

BERMUDA'S CONSTITUTIONAL DEVELOPMENT

I FOUNDING:

It is generally accepted that Bermuda was FOUNDED in 1543 when Juan de Bermudez (after whom Bermuda is named), a Spaniard, was shipwrecked on the south shore of these fair Isles.

At the time, apart from staying long enough to effect the necessary repairs to his ship, replenish his food stock and carve his inscription upon a rock (Spanish Rock), Juan de Bermudez, or any Spaniard subsequently, doesn't appear to have attempted to plant a settlement in Bermuda. In short, no constitution was introduced.

II SUBSEQUENT DISCOVERY AND SETTLEMENT:

On the 28th day of July, 1609 a ship, the Sea Venture, carrying colonists to Virginia struck a reef in a storm whilst approaching Bermuda seeking shelter from that storm. Sir George Somers, (who gave Bermuda the alternative name of the "Somers Islands"), was the leader of that Virginia expedition. In 1610, all but three of that Virginia expedition sailed for Virginia. Thus far, there was no constitutional arrangement for Bermuda.

In 1612, King James I granted to the Virginia Company an extension of their existing charter to include Bermuda and the company subsequently conveyed a party of settlers to the Island. In the same year, however, the Virginia Company transferred their rights to a new body of adventurers who in turn surrendered them to the Crown, in right of Crown, in 1614. The following year, in 1615, King James I granted a new charter to "the Governor and Company of the City of London for the plantation of the Somers Islands."

In 1619, when Captain Nathaniel Butler was appointed Governor, he carried (Royal) instructions to institute an elected General assembly with power to make laws.

On August 1st, 1620, the first General Assembly was convened. Sixty four (64) years later in 1684, a writ of Quo Warranto (warrant to retrieve royal property) resulted in the forfeiture of the Company of the City of London's Charter and the Government of the colony passed back once again to the Crown.

Over a period of time, Bermuda was divided into nine (9) tribes or parishes named, for the most part, after English dukes. Bermuda was now poised, as far as its' Constitutional status was concerned, to introduce a "representative system" of Government (representative, that is, of the land holders). This representative system

consisted of a Governor, an Executive Council (EXCO) and a bicameral Legislature which was constituted by a Legislative Council (LEGCO) and a House of Assembly. LEGCO was an appointed body and the House of Assembly an elected body of land holders.

III BERMUDA'S CONSTITUTIONAL BEGINNINGS:

As a Colony acquired by settlement, Bermuda was governed constitutionally from 1888 to 1962 by Letters Patent issued by the reigning monarchs of that period to the respective Governors. The Royal Prerogative, which permits the Crown to make law in and to extend British common law to Bermuda, was preserved and indeed applied to Bermuda.

Letters Patent is an instrument by which offices particularly that of Governor, are created. Powers relating to the prerogative of mercy, the disposal of land and the appointment and dismissal of officers are delegated via these Letters Patent to the holders of the offices created under them. These Letters Patent were also utilized occasionally to appoint judges. In fact, as noted above, Letters Patent regulated colonial constitutions in every minute detail well into the twentieth century. In Bermuda, these Letters Patent, as late as 1955, not only constituted the office of the Governor and the powers delegated to him, but also established the EXCO, set up the LEGCO (The Upper House of the Legislature), conferred the power to make law and made provisions for their disallowance by the Governor. In 1968, Bermuda was to be governed as it is today by Order in Council.

IV FURTHER CONSTITUTIONAL DEVELOPMENT:

In general, there is little distinction of substance between Orders in Council and Letters Patent. They are, in fact, equally effective for any purpose and, therefore, alternatives to each other.

Orders in Council are made by Her Majesty at a meeting, and with the advice of the Privy Council. They are signed by the Clerk of the Council. Letters Patent, on the other hand, are made by the Sovereign alone and become law on the affixing of the Great Seal, under the authority of a warrant bearing the Queen's or Sovereign's signature. They are, and have been for a long time, approved in draft by Order in Council, which requires the Secretary of State to cause the warrant to be prepared. These days, whilst Letters Patent may be employed to create the office of Governor and delegate powers to him, there is a preference for Orders in Council for all other purposes as is eminently evident in Bermuda's Constitutional Order in Council, which is, in fact and in law, the Constitution (with its reserved powers) which governs Bermuda today. This Order in Council is supplemented by Royal (and therefore formal) instructions under the Royal Sign Manual and Signet addressed personally to the Governor. These

instructions may be no more than administrative directions but they are frequently legislative in nature.

V BERMUDA'S CONSTITUTIONAL POSITION TODAY:

Bermuda's Order in Council has advanced and been amended to the extent that it is safe to say that under the present Constitution, last amended to return the House of Assembly to thirty-six (36) members (single-seat) for the summer General Election 2003; the Premier and the Cabinet, through the Legislature, have full responsibility for the Government and governance of Bermuda, except for those matters specifically reserved to the Governor, i.e.

- a) External Affairs;
- b) Defence, including Armed Forces;
- c) Internal Security;
- d) The Police.

The Constitution, however, requires the Governor, in exercising his reserved powers, to consult the Governor's Council though he is not bound by any advice given by this body.

It has been said numerous times by the U.K. Government that when it enacted and extended Bermuda's Constitution in 1968 under the Bermuda Constitution Act 1967 (an Act of Westminster Parliament) it did so with the understanding that Bermuda was poised on the eve of Independence and any further 'tinkering' with the Constitution would indeed be tantamount to achieving same. That was thirty-six (36) years ago. Indeed, the United Kingdom Government suggested at that time that, inter alia, in the light of the considerable constitutional developments in Bermuda, the Bermuda Government might wish to consider whether the time had now come to move more positively in the direction of Independence or self-determination. In fact, the United Kingdom Government emphasized that their policy was not to delay independence for those dependencies who wanted it (Independence) or to force it upon those who did not. They had no intention of pressing Bermuda to Independence against the wishes of the people of Bermuda. The decision was Bermuda's and Bermuda's alone.

VI THE UNITED BERMUDA PARTY'S RESPONSE:

Pursuant to this view, the United Bermuda Party administration over the years 1977, 1979, 1994 and 1995 produced Green and White Papers and indeed, statements on the issue of Independence. Those administrations accepted the view that there was no possibility of further constitutional advance with respect to gaining control over the 'reserved powers' by changing the existing Constitution. Associated Statehood was not

an option which the United Kingdom Government was prepared then (or now) to contemplate. Its view was that it would still retain responsibility and obligations for Bermuda without the power to control the responsibility which would be solely in the hands of the Bermudian Authorities.

The United Bermuda Party administrations were then forced to accept that the choices now open to them were to:

- a) maintain the STATUS QUO of continued dependency, or
- b) to move positively towards complete independence in accordance with a planned time-table. The centre-piece of that time-table was to firstly construct a vehicle and forum to inform and educate the people of Bermuda as to the option of being Independent as a constitutional monarchy and what that state of affairs would entail.

Indeed, on July 1, 1994, on behalf of the then United Bermuda Party Government, the Premier, Sir John Swan, made the following statement to Parliament:

“Mr. Speaker, early in the next session the government will bring forward a Green Paper on the issue of independence. The Green Paper will not make a recommendation for or against independence. Instead, it will identify the issues and examine the pros and cons of independence for Bermuda.

The Green Paper will form the basis for an extensive public education programme. In addition, it will be debated in the House of Assembly and widely discussed and debated in a series of public meetings.

Once the public has had an opportunity to thoroughly review and consider the information in the Green Paper, it is the Government's intention to allow the people of Bermuda to express their opinion as to whether Bermuda should or should not be independent through the vehicle of a referendum. It is intended to hold the referendum either before the end of the next Parliamentary year or during the 1995 summer recess.

Mr. Speaker, Government recognizes that an overwhelming majority of Bermudians are in favour of more information on the subject of independence, and we believe that a majority are in agreement with the idea of a referendum to express their opinion. Government also believes that a Green Paper followed

by a referendum will resolve the issue by putting the final decision about independence in the hands of the Bermudian people.”

Today, the present Progressive Labour Party administration, under Premier W. Alexander Scott, J.P. M.P., finds itself poised in a similar manner and place as did Sir John Swan’s United Bermuda Party administration, over ten (10) years ago.