

Stephen Gardbaum

# A Comparative Perspective on Reforming the New Zealand Bill of Rights Act

As an academic comparative constitutional lawyer, I come to the recent Constitutional Advisory Panel report and the issue of whether and how the New Zealand Bill of Rights Act 1990 (NZBORA) should be reformed from a particular – perhaps idiosyncratic – perspective. This is viewing the NZBORA as an influential version of a new general model of constitutionalism. This model grants to legislatures ultimate responsibility for the resolution of controversial rights issues while at the same time seeking to improve the rights sensitivity of the legislative process and increasing the rights protective powers of courts as compared with the traditional institutional form of parliamentary supremacy. At least in theory and aspiration, this general model provides an

alternative to both the latter, venerable form of constitutional arrangement and its conventional rival, the model of constitutional supremacy, involving a fully constitutionalised regime of supreme, entrenched law enforced by the power of one or more courts to invalidate inconsistent statutes. As an experiment, this new model seeks to create greater balance between courts and legislatures on the resolution of contested rights issues than the traditional alternatives, whilst also providing an effective regime of rights protection.

As a result of this particular perspective on the issue, of the many topics raised in the constitutional advisory report, my focus in this article will be on institutional, and particularly inter-institutional, relations and allocations of power under the NZBORA, rather than on the content of its rights provisions. In other words, I shall be concentrating on structural rights issues and not substantive ones. And within this subset of NZBORA issues, I

---

**Stephen Gardbaum** is the MacArthur Foundation Professor of International Justice and Human Rights at UCLA School of Law

shall mostly be focusing specifically on two: (1) improving the legislative role, and (2) the appropriate scope of judicial power. In so doing, my aim is to bring comparative experience to bear on the discussion.

I think it is worth stating at the outset that from this vantage point, of the five jurisdictions to have adopted versions of this 'new Commonwealth model of constitutionalism' (Gardbaum, 2013), New Zealand is in my overall view performing the best, in that it is hewing most closely to the 'intermediate' aims and design structure of the model. At a very general level, courts are exercising the new rights-protecting powers granted

some possible reforms to each of its – and the general model's – three distinct stages. But it is perhaps useful to state this broader, 'macro' evaluation at the outset to help place this discussion in proper perspective.

Before setting out on this task, however, let me briefly state my view on an even more macro question, what Sir Geoffrey Palmer has recently referred to as 'the big issue' concerning the NZBORA (Palmer, 2013), as distinct from the 'tweaking' that I will mostly focus on. This, of course, is whether the NZBORA should be constitutionalised – made supreme law and enforced

more significant support now for giving the NZBORA supreme law status than there was in 1986.

There is also some separate discussion in the report on the issue of entrenching the NZBORA in whole or part by means of some special amendment procedure, such as a required three-quarter majority vote in Parliament or an ordinary majority in a referendum.<sup>1</sup> To the extent that this is intended as a distinct issue from the potential supreme law status of the NZBORA – i.e. that the entrenched provisions would still have only the force of ordinary law in the event of a conflict with another statute and section 4 would still apply – I am not sure it addresses a real concern. Unlike the HRA and the Victorian Charter in particular, the NZBORA does not appear to be politically endangered, as it currently has the support of both major parties. Unless inserted at the same time as any such entrenchment provision, this latter would of course be a two-way ratchet, making the addition of new rights – such as those discussed in the report – as difficult as repealing current ones.

## Unlike the HRA and the Victorian Charter in particular, the NZBORA does not appear to be politically endangered, as it currently has the support of both major parties.

by the NZBORA, as distinct from either not using or misusing (i.e., over-using) them, but rights issues are still frequently resolved by Parliament. This contrasts most clearly, in my view, with the situations in Canada, where in practice the latter is no longer true given the strong reluctance to employ the section 33 legislative override mechanism, and the two sub-national Australian jurisdictions of ACT and Victoria, where the courts are mostly failing to use their new powers (Debaljak, 2011). Under its Human Rights Act 1998 (HRA), the United Kingdom I think is a closer call and comes second to New Zealand in terms of practice living up to theory, in that, while not lurching as closely towards the judicial supremacy pole as Canada, the preferred and intended legislative–judicial balance on rights issues is more off-kilter, due significantly to the skewing impact on the working of the model of the European Convention on Human Rights. That all said, the NZBORA is certainly not functioning in anything like an 'ideal' fashion, and in the third section of this article I explain the problems in its operation as I see them, and suggest

through a judicial power to strike down inconsistent statutes. Personally, I find the new Commonwealth model normatively attractive relative to the other two leading alternatives. If I had to choose between these other two, either generally or specifically in the New Zealand context, I might opt for constitutional supremacy, given what seem to me to be valid contemporary concerns about the concentration of power in parliamentary executives and the consequent undermining of political accountability and responsibility to legislatures that is the major continuous check within the theory and practice of parliamentary sovereignty (Gardbaum, 2014). But I believe comparative experience within established democracies more generally suggests that, even though courts can usefully be employed as an instrument of dispersal, some lesser judicial power is preferable because of the new risk of courts coming to monopolise authority themselves over rights issues. For this reason, 'tweaking' the current system seems to me the better path of reform. Moreover, as the Constitutional Advisory Panel report states, there appears to be no

### Some comparative perspective

Common to the model in all five jurisdictions are three constitutive steps. The first is political rights review during the legislative process, which is designed as an *ex ante* mechanism to improve its outputs from a rights perspective by inculcating rights sensitivity among ministers, MPs and officials, focusing attention on the rights implications of bills and promoting rights deliberation at all stages of their passage into law. Secondly there is a form of *ex post* constitutional review by the courts, empowering them to engage in rights-friendly statutory interpretation and to assess the compatibility of legislation with protected rights, whether or not they have the power of invalidation. The third step is political review and reconsideration of a law in light of the prior exercise of judicial review, and a legislative power of final resolution of the rights issue, typically (though perhaps not necessarily) by ordinary majority vote.

Overall, certain general problems have arisen in practice among the various jurisdictions in all three areas.

Summarizing very briefly, the main problem at the first stage has been the quite limited role of specifically *legislative* deliberation, as distinct from the substantial impact that the required rights vetting has had on the formalised processes of developing, proposing and drafting government bills by the executive. This gap has primarily been due to the Westminster system of executive/party dominance, and obviously requires creative institutional reforms to address it. An only slightly lesser problem, at least to my mind, has been that too much of the rights scrutiny by both executives and legislatures has been exclusively *legal* in nature, rather than taking broader moral and political values into account.

Although reasonable people will and do differ on this, to my mind the major reason for rejecting judicial supremacy in the first place is the nature of many controversial rights issues, which, whether or not enshrined in a bill of rights, are not exclusively legal in content but necessarily implicate more general moral and political values, on which the judiciary has no special authority or expertise. This is particularly so where, as if often the case, vague, underdetermined or underspecified rights provisions are also subject to the modern proportionality principle. Simply labelling these legal issues does not make them so. It artificially narrows the type of reasoning employed, or licenses courts to roam beyond their subject-matter jurisdiction; either way, it overly empowers lawyers and judges at the expense of citizens and their elected representatives. Under the new model, the legislative role is designed in significant part to inject these broader values into rights deliberation. If simply having an available *ex ante* mechanism of rights review were the only reason for the first stage, continental-style abstract judicial review of legislation could be borrowed, perhaps through more routine advisory opinion jurisdiction.

As far as the second stage of judicial review is concerned, with the exception of the two Australian jurisdictions, I believe that, broadly speaking, courts have for the most part exercised their new powers in appropriate and expected ways, notwithstanding a few concerns at the

more detailed or micro level. With respect to the NZBORA, I shall be discussing these in the next section. In the UK, after a few early teething problems involving an overly robust understanding of the scope of the interpretative duty under section 3, the courts appear to have reached more of an equilibrium between section 3 and their declaratory power under section 4, employing them on a roughly similar number of occasions. Here I am putting to one side more substantive criticisms concerning the outcomes of particular cases or classes of cases as being either insufficiently or overly rights protective, and also about the courts' application

## **In New Zealand ... in almost every case the political branch has responded to judicial decisions on rights in one way or another, with an overall mixed record of accepting and not accepting ... decisions.**

of section 2 directing them 'to take into account' decisions of the European Court of Human Rights. In Canada courts have generally done what courts do when they have the power to invalidate legislation: they have employed it quite forcefully and regularly, albeit that the judicially-created proportionality doctrine and remedy of suspended declarations of invalidity sometimes allow legislatures a slightly longer leash.

Finally, on political reconsideration following judicial review, certainly a key issue, thus far the record has not been particularly encouraging. In Canada, the temporary but renewable legislative override power under section 33 remains essentially dormant, leaving the courts' decision whether or not to uphold 'legislative sequels' under proportionality analysis the major claimed source of judicial-legislative 'dialogue'. In Australia there has only been one final declaration of inconsistency in either jurisdiction, whereas in the UK 18 out of 19 final declarations triggered amendment or repeal of the statute, with the vexed issue of prisoners' voting rights the outstanding and still unresolved one. Stated baldly, I think this figure is slightly misleading, in

that several of the declarations involved statutes that (1) had either been, or were in the process of being, amended at the time, or (2) had already been adjudged by the European Court of Human Rights to violate the convention, so creating an international legal obligation to change them. And with respect to a few others there has been some disagreement as to whether the amendment fully resolved the declared incompatibility. In New Zealand, again to be discussed in a little more detail below, in almost every case the political branches has responded to judicial decisions on rights in one way or another, with an overall mixed record

of accepting and not accepting these decisions. Notable among the latter is the *Hansen v R* decision applying section 4 of the NZBORA to the reverse onus of proof attaching to possession of specified quantities under the Misuse of Drugs Act 1975.<sup>2</sup> In neither the UK nor New Zealand instances of not acting on the judicial view did the quantity or quality of legislative rights deliberation come close to satisfying the normative standards that in my view are necessary for the justification of this power.

### **The NZBORA**

Let me now turn specifically to the NZBORA and address some of the issues flagged in the Constitutional Advisory Panel's report. Once again my suggested reforms will all fall into Geoffrey Palmer's 'tweaking' category, so I obviously do not share his 'either make it supreme law or don't tinker' view, although I certainly respect it.

At the first, rights-vetting, stage the key weakness has been the role of the legislature, as Tessa Bromwich and Andrew Geddis have convincingly shown (Bromwich, 2009; Geddis, 2009). Accordingly, the focus should be on how

to improve legislative consideration of, and deliberation on, rights issues raised by proposed bills. To the significant extent that the underlying problem here is executive and party dominance in a Westminster-style system, any general measures to weaken this hold over the legislative process – including, perhaps, abolishing the ‘party vote’ in Parliament – are to be welcomed. But apart from such general or systemic reforms, what might be helpful in this regard with respect to NZBORA’s specific processes and requirements?

One idea is to require section 7 reports for *every* bill introduced into

reasoned statements for compatibility and incompatibility reports – whether *and how* they are consistent – could usefully be adopted.

I also believe that from a systemic or functional perspective, 62 section 7 reports since 1990, especially given the increased pace at which they have been issued in recent years, is too high. Not, I should immediately stress, because any were not merited on an individual basis or did not reflect the sincere fulfilment of the statutory duty by the attorney-general under the current standard, but because from a more functional standpoint the overall impact of such relatively frequent

think it is worth considering transferring responsibility for making reports from the attorney-general to the sponsoring minister, as again in the UK and Australia. The idea here is partly to help promote greater rights-consciousness among a larger group of government ministers and officials, and partly to spread the burden if a report is required for every bill. But it is mostly to overcome or reduce any perception that the NZBORA raises purely legal and technical issues that are separate and distinct from the normal and more central public policy concerns of politicians, to be handled and overcome by a specialist group of expert officials. In order to transcend any such perceived division of labour and to promote the injection of broader moral and political values into rights deliberation that is often both an inherent part of their resolution and a more appropriate task of the political branches than the courts, the final executive branch judgment at the time a bill is introduced should be made and presented by the responsible minister, albeit one who is fully informed by the prior legal advice of officials, including perhaps the attorney-general.

Once a bill is introduced into Parliament, comparative experience suggests that the best type of committee to engage in serious and detailed rights scrutiny is one that specialises in the subject, along the lines of the Joint Committee on Human Rights in the UK (and also now at the federal level in Australia). The Joint Committee on Human Rights has three characteristics in particular that enable it to function reasonably effectively in a difficult context in which even this level of success is at a premium: (1) as a specialised committee with a license to consider the rights implications of any bill, its members develop expertise which gives them additional credibility with their parliamentary colleagues and executive officials alike; (2) it has its own top-notch human rights lawyer to advise and provide legal opinions;<sup>3</sup> and (3) as a joint committee of both houses of Parliament, it has no in-built government majority and has been able to operate on a broadly non-partisan basis.

In thinking about switching from the current system under the NZBORA,

## Once a bill introduced into Parliament, comparative experience suggests that the best type of committee to engage in serious and detailed rights scrutiny is one that specialises in the subject ...

Parliament, rather than only those the attorney-general believes to be inconsistent with the NZBORA, as is the case in the UK, ACT and Victoria. That is, the rights implications of a bill should be reported whether or not it is deemed compatible. It is true that on occasion the attorney-general has elected to issue a ‘not a section 7 report’, and that the government usually makes available the advice provided to the attorney-general on all bills. Nonetheless, I believe that for Parliament and the relevant parliamentary committee to receive focused and politically accountable information on how the executive has identified and assessed the rights implications in the case of every government bill would be helpful in more deeply inculcating a norm of a rights-conscious legislative process. For one thing, it may reduce the reflex sense that any report produced is the occasion for partisan solidarity for or against the bill. In addition, to the extent that section 7 reports now (or any newly required ‘not a section 7 report’ would) sometimes provide rather conclusory assessments that do not afford a real basis for understanding how they were made, the Australian practice of requiring

reports threatens to routinise what ought to be a relative rarity: risks reducing the political significance or gravity of each one. Just as in legal systems in which each decision of an apex court is designed to be individually considered and digested for its potentially system-wide significance, the number of such decisions is deliberately kept low by means of fully discretionary jurisdiction, something similar is at work here. The high number also arguably sends a message that the cabinet does not take the NZBORA very seriously. So, although I am certainly not commending the opposite flaw as exhibited in Canada and the UK, where the numbers of incompatibility statements are zero and two respectively, the criteria or standard for triggering a section 7 report should be adjusted to try and ensure that such a finding is a more special event, attracting the type of attention that raises the costs of politics-as-usual. To the extent that section 7 reports take into account justified limits less than elsewhere, changing this practice might be another way to reduce the number.

On this score, but also relating to my earlier critique of pre-enactment rights-vetting as exclusively a legal issue, I



in which legislative rights scrutiny is undertaken by the ordinary subject-matter select committees, three practical problems of varying degrees of difficulty immediately present themselves. The first is possible resentment and hostility towards a specialist committee on the part of the existing select committees, which would continue to scrutinise the non-rights dimensions of bills – especially if its reports are treated differently or any exceptions are made to normal procedures for their discussion. I think the appropriate response is that any ‘special’ treatment of rights issues should be understood to reflect and express the ‘constitutional status’ of the NZBORA. Second is the problem of staffing such a specialist committee, given the small absolute (though clearly not per capita) number of MPs. This legitimate concern provides one reason to resist calls for reducing the size of Parliament towards more typical average international representation levels. The hardest problem is how to reproduce the relative independence and non-partisan nature of the Joint Committee on Human Rights in a unicameral legislature. I am not sure what the solution to this is short of the political non-starter of reviving the Legislative Council and electing its members on a different basis from the House. But even the most party-controlled of legislatures usually have a small corps of members who press and take a particular interest in rights issues, and these should be drafted first.

Finally, in thinking about the importance of the committee stage to legislative rights review, the practice of enacting bills under urgency seems inconsistent with the constitutional status of the NZBORA and the fact that, section 4 notwithstanding, it expressly applies to Parliament.<sup>4</sup> This is especially so where the executive vetting stage has identified a bill as raising serious rights issues, and certainly where one is deemed inconsistent by the attorney-general.<sup>5</sup>

The overall sense here is that with fewer, less ‘technical’ section 7 reports and more rights concerns and amendments emanating from a specialised committee with the expertise, time and resources to invest in the task, the relevance of

the NZBORA to the legislative process and the amount of parliamentary rights deliberation will increase. This is essential because, as Andrew Geddis has suggested (Geddis, 2011), in this day and age no longer can any Parliament anywhere take for granted the right to the final say; it must earn it.

Turning to the role of courts under the NZBORA, the key problem in my view is that cases in which judges find an inconsistency and apply section 4 do not receive sufficient attention in the media and elsewhere to ensure that Parliament comes under political pressure to address and resolve the rights issue. Such publicity

mode of establishment does not hamper its full-fledged use, as seems to have been the case following *Moonen*.<sup>7</sup> But if either the implication or the exercise of the power continue to be muted at best because of any sense of illegitimacy or judicial reluctance to criticise Parliament, then the NZBORA should be amended to grant it expressly. If this happens, consideration might even be given to *mandating* issuance of declarations, rather than the current discretionary power in the UK and Australia, thereby bringing it into line with the interpretative duty (not power) placed on courts in the various jurisdictions.

## ... the burden and political costs placed on the legislature by a default rule in favour of the judicial position have been too high to overcome

and attendant raising of political costs is an important structural feature of an institutional arrangement in which the default rule lies with parliament and its affirmative action is needed to affect the continuing operation of the law, as in all versions except the Canadian one; it is part of the model’s subtle combination of legal and political mechanisms. Again, *Hansen v R* is the best example here, and it is instructive to compare the reception of this decision with that of the House of Lords’ declaration of incompatibility in *A and Others*.<sup>6</sup> In the latter, the UK government’s very first, reflex response was to do nothing, but this quickly became politically impossible due to the media and political reaction (Sathanapally, 2012, pp.191-2). Accordingly, as Claudia Geiringer has argued (Geiringer, 2009), New Zealand courts need to not *just* find an incompatibility where a statute cannot be interpreted in a rights-consistent manner, as section 4 implicitly requires (Rishworth, 2004), but to *declare* it. Otherwise, as in *Hansen*, the finding risks being buried beneath the judgment that the claimant loses.

It would be fine in my view, and arguably preferable, for courts to imply the declaratory power as long as this

In terms of the options for reform mentioned in the Constitutional Advisory Panel report, this I think is a better choice than a judicial invalidation power either with or without a legislative override provision. I have explained above why I think full constitutionalisation is generally not justified in the modern rights context. The addition of a legislative override power has not in practice proven to be an effective mechanism for resisting or avoiding judicial supremacy in the major jurisdiction in which it has been instituted, Canada. Rather, the burden and political costs placed on the legislature by a default rule in favour of the judicial position have been too high to overcome.<sup>8</sup> To the extent that a declaratory power is thought to create too few incentives for individual claimants to pursue cases<sup>9</sup> or to distort judicial analysis, I believe a law or norm that governments compensate individuals when they elect to amend or repeal a law previously declared incompatible by the courts, as currently in Ireland,<sup>10</sup> or that such amendments/ repeals be given retrospective effect, provides a practical solution to the problem (Gardbaum, 2013, pp.198-201). Another, separately or in tandem, is to encourage litigation by public interest

groups, for whom any such disincentive effects will likely be smaller. I have no real issues with how New Zealand courts are interpreting and applying section 6, as I think that ‘reasonably possible meanings’ is a reasonable contextual interpretation of ‘wherever an enactment can be given a meaning that is consistent with the rights’. As just discussed, the problem is rather with the findings of incompatibility that are rendered more likely by this interpretation than by a stronger one.

At the final stage of political responses to judicial rights decisions, the main problem has been less unwillingness to disagree with the courts – or to act on that disagreement – than with the quality of rights engagement in so doing; that is, the concern is with process more than outcome. This contrasts with the situation in Canada, and at least according to some also in the UK, where courts have in practice mostly been given the final word on rights issues. In New Zealand, Parliament still decides most significant and contested issues and, equally importantly, the courts still believe that it should.

Overall, the political institutions have responded in one way or another to most of the important judicial rights decisions, with a mixed record of accepting or rejecting them. These include *Baigent’s Case* (reference to the Law Commission and no action on public law damages), *Quilter* (eventual passage of the Civil Unions Act 2004), *Taunoa* (modifying the judicial decision in enacting the Victims’ Compensation Act 2005), *Poumako* (resulting in amendment of the

Criminal Justice Amendment Act 1999 by the Sentencing Act 2002), Hansen (reference to the Law Commission but no amendment or repeal of the reverse onus provision found incompatible with the NZBORA) and *Ye* (amending the statute to overrule the court’s section 6-inspired interpretation of the Immigration Act 1987). So far so good, as it is fine under the NZBORA – and the general model – for the political branches to disagree with judicial rights resolutions and insist on their own. The problem is that, as with pre-enactment review, such insistence ought to be the product of serious rights deliberation rather than raw political power, and it has mostly not been.

Several of the other already suggested reforms are geared towards changing the equation at this juncture, perhaps most directly the judicial declaratory power. Another advantage of a specialised rights committee such as the Joint Committee on Human Rights, as compared with ordinary subject-matter select committees, is that it has the authority and expertise to follow up on findings of inconsistency and put pressure on the government for a response. To this end, a further reform of the NZBORA might bolster the others by requiring the responsible minister or the attorney-general to respond formally to a declaration (or even a finding) of inconsistency within six months or some other specified period of time, as with the Australian bills and declarations by the Human Rights Review Tribunal under New Zealand’s Human Rights Act 1993.

## Conclusion

Under the NZBORA, as with the general model it instantiates, it is important not only that rights are taken seriously, but *who* takes them seriously. Because it has a tendency to focus only on the former, full constitutionalisation should be resisted until such time, if any, as suitable means for promoting both halves of the goal have been given sufficient opportunity to succeed and found to fail.

The general model is a notable constitutional experiment – in whether both greater balance between courts and legislatures and effective rights protection is possible, in whether judicial power can be increased without leading inexorably to judicial supremacy; in short, whether a stable middle ground exists and can be maintained. As with all experiments, the process of trial and error, of making adjustments in the light of experience, is an entirely sensible and appropriate one to employ before coming to any definitive conclusions. It is for this reason that I believe tinkering is currently the best course of action, not the worst.

- 1 The report also suggests that this entrenching provision could also itself be entrenched (‘double entrenchment’).
- 2 *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1.
- 3 Initially David Feldman and now, for several years, Murray Hunt.
- 4 NZBORA, section 3(a).
- 5 See, for example, C. Geiringer, ‘Urgency, Parliament and the Bill of Rights – time for a cup of tea, guys?’, blog post at <http://55lambtonquay.blogspot.co.nz/2009/04/urgency-parliament-and-bill-of-rights.html>, April 2009, and A. Geddis, ‘I think National just broke our constitution’, at <http://pundit.co.nz>, 17 May 2013.
- 6 [2004] UKHL 56 (‘the Belmarsh case’).
- 7 *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 (CA).
- 8 From a pragmatic perspective, Canada presents the only empirical evidence we have of a constitutionalised system combined with a legislative override power, so that unless the near-dormancy of section 33 is due to Canada-specific reasons, its experience ought to remain a cautionary tale.
- 9 As powerfully argued by Tom Hickman in his contribution to this issue of *Policy Quarterly*.
- 10 Under section 5(4)(c) of the European Convention on Human Rights Act 2003.

## References

- Bromwich, T. (2009) ‘Parliamentary rights-vetting under the NZBORA’, *New Zealand Law Journal*, pp.189-90
- Debeljak, J. (2011) ‘Who is sovereign now? The Momcilovic Court hands back power over human rights that parliament intended it to have’, *Public Law Review*, 22, pp.15-39
- Gardbaum, S. (2013) *The New Commonwealth Model of Constitutionalism: theory and practice*, Cambridge: Cambridge University Press
- Gardbaum, S. (2014) ‘Separation of powers and the growth of judicial review in established democracies (or why has the model of legislative supremacy mostly been withdrawn from sale?)’, *American Journal of Comparative Law*, 62 (3), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2430903](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2430903)
- Geddis, A. (2009) ‘The comparative irrelevance of the NZBORA to legislative practice’, *New Zealand Universities Law Review*, 23, pp.465-93
- Geddis, A. (2011) ‘Prisoner voting and rights deliberation: how New Zealand’s parliament failed’, *New Zealand Law Review*, 2011: 3, pp.443-74
- Geiringer, C. (2009) ‘On a road to nowhere: implied declarations of inconsistency and the New Zealand Bill of Rights Act’, *Victoria University of Wellington Law Review*, 40, pp.612-45
- Palmer, G. (2013) ‘The Bill of Rights after twenty-one years: the New Zealand constitutional caravan moves on?’, *New Zealand Journal of Public and International Law*, 11, pp.257-80
- Rishworth, P. (2004) ‘The inevitability of judicial review under “interpretive” bills of rights: Canada’s legacy to New Zealand and commonwealth constitutionalism?’, *Supreme Court Law Review*, 23, pp.233-57
- Sathanapally, A. (2012) *Beyond Disagreement: open remedies in human rights adjudication*, Oxford: Oxford University Press