

- **Definition** of the Crown: jewel, Monarch, Executive, State – importance is association with constitutional authority
- The Crown is “one and indivisible”: one body with collective will and action (source of unity and stability)
- *Town Investments Ltd v Department of the Environment*: issue of lease, counter inflation, raising rent not allowed when occupied as a “business tenancy”, found GVT & Crown are a collective: public servant occupation = Crown occupation
 - “For and on behalf of” **private law meaning**: agency, contracted relationship with legal duties and rights, **public law meaning**: constitutional duty exists stemming from the authority of the Crown as part of the Crown
 - “HMajesty”: symbolic phrase embodying the power of the Monarch – Crown is a whole greater than the Queen
 - Relationship between Crown and Ministers: aspects or members, Minister “hand” on the “body of the Crown”
- *Solicitor-General v Miss Alice (2007)*: Army bridge, maintenance, second investigation Army liable released by Alice
 - Conduct expected of the Crown: the AG is obliged to act in the public interest + must act as a model litigant
 - Meaning of “The Crown”: includes the Courts, Army and Judiciary (surprising)
- *A-G v Chapman (2011)*: SC held the Crown was not liable for damages for judicial breach of the NZBORA
 - Separation of powers (strange for Crown to be liable for judicial breaches) + rule of law (no accountability)
 - Justification for AG as the defence: **practically** (none more appropriate, can’t sue judiciary [independence], Crown provides infrastructure and supply for judiciary) + **theoretically** (Crown responsibility for system)
 - **Harris**: AG correct choice, judges being liable would practically interfere with the administration of justice, compensatory purpose of damages: judges inability to pay, deterrence purpose of damages: judges not involved/aware, the Crown stands behind the Court system and should be responsible for its performance
- Meaning of **Crown** in legislation: State OE A ’89: Crown = Queen, Public F A ’89: Crown = Ministers and departments
- **“Head of State”**: Constitution A ’86, s 2: Sovereign in Right of NZ (GG), Royal Titles A ’74, s 2: SRNZ is Queen Elizabeth, in NZ the Head of State is known to be Queen Elizabeth through the Royal Succession Act and common law
- **Succession**: Royal Succession Act 2013: first born female (despite siblings) + marriage of Roman Catholics (not *be*)
- **Governor Generals** “representative” of the Head of State (Constitution Act 1986 s 2(2) (LP: replaced by administrator)
 - GG distinguished NZ (now more representative) not associated with Crown – understanding of law = helpful
 - **Appointment**: Letters Patent ’83, cl 2: appointed by the Crown
 - **Functions**: Ceremonial (opening Parliament), Symbolic (embodies values of the nation), Constitutional (assenting)
 - **Legal Powers** Const. Act ’86 + Letters Patent ’83: a/d Ministers, s/p/d Parliament, Bills, appointing judges
 - **Exercised**: Underlying principle of democracy, (*Bagehot*) monarch can be “consulted, encouraged, warn”
- **Prerogative powers**: origin- before modern Parliamentary system, (*Sunkin*) inability to establish new /remove old PP
 - Exercised by GG **on advice**, accountability: Crown accountable to the executive + judicial review (tricky in practice) + without being in statute hard to find where they have acted outside
 - Monarch: bills, s/p/d Parliament, appointment of PM and other Ministers + Ministers enter treaty obligations
- **Reserve powers**: (*P&P*) a/dPM, refused d P, force d P + controversial refusing royal assent
 - Reserve powers: no advice required: rejected or independent judgement used
 - Refusing assent: *Cartw.* Yes, *Joseph* disputed but could occur, *P&P* going to far, greater constitutional issues
 - Alternatives: assent and leave to the courts (reluctance), delay while opinion changes, GG resign

- **Definition**: Ministers + GG + GVT departments, it is the relationships/ accountability, modern executive broader role
- **Constitutional conventions**: observed norms of political behaviour generally acknowledged to have attained significance worthy of general acknowledgement, ensure powers of the constitution exercised democratically
 - **Jennings Test**: 1. Existence of precedent 2. Belief actors are bound by the rule, 3. Good reason for the rule (*Evans* single precedent with good reason may be enough) (actors: Ministers, MPs, GG, public servants)
 - **Conventions**: cardinal convention, collective cabinet responsibility, caretaker convention, collective ministerial responsibility, individual ministerial responsibility
 - **Enforceability**: **political**: can be acknowledged and defined in court but not legally enforceable as they may conflict with legal rules (Canada *AG v Jonathan Cape*), cannot crystallise into law, can become law by statute
 - *Evans v Information Commissioner 2013*: correspondence between Prince Charles and Ministers – battle of public interests in transparency v ability to advise
 - Evans won: Jennings Test (3): democracy more important – perception of neutrality
 - Recognised: **education**, **cardinal** (not M), and **tripartite** convention (consult/encourage/warn)
- **Government formation**: occurs (1) after an election, (2) where there has been a loss in a vote of confidence
 - Government requires confidence to govern (responsible government) – without it must resign or seek election
 - **Key conventions**: cardinal convention, requirement of confidence – **Knigh** contends that it is wrong that the party with the highest vote would have the first call on government formation, not the only important factor
 - **MMP**: increases negotiation, with FPP rarely issues with majority but under MMP it is unlikely leading to requirement to form less sound arrangements (single party government, coalition government)
 - **Ascertaining confidence** – goes to the heart of the government’s ability to govern and use resources
 - **Express**: originates with the opposition – attached as an amendment to other motions – budget, supply, address in reply (1st), debate on PMs statement (1st each year)
 - **Implied**: emanates from government automatically through supply and budget bills
 - By **declaration** of the government (PM decision) – snap election



- Loosing confidence: another general election (caretaker) unless new arrangements of confidence can be formed
- GG involvement: duty to **inform and consult** to ascertain where confidence lies (views and PM)
 - Parties approach GG where majority formation – practice is largest has first – unsure if convention
 - MMP: process slowed – *First MMP election* 8 weeks for NZ First to form coalition
 - Refusing to dissolve parliament: can do so when unsure PM has confidence of the House
 - Dismissing the PM: *Australian constitutional crisis 1975* Whitlam v Fraser
 - Dismissing the GG: *Tuvalu constitutional crisis 2012-13* refused vote of confidence – dismissed PM
 - Refusing to prorogue Parliament: *Canada* deliberation protected ability to refuse + reaffirmed role of GG in protecting the constitution but also shielded Crown from uproar at refusing PMs request



- Government arrangements: coalition, support (agree to support/abstain in C/S), Cooperation (not oppose C/S)
 - Coalition < support: retain individual identity so not to be bound by collective responsibility
 - Support agreements: written (position/speaking) to increase clarity and transparency + not legally enforceable
 - **Politically enforced** as there is an incentive to provide to retain support for confidence
 - Few constraints on inter-party bargaining: no limit on duration, no formal overseer, no formal investiture vote
- Government transition: caretaker convention applies 1. After an election, 2. After the loss of a confidence vote
 - If the GVT lost confidence – should not have the opportunity to make big decisions (democracy) (*Muldoon84*)
 - Two arms: (1) **where it is unclear who the government is**: continue day to day business, refrain from big initiatives/decisions, if urgent defer, consult to find confidence, or implement temporary measure (2) **when the incoming government is clear**: continue day to day business, delay decisions, if urgent consult incoming GVT
- The Cabinet Manual: not legally binding, descriptive of relationships, values, and what practice – authority from Cab.
- Ministers: (LP) appointed by the GG, is an MP or a candidate, role: portfolio, EC, advise GG, decide GVT policy, financial responsibilities, powers: common law and statutes, **types**: associate, acting, duty, P UnderS, P PrivateS
- Prime Minister: appointed by GG as person who has confidence of the House (reserve power) use judgement and electoral results, no legal status, principal advisor to Sovereign, chairs Cabinet, overall policy direction
- Cabinet: central decision making body, informal, conventions: consultation, confidentiality, collective responsibility
 - Consider significant policy, controversial legalisation, agenda (PM, Secretary of Cabinet, submit before, advice) Secretary of Cabinet: secretary function and advice for continuity of constitution and democracy
- **Collective Ministerial Responsibility**: (1) confidence, (2) unanimity, (3) confidentiality
 - (2) Knight: evolved practice minister can disagree outside portfolio when support or minority party
 - (3) Official information Act: presumption of release unless there is a specific public interest against it
 - Democracy: House expresses confidence in whole of government + GG confidence when acting
- **Individual Ministerial responsibility**: exists so Cabinet is responsible to Parliament
 - Expected to behave at the “highest standards”, M accountable to PM, a relationship with M should not benefit
 - Types of conflicts: pecuniary/non pecuniary, direct/indirect, family/whanau/close associates, association
 - Actions: Register of Pecuniary Interests, divestment, declaration of interests, don’t receive papers, transfer to another Minister or to the department, place investment in Blind Trust, resign from organisation
 - Responsibility to the House: explanatory, amendatory, culpability (vicarious responsibility) – alleged sufficient
 - *Cave Creek* (soft/hard), *Judith Collins and Oravida* (endorsement), *Maurice Williamson* (association)
- Changing Executive: 12-84: hierarchies (centralised control, local GVT), 84-99: markets and contracts (corporatisation, competition, consolidation), 99-08: mixed (disaggregation, arms length agencies, issues defining executive)
- Public Service: public sector > state sector > state services > public services
 - *Comm. of IR v Medical Council of NZ 97*: “instrument” requires accountability to Minister (function/control)
- Accountability of Ministers/Chief Executives: Ministers concerned with policy directions and are vicariously responsible for CEO, CEO deal with day to day operations, and advise the Minister (5yr SSA+ appointed by GG)
 - SSA: perform functions and duties, advise, manage – independence relating to individual employees
 - PFA: financial management and performance + accountable to Minister 1yr performance info in Estimates
- Key duties of public servants
 - *Palmer*: Loyalty (GVT of the day, best ability), neutrality, anonymity (Ministers public + defend)
 - *State Services Commissioner*: fair, impartial, responsible, trustworthy
 - Tensions: MMP policy direction, Ministries detached, difficult identifying extent of responsibilities, Official Information Act pressure on advice, private sector style and culture, trend of attacking not defending servants
- Judicial powers and functions: (1) **interpreting statutes**: common law presumptions (legality, international, property) + statutory presumptions (IA/BORA) (2) **Making law**: common law, administrative, constitutional (conventions articulated and doctrines applied – increases the doctrines and protects individuals from excess arbitrary power)
- Judicial independence: independence v impartiality, elements (security of tenure- incapacity/misbehaviour, financial security, institutional independence, extra-legal protections- conventions and circumspection)
- Judicial appointment: AG with Judicial Appointments Unit + Secretary of Justice – announces to Cabinet and advises GG but (1) PM recommends and appoints CJ, (2) Minister of Maori affairs recommends Maori Land/Appellate Courts
- Judicial accountability: Judicial Matters Bill 2004, Judicial Conduct Commissioner: 1° investigation -> dismissed, Head of Bench, recommends AG appoint Judicial Conduct Panel, Judicial Complaints Lay Observer (appeal decisions of the Commissioner or Head of Bench) [*Wilson J*: QC, Commissioner recommended AG inquiry, resigned]

