

## **New Zealand as a Monarchy in 2010**

The monarchy has evolved in New Zealand to the extent that it is a major source of indigenous governmental legitimacy and authority. In particular, the legitimacy of the regime derives from two inherited sources, from the legacy of the imperial Crown and Parliament, and from the tangata whenua. The compact between the Crown and Maori is perhaps the single most important aspect of the New Zealand constitution.

But the Crown is also established at the heart of the constitution in other ways. Thus the continuity of government, embodied by the Crown, remains an important source of legitimacy. In this respect, the physical absence of the person of the monarch has encouraged consideration of the Crown as a symbolic or conceptual focus for government action.

The Crown remains an important source of traditional legal, though not necessarily political, authority. Thus, in traditional terms, the Crown is the embodiment of governmental authority, and a focus of legal sovereignty. But the Crown, as distinct from the Sovereign and Governor-General, is also important as a source of constitutional or political legitimacy. This is partly based on traditional, inherited authority.

The orthodox legitimacy of the Crown is the legitimacy of inherited legal form. So long as government is conducted in accordance with the rule of law, and meets the aspirations of the majority of the population, the legitimacy of the government based on such a ground is little questioned.

This legitimacy alone is not necessarily sufficient however. Nor does it alone explain the general acceptance of the current regime. There exists a second, potentially potent, source of legitimacy- the Treaty of Waitangi. As the moral, if not legal, authority for European settlement of New Zealand, this 1840 compact between the Crown and Maori chiefs has become increasingly important as a constitutional founding document for New Zealand. With the Treaty settlement process at but completed, attention now focuses upon consideration of the proper role for Maori within the wider political body.

As a party to the continuing Treaty, the Crown acquired a new, and significant, potential source of legitimacy, as the body with which the Maori have a partnership. It is also a legitimacy which belongs specifically to the Crown as a symbol of government.

This general observation is as true for New Zealand as it is for the other "old Dominions". Legal changes tended to follow political changes, and this is seen especially in the considerable distortion which arose between the powers conferred upon the Governor-General by the letters patent constituting the office, and the powers actually exercised. Imperial constitutional law was developed not in the courts so much as in the opinions of the law officers of the Crown. It was the practice that evolved out of these opinions which eventually influenced the courts. They followed, but did not invent, doctrines such as that of colonial legislative territoriality.

From the Maori perspective there are perhaps two questions central to any republican debate in New Zealand: who or what is the Crown and, more specifically, what is its function under the Treaty of Waitangi? It continues to be, and in fact appears increasingly imperative to Maori, that the Crown is not only something other than the government of the day, but that the Crown is able to function in such a manner as to hold the government to the guarantees made under the Treaty of Waitangi. The Crown is, at the very least, something distinct from the political government. Nor can it (as Treaty partner) be equated with a State or the people, since it involves the preservation of a special relationship with one sector of society.

The legitimacy of the present regime relies, at least in part, on a compact between Crown and Maori, as a basis for the assumption- and continuation- of sovereignty. Whether the Maori can be said to have actually benefitted from this cession to the Crown, and from the subsequent artificial distinction drawn between the Crown and government is problematical. British government would probably have been extended to New Zealand in any event. But the way in which it was done was important.

If the reality is that the Maori must negotiate with governments which owe their authority solely to the general, predominantly European population, then the majority ambivalence or hostility to the principles of the Treaty present real problems for Maori wishing to enforce the Treaty of Waitangi. The result is that for pragmatic reasons alone many Maori remain attached to the concept of the Crown. This is so even though the Treaty of Waitangi may itself be an insubstantial basis for a modern constitution. The Crown may not be essential to the body politic, but its removal would raise questions of the role of Maori in society and government which many, not least of all political leaders, would prefer to avoid.

The evolution of the constitution suggests that there is now a New Zealand-based Crown in practice as well as in law. In particular, the absence of the Sovereign has led both to the Governor-General substituting for the Sovereign in almost all particulars, and to the development of a distinct national vice-regal office.

The Sovereign might have lost his or her personal power, but the institution of the Crown continued. The powers of the Governors-General were generally extended at the expense of the Sovereign, though seldom were they exercisable at the Governor-General's discretion. Rather, they became a significant source of governmental authority, exercised at the behest of Ministers.

While the Queen came to be regarded more and more as Queen of New Zealand, and only incidentally Sovereign of other countries, so a distinct New Zealand Crown evolved. This is reinforced by changes in royal symbolism. The changing royal style and title made this separation even clearer. From the middle of the twentieth century the Sovereign of each realm has enjoyed a separate style and title. Yet common elements remain, and while these remain it remains uncertain just to what extent the divisible Crown is divided.

With The Queen now 84, the focus is now very much more on the 62 year old Prince of Wales and the 28 year old Prince William. But, from a practical perspective, it is the Governor-General who is de facto head of state- though he or she owes their position to being representative of The Queen.

Once the tool of imperial government, the Governor-General became one of the principal means through which national independence is symbolised. The process again is one primarily of the political executive, with legal changes having generally followed practical or political changes.

The choice of people to fill the office of Governor-General has reflected changing social and political cultures, and may have also served in some respects to direct the further evolution of the office.

The patriation, or nationalisation, of the office of Governor-General is also noticeable. The office has acquired a strong patina of national identity, and the nationalisation of the office of Governor-General has also had a profound impact upon the evolution of the Crown. In particular the office has come to symbolise national identity in the near-permanent absence of the Sovereign.

The Governor-General can be said to have three principal roles, constitutional, ceremonial, and community leadership. Of these, though it is the first which has been the subject of the most intensive study, it is perhaps the third which has greatest day-to-day importance. This role includes commenting on contemporary social trends and virtues. The ceremonial role of the Governor-General is seen as relatively unimportant, due to the lack of a tradition of overt symbolism and ceremony in New Zealand.

The low profile of the office has encouraged a minimalist perception of the role, though experience in Australia and elsewhere show that this perception is not necessarily accurate. Yet the perception of the office is critical in determining its actual role.

Ancient institutions have been ceaselessly adapted to meet purposes often very different from those for which they were originally intended. Continuity has not meant changelessness, and it is necessary to interpret evolution with reference to the political and social conditions and the currents of thoughts and opinions by which it has been determined.

We have seen the evolution of the office of Governor-General, and the development of a distinctly New Zealand legal and political identity. This has brought the focus on the Crown to a more practical level, where its symbolic role remains of some use to government.

What remains is a legally distinct New Zealand Sovereign and a symbolically distinct New Zealand monarchy, though it is unrealistic to deny that it is not to some extent essentially British. Ironically these changes have occurred at a time when the increasing internationalisation of finance has led to a general reappraisal of sovereignty and independence.

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