

Privilèges et immunités de la couronne

Cours 8

La prérogative et la loi

- La primauté du droit («*rule of law*»)
 - L'approche libérale de la primauté du droit
 - Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 6^e éd. London, Macmillan, 1902.

L'approche libérale de la primauté du droit

- L'action du pouvoir exécutif doit être autorisée par le droit;
- Les droits et libertés sont le résultat de décisions judiciaires rendues dans des cas particuliers.
- L'égalité devant le droit
"[N]o man is above the law, but [...] that every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals".
Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 6^e éd. London, Macmillan, 1902, p. 189.

La prérogative royale

- Un régime juridique spécial pour la Couronne;
- L'immunité de la Couronne à l'égard des lois.
 - Soumission volontaire de la Couronne à la loi (une présomption interprétative).

L'immunité de la Couronne à l'égard des lois

- **42.** Nulle loi n'a d'effet sur les droits de l'État, à moins qu'ils n'y soient expressément compris.

Loi [québécoise] d'interprétation.

- **17.** Sauf indication contraire y figurant, nul texte ne lie Sa Majesté ni n'a d'effet sur ses droits et prérogatives.

Loi [fédérale] d'interprétation.

- Or « **LOI** » = « **STATUTE** »

- Un texte législatif adopté par le Parlement;
- Un texte exorbitant de la common law;
- Un texte exorbitant du droit commun.

La règle de la mention expresse

- **126.** Nonobstant toute disposition inconciliable de toute loi générale ou spéciale, la présente loi s'applique au gouvernement de même qu'à ses ministères et organismes.

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