

## Essay 2

### Relationship Development between the Government and the People since the Middle Ages

The relationship between the government and the people has developed through many stages since the middle ages. English legal history has been a major influence in this relationship. It is through the early reign of the Monarchs that basic legal documents came into place, such as the Magna Carta, that became the foundations for prominent legislation and Bills that still bind England today. The introduction of the common law system in the 17<sup>th</sup> century saw the public becoming more involved in legal systems and decisions which lead to significant movements towards Human Rights. This resulted in a positive relationship development between government and people not only in England but influencing New Zealand Law to.

The struggle for power between crown and parliament was something that would shape the English legal system. In the 1500's the crown was still very much in control of England. Henry VIII was a monarch who created the Church of England, overpowering the Roman Catholic Church.<sup>6</sup> Charles I believed in the 'divine right of kings', and maintained that monarchs should be unquestioned in their authority, with parliament submitting to their wishes. Parliament disagreed with this, and therefore made Charles I sign the Petition of Rights 1627; in many ways this led to the Bill of Rights 1688. The Civil War (1642-51) was a battle between the Parliamentarians and the Royalists, and resulted in a victory for parliament. Monarchy was re-established in 1660 when Parliament had William III sign the Bill of Rights Act 1688. This ensured the rights and powers of Parliament and also protected liberties. The Bill of Rights 1688 prevents the monarchy from delaying laws and putting up taxes without the approval of parliament. As well as this, all parliamentary procedure would be protected this included freedom of speech inside parliament and free elections. As a result of this England became a constitutional monarchy.<sup>7</sup>

Equity and common law progressed alongside each other for several centuries, and then effectively merged in the late 19<sup>th</sup> century. The common law was then based on preceding and case law as opposed to codified laws. The British constitution, often referred to as an unwritten document, is a product as a result of historical legal development. Evolving over time, the constitution has two main strands of development; the first is the changing relationship between Parliament, monarchy and executive, and the second being the landmark reforms that delimited constitutional powers and extended rights and liberties. Landmark reforms that extended rights and freedoms of the people while

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<sup>6</sup> *Grant Morris Law alive: the New Zealand legal system in context (2<sup>nd</sup> ed, Oxford University Press, South Melbourne, 2011) at 17.*

<sup>7</sup> *At 20.*

**Beginning of notes...**

# Constitutional law

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- Framework of fundamental principles under which a nation is generated and constituted.
- Not just comprised of laws, also involves principles.
- Concerned with how the power of the state is exercised – how the institutions of government work and relate to each other.
- Concerned with the relationship between the government and citizens.

## **NZ's Constitution**

- Unwritten constitution (of UK and Israel)
- Treaty of Waitangi

## **Features of a written constitution**

- Origins in a 'constitutional moment'. Single event which is precursor to constitution.
- Single written document, very difficult to change.
- "supreme law", possibly "entrenched" overrules anything else e.g. legislation
- Key function: defines sources of power and institutions of a government.
- May contain a Bill of Rights which limits government powers e.g. Canada, Tonga. Any legislation overrules the NZ Bill of Rights.

## **Risks of a written constitution**

- Unelected judges can invalidate legislation enacted by democratically elected parliament.
- Processes for amendment of written constitutions are usually cumbersome
- Will eventually lead to courts becoming political

## **NZ's unwritten constitution**

- "loose" "vague" "apathy and indifference" towards it
- Constitutional monarchy
- The 3 branches of government
  - Executive (makes)
  - Legislative (applies)
  - Judiciary (interprets)
- The sovereign/ head of state is responsible and represented of government
- There must always be a government that advises the queen.

- Elected to represent the people
- The “Westminster system” continues to be important
- The Treaty of Waitangi as a/ the founding document

### **Key Concepts**

- Separation of powers
  - Attributed to a French philosopher
  - Avoids risk of dominance by one branch being over the others
- Parliamentary sovereignty
- Rule of law. Protected from arbitrary action. Government subject to the law. Everyone is equal under the law.
- Democracy as the “underlying principle” (per Ken Kenith), underpins everything else.
- All of which are reflected to varying degrees in the Constitution Act 1986

### **Main Sources of NZ’s Constitution**

#### **The Constitution Act 1986**

- Came from the July ’84 “constitutional crisis”
- General election, labour won (David Lange)
- Outgoing PM (Robert Muldoon) allowed to remain in power until the writs were returned.
- No controversial action allowed to be taken
- Must act on advice of the incoming government if something urgently needs to be done.
- Muldoon refused to devalue the NZ dollar
- Eventually forced to by his MPs
- Highlighted the issue of the transfer of power
- Underlying principle of democracy requires Muldoon to act in accordance with the wishes of Lange’s government.

#### **1986**

1. Head of State is the sovereign. The Governor-General is the sovereign’s representation in New Zealand
2. Executive: emphasises parliamentary character of the executive. Ministers of the crown are to be members of parliament.
3. Legislature: Parliament is the sovereign and the House of Representatives. Extinguishes power of the UK to make laws for New Zealand. Patriating the constitution. Provides for 3 year term of parliament. Only provision of the Act that’s entrenched.