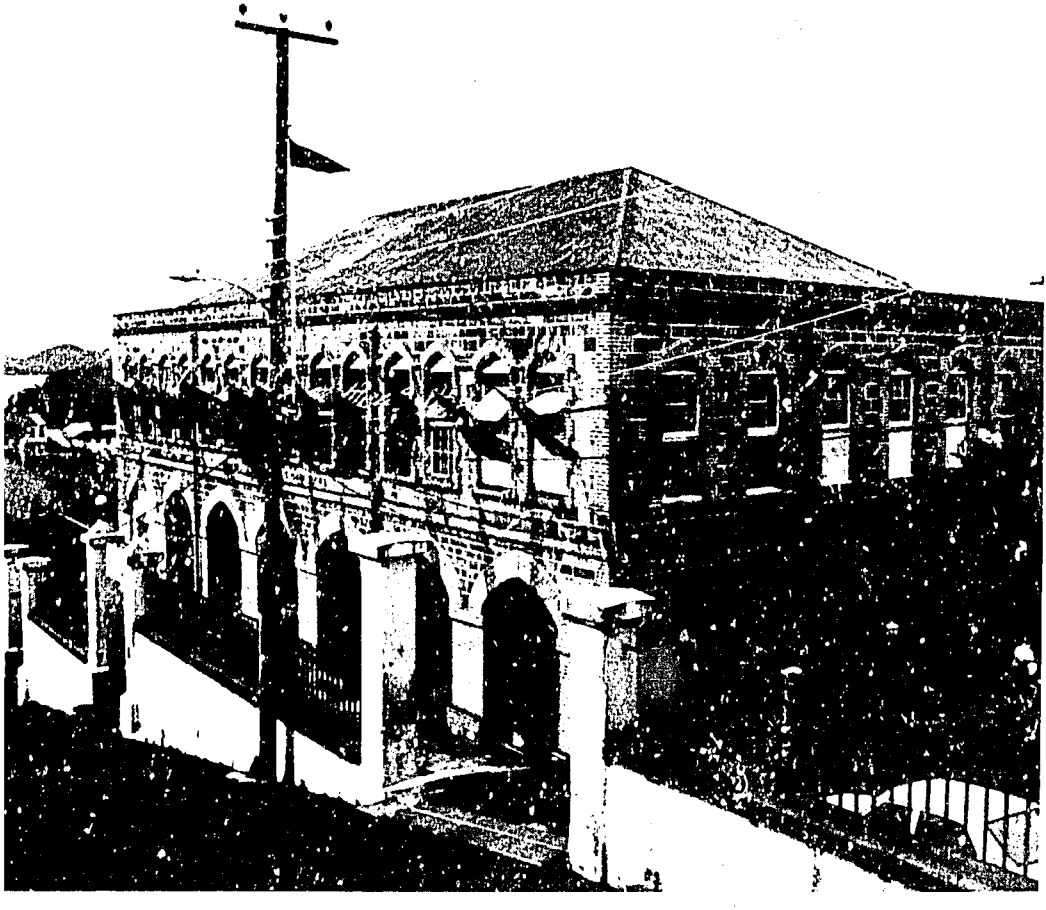
THE CONSTITUTION AND YOU GRENADA

Francis Alexis



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THE CONSTITUTION AND YOU GRENADA

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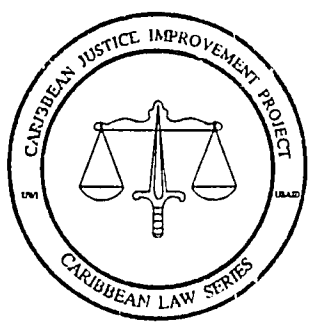

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Dedicated

to

The People

of

Grenada, Carriacou & Petit Martinique

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FOREWORD

This book is one of a series which is being published under the auspices of the Case Reports/Textbooks Fund of the UWI-USAID Caribbean Justice Improvement Project. The Project is the subject of a five year grant agreement entered into between the University of the West Indies and the United States Agency for International Development in August, 1986. It provides assistance in improving the administration of justice in the six OECS independent countries of the Eastern Caribbean, as primary beneficiary countries. Other countries called non-primary beneficiary countries are also able to participate in Case Reports/Textbooks Revolving Fund Activities.

The project paper which led to the establishment of the project recognised the need for the establishment of the project; recognised the need for the establishment of facilities for law reporting, especially in the OECS states; and also sought to offer an incentive to provide teaching materials for the Faculty of Law and the Law Schools of the Council of Legal Education.

The fund is managed by a committee under the chairmanship of the Dean, Faculty of Law, and has among its members non-academic members of the legal community. The committee selects and approves materials for publication on the recommendation of chosen assessors, and encourages the compilation of Commonwealth Caribbean legal material from original sources.

Finally, I wish to thank Mr. Shaka Rodney of ***'Caligraphic'*** *for his inspired design of our logo.*

Andrew D. Burgess
Dean, Faculty of Law
U.W.I.
Cave Hill Campus
BARBADOS

PREFACE

It has been a great honour and privilege for me to have been invited by Dr. N. J. O. Liverpool, Project Director, UWI/USAID Caribbean Justice Improvement Project (CJIP), to write this monograph, "The Constitution and You: Grenada".

I am very glad to have been able to accept that invitation, issued in July, 1987 resulting in the writing of this book.

My instructions from Dr. Liverpool were to write a book on the Constitution of Grenada for "laymen in Grenada". I have materially kept to that brief. But the book does refer to the constitutional law of other countries, especially Commonwealth Caribbean countries.

I could not have written this book without incurring huge debts, human debts, far more onerous than financial ones.

Dr. Liverpool very kindly read the entire draft of this book and helped it maintain objective academic balance.

The secretarial services for this book were rendered by Miss Tamara Mayers of Barbados. She did a most efficient job, very cheerfully.

As usual, I am in the great debt of my inspiring home circle, especially my daughters Nekol, Oyeronke and Molara.

It was quite good of UWI and USAID to finance the publication of this book. Equally, it was rather kind of the UWI Faculty of Law Sub-Committee to certify the work as being fit for publication.

To all of them, and several more too many to mention, I say very many thanks.

Writing on contemporary Grenadian constitutional law is most exciting, since it is forever in growth, vibrantly developing. So, most times when one thinks that the drama is ending, another gripping episode gets going. But printing day must come if there is to be a book. That day for this book is 16 August, 1991.

Francis Alexis
St. Paul's
St. George's
GRENADA

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AC	: Appeal Cases
CJ	: Chief Justice
CA	: Court of Appeal
DPP	: Director of Public Prosecutions
GULP	: Grenada United Labour Party
HC	: High Court
LRC (Consti)	: Law Reports of the Commonwealth (Constitution)
NDC	: National Democratic Congress
NNP	: New National Party
PRG	: People's Revolutionary Government
PM	: Prime Minister
PC	: Privy Council
PSC	: Public Service Commission
TNP	: The National Party
WILJ	: West Indian Law Journal
WIR	: West Indian Reports

CHAPTER 1

INTRODUCTION

Constitutional Law Defined

Constitutional Law is that body of law which tells us what are the powers, functions and duties of the organs of the State, namely, the Executive, the Legislature and the Judiciary; both as among themselves and also as between them on the one hand and the rights of the individual on the other.

In Grenada, Carriacou and Petit Martinique, the laws which make up the constitution are to be found mainly in the text of the written document called the Constitution *[1]*. This is the flesh and bone of our Constitutional Law. But some of its joints are to be found in other laws, all subordinate to the written Constitution. Most of these are made by Parliament and are called Acts of Parliament. The rest are unwritten principles coming down the ages, in the common law. These all help the text of the Constitution to work.

Together, the Law and the Constitution make up our Constitutional Law.

The Mission of Constitutional Law

The mission of Constitutional Law is to hold evenly a certain balance. On one hand of this balance are the powers required by the organs of the State - the Executive, the Legislature and the Judiciary - if the State is to advance developmentally. On the other hand are the rights and freedoms needed by the individual if he is to be free to nurture his talents *[2]*.

The importance of maintaining this balance is accentuated by entrenching the provisions of a written Constitution. This is especially so where the Constitution enshrines a Bill of Rights, all protected by the Judiciary against encroachment by the Legislature and the Executive. Grenada has such a Constitution.

From Associated Statehood to Independence: A First

On 7 February, 1974, there came into effect the constitutional instruments bringing independence to Grenada, instruments made on 19 December, 1973, in Britain *[3]*, including the independence Constitution *[4]*.

Between 1967 and 7 February, 1974, Grenada was an Associated State, a country enjoying full internal self-rule, a State in Association with Britain *[5]*. Five other countries made up the West Indies Associated States *[6]*.

Grenada was the first West Indies Associated State to move from associated status to full political independence. This step has since been taken by all the other former West Indies Associated States.

The very route to independence taken by Grenada, led at the time by Mr. Eric Gairy (later Sir Eric) and his Grenada United Labour Party (GULP), provoked controversy. It was Gairy who wanted independence. There was a view that, in the event, independence should come through a referendum in Grenada *[7]*; and not as happened. What happened was that an order was made by the British terminating the status of association between Grenada and Britain *[8]*, thus leaving Grenada independent of Britain *[9]*.

That is the route to independence that has since been taken by all the other former Associated States. At the time of Grenada's move to independence though, late 1973 to early 1974, there was debate as to the constitutional propriety of its road to independence.

That particular controversy was quite separate and distinct from certain suggestions made by certain persons at the time. The sum effect of these was that Grenada was not yet ready for independence. The Leader of the Opposition, Mr. Herbert Blaize, and his Grenada National Party (GNP), said that Grenada was too small and too poor to assume independence by itself. Mr. Maurice Bishop and his New Jewel Movement (NJM) also questioned the readiness of Grenada for independence.

This was all very curious. It was the sort of thing the British would say of the colonies in the 1950s and early 1960s when they, the British, wanted to hold back the winds of change blowing towards independence.

When Blaize and Bishop put their version to this theme on the eve of Grenadian independence, they had in mind a particular meaning. It had much to do with

the tendencies to maximum rule displayed by Gairy *[10]*. This generated considerable trauma, as Grenada moved relentlessly on to independence, the first of the small Caribbean countries to do so *[11]*. What they really meant was that they did not want independence under Gairy, having regard to his demonstrated despotic tendencies. But Gairy took Grenada to independence on 7 February, 1974, he becoming its first Prime Minister.

Leftist Revolution: Another First

Some of those who in 1973-1974 peddled the line that Grenada was not yet ready for independence were to seize power from Gairy by force of arms just five years after independence, and scrap the independence Constitution, or suspend it, as they put it. This armed revolt took place on 13 March, 1979.

The NJM under Maurice Bishop overthrew the GULP Government of Eric Gairy in a Leftist Revolution, and installed itself as the People's Revolutionary Government (PRG), with its leader Maurice Bishop as Prime Minister. This was another first for Grenada, the first time a Leftist Revolution or any Revolution indeed succeeded in an independent Commonwealth Caribbean State.

In their Declaration of the Grenada Revolution, on 25 March, 1979, the PRG sought to justify the overthrow as a *"sovereign act of necessity"* brought on by *"violations and abuses of democracy committed by the administration of Eric Matthew Gairy under the guise of constitutionality"*. The PRG proceeded to promulgate a number of laws, which it called "People's Laws". Its very first People's Law, No. 1 of 1979, declared that *"The Constitution of Grenada is hereby and has been suspended as of 12.01 am on March 13th, 1979"*. This "suspension" was permanent during the entire lifetime of the PRG.

The PRG, led by Maurice Bishop, buttressed by their People's Revolutionary Army (PRA), remained in office until 19 October, 1983. That day, they turned their revolutionary guns inward, following the house-arrest of Bishop for about a week. Unknown numbers of people were killed that day as PRA units stormed Fort George, then Fort Rupert *[12]*, where Bishop and scores of his loyalists were assembled. Among those killed were Bishop himself and four of his loyal Ministers.

Political and military elements from the PRG that night dissolved the PRG and proclaimed themselves as the Revolutionary Military Council (RMC), headed, formally at least, by the People's Revolutionary Armed Forces commander, General Hudson Austin. That same night, the RMC imposed an all-day curfew on the shocked Grenadian nation, ordering that anyone violating the curfew be shot on sight. That curfew remained in force from that night until 24 October, save for a few hours on 22 October.

All these events of October 1983, paved the immediate way for the military intervention which took place early in the morning of 25 October, 1983, dubbed by Grenadians as the Rescue Mission. This was mounted by the United States of America and certain Caribbean countries, especially Jamaica and Barbados *[13]*, reportedly invited in by the Governor-General of Grenada, Sir Paul Scoon. This intervention ended the life of the RMC on or around 30 October, 1983.

The PRG, a government in fact, *de facto*, never achieved the status of a government in law, *de jure*. This was later to be the ruling of the Court of Appeal set up by the PRG itself, by judges also appointed by the PRG *[14]*, in a ruling given after the fall of the PRG *[15]*. Yet, the acts of the PRG did have lawful force, on the basis of necessity, the court ruled, as seen below *[16]*.

The Restoration

The suicidal fall of the PRG and the military routing of the RMC led to the restoration of Parliamentary Democracy under the 1974 independence Constitution.

The process began on 31 October, 1983, when the Governor-General, Sir Paul Scoon, issued a Proclamation, his first since this turn of events, Proclamation No. 1 of 1983. This proclamation was an Order in which the Governor-General stated that he was the only constitutional authority in the State; that he intended to assume executive authority over the State; and that he would exercise this either personally or after consultation with an Advisory Council which he would name in due course *[17]*.

On 4 November, 1983, Sir Paul issued Proclamation No. 3, recommissioning certain parts of the Constitution, including the Bill of Rights, the provisions establishing the office of Governor-General, the provisions establishing the

offices of Attorney-General and Director of Public Prosecutions, and the citizenship chapter. Proclamation No. 4, promulgated on 11 November, 1983, refloated certain other sections of the Constitution.

On November 14, 1983, Proclamation No. 5 created the Interim Advisory Council to advise the Governor-General on the exercise of his functions, in an Interim Government headed by Mr. Nicholas Brathwaite. Then on 9 November, 1984, the Governor-General issued the Constitution of Grenada Order 1984 restoring all sections of the 1974 Constitution not yet recommissioned, except those sections relative to the judiciary.

On 3 December, 1984, general parliamentary elections were once again held, the first since December 1976. A new party, the New National Party (NNP) *[18]*, led by Herbert Blaize formerly of the GNP was voted in overwhelmingly as the Government *[19]*, with the 1974 Constitution almost wholly restored.

The extent of that restoration remained the same on 13 March, 1990 when there were fresh general elections. Those elections produced cliff-hanging results *[20]*, out of which emerged a Government of the National Democratic Congress (NDC), whose leader, former Interim Head, Mr. Nicholas Brathwaite was sworn in as Prime Minister on 16 March and whose other Ministers were sworn in on 21 and 22 March. To this new NDC Government fell the task of completing the recommissioning of the 1974 Constitution.

Principles of the 1974 Constitution

The 1974 Constitution, section 106, proclaims itself to be the supreme law of Grenada.

It provides for parliamentary democracy with a bicameral Parliament whose more important House, the House of Representatives, is elected directly by the people in periodic elections; a political Executive drawn from Parliament; and an independent Judiciary separated from the Executive and the Legislature. This independent Judiciary administers the rule of law, and guards the Constitution generally and the Bill of Rights particularly against interference by both Parliament and the Executive, in a system of judicial review.

The preamble to the Constitution affirms that the Grenadian nation is founded upon the supremacy of God, and that spiritual development is the highest

expression of human existence. It pays homage to the dignity of human values, saying that all men are endowed by the Creator with equal and inalienable rights, reason and conscience, but that rights and duties are correlatives. It expresses respect for the rule of law, commending the ideal of free men enjoying freedom from fear and want. It says it wants to ensure the protection of fundamental human rights and freedoms.

The 1974 independence Grenada Constitution establishes a kind of Government typical of those patterned on the form of Government at Westminster in Britain. It is a Westminster model of Government.

That the Constitution was put aside by force of arms in March 1979, until November 1983, might be apt to raise the question whether that Constitution is as appropriate to the realities of Grenadian society as it might be.

The 1985 Constitution Review Commission

That question seemed implicit in certain action taken by the Government elected in December 1984, within three months of taking office.

By 13 February, 1985, the NNP Government of PM Herbert Blaize Gazetted the appointment of a Constitution Review Commission chaired by Sir Fred Phillips and containing five others *[21]*. This Commission was required to examine, study and inquire into the Constitution and other related laws; and then make such recommendations for reforms which the Commissioners considered necessary and desirable for promoting the peace, order and good government of Grenada *[22]*. Their mission expressly required them to look at certain matters in particular, reproduced in the Appendix to this book.

After receiving numerous memoranda and interviewing several persons, the Commission duly reported in November 1985, making a variety of recommendations for reforms to the Constitution *[23]*. Nothing, however, has as yet come of any of these recommendations. But there is still room for hope, as the NDC Government of Nicholas Brathwaite, elected in March 1990, has fully committed itself to comprehensive constitutional reform.

Focus of This Book

The focus of this book is to explain what the 1974 independence Constitution of Grenada provides. While examining the Constitution, the book offers suggestions for changes to the Constitution so as to make the Constitution more applicable to conditions in Grenada.

This book is aimed at the general reader. The idea is to bring the Constitution to the ordinary Grenadian, to "laymen in Grenada", in eleven chapters.

This chapter merely introduces the book, and is Part I. Chapter 2 introduces Part II, which examines the principal organs of the Constitution.

One such organ, the Executive, especially the political directorate, is the focus of chapter 3. Another such organ, the Legislature or Parliament, is looked at in chapter 4.

In talking about Parliament, one might as well consider the matter of Elections and Voting. This is looked at in chapter 5. While there is no Local Government in Grenada for the time being, there is currently much talk about reintroducing it. This is considered in chapter 6.

The position of the Judiciary in Grenada has been wholly unique to the Commonwealth Caribbean, indeed probably to all other countries. This is discussed in chapter 7, the last chapter in Part II.

The fundamental human rights and freedoms of the individual are enshrined in what is affectionately called the Bill of Rights. These are gone through in chapter 9, or Part IV.

Public Finance is examined in chapter 10, or Part V.

Final remarks are made in the Conclusion, in chapter 11, or Part VI.

Footnotes

1. See note 4 below.
2. See Sir Allen Lewis, "The Separation of Powers: Its Relevance for Perliamentary Government in the Caribbean", [1978 October] W.I.L.J. 4,6.
3. The Grenada Termination of Association Order 1973, S.I. 1973 No. 2157 [UK]; The Grenada Constitution Order 1973, S.I. 1973 No. 2155 [UK].

4. Sched. 1, Grenada Constitution Order 1973, S.I. 1973 No. 2155 [UK].
5. An associated state has full power over its internal affairs and may move unilaterally to independence, while full power over its external affairs and defence resides in the UK. The UK created associated status, by its West Indies Act 1967 (C.4).
6. Antigua (Agua.), Dominica (Dom.), St. Christopher & Nevis (St. CN.), St. Lucia (St. L.), St. Vincent (St. V.).
7. When an associated state moved to terminate its association with Britain and thus become independent, it could do so without the cooperation of the UK, if sanctioned by a referendum vote in that associated state: see The West Indies Act 1967 (C. 4) [UK].
8. The Grenada Termination of Association Order 1973, S.I. 1973 No. 2157 [UK], made under Section 10(2) West Indies Act 1967 (C. 4) [UK].
9. See notes 3-4 above.
10. See the Report of the (Duffus) Commission of Enquiry into the Breakdown of Law and Order, and Police Brutality in Grenada, February 27, 1975; Report of the Commission of Enquiry into the Control of Public Expenditure in Grenada during 1961 (1962) Cmnd. 1735.
11. At that time, the only other Commonwealth Caribbean countries to have moved on to independence were Jamaica 1962, Trinidad & Tobago 1962, Barbados 1966, Guyana 1966 and Bahamas 1973.
12. Historically called Fort George, it was renamed Fort Rupert in memory of Maurice Bishop's father Rupert Bishop who had been killed on 21 January, 1974, by Gairy's police aides in the pre-independence struggles between NJM and Gairy. It has since been renamed Fort George.
13. Also Antigua, St. Christopher-Nevis, St. Lucia, and Montserrat. The main strike force in this intervention was the US military, making US President Ronald Reagan quite popular in Grenada.
14. Haynes P. and Liverpool JA in MITCHELL v. DPP (No. 1) [1986] LRC (Const) 35 (C.A. - Grenada). The other Judge Peterkin J.A. was appointed after the fall of the PRG. All three of them had previously held high judicial office elsewhere. Nedd C.J. thought otherwise at first instance [1985] LRC (Const) 127 (H.C. - Gda).
15. See note 14 above.
16. Chapter 7 text after note 62.
17. Similarly, in 1962 the Administrator found it necessary to rule by decree, following the dissolution of the Legislature and the Executive Council by a UK Order in Council. See Sir Fred Phillips, Freedom in the Caribbean (1977), 95.
18. This combined the old GNP, the National Democratic Party founded in 1984 and led by George Brizan, and the Grenada Democratic Movement founded outside Grenada early in

1983 and led by Francis Alexis. The NNP was moulded in Union Island, part of St. Vincent, in talks observed by PM Mitchell of St. Vincent, PM Compton of St. Lucia, and PM Adams of Barbados. See now note 19 below.

19. But two of three persons who led groups into the NNP, Brizan and Alexis, left NNP and the NNP Government in April 1987 on policy differences with PM Blaize. The two have since helped form the National Democratic Congress (NDC), at first led by Brizan, now led by Nicholas Brathwaite. The NDC won the March 1990 general elections and as such is now the Government. See note 20 below.
20. Of the total 15 seats Brathwaite's NDC got 7, Gairy's GULP 4, Ben Jones' The National Party (TNP) founded by Blaize November 1989 got 2 and Keith Mitchell's NNP 2.
21. Prof. A. R. Carnegie, Bryn Pollard, J.D.B. Renwick, A. Michael Andrew. There was an associate member, Prof. S. McIntosh. The Secretary was Bernard Gibbs.
22. Grenada Government Gazette, Vol. 102 No. 9 (Extraordinary Issue), Friday 15 February, 1985.
23. Report of the Grenada Constitution Review Commission, November 1985.

CHAPTER 2

THE PRINCIPAL ORGANS OF THE CONSTITUTION

There are three principal organs of the Constitution.

One of these is the Executive. We refer here to the political directorate or political Executive. This is to be distinguished from the administrative executive, the bureaucracy. Another is the Legislature or Parliament.

The Constitution refers to Local Government, at least in relation to Carriacou and Petit Martinique. Local Government has both executive and legislative aspects.

The third principal organ of the Constitution is the Judiciary, in particular the higher Judiciary or Supreme Court Judges, but not excluding the lower Judiciary or Magistrates.

These three organs are discussed in this part of the book, Part II. Each organ is treated in a separate chapter. Additionally, there are two further chapters in this part, one on Elections and Voting, and the other on Local Government.

CHAPTER 3

THE EXECUTIVE

The executive authority of Grenada is the authority to decide and implement policies and programmes for the development of the State. Some executive decisions may be put into effect without the aid of legislation, such as a decision to enter into a contract to employ someone as National Security Advisor. Other executive decisions need direct statutory support for their validity, such as a decision to abolish income tax and bring in a Value Added Tax.

Vesting Executive Authority

The executive authority of Grenada is vested in Her Majesty the Queen of the United Kingdom, by section 57(1) of the Constitution. This makes Grenada a Monarchy, since our Head of State is a Monarch *[1]*.

Generally, this executive authority may be exercised on Her Majesty's behalf by her local representative, the Governor-General, who is currently Sir Paul Scoon. He may exercise this authority either directly, by himself; or indirectly, through officers subordinate to him, by section 57(2) of the Constitution.

The Queen rarely acts herself regarding Grenada. When she visited Grenada in October 1985, she personally on 31 October delivered to Parliament at its seat at York House in the capital city of St. George's, the Throne Speech, outlining Government's policy objectives for the ensuing Parliamentary year. Addressing a joint sitting of the two Houses of Parliament, the House of Representatives and the Senate, Queen Elizabeth II declared open a Special Session of the Third Parliament.

Her Majesty thus created history by being the first Monarch to address Parliament in Grenada since Independence.

This declaring open of a Session of Parliament is a function normally performed for the Queen by the Governor-General. She herself appoints and

removes the Governor-General, in accordance with appropriate advice *[2]*. Otherwise, though, she ordinarily acts for Grenada through the Governor-General.

Incidental to this executive authority, the Governor-General has power to constitute offices for Grenada, to make appointments to any such office, and to terminate any such appointment *[3]*.

The Prerogative

The executive authority that is vested in Her Majesty includes the royal prerogative. This royal prerogative is the residue of discretionary arbitrary powers legally left in the hands of the State for the purpose of ensuring the survival of the State. The prerogative embraces the power of the State to declare war, to conclude treaties, to say who is an enemy alien. But the prerogative may always be cut down by Act of Parliament, to say nothing of the Constitution, and no doubt also by judicial decree.

Dignity Rather Than Power

In theory, then, Her Majesty or her local representative, the Governor-General, may constitutionally run the State from day to day, deciding its policies and programmes.

But, by convention, the executive authority of Grenada, as an independent State, is not exercised by Her Majesty or the Governor-General.

In fact, section 62(1) of the Constitution specifically says that in the exercise of his functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except where he is required by the Constitution or any other law to do otherwise *[4]*.

There are instances where the Constitution empowers the Governor-General to act in his own deliberate judgment. But these are preciously few. They are considered below *[5]*. Apart from these instances, it is only where the constitutional system has materially broken down, so that there is no other constitutional authority around, that one would expect the Governor-General to attempt to actually exercise executive authority. This latter situation occurred in

October 1983, and is discussed below *[6]*. It required such rather unusual circumstances for the Governor-General to exercise executive authority himself.

Quite apt therefore is a comment made by the 1985 Grenada Constitution Review Commission regarding the position of the Head of State, the Queen, and her local representative, the Governor-General. The Phillips Commission *[7]* said that this position is "one of dignity rather than power - the Head of State not being the Head of Government" *[8]*.

This is the situation with the Head of State in the governmental system in the United Kingdom itself, seated at Westminster. As the Westminster model of Government *[9]* got exported from Britain to different parts of the Commonwealth, there have been variations on the role of the Head of State. Where the Monarchy is retained, as in Grenada, the Head of State is a figurehead or ceremonial or titular functionary only; as distinct from the effective Head of Government, the Prime Minister *[10]*.

But in some Commonwealth countries, the Head of State is also the Head of Government, usually styled a President, in varying forms of Republican Government, as in Guyana, seen below *[11]*. Equally as a monarchy, a republic is acceptable to the Westminster model of government *[12]*.

Cabinet Government

In Grenada, in actuality, executive authority is exercised by the Cabinet of Ministers.

In strict constitutional theory, as section 59(3) of the Grenada Constitution says, the functions of the Cabinet shall be *"to advise the Governor-General in the government of Grenada"*; meaning, to advise the Governor-General how the executive authority is to be exercised *[13]*.

This looks on the surface as if the functions of the Cabinet are merely to advise, and not to decide.

Indeed, the Constitution says that where it requires the Governor-General to perform any function in accordance with the advice of the Cabinet *[14]*, the question whether he has received or acted in accordance with such advice shall not be enquired into in any court of law *[15]*. But such ouster clauses, shutting

out the jurisdiction of the courts, are not taken literally *[16]*, not always at any rate *[17]*.

The fact is that it is the Cabinet that exercises the executive authority of Grenada, just as in any other monarchy in the Westminster model of Government. It is the Cabinet that decides the policies and programmes of the State. Informing the letter of the Constitution, convention expects the Cabinet to run the State. Strictly, therefore, the Cabinet is the Government. More widely, though, the Government is considered as comprising all those members of the ruling party who sit in either the House of Representatives or the Senate.

Special Situations

There are areas in relation to which the Constitution says that its provisions enabling Cabinet to advise the Governor-General do not apply. In these excepted situations the Cabinet has no right to advise the Governor-General. But in many of these instances, he has to act on the advice of the Prime Minister or some other Minister.

Take the appointment and removal of Ministers and Parliamentary Secretaries, the assignment of responsibility to any Minister, or the authorising of a Minister to perform the functions of Prime Minister during the latter's absence or illness. Advice to the Governor-General in these situations is to come, not from the Cabinet, but from the Prime Minister himself *[18]*.

Another example is the dissolution of Parliament. On this matter, the Governor-General has to take the advice, not of the Cabinet, but of the Prime Minister. So says section 59(4)(b). However, in the two special situations regarding dissolution, considered below, the Governor-General, in dissolving Parliament, acts in his own deliberate judgment *[19]*.

Yet another example concerns the Prerogative of Mercy. This Prerogative is a right in the Governor-General to grant a person a pardon from a criminal offence. Its general nature is considered later *[20]*. The point now relevant is that in exercising this Prerogative, the Governor-General is required to act in accordance with the advice of the particular Minister designated by the Governor-General for the specific purpose of advising on this matter. In designating this

Minister, the Governor-General has to act in accordance with the advice of the Prime Minister *[21]*.

There are other excepted situations, considered elsewhere *[22]*.

But apart from these special excepted situations, it is the Cabinet as such that is expected to advise the Governor-General as to how the State should be run. The Cabinet runs the State.

It thus becomes vital to examine what is this Cabinet.

Composition of Cabinet

After requiring that there shall be a Cabinet of Ministers for Grenada, the Constitution adds that this Cabinet shall consist of the Prime Minister and the other Ministers *[23]*. The Attorney-General is always entitled to sit in Cabinet, whether in his own right as a politically appointed Minister; or whether he is a public officer or bureaucrat, in which case he is an ex-officio member of Cabinet "in addition to the Ministers" *[24]*.

The Prime Minister

The Constitution requires, in section 58(1), that there shall be a Prime Minister of Grenada. The Prime Minister is appointed by the Governor-General. He has to be the member of the House of Representatives who appears to the Governor-General likely to command the support of the majority of the members of that House *[25]*. In making such an appointment, the Governor-General has to act in his own deliberate judgment *[26]*.

Ordinarily, the choice is self-evident. The person to be appointed has always been the leader of the political party winning the general elections by obtaining the majority of the seats in the elected House of Representatives contested at those elections. This is the majority government normally expected by the Westminster model of government.

Only rarely may there be minority government, that is, government under a Prime Minister whose party does not have a majority of the members of the House of Representatives. A minority government requires extremely special political circumstances for its existence, such as war or the inability of

Opposition forces to accommodate each other. Necessarily, therefore, a minority government is always under the shadow of being brought down by an Opposition sponsored resolution in the House of Representatives that the House has no confidence in the Government.

Thus, a minority government may not be willing or able to go to the House for money or other supplies for the nation without first being assured by the Opposition that a no-confidence resolution would not be moved. Prime Minister Herbert Blaize found himself in precisely this situation in December 1989. He needed some $24M to pay public workers back-pay for 1987-1989 under a collective bargaining agreement between government and the three trade unions representing the workers, the Public Workers' Union (PWU), the Grenada Union of Teachers (GUT) and the Technical & Allied Workers' Union (TAWU).

The money should have been paid on 1 December, 1989. The Government said they could not raise the money. The public workers went on strike to enforce payment of the money.

This money had not been provided for in the 1989 budget passed back in April when the Government had a 9 to 6 majority in the House. By August, Mr. Blaize had lost that majority, with nine members being then on Opposition benches, 6 led by George Brizan and another 3 led by Keith Mitchell. And there were two no-confidence resolutions hanging over Mr. Blaize's head like the sword of Damocles, one each being brandished by Brizan and Mitchell. Nor could Blaize raise the money without going to the House.

This poised the nation on the brink of national crisis. To avert it, the Opposition forces publicly assured Mr. Blaize that in the national interest they would afford him safe conduct through the House to get authorisation to borrow the money. They kept their word when the House met on 14 December in a special session, summoned out of a prorogation into which it had been sent in August in the face of those no-confidence motions.

Blaize's minority government survived. But five days later, on 19 December, 1989, just nine days before Parliament was due to be dissolved automatically by the Constitution, Mr. Blaize passed away, reducing his ruling TNP party to now only 5 seats in the House. His Deputy Prime Minister Ben Jones was able to

hang on to power as the new Prime Minister in a continuing minority government of 5 to 9, with Mr. Blaize's seat now vacant.

Only once could Mr. Jones venture into the House as Prime Minister, on 21 December, 1989, Parliament being dissolved by Proclamation issued by Governor-General Sir Paul Scoon on the advice of Prime Minister Jones on 27 December, 1989, only one day before Parliament would have been automatically dissolved by effluxion of time on 28 December, 1989. And when Mr. Jones did so go there, it was at an extraordinary joint sitting of the House of Representatives and the Senate, called especially to pay a last tribute to Mr. Blaize.

Such is the dogged life of a Prime Minister heading a minority government. For him Parliament is materially out of bounds.

It should be noted that the Prime Minister has to be a member of that House of Parliament whose members are elected, the House of Representatives, as against the House whose members are nominated, the Senate *[27]*. This reflects the time-honoured convention that the Prime Minister must be an elected Member of Parliament, and not a nominated Member of Parliament.

A Dangling Situation

Governor-General Sir Paul Scoon found himself faced with an adroit challenge in the aftermath of the general elections of 13 March 1990.

Of the 15 seats contested at those polls, 7 went to the NDC led by Nicholas Brathwaite; 4 were won by the GULP of Eric Gairy; and 2 went to the TNP which caretaker Prime Minister Ben Jones had inherited along with the Prime Ministership from Herbert Balize, this TNP being essentially the old GNP reborn of the NNP. The remaining 2 were copped by the NNP led by Keith Mitchell who had in January 1989 ousted Herbert Blaize from the NNP leadership.

So, then, no single party by itself commanded a majority of the seats in the House of Representatives. That same election night, the behind-the-scenes negotiations characteristic of such a hung Parliament began in earnest. It was a dangling situation.

Efforts were made to put together a Government comprising GULP, NNP and TNP Representatives. Under these arrangements, caretaker Prime Minister Ben Jones was to be the Prime Minister. These efforts failed.

While those initiatives were being pursued, Ben Jones was in communication with the NDC of Nicholas Brathwaite.

It was not till three days later, on Friday 16th, that a Prime Minister could be appointed. That morning, Governor-General Sir Paul Scoon asked caretaker Prime Minister Ben Jones to resign, to pave the way for the appointment of a Prime Minister following the elections. Had Mr. Jones refused to resign, the Governor-General could have dismissed him, under section 58(6)(b).

Mr. Jones assured the Governor-General that he Jones and his other TNP colleague Representative Alleyne Walker were supportive of Mr. Brathwaite.

Accordingly, the Governor-General formed "the distinct impression" that Mr. Brathwaite commanded the majority support of the members of the House of Representatives. Sir Paul thus resolved to appoint Mr. Brathwaite as Prime Minister. So Sir Paul told the Nation when swearing in Mr. Brathwaite as the new Prime Minister around mid-afternoon that Friday 16th.

On Wednesday 21st March, the Brathwaite Cabinet was sworn in. In addition to the 7 NDC Representatives, it included Edzel Thomas who had been elected on a GULP ticket but who had by then crossed over to the NDC. The following day, Ben Jones and his other TNP colleague Representative Alleyne Walker were also sworn into the Government, with Ben Jones obtaining a place in the Cabinet.

The Brathwaite administration was, after all, a majority government, assured of 10 votes to 5 in the House of Representatives.

First Among Equals

A Prime Minister is sometimes referred to as *primus inter pares*. This means he is first among equals, as if he were simply another Minister, with the other Ministers being his equal.

But it is the Prime Minister who decides who shall be appointed a Minister, and which Ministry a Minister should hold *[28]*. The Prime Minister decides on the assignment to himself or any other Minister, responsibility for any business

of the Government, including the administration of any department of government *[29]*.

The Prime Minister decides when and how to change his Ministers, in a Cabinet reshuffle. He decides when to dismiss a Minister. He may require a Minister to retract statements made by that Minister or resign *[30]*. He decides which Minister shall perform the Prime Minister's functions when the Prime Minister is absent from Grenada or when illness disables him from performing the functions conferred upon him by the Constitution *[31]*.

The Prime Minister hires and fires ten of the thirteen Senators. He decides which Senators and elected Representatives are appointed Parliamentary Secretaries to assist Ministers in the performance of the latter's duties; and how long they shall hold that office *[32]*.

It is the Prime Minister who presides over meetings of the Cabinet. As such, he catches the consensus of Cabinet opinions, thus ruling on what is the decision of Cabinet.

The Prime Minister it is who gives the Governor-General information concerning the general conduct of the Government or any particular matter relating to the Government *[33]*.

Very importantly, the question when is Parliament to be dissolved is a matter for the Prime Minister *[34]*. This power ultimately keeps his Ministers in check *[35]*.

No other Minister has this array of power. All other Ministers are subordinate to the Prime Minister, though this may be counter-balanced by the political influence wielded by another Minister. So the other Ministers are very far from being equal to the Prime Minister, especially if his party has a large majority in the elected House of Representatives.

Removal of the Prime Minister

The Constitution provides for the removal of the Prime Minister, by the Governor-General. In exercising his power to remove the Prime Minister, the Governor-General has to act in accordance with his own deliberate judgment, by section 58(9).

The situations in which the Constitution provides for the removal of the Prime Minister, by the Governor-General, are restricted.

One of these might be brought on by a resolution of no-confidence in the Government of Grenada being passed by a majority of all the members of the House of Representatives. The passage of such a resolution does not enable the Governor-General to automatically remove the Prime Minister. The Prime Minister still has two options for forestalling his removal.

He may resign from his office *[36]*. Or he may advise the Governor-General to dissolve Parliament. He must make his choice as between these two options within three days of the passage of the resolution; or on the fourth day the Governor-General may remove him *[37]*.

There is another situation in which the Constitution provides for the removal of the Prime Minister. It may happen that as a result of the holding of a general election for the members of the House of Representatives, changes may occur in the membership of the House. Between the holding of such general election and the date on which the House first meets after the election, the Governor-General may consider that as a result of such changes, the Prime Minister will not be able to command the support of the majority of the members of the House. In that event, the Governor-General may remove the Prime Minister from office *[38]*.

This second situation is designed to prevent the defeated Prime Minister from going back to the House as Prime Minister, waiting for a no-confidence resolution to be passed by the House, and then advising dissolution again, entailing new general elections. The objective is good. But the strategy might be unfortunate. A Governor-General could find that he removes someone whom the members of the House then say they want as Prime Minister. Better strategies were available.

Thus, the Constitution could have provided that as from midnight on the day of a general election, the office of Prime Minister should automatically become vacant.

The analogues are the provisions that the office of Prime Minister becomes vacant if the holder is not a member of the House when the House first meets after a dissolution of Parliament *[39]*; or if he ceases to be a member of the House otherwise than by reason of a dissolution of Parliament *[40]*; or if he is

required to cease to perform his functions as a member of the House in certain circumstances *[41]*. In these situations, the Governor-General does not come in at all. The vacancy of the office occurs automatically.

Vacancy in Office

The death of Mr. Blaize while being Prime Minister on 19 December, 1989 raised certain constitutional issues in a way that, perhaps of all the Caribbean countries, only Grenada has come to confront such matters.

One of these had to do with section 52(4)(b).

This says:

> *"If the office of Prime Minister is vacant and the Governor-General, acting in his own deliberate judgment, considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of the majority of the members of the House of Representatives, the Governor-General shall dissolve Parliament".*

Writing in **"The Grenadian Voice"** newspaper of 30 December, 1989, Mr. Lloyd Noel, a well-known Lawyer, argued that under this provision, when Mr. Blaize passed on, the Governor-General ought to have dissolved Parliament. Next, Mr. Noel added, the Governor-General should have proceeded by himself to fix an election date, earlier than the ultimate date of 27 March, 1990.

The submission that the Governor-General should thus have dissolved Parliament entails that he should on his own deliberate judgment have decided that there was no prospect of his being able to appoint a Prime Minister within a reasonable time. For this preliminary ruling by the Governor-General, acting in his own deliberate judgment, that he is unable to find a Prime Minister, is a necessary and inescapable prerequisite to the Governor-General dissolving Parliament under section 52(4)(b).

The suggestion by Mr. Noel that no Prime Minister could be found was based on the special composition of the House on the 19 December, 1989. The party

of the deceased Prime Minister Herbert Blaize and his Deputy Prime Minister Ben Jones, TNP, now had 5 seats. The official Opposition Party of George Brizan, NDC, had 6 seats. And the other Opposition party of Keith Mitchell, NNP, had 3 seats.

So, Mr. Noel submits, the Governor-General had no warrant for appointing Mr. Ben Jones as Prime Minister before dissolving Parliament.

But, Mr. Noel adds, after dissolving Parliament and fixing an election date by himself then, *"the Governor-General, in his own deliberate judgement, under section 61(2) could have appointed the same Hon. Ben Joseph Jones - who is deputy Prime Minister - to act as Prime Minister"*.

Section 61 states that whenever the Prime Minister *"is absent from Grenada or is by reason of illness unable to perform the functions conferred upon him by this Constitution"*, the Governor-General may authorise some other Minister to perform those functions.

Manifestly, section 61 is providing for the temporary appointment of a Prime Minister while there is a substantive Prime Minister, but who is not available because of his "absence or illness".

Thus, section 61(2) requires the Governor-General to make such temporary appointment on the advice of the Prime Minister, unless the Governor-General has to act in his own deliberate judgment because no advice can be got from the Prime Minister owing to the Prime Minister's "absence or illness".

It follows that section 61 could not properly apply in the wake of the death of Mr. Blaize. For there was no substantive Prime Minister who was merely absent or ill. This writer so responded to Mr. Noel in **"The Informer"** newspaper of 5 January, 1990.

This writer there added that Mr. Noel's submission had a certain curious implication. This involved the Governor-General in dissolving Parliament and fixing an election date on the basis that he could not find a Prime Minister.

Yet, the minute the Governor-General dissolved Parliament and fixed an election date, he would have had to turn around and present a Prime Minister. This would be rather infelicitous in a Governor-General.

This reasoning too precluded reliance on section 58(5). This provision says that if occasion arises for making an appointment to the office of Prime Minister

while Parliament is dissolv J, a person who was a member of the House of Representatives immediately before the dissolution may be appointed as Prime Minister.

This provision, section 58(5), addresses the situation where Parliament has already been dissolved when the need for appointing a Prime Minister arises. This would happen where, after Parliament has been dissolved and before general elections are held, the caretaker or interim Prime Minister resigns or dies. No such situation arose here. Accordingly, Mr. Noel did not seek to invoke this provision.

Perhaps section 61 should be amended to provide for the appointment of an acting Prime Minister when the post of Prime Minister falls vacant for whatever cause. On the other hand it may be argued that the post of Prime Minister is too critical to have someone merely acting in it when there is no substantive Prime Minister.

Acting Prime Minister

It has recently been questioned whether the Grenada Constitution permits the appointment of an acting Prime Minister. Editor Leslie Pierre in **"The Grenada Voice"** newspaper of 8 December 1990, referring to section 61, just quoted, says *"I fail to recognise any provision here for an acting Prime Minister"*.

There can be a system in which, no matter how far the Head of Government travels from his country, he takes his office with him and performs its functions regarding his own country day by day. This is apparently the case with the President of the United States of America. He is not empowered by the Constitution to authorise any person to perform his functions or act for him. Thus was the strength of the maxim that a delegate cannot delegate when the American Constitution was drawn up in 1787.

But even in the American Constitution, if the President is unable to discharge his functions, these devolve on the Vice President. If both of them are so unable, Congress may declare another officer fit to *"act as President"*, and that other officer *"shall act accordingly"*, until the disability is removed. So says Article II section 1.

The Grenada Constitution makes provision for situations in which the functions of Prime Minister need to be performed by a Minister other than the Prime Minister.

This is when the substantive Prime Minister is absent from the State or is by reason of illness unable to perform the functions conferred upon him by the Constitution. Then, these functions of the office of Prime Minister may be performed by another Minister authorised to perform them. Section 61, just quoted, thus states.

This section, providing for the performance of the functions of Prime Minister when he is absent or unable, is also informed by the principle that a delegate cannot delegate. But this is to a lesser extent than its American equivalent.

The American counterpart does not empower the President to delegate his powers at all. Section 61 in Grenada is wider. It says that the Minister performing the functions of Prime Minister when the latter is absent or unable, can perform those functions other than those of having another Minister authorised to perform the functions of Prime Minister.

Obviously, another Minister performing the functions of Prime Minister, when the latter is absent or unable, is the acting Prime Minister. He acts as Prime Minister in that he is authorised to perform the functions of Prime Minister even though he is not the substantive Prime Minister.

This is in the constitutional culture in any Westminster model of Constitution in *pari materia* with that of Grenada. Take the Constitutions of other Commonwealth Caribbean countries. These are identical with that of Grenada in this respect. They do not have an express reference to an acting Prime Minister. Yet, another Minister performing the functions of Prime Minister in the circumstances now being discussed is throughout the Caribbean intelligently called by all concerned the acting Prime Minister.

How Long Should a Person Remain Prime Minister?

The 1985 Phillips Constitution Review Commission of Grenada was asked whether a person should be constitutionally disabled from being Prime Minister continuously for more than two terms or parts thereof, or more than ten years, provided he could return to that office after a lapse of time. The Commission

was given this term of reference in view of the search by Grenadians for methods of curbing the dictatorial tendencies which had characterised Prime Ministers and Governments since Independence.

Such a limit was spoken of positively by some who submitted memoranda to the Commission, while recognising that such a limit could also have negatives *[42]*. The Commission made no recommendation on the matter. But, quite strangely, the Commission put arguments against such a limit without putting any argument for it *[43]*.

Other Ministers

In addition to the Prime Minister, there are other Ministers. These may be full senior Ministers, or they may have a less exalted stature, and called Ministers of State. Both kinds of Ministers may sit in the Cabinet. There are also Parliamentary Secretaries, whose duty it is to assist Ministers in the performance of their duties *[44]*. If Parliamentary Secretaries are Ministers in their own right, they certainly are at the lowest level of Ministerial life. With one Prime Minister, Parliamentary Secretaries may belong to the Cabinet *[45]*; with another Prime Minister, they may not at one stage and they may at another, depending on how events unfold around him *[46]*.

Parliament may decide how many Ministers other than the Prime Minister there shall be. Subject to such law made by Parliament, the Prime Minister decides how many Ministers other than himself there shall be.

The formal establishment of such other offices of Minister is done by the Governor-General, subject to what Parliament says. In doing so, the Governor-General has to act in accordance with the advice of the Prime Minister, under section 58(3).

Quite apart from deciding how many such other Ministers, Ministers of State and Parliamentary Secretaries there shall be, the Prime Minister also decides who they shall be. The formal appointment is made by the Governor-General; he issues the instrument legally appointing them. But he has to act in accordance with the advice of the Prime Minister *[47]*.

The Constitution does not refer to a Deputy Prime Minister. But, as in other Commonwealth Caribbean countries with this situation, there surely may be a

Deputy Prime Minister. There may be controversy regarding Prime Minister Blaize's appointment of Ben Jones as Deputy Prime Minister in 1989. But this would be better directed at the politics of the appointment *[48]*, rather than at the silence of the Constitution on the matter.

Parliamentary Membership Required

The Ministers other than the Prime Minister, including the Ministers of State and the Parliamentary Secretaries, must, like the Prime Minister, belong to Parliament. But whereas the Prime Minister must come from the elected House of Representatives, these other Ministers may be members either of that House or of the nominated Senate *[49]*.

There is only one instance in which a person may be a member of the Cabinet without belonging to either House of Parliament. This is the case where the holder of the office of Attorney-General *[50]* is a public officer.

The office of Attorney-General may be the office of a Minister. In this situation, the Attorney-General must belong to either House *[51]*. But the office of Attorney-General may, on the other hand, be a public office *[52]*. And in this event, the Attorney-General must be an ex-officio member of the Cabinet in addition to the Ministers *[53]*. In either case, the Attorney-General is the principal legal adviser to the Government of Grenada *[54]*. No one else may be a member of the Cabinet without having a seat either in the House or in the Senate.

Otherwise Free Hand

Leaving aside the requirement that Ministers and Parliamentary Secretaries must belong to either House, the Prime Minister has a free hand constitutionally in picking his Ministers and Parliamentary Secretaries.

There is no constitutional limit on the number of Ministers or Parliamentary Secretaries who may come from the Senate; just as in Trinidad and Tobago *[55]*. There is such a limit set by the Constitution in some countries. In Jamaica, not more than four Ministers may come from the Senate, though any number of Senators may be Parliamentary Secretaries *[56]*.

In Grenada, limits on the number of Ministers and Parliamentary Secretaries coming from the Senate are set by essentially political factors. If the Prime Minister has a small majority in the elected House, he may have no choice but to draw on the Senate for Ministers and Parliamentary Secretaries. If by contrast he has a large majority in the elected House, and if all his party colleagues in that House yearn for appointment as Minister or Parliamentary Secretary, it may be awkward for the Prime Minister to bypass them and go to the Senate for Ministers and Parliamentary Secretaries.

A Prime Minister who has a free hand politically may decide to have only a few Ministers and Parliamentary Secretaries, with some of his party colleagues in the House being only Parliamentary Secretaries, and with no Senator being a Minister. If the political situation so changes that his majority in the House decreases significantly, he may then make all his party colleagues in the House either full senior Ministers or Ministers of State, still leaving his party colleagues in the Senate to be only Parliamentary Secretaries. Yet later, responding to challenges from within his own party, he may be forced to make even some of his party colleagues in the Senate Ministers of State and even full Ministers to boot. Prime Minister Blaize ran this entire gamut between April 1987 and December 1989.

But constitutionally, the Prime Minister has great leeway in choosing his Cabinet in Grenada. He no doubt will consider the skills and expertise of his colleagues; their loyalty, reliability, experience, influence and integrity. It may be thought that the chief Government spokesperson in the Senate, called the Leader of Government Business in the Senate, should be in the Cabinet if he is to capture no less the spirit than the actual decisions of Cabinet. So one Prime Minister may ensure that his Leader of Government Business in the Senate is a member of his Cabinet *[57]*. Another Prime Minister may hold out against this as long as he can *[58]*.

Ministerial Responsibility

A Minister is individually responsible to Parliament for the actions or omissions of his Ministry and for the general running of his Ministry. He is answerable for any department of government for which he is put in charge by the Prime

Minister; he has to exercise general direction and control over that department *[59]*.

He must take blame for any wrongdoing in his Ministry, even if he knew nothing of it in advance. It is improper to cast public blame on his public officers, let alone on a fellow Minister.

A Minister is also collectively responsible to Parliament together with his fellow Ministers for any advice given to the Governor-General by or under the general authority of the Cabinet, and for all things done by or under the authority of any Minister in the exercise of his office *[60]*. This means that all Cabinet Ministers are equally answerable for the decisions of the Cabinet and also for the actions of their fellow Ministers. If a Cabinet Minister feels so strongly against a Cabinet policy or some action of a fellow Minister that he speaks out against it in public, he should not be surprised if he is asked to publicly retract or to resign.

Ceasing to be Minister

The office of Minister or Parliamentary Secretary becomes vacant if its holder ceases to be a member of either House otherwise than by reason of the dissolution of Parliament. Or if he is not a member of either House when the House first meets after the dissolution of Parliament. Or if he is required to cease to perform his functions as a member of his respective House in certain circumstances *[61]*.

The office also becomes vacant if the Prime Minister resigns from office as a result of a no-confidence resolution; or is removed as a result of such resolution or through losing majority support in the House at a general election. The office of Minister or Parliamentary Secretary becomes vacant when someone is appointed as Prime Minister. Of course the office becomes vacant if its holder is dismissed by the Prime Minister, the Governor-General having to direct the removal of the holder if the Prime Minister so advises *[62]*. Naturally, too, a Minister or Parliamentary Secretary may resign his office at any time *[63]*.

When Ben Jones was appointed the new Prime Minister in December 1989, all Ministers and Parliamentary Secretaries were issued new instruments of

appointment, even to the same Ministries they held immediately before the new Prime Minister was sworn in.

That was because of section 58(8)(c). This says that the office of a Minister becomes vacant on the appointment of any person to the office of Prime Minister. So, as soon as Ben Jones was appointed Prime Minister, all the offices of Minister other than that of the Prime Minister became vacant. Hence the issuance of new instruments to them.

Does the dissolution of Parliament render vacant all Cabinet posts, including the office of Prime Minister? Section 58(5) provides that if the occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament is dissolved, a person who was a member of the House of Representatives immediately before the dissolution may be appointed as Prime Minister or any other Minister, and a person who was a Senator may be appointed as any Minister other than the Prime Minister.

Arguably, this provision implies that dissolution of Parliament vacates all Cabinet posts. And the section enables the Governor-General to reconstitute those posts.

By convention, though, those who were in the Cabinet immediately before the dissolution of Parliament automatically hold over, as an interim or caretaker Government, until the ensuing general elections are held. So section 58(5) is understood as meaning that if between a dissolution and an election, a vacancy arises in the interim or caretaker Cabinet through resignation or death or whatever, that vacancy may be filled.

Admittedly, the Constitution does not in terms say that a pre-dissolution Cabinet automatically survives the dissolution of Parliament and holds on as a caretaker Cabinet until the elections are held. But equally the Constitution does not stipulate that the dissolution of Parliament renders vacant membership of the Cabinet.

In this particular territory left vacant by the law of the Constitution, the courts may fill in conventions of the Constitution that do no violence to the Constitution and that indeed make the Constitution work. For there is no attraction in the idea of there being no Government in the possible 90 days that may run between dissolution and elections.

Ministerial Integrity

It is of the first importance that Ministers comport themselves with the dignity appropriate to their high office. Parliamentary democracy everywhere, not least in Grenada, requires for its survival the willing consent of the people. Democracy does not thrive on force brought to bear down on the people.

The willing consent of the people on which alone democracy thrives, needs belief by the people in our system of government. The extent to which our people will continue to believe in our system of government depends greatly on the behaviour of those who hold the high political offices established by the system. The scholar of the Jamaican Constitution makes this point neatly. He says that

> *"Public confidence in the administration will be influenced by the character of the individual Ministers and this includes their reputations for moral probity, dignity and good conduct" [64].*

It is on that fundamental premise that one objects to ugliness in high political life. A block-making plant comes into the country consigned to the Central Water Commission of the Ministry of Public Utilities. The plant ends up in the hands of a private company. That company is owned by very close relatives of the executive manager of the Commission and his first cousin the Minister of Public Utilities. That does not look good. It undermines confidence in the democratic process. It so erodes credit in the process that it can lead to the undoing of the process.

Government and Party

A certain question has been the focus of debate in Grenada since parliamentary democracy was restored in December 1984. This is whether the Constitution recognises political parties and gives them a role in the nurturing of democracy, and if so, what is this role.

The breakdown of parliamentary democracy inherent in the armed revolution in 1979, and the aftermath of that revolution, provided the natural backdrop

against which such a question could arise. That ambience was further coloured by events occurring in the restoration.

Members of the top decision-making bodies of the ruling party between 1984 and 1989, the NNP, felt that the views of the party were not being given sufficient, if any, attention by their party leader, Prime Minister Blaize.

Thus, in December 1985 the first annual convention of the NNP elected its Deputy Leader, and there was a feeling that he should be called upon to act for the Prime Minister when the need arose. But, instead, Mr. Blaize always had his long time friend Ben Jones act for him.

Then there was the drama which unfolded after the January 1989 convention of the NNP. At that convention Keith Mitchell got himself chosen as party Leader over Prime Minister Blaize. The resulting friction between those two culminated in Blaize reshuffling Mitchell out of the Cabinet, and Blaize taking his loyalists out of the NNP and forming the TNP. What started off as an NNP Government gave birth to an official NDC Opposition and ended up as a TNP Government facing an official NDC Opposition plus an unofficial NNP Opposition.

The Constitution never expressly recognises political parties; it does not in terms see a government as the government of a particular party as such. Section 58(2) defines the Prime Minister as the member of the House of Representatives who appears to the Governor-General liklely to command the support of *"the majority of the members of the House"*. And the other Ministers come from among *"the Senators and the members of the House of Representatives"*, by section 58(4).

But, clearly, in selecting the Prime Minister, the Governor-General would take his gauge from party connections of members of the House.

Political campaigns for electing members of the House are conducted on party lines. Election results tell which party got more of its candidates voted into the House than the others.

Where a party gets a clear overall majority of members of the House, the lot of the Governor-General is relatively easy. Ordinarily in this event, he simply appoints as Prime Minister the person who led through the campaign the party which emerged from the campaign victorious, if, of course, that person is voted

into the House. This person is the one whom the party has presented as its Political Leader.

If the Political Leader of the victorious party is not voted in, the Governor-General might want to hear what is to be said by members of that party belonging to the House regarding who should be Prime Minister. If such members inform the Governor-General that they want as Prime Minister a person other than their Political Leader when their Political Leader belongs to the House, the system chokes. The system does not expect, and cannot thrive on, such intrigue.

If there is no clear majority for a party in the House, party affiliations do not strictly provide an answer. Nor can the Governor-General wait indefinitely for wheeling and dealing produced by that situation to settle down. The Governor-General has to try his best to identify a Prime Minister. Governor-General Sir Paul Scoon all but had to do so in March 1990. It was not till the following Friday that Sir Paul could pick a Prime Minister from the hung Parliament produced by the elections of Tuesday 13 March, as seen above *[65]*.

If the Governor-General gets it palpably wrong, the matter will no doubt be settled by a resolution in the House that the House has no confidence in the Government. This no-confidence motion will, if successful, expedite fresh general elections normally.

The Prime Minister and his Party

The question to what extent should the Prime Minister be guided by the views of his party in running the country is a matter domestic to the party.

The Westminster model does not admit of the paramountcy of the party over the government. Nor does this model expect a dictatorship of the Prime Minister. To be sure, the model does give the Prime Minister an abundance of power, but conventions in the model moderate the literal extent of this power.

The Westminster model leaves the relationship between the Prime Minister and his party to be regulated by political factors local to the party, impacted upon by appropriate public forces. That relationship is not addressed by the Constitution.

The Leader of the Opposition

The Constitution establishes the office of Leader of the Opposition. He is the member of the House of Representatives who appears to the Governor-General to command the support of the largest number of members of the House in opposition to the Government, by section 66(1)(2).

Constitutionally, the Leader of the Opposition is the alternative Prime Minister. More specifically, he has the right to have three Senators appointed, by the Governor-General, in accordance with his advice. He is likewise entitled to have them removed in accordance with his advice *[66]*. He has the right to have two members of the Constituency Boundaries Commission appointed, by the Governor-General, in accordance with his advice *[67]*. If there is no Leader of the Opposition, the Governor-General acts in his own deliberate judgment in these situations *[68]*.

Tenure of Opposition Leader

If it appears to the Governor-General that the Leader of the Opposition no longer commands the support of the largest number of members of the House in opposition to the Government, the Governor-General must remove the Leader of the Opposition from office, by section 66(4).

Also, the Leader of the Opposition must vacate his office if for any reason other than a dissolution of Parliament he ceases to be a member of the House of Representatives. Or if he is not a member of the House when the House first meets after a dissolution of Parliament. Or if he is required to cease to perform his functions as a member of the House in certain circumstances *[69]*.

The Governor-General

The Constitution of Grenada requires, in section 19, that there shall be a Governor-General. He is the representative in Grenada of the Head of State of Grenada, Her Majesty the Queen of the United Kingdom, as the same section adds, and as seen above *[70]*.

Appointment and Tenure

The Constitution, section 19, says that the Governor-General is appointed by Her Majesty. It does not say whether Her Majesty has to act on advice from anyone in making the appointment. But, by convention too strong to be ignored, Her Majesty would be expected to appoint only such a person as the Prime Minister wants appointed.

By the same token, while section 19 of the Constitution says that the Governor-General holds office during Her Majesty's pleasure, it must be that Her Majesty's pleasure is materially the same as the Prime Minister's pleasure.

It would be rather awkward for Her Majesty to try to appoint as Governor-General someone not acceptable to the Prime Minister, or to try to continue having pleasure in someone who no longer pleases the Prime Minister. In fact the system cannot work this way.

The recent example of Fiji illustrates this. Following the second military coup in Fiji in September 1987, after an earlier one in July that year, Her Majesty intimated to the Governor-General that it was her pleasure that he should stay on as Governor-General.

This was not known to be the pleasure of the coup leader, Colonel Rambukka. The Governor-General did indeed declare that he would stay on. But he soon realised how well-nigh impossible this would be. So he backed down, leaving the Colonel to have his way materially.

On 28 February, 1988, Sir Lambert Eustace, Governor-General of St. Vincent & the Grenadines resigned, obviously not gladly. By the following week while a new Governor-General was being sworn in, Prime Minister James Mitchell hinted that the relationship between himself and Sir Lambert had soured.

It appears that Sir Lambert was laying some store by the provisions of the St. Vincent Constitution saying that the Governor-General holds office at Her Majesty's pleasure. He first said so in a public speech in August 1987. He did not last long after that. In getting in the last word, Prime Minister Mitchell stressed that *" 'Her Majesty's pleasure' is a euphemism for the will of the people of St. Vincent and the Grenadines" [71].*

Even before independence this was so. Premier Gairy could get rid of Governor Dame Hilda Bynoe rather easily and unceremoniously *[72].*

Acting Governor-General

At times, the office of Governor-General may be vacant. Or its holder may be absent from Grenada. Or he may otherwise be unable to perform the functions of his office. Those functions may then be performed by such person as Her Majesty may appoint, under section 21(1). Of course this would be, as with the appointment of the Governor-General himself, on the advice of the Prime Minister. The absence or inability of the Governor-General to perform his functions here referred to would be of a somewhat enduring kind, akin to a vacancy. The person appointed to perform those functions during that period is an Acting Governor-General.

Deputy Governor-General

When the absence or inability of the Governor-General to perform his functions is casual, a different arrangement is appropriate. The solution then is to appoint a Deputy to the Governor-General.

This is so when the Governor-General needs to be absent from the seat of Government but not from Grenada. Or when he has to be absent from Grenada for a period which he considers short. Or when he is suffering from an illness which he considers will be of short duration.

In any such case, the Governor-General may appoint any person in Grenada to be his Deputy during such absence or illness. Of course, in appointing his Deputy, the Governor-General will act in accordance with the advice of the Prime Minister, as section 22(1) of the Constitution says. Also, a practice has developed by which the Deputyship is rotated between the Speaker of the House of Representatives and the President of the Senate, functionaries considered below *[73]*.

The Deputy may perform on behalf of the Governor-General, such of the functions of the office of Governor-General as may be specified by the Governor-General, section 22(1) adds. But the power and authority of the Governor-General is not affected by the appointment of a Deputy.

Rather, the Deputy has to abide by all instructions given to him by the Governor-General acting in his own deliberate judgment. The Deputy holds his

appointment for the period specified by the Governor-General, but his appointment may be revoked at any time by the Governor-General, acting on the advice of the Prime Minister,under section 22(2)(3).

Functions of Governor-General

Since the Governor-General represents Her Majesty the Queen, and given that the executive authority of Grenada is vested in Her Majesty, the Governor-General exercises the executive authority of Grenada on behalf of Her Majesty, either by himself directly or through officers subordinate to him, by section 57(2). But, of course, as that provision says, this is all *"subject to the provisions of this Constitution"*.

And the Constitution makes it clear, in section 62(1), that, in exercising his functions, the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet. This has already been seen above *[74]*.

These provisions, section 62(1), do however add that they do not apply in certain situations. In these excepted situations, the Cabinet has no right to advise the Governor-General. He may still, though, have to act on the advice of either the Prime Minister or a Minister designated by the Prime Minister.

Some such excepted situations have already been seen above. They are the appointment and removal of ten of the thirteen Senators; the appointment, transfer and removal of Ministers and Parliamentary Secretaries; and the dissolution of Parliament *[75]*, regarding all of which the Governor-General has to act on the advice of the Prime Minister. In exercising the Prerogative of Mercy, he has to act on the advice of the Minister advising on Mercy. These have all been already seen *[76]*.

Although the Governor-General has to act in accordance with the advice of a particular Minister on a given matter, that Minister may not act on that matter himself. The action has to be taken, not by the Minister, but by the Governor-General *[77]*.

Other Authority

There are occasions on which the Governor-General has to act in accordance with the advice or recommendation of some person or authority other than the Cabinet, the Prime Minister or a Minister.

Thus, in appointing and removing three of the thirteen Senators, the Governor-General has to act in accordance with the advice of the Leader of the Opposition, as stated before *[78]*.

Or take the matter of the removal of certain functionaries from the office they hold. They might not be removable without the question of their removal being first referred to a judicial tribunal. They cannot be removable except for inability to discharge the functions of their office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour.

Having enquired whether any of these limited grounds of removal exists, the tribunal recommends to the Governor-General whether or not the functionary ought to be removed. The functionary must be removed by the Governor-General if the tribunal recommends removal. It would seem to follow that the functionary must not be removed if the tribunal recommends against removal.

This is the situation with members of the Constituency Boundaries Commission, the body charged by the Constitution with responsibility for reviewing the number and boundaries of the constituencies into which Grenada is divided. It is the position with members of the Public Service Commission, the body with power to appoint, discipline and remove most public officers. It is the position with members of the Public Service Board of Appeal, the body empowered to determine appeals against decisions disciplining or removing public officers or adversely affecting their pension rights *[79]*.

So too with the Director of Public Prosecutions, the officer responsible for the conduct of criminal proceedings; and the Director of Audit, the officer charged with auditing public accounts and reporting on them *[80]*.

There is also the power to appoint persons to the offices of Secretary to the Cabinet, Permanent Secretary, head of a department of government and deputy head of such department; and the power to discipline these functionaries and remove them from office. This power vests in the Governor-General, but he has to exercise it in accordance with the advice of the Public Service Commission

[81], although the Prime Minister may prevent the Commission from sending the names of certain persons to the Governor-General *[82]*.

Shall Not Be Enquired Into

Some Caribbean Constitutions state that where the Constitution requires the Governor-General or President to perform a function on the advice of, or on the recommendation of, *"any person or authority"*, the question whether he so acted *"shall not be enquired into in any court of law" [83]*. The Grenada clause does not extend to *"any person or authority"*. It applies only in relation to advice to the Governor-General from *"the Cabinet, the Prime Minister or any other Minister or the Leader of the Opposition"*.

The question whether the Governor-General has acted in accordance with such advice *"shall not be enquired into in any court of law" [84]*.

Despite such ouster clause, if the question whether he has so acted arises in any way that goes to the root of his jurisdiction, that question is properly justiciable by the courts. That is so indeed *"without the aid of any other enabling provisions" [85]*.

The power of the courts to so enquire rests on limitations on the clause internal to the clause. These limitations do not enable the courts to interfere when the Governor-General acts within his jurisdiction. But if the relevant advisory body wants the Governor-General to act without jurisdiction, or to exceed his jurisdiction, the courts may intervene to protect him and uphold the rule of law. This is required by the internal limitations on such a clause and does not need other provisions, a matter pursued below *[86]*.

On this basis, one supports the preparedness of the courts to enquire into actions of a Governor-General or titular President, and to strike them down for unconstitutionality in a proper case *[87]*.

A Titular Figurehead

Clearly, then, the Governor-General often has to act in accordance with the advice of some other functionary. This other functionary may be the Cabinet, the Prime Minister, another Minister, the Leader of the Opposition, the Public

Service Commission, or a special disciplinary tribunal. And, as with other functionaries, he may be controlled by the courts, though perhaps the courts might be not too quick to interfere with him.

It has therefore to be said, with Sir Fred Phillips, that, as stated already, the position of Governor-General is *"one of dignity rather than power" [88].* He is, thus, a titular or ceremonial figurehead.

This is not to say that the Governor-General has absolutely no power. It would be wrong to believe that he is never authorised to act in his own deliberate judgment.

His Own Deliberate Judgment

There are times when the Governor-General is not required to act on the advice or recommendation of anyone, or in consultation with anyone. Rather, he has to act in his own deliberate judgment.

An instance is when he appoints the Prime Minister. He appoints the member of the House of Representatives *"who appears to him"* likely to command the majority support of the House, by section 58(2).

Governor-General Sir Paul Scoon had to exercise such judgment in rather acute circumstances on 19 December, 1989 when Prime Minister Herbert Blaize suddenly passed away that day. Mr. Blaize left behind a ruling TNP party with only 5 seats in the 14 member House, these 5 being led by Deputy Prime Minister Ben Jones. George Brizan's NDC official Opposition had 6 seats. Keith Mitchell's NNP other Opposition had 3 seats. Sir Paul that day appointed Ben Jones as the new Prime Minister. He did so in his own deliberate judgment, as he told the Nation by radio that evening.

A Minister other than the Prime Minister may need to act for the Prime Minister during the latter's absence or illness. The Governor-General acting in his own deliberate judgment may consider that it is impracticable to obtain the advice of the Prime Minister as to which such Minister should act for the Prime Minister. In this case, in authorising a Minister to so act for the Prime Minister, the Governor-General decides "in his own deliberate judgment", under section 61(2).

Or the office of the Prime Minister may be vacant. The question may arise whether there is no prospect of the Governor-General being able within a reasonable time to appoint to that office a person who can command the majority support of the House. The question whether there is no such prospect is one which the Governor-General has to decide in his own deliberate judgment. If he decides there is no such prospect, he shall dissolve parliament *[89]*. The controversy about the application of these provisions which followed the death of Prime Minister Blaize and the appointment of his successor Ben Jones on 19 December, 1989 has already been seen *[89A]*.

The House may pass a no-confidence resolution in the Government. Within three days of the passage of such resolution, the Prime Minister may either resign or advise a dissolution. If the Prime Minister does not either resign or advise a dissolution, the Governor-General may dissolve Parliament. In deciding whether to dissolve Parliament in these circumstances, the Governor-General acts in his own deliberate judgment *[90]*.

As part of the right of the Governor-General to be kept fully informed by the Prime Minister concerning the general conduct of the Government, the Governor-General is entitled to request of the Prime Minister information regarding any particular matter relating to the Government. When the Governor-General requests such information, the Prime Minister, the Constitution says, shall furnish him with such information. In deciding which such information to request, the Governor-General acts in his own deliberate judgment *[91]*.

So too when he appoints the Leader of the Opposition, equally as when he removes the latter for having lost the majority Opposition support in the House, by section 66(2)(4). There are powers regarding which the Governor-General has to act on the advice of the Leader of the Opposition. If there is no Leader of the Opposition, the Governor-General acts on these powers "in his own deliberate judgment", under section 62(2).

The Supervisor of Elections is the holder of the public office designated as such by the Governor-General acting, by section 35(2), "in his own deliberate judgment".

Unique Circumstances

Unique circumstances not expressly addressed by the Constitution may arise putting the Governor-General in an adroit and poignant dilemma requiring him to act in his own deliberate judgment. An example occurred in October 1983, when the PRG which had been born by the sword, and which lived by the sword, finally perished by the sword. The massacre at the Fort engulfing the life of Prime Minister Bishop, the birth of the RMC, the four day all-day shoot-on-sight curfew, and the military intervention ending the week-old RMC have all been seen above *[92]*.

The point being made now is that the decision to invite in to Grenada the military forces of the USA and certain Caribbean countries was taken reportedly by the Governor-General, Sir Paul Scoon, clearly not on the advice of the RMC which was holding itself out as the Government. Obviously the RMC would not have advised Sir Paul to invite in foreign military forces to end the governmental life of the very RMC. So Sir Paul must have acted in his own deliberate judgment, and this he was surely entitled to do in the very peculiar circumstances then prevailing.

Monarchy or Republic?

One may ask whether Grenada should continue to have a Governor-General in a Monarchy, or should change over to a President in a Republic.

To continue to have a Governor-General is, arguably, to cherish our traditional ties with the British, since the Governor-General represents the British Queen, the repository of the Executive authority of Grenada. Also, some might think that those ties somehow bring us some kind of security, protection and economic advantage from the British, without undermining our independence.

But the experiences of October 1983 must raise doubts as to whether the British would be prepared to help resolve Grenadian troubles unless these troubles jeopardise British interests. Also, as Britain goes deeper and deeper into Europe, it is not clear that Britain would be able to secure economic protection for Grenada.

One must not, however, build castles in the air. Going Republic will not, by itself, shift the emphasis in the economy so as to make economic power correspond to political power. It will not by itself make the small man a real man.

Yet, the abolition of the role of Her Majesty in Grenadian affairs and the Grenadianising of decisions as such should evoke worthwhile nationalistic sensibilities. The whole idea of political independence is that a people should locate their institutions of State among themselves and build local structures. This conduces to the fostering of the national spirit and national identity.

Going Republic would emphasise that the people of Grenada should only rely on themselves to further their national interest. This would be no mere political gimmick. If not a change of real substance, it would not be just a change of form, but rather a useful symbolic change.

What Kind of Republic?

One model of Republic is the kind which exists in Dominica or Trinidad & Tobago. In this model, the President symbolises national unity; representing, not the British Monarch, but rather local nationalism. He would not have real executive power. He would be a figurehead; a Head of State removed from partisan politics. The Prime Minister would remain Head of Government.

In another model of Republic, it is the President who is in control, and the Prime Minister is merely his agent. This is an executive President, appointing and dismissing his Prime Minister at will. He may have a veto power over legislation, but the legislature may be able to override his veto, as in the USA. Or he may have a veto which the legislature is not able to override, as in the Republic of Guyana put together by Forbes Burnham.

Grenadian Viewpoint

Whether Grenada should continue with a Governor-General or should change over to a President was a matter put to the 1985 Constitution Review Commission.

They found that the idea of a Head of State who would not owe his appointment and his continued tenure solely to a Prime Minister appeals to *"quite a vocal minority in Grenada"*. This minority wants as Head of State a President, elected by an Electoral College.

The Commission made no recommendation on the matter whether we should change over to a President. They said that this is the kind of choice *"in which technical issues can be less important than the collective expression of the national consciousness through the political process" [93]*. What this means is far from clear.

What is clear is that the Commission shared with many a real unhappiness about the appointment and removal of the Governor-General being solely in the hands of the Prime Minister. Events in Grenada between 1973 and 1983 convinced the Commission that they ought to be innovative and not adopt a traditionalist line. The Commission felt that Grenada should be treated as a unique case, *sui generis*. But they were ensnared by their dread of breaking new ground, as argued by their associate member *[94]*. They did not want to take a stand on the issue of Republicanism.

As a half-way house, then, the Commission recommended that whether a Governor-General or a President, he should be appointed by an Electoral College. This would comprise the members of both Houses of Parliament, the chairmen of the proposed local government District Boards, and the chairman of the recommended Council for Carriacou and Petit Martinique all sitting together. Their nomination for Governor-General or President would be made by a simple majority in a secret ballot. Provision saying so would be inserted in the Constitution and would be deeply entrenched therein.

The Commission think that this open method of selection proposed by them will more likely ensure that the nomination does not invite controversy. One may differ here. Precisely because the proposed method of selection is open, it may invite controversy. In any case, controversy is sometimes the handmaid of democracy. The point is, as the Commission say, the functionary emerging from that process will be seen as a symbol of unity throughout the nation. For he will be seen as having been thrown up democratically by and from within the body politic.

Increasingly, calls might be made for Caribbean monarchies to move to republicanism. In February 1988, such calls were made both by former Prime Minister Sir Eric Gairy for Grenada and Deputy Prime Minister Lester Bird for Antigua. In August 1989, Jamaica's Deputy Prime Minister, P. J. Patterson, announced that both Government and Opposition were agreed that Jamaica should become a republic. The same forces which motivated the drive towards independence tend to nurture a wish for republicanism, as the 1979 Barbados (Cox) Constitution Review Commission found.

The Prerogative of Mercy

The Governor-General may grant certain concessions to any person convicted of any criminal offence. He may do so in Her Majesty's name and on her behalf, not in his own right. These concessions make up the Prerogative of Mercy, provided for by section 72(1) of the Constitution.

Under this Prerogative, the Governor-General may grant a pardon to any person convicted of any offence. This pardon may be total, freeing the recipient from any criminal stain in law. The pardon may on the other hand be subject to lawful conditions.

Or he may grant to any person a respite of the execution of any punishment imposed on that person for any criminal offence. This respite is a delaying of the execution of the punishment, indefinitely or for a specified period.

By virtue of the Prerogative of Mercy, the Governor-General may substitute a less severe form of punishment for any punishment imposed on any person for any offence. Or he may remit the whole or any part of any penalty or forfeiture otherwise due the Crown on account of any offence.

Designated Minister

In exercising the Prerogative of Mercy, the Governor-General has to act in accordance with the advice of such Minister as may be designated by himself. This designating of the Minister has to be done in accordance with the advice of the Prime Minister, as stipulated by section 72(2).

Advisory Committee

For the purposes of the exercise of the Prerogative of Mercy, the Constitution establishes an Advisory Committee on the Prerogative of Mercy. One member is the Minister designated to advise the Governor-General on the exercise of the Prerogative of Mercy, just mentioned. This Minister is the Chairperson of the Committee. The Attorney-General is a member of the Committee, as is the Chief Medical Officer. There are three others, all selected by the Prime Minister and holding office at his pleasure, the formal appointment being made by the Governor-General *[95]*.

This Committee may regulate its own procedure, and may act despite any vacancy in its membership or the absence of any member. Its proceedings are not invalidated just because a non-member was present at or participated in its proceedings *[96]*.

The Advisory Committee always comes into play where any person has been sentenced to death for an offence, except where such sentence is imposed by a court-martial. There has to be a written report of the case from the trial judge or the Chief Justice. The designated Minister has to cause the Committee to consider this report, together with such other information derived from the record of the case or elsewhere as he may require.

The Committee must then advise the Minister on the matter. After considering this advice, the Minister has to decide in his own deliberate judgment whether to advise the Governor-General to exercise any of his powers contained in the Prerogative of Mercy. By section 74(1), then, the Minister is not obliged to act in accordance with the recommendations of the Committee.

A warrant should not issue for carrying out a sentence of death until after the Committee considers the case and advises the Minister and he in turn advises the Governor-General. That this process takes seven or eight months does not render unlawful the execution of a condemned man *[97]*.

In cases not involving capital punishment, whether the Committee is activated is a matter for the Minister advising on the Prerogative of Mercy. He may consult with the Committee, or he may not. Here too, he is not required to act in accordance with the recommendations of the Committee, as section 74(2) says.

It is not the business of the Committee to determine the severity of criminal punishment, this is a matter for the courts. After the courts have decided on punishment and imposed a sentence, the Committee may then advise on clemency. But the courts must first determine the sentence.

An ordinary Act of Parliament which says that the Committee may determine the severity of punishment, depriving the courts of responsibility for doing so, is void for unconstitutionality *[98]*. It is unconstitutional because it violates the doctrine of the separation of powers.

This separation of powers doctrine says that a decision on the severity of criminal punishment is a function of the judicial organ, not of an executive organ such as the Advisory Committee on the Prerogative of Mercy. This doctrine is discussed more below *[99]*.

Footnotes

1. As distinct from a Republic.
2. The advice of the Prime Minister.
3. Grenada Constitution, section 69. But see text to notes 4 and 74 below.
4. See text to notes 74-92 below.
5. See text between notes 24 and 42, and text between notes 88 and 92.
6. Text after note 91.
7. See chapter 1 note 20 and accompanying text above.
8. The Grenada Constitution Review Commission Report (Nov. 1985), p.32.
9. A term popularised by S.A. de Smith, The New Commonwealth And Its Constitutions (1964), 77-78. See note 12 below.
10. On the PM, see text between notes 24 and 48 below.
11. Text after note 92.
12. In this model, the Cabinet is collectively responsible to Parliament for the general direction and control of the Government that is vested in it; Parliament is elected by the people under universal adult suffrage in elections held regularly, usually every five years; and Ministers must be members of Parliament. The existence of even some only of these features satisfies the requirements of the model.
13. Cabinet is collectively responsible to Parliament for such "advice": section 59(3).
14. Or the advice of the Prime Minister, or any other Minister, or the Leader of the Opposition.

15. Section 108.
16. RE SARRAN (1969) 14 W.I.R. 361 (C.A. - Guyana). See chapter 8 text between notes 14 and 25 below.
17. RE FISHER (1966) 9 W.I.R. 465 (S.C. - Jamaica) to the contrary is clearly an aberration, not to be followed.
18. Section 59(4)(a).
19. See text after note 41 and text to note 90 below.
20. Text between notes 94 and 99.
21. Section 59(4)(c).
22. E.g. chapter 5 text after note 2; chapter 7 text after note 76; chapter 8 text after note 62.
23. Section 59(1).
24. Section 59(2).
25. Section 58(1)(2). If a PM has to be appointed while Parliament is dissolved, he need not be able to command such majority: section 58(5).
26. Section 58(9).
27. On the composition of Parliament, see chapter 4 text before note 5 and after note 12 below.
28. Section 59(4)(a).
29. See also section 60.
30. In 1986 Senator Ben Andrew made a radio broadcast retracting his earlier statement critical of PM Blaize's Government. In April 1987, Agriculture Minister George Brizan and Attorney-General Francis Alexis preferred to resign from the Cabinet rather than retract criticism of Blaize's plans to retrench half of the civil service, his fiscal policy and his refusal to negotiate wages in good faith with public workers. Tillman Thomas and Jerome Joseph also resigned from the Government in solidarity with Brizan and Alexis.
31. Section 61.
32. Sections 24(2)(a)(c), 27(2)(e), 64(1)(2)(a).
33. Section 63.
34. Section 59(4)(b).
35. On dissolution, see chapter 4 text before note 59 below.
36. By writing addressed to the the Governor-General: sections 109-110.
37. Section 58(6)(a).
38. Section 58(6)(b).
39. Section 58(7)(b).
40. Section 58(7)(a).

41. Because he is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt, or found guilty of an election offence: section 58(7)(d) importing section 33(3).
42. Alexis, Memorandum to GCRC, pp. 7-9.
43. GCRC Report Nov. 1985, p. 36.
44. Section 64(1).
45. So under Eric Gairy.
46. So under Herbert Blaize.
47. Sections 58(4), 64(1).
48. This happened just after Blaize's Minister of Works, Keith Mitchell, dethroned Blaize as their NNP party Leader in January 1989 in an unseemly power struggle. That August, Blaize dismissed Mitchell from the Cabinet and formed his own party, TNP.
49. Sections 58(5), 64(1).
50. On this office, see chapter 8 text after note 42 below.
51. This is usually the case. This writer was in that position briefly in 1987. So too were his two successors Ben Jones and Danny Williams. All three were elected MPs while being AG.
52. Section 70(2).
53. Section 59(2). In 1985-86, AG Carlyle Payne was a public officer. But he never sat in Cabinet.
54. Section 70(1).
55. Trinidad & Tobago 1976 Constitution, section 76(3).
56. Jamaica 1962 Constitution section 70(2) amended by Act 36 of 1975 section 2; Jamaica Constitution section 78(2) amended by Act 1 of 1977 section 4(a).
57. So under Eric Gairy. Likewise with Nicholas Brathwaite.
58. So with Herbert Blaize, who brought his Government Senate Leader Norton Noel into his Cabinet only when he could no longer help it.
59. Section 67.
60. Section 59(3).
61. These are the same as those mentioned in note 41 above. See sections 58(7)(a)(c)(d), 64(2)(d)(e)(f), both importing sections 27(3) and 33(3).
62. Sections 58(8)(b)(c)(a), 64(2)(b)(c)(a).
63. See note 30 above. Then see section 109.
64. Barnett, The Constitutional Law of Jamaica (1977), 49-50
65. Text after note 27.
66. Sections 24(2)(b), 27(2)(e).
67. Section 55(1).

68. Section 62(2).
69. Those mentioned in note 41 above; see section 66(3) importing section 33(3).
70. See text to notes 1-12.
71. EC News, Friday/Saturday, March 4-5, 1988, P. 1.
72. Shortly after Dame Hilda on 6 December, 1973, appointed the Duffus Commission of Enquiry, as to which, see chapter 8 text to note 19 below.
73. Chapter 4 text after notes 9 and 17.
74. Text to note 4.
75. But see text after note 41 above and text to note 90 below.
76. Text between notes 17 and 35.
77. JEAN v. MINISTER OF LABOUR & HOME AFFAIRS (1981) 31 W.I.R. 1(H.C. - Bdos).
78. Text to note 66, referring to sections 24(2)(b), 27(2)(e).
79. Sections 55(5), 83(6), 90(5).
80. Sections 86(7), 87(7).
81. Or with the advice of the Prime Minister where a person is being transferred from one office of Permanent Secretary to another such office carrying the same salary.
82. Section 85.
83. E.g. Jamaica Constitution section 32(4).
84. Section 108.
85. RE LANGHORNE (1969) 14 W.I.R. 353, 357B (Luckhoo C. - Guyana).
86. Chapter 8 text before note 25.
87. RE MAHARAJ (1966) 10 W.I.R. 149 (CA - T&T); BRANDT v. ATTORNEY-GENERAL (1971) 17 W.I.R. 448 (Full C.A. - Guyana); respectively.
88. See note 8 above.
89. Section 62(3)(a) relating to section 52(4) proviso (b).
89A. Text after note 41.
90. Section 52(4) proviso (a).
91. Section 62(3)(b) relating to section 63.
92. Chapter 1 text after note 11.
93. GCRC Report p. 33.
94. Prof. S. McIntosh, Grenadian Voice, 21 June 1986, p. 12.
95. Section 73(1)(2)(5).
96. Section 73(3)(4).
97. ABBOTT v. ATTORNEY-GENERAL (1979) 22 W.I.R. 347 (PC) [Trinidad & Tobago].
98. HINDS v. R. [1977] AC 195 (P.C.) [Jamaica].
99. Chapter 7 text after note 51.

CHAPTER 4

THE LEGISLATURE

The Constitution of Grenada establishes a Legislature for Grenada. Section 23 provides that "There shall be a Parliament of Grenada".

Parliament in Grenada, at all times that there has been one, has always been seated at a building called "York House", situated in the capital City of St. George's.

History does not record how the building got the name "York House". But it is believed that it was named after the Duke of York who visited Grenada in the eighteenth century.

Composition of Parliament

The composition of the Parliament of Grenada is regulated by section 23 of the Constitution. This provision says that the Parliament of Grenada *"shall consist of Her Majesty, a Senate and a House of Representatives".*

Her Majesty

In the legislative process, as usually in other matters pertaining to the Constitution of Grenada, Her Majesty is represented in Grenada by her local representative, the Governor-General.

Only on one occasion has a Monarch personally participated in the legislative process at York House, at all events since Grenada gained independence in 1974. That was on 31 October, 1985, when Her Majesty Queen Elizabeth II delivered the Throne Speech to Parliament at York House.

That day, Her Majesty addressed a Joint Sitting of the two Houses of Parliament, the House of Representatives and the Senate. She declared open a Special Session of the Third Parliament.

At all other times, in the legislative process in Grenada, Her Majesty has been represented by her local representative, the Governor-General.

The House of Representatives

The House of Representatives consists of such number of members as corresponds with the number of constituencies for the time being established under the Constitution. So says section 29(1) of the Constitution. Currently there are 15 constituencies, so that there are 15 elected members of the House *[1]*, elected directly by the people, by the process considered below *[2]*. An elected member of the House of Representatives may be called a "Representative".

Not only an elected member of the House may be the Speaker of the House, the presiding officer of the House, chosen by the elected members of the House. A person who is not an elected member of the House may be chosen Speaker. When that happens, the person so elected Speaker becomes a member of the House, by virtue of holding the office of Speaker, under section 29(2). This way, a 15-member House grows to 16 members.

There seems to be a convention in Grenada that the Speaker is not an elected member of the House. Every Speaker since independence in Grenada has not been an elected member of the House.

Qualifications

Certain criteria, set out by sections 30 and 32, have to be met by a person if he is to be qualified to be elected as a member of the House.

Such a person must have attained the age of 18 years *[3]*. He must be a Commonwealth citizen *[4]*. He needs to have resided in Grenada for 12 months immediately before the date of his nomination for such election. Or he should be domiciled and resident in Grenada at that date.

He should be able to speak and, unless incapacitated by blindness or other physical cause, to read English with sufficient proficiency for him to actively participate in the proceedings of the House.

Disqualifications

One may however meet those criteria and yet not be qualified to be elected a member of the House. Other considerations may disqualify him from being so elected. There are spelt out in section 31.

He is disqualified if he voluntarily puts himself under any allegiance to a foreign country. Or if he is an undischarged bankrupt under any Grenadian law. Or if he is legally certified to be insane or of unsound mind. Nor must he be under legal sentence of death, or under a sentence of imprisonment exceeding twelve months. He should not have a forbidden interest in any government contract.

These are the grounds of disqualification set out by the Constitution itself. Additionally, the Constitution enables Parliament to provide for other grounds of disqualification *[5]*.

Tenure

A member of the House has to vacate his seat in the House at the next dissolution of Parliament after his election, by section 33(1). Or if he is absent from the number of sittings of the House prohibited by the rules of procedure of the House *[6]*. Or if there arises any circumstance that would have caused him to be disqualified from being elected in the first place, had he not been a member *[7]*.

Hung Parliament

The House of Representatives may be so composed by general elections that no single party has a majority in the House. This situation is described as a hung Parliament.

A hung Parliament presents difficulties with the appointing of a Prime Minister. For a Prime Minister needs to command the support of the majority of the members of the House of Representatives, by section 58(2).

A classic illustration of a hung Parliament was provided by the general elections in Grenada on 13th March, 1990. There were 15 seats in the House of Representatives at stake. The NDC led by Nicholas Brathwaite won 7, the

GULP of Eric Gairy 4, the TNP headed by caretaker Prime Minister Ben Jones 2, and the NNP led by Keith Mitchell 2.

The majority of the House being 8, no party by itself enjoyed a majority. Parliament was hung among the parties. The attendant inevitable bargaining regarding the Prime Ministership proceeded.

It took three days for the impasse to break. On Friday 16th March, Ben Jones of the TNP indicated to the Governor-General that he and his other TNP colleague Representative Alleyne Walker were supporting Nicholas Brathwaite of the NDC. That same day, the Governor-General appointed Mr. Brathwaite as Prime Minister. Likewise, Edzel Thomas who had been elected on the GULP ticket threw his support behind Mr. Brathwaite. Thus did the Parliament become un-hung, with the Government commanding 10 of the 15 seats.

Floor Crossing

There is a question whether the Constitution should make a Representative forfeit his seat in the House if he abandons the party on whose platform he was elected to the House. Put another way, should the Constitution prohibit floor-crossing, which is the crossing of the floor in the House from the side of the House to which a Representative was elected to another side?

Provisions in a Constitution outlawing floor-crossing tend to discourage a Prime Minister from listening to his party parliamentary colleagues. Such provisions encourage Prime Ministerial arrogance, if not dictatorship.

Notably, many a Prime Minister in the Caribbean, both past and present, had belonged to a party different from the one which brought them to the Prime Ministership. Examples are Errol Barrow, Forbes Burnham, A.N.R. Robinson, James Mitchell and Eddie Seaga. To this milieu too belongs Ronald Reagan.

Leaving a ruling party on a point of principle may indeed be rather creditworthy. Jumping an opposition ship to get a Ministry may at times jolt moralists. But better several immoral Opposition Representatives be free to reach for a Ministry than that one principled Government Representative be prevented from abandoning a ruling party which is flagrantly betraying its key election promises. Indeed, the decision of a Representative to cross party lines may well be inspired by a genuine desire to give stability to the Nation and to end horse-

trading by selfish power-seekers. He could hardly be accused of greed when he would be in the Cabinet whichever way he goes.

Recall?

The 1985 Phillips Constitution Review Commission was asked to make recommendations for *"ensuring that elected parliamentary representatives are subject to recall by their respective constituents for persistent malrepresentation or other sufficient cause in the view of the constituents"*.

This writer, in his written memorandum to the Commission, argued for recall as encouraging Parliamentarians to keep in constant touch with their constituents and as assuring the people that they are indeed the ultimate political sovereign. A recall procedure should not be so simple as to render over-insecure the tenure of a parliamentarian; nor should it be so complicated as to make recall impossible. This writer accordingly set out in detail the recall procedure that he would recommend, a procedure quoted extensively by the Commission *[8]*.

At first blush, the Commission thought that parliamentarians could be made subject to recall by permitting their constituents to petition the Speaker for their removal in specific circumstances for serious malfeasance or malrepresentation. They, however, felt that the matter of recall should be set out, not in the Constitution itself, but in ordinary legislation enacted under an enabling provision inserted into the Constitution *[9]*.

The Speaker

The person who holds the office of presiding over a meeting or sitting of the House, or a committee of the Whole House, is known as the Speaker, by section 41(2)(a). He is addressed by other members of the House as *"Mr. Speaker"* or *"Mr. Speaker, Sir"*. He is elected by the members of the House, under section 34.

When the House first meets after a general election, or after the office of Speaker falls vacant, it has to elect a Speaker before it takes any other matter. No business shall be transacted in the House other than the election of a Speaker whenever the office of Speaker falls vacant.

A Minister or a Parliamentary Secretary cannot be the Speaker. He can be elected from among persons who are not members of the House. In this latter case, by being elected Speaker, he becomes a member of the House, but without any voting rights at all, under section 43(3). Outsiders have always been elected Speaker since independence.

The grounds which disqualify one from being an elected member of the House, already stated above *[10]*, also disqualify one from being elected Speaker from among outsiders, by section 34(2). Similarly, the circumstances which require an elected member of the House to vacate his seat, already stated above *[11]*, also require an outside Speaker to vacate his office, by section 34(5).

The Deputy Speaker

The Constitution provides for a Deputy Speaker. He presides over a meeting or sitting of the House, or a committee of the Whole House, in the absence of the Speaker *[12]*. He is addressed by other members as *"Mr. Deputy Speaker"* or *"Mr. Deputy Speaker, Sir"*.

Immediately after electing a Speaker when the House first meets after a dissolution, the House has to elect a Deputy Speaker. Like the Speaker, the Deputy Speaker may not be a Minister or Parliamentary Secretary. But, unlike the Speaker, the Deputy Speaker, by section 34(3)(6), has to be an elected member of the House.

The Senate

The Senate comprises thirteen members, called *"Senators"*. Seven of them are selected by the Prime Minister in his own deliberate judgment. Another three are chosen by the Prime Minister after he consults the organisations or interests which he considers these three Senators should represent; which tend to be agriculture, business and labour. The other three are designated by the Leader of the Opposition in his own deliberate judgment. In all cases, the formal appointment is made by the Governor-General, under section 24.

As soon as practicable after every general election, the Governor-General is obliged by section 53(2) to proceed to appoint the Senators. Likewise, when a vacancy arises in the Senate, it is expected to be filled as soon as possible.

So, then, all members of the Senate are nominated or hand-picked, ten by the Prime Minister and three by the Opposition Leader. By contrast, all voting members of the House of Representatives are elected directly by the people voting in parliamentary elections, in general elections, or in supplementary elections known as bye-elections.

Qualifications

In order to be appointed a Senator, one has to meet prescribed qualifications. These are set out in section 25. They are the same as those that apply to one wanting to be elected as a voting member of the House of Representatives, which have already been set out above *[13]*.

Disqualifications

The grounds set by the Constitution as disqualifying one from being elected to the House, likewise disqualify one from being a Senator *[14]*. Also, the bases on which Parliament may provide for disqualifying one from being elected to the House, are those on which Parliament may disqualify one from being a Senator *[15]*.

Naturally, by section 26(3), no person shall be qualified to be appointed a Senator if he is a member of the House of Representatives. One cannot belong both to the Senate and the House simultaneously.

Tenure

A Senator has to vacate his seat in the Senate at the next dissolution of Parliament after his appointment, by section 27(1). Or if he is absent from the number of sittings of the House prohibited by the rules of procedure of the House *[16]*.

He has to vacate, if, with his consent, he is nominated as a candidate for election to, or is elected to, the House of Representatives. Or if any

circumstances arise that would have disqualified him from being appointed in the first place. Or if his dismissal is ordered by his respective effective appointer, the Prime Minister or the Opposition Leader *[17]*.

The President and his Deputy

The equivalent of the Speaker of the House of Representatives, met above *[18]*, is the President of the Senate. The President presides over meetings of the Senate or of Committees of the whole Senate. He is regulated by section 28, as is his Deputy. The Deputy President presides in the absence of the President *[19]*.

The conditions governing the election and tenure of the Speaker and his Deputy, met above *[20]*, are the same as those regulating the elections and tenure of the President and his Deputy, by section 28. But there is an important difference.

The Speaker may be elected from among persons who are not elected members of the House. By contrast, the President must be chosen from among persons who are already members of the Senate.

Should There Be a Senate?

The Senate must be a rubber stamp. A nominated Senate cannot be empowered to veto measures sent across to it by an elected House of Representatives. To give such a Senate those powers would be to pervert democracy.

Such a Senate can review measures sent across by the House, and debate and deliberate fully. But it cannot veto the House. It can merely delay those measures for a while.

Nor does one need a Senate just to house as Ministers, persons with particular expertise who might not be prepared to face the political hustings. These technocrat Ministers can be accommodated as appointed Ministers in a single House Parliament or unicameral Legislature. This is done in St. Kitts and Nevis, as well as in Guyana.

The 1985 Phillips Constitution Review Commission voted to retain the Senate. They wanted independent Senators, appointed by the Governor-General

in his own deliberate judgment. But an associate member of the Commission testifies that every person who appeared before the Commission expressed grave doubts that the Senate serves a useful function. They see the Senate as being merely a rubber-stamp of the Government *[21]*. They are right. The question whether a Grenada-type Senate should be abolished is being considered by the Trinidad & Tobago Constitution Review Commission being chaired by former Chief Justice Sir Isaac Hyatali, set up by President Noor Hassanali under Prime Minister A.N.R. Robinson in May 1987.

Oaths for Members

The House and the Senate are properly constituted only when members take the oath of allegiance. A member must take the oath in the chamber before taking his seat or voting on any matter *[22]*.

If a person fully takes and subscribes the prescribed oath, he might be able to add innocuous words, not affecting the essence and validity of the oath *[23]*.

Quorum

At least a minimum number of members of the House or the Senate must be present if the sitting is to be properly constituted. This minimum number is called a quorum, regulated by section 42(2).

A quorum of the House is five (5) members. That of the Senate is four (4) members. The person presiding need not on his own raise the question whether there is a quorum. It is for another member of the House to draw the attention of the person presiding to the absence of a quorum. If the person presiding ascertains that a quorum is not present, the House shall be adjourned, under section 42(1).

Once, however, there is a quorum, a House may act despite any vacancy in its membership. Section 50(2) says so.

Unqualified Persons in House

It is an offence for a person to sit or vote in Parliament knowing or having

It is an offence for a person to sit or vote in Parliament knowing or having reasonable grounds for knowing he is not entitled to do so. This is detailed by section 44.

But merely because such unqualified persons are present at or participate in proceedings of either House does not invalidate such proceedings, according to section 50(2).

The matter who is unqualified to sit in Parliament may arise in the context of disputes regarding membership of Parliament. We now turn to these.

House Membership Disputes

There may be a question whether a person has been validly elected as a member of the House, or appointed as a Senator, or chosen Speaker from outside the House. It may be an issue whether a Representative or a Senator has vacated his seat or is required by the Constitution to cease to perform any of his functions as such Representative or Senator.

When any of these questions arises, the High Court has jurisdiction to hear and determine it, by section 37. This jurisdiction in the High Court to hear and determine Parliamentary membership disputes is, for the court, new, peculiar or special *[24]*.

Historically, at common law, the determining of Parliamentary membership disputes was always a matter, not for the courts, but for the respective House itself *[25]*. It requires special provisions, either in an Act of Parliament or the Constitution, to change this. That has been done by the Constitution.

It is thus no more open to either House to decide whether a person may validly sit in it. Only the Court may now decide this. That came out in **JONES v. GIBBS & KNIGHT** *[26]*. Prime Minister Eric Gairy's Senate Leader Derek Knight got Senate President Joseph Gibbs to forbid Opposition Leader Herbert Blaize's trusted ally Ben Jones from sitting in the Senate.

When Ben Jones asked the High Court for a declaration that he had been duly appointed a Senator, Derek Knight felt that the Senate had sole authority to decide who are its members. The Court rejected this view of Derek Knight. The Court determined that Ben Jones had been validly appointed as a Senator.

The Clerk of Parliament

The lot of the Speaker, the President, and their Deputies is made much easier by the presence of a certain officer provided for by the Constitution. The Constitution, section 36, says that there shall be a Clerk to the House and a Clerk to the Senate, and that the same person may fill both roles. The Clerk is there to guide and advise the House on the requirements of Parliamentary procedure.

Since having a bicameral legislature with the coming of full internal self-government under Associated Statehood in 1967, Grenada has had the same person serving as Clerk to both Houses. Before that, he was also Clerk of the Legislative Council in the unicameral legislature. This long run has enabled him to build up a unique expertise as Clerk. He is Mr. Curtis V. Strachan. And indeed, the experience and stature of Curt Strachan as a Clerk is recognised all over the Commonwealth. He has made an outstanding contribution to the refining of Parliamentary procedure in Grenada.

This has especially been so since the restoration of Parliamentary Government in Grenada in December 1984, under Herbert Blaize. This followed its interruption by Maurice Bishop's left-wing People's Revolutionary Government (PRG) launched 13 March, 1979, which lasted till 19 October 1983, when it was overthrown by Hudson Austin's Revolutionary Military Council (RMC), whose fall on 25 October, 1989 paved the way for Nicholas Brathwaite's Interim Government of October 1983 to November 1984.

Serjeant-at-Arms

The presiding officer of each House has at his call a certain officer for preserving order. This officer is the Serjeant-at-Arms. The presiding officer might wish to clear the House of strangers, the public in the gallery; or to have a member removed for being disorderly. It is the Serjeant-at-Arms who executes such orders, enlisting the aid of police officers if need be.

The Serjeant-at-Arms thus epitomises the preservation of order in the House. Accordingly, he handles the Mace. The Mace symbolises the authority of the Crown in Parliament. It is used in both Houses.

When a House is in formal session, the Mace is placed in the upper brackets on the Table of the House, to signify that Her Majesty is part of the proceedings. When a House is only in committee stage, the Mace is removed into the lower brackets under the Table, indicating that Her Majesty is not part of the proceedings.

Legislation and Procedure of Parliament

The Constitution gives Parliament its powers, saying that *"Parliament may make laws for the peace, order and good government of Grenada"*. This is stated in section 38.

Widest Law - Making Power

This authority in our Grenadian Parliament to legislate for peace, order and good government is *"the widest lawmaking powers appropriate to a Sovereign" [27].* This is the power materially possessed today by the pattern on which the Grenadian Parliament is designed, the Parliament of the United Kingdom, subject to what is said next.

Wide though the power of the Grenadian Parliament is, that power is not limitless. Parliamentary Democracy has no room for arbitrary or limitless power in any of its institutions, including Parliament. Thus, the Constitution itself, section 38, says that the power of Parliament to make laws for peace, order and good government is *"subject to the provisions of this Constitution"*.

This follows inevitably from a certain attribute possessed by the Grenada Constitution. The Constitution says, in section 106, that:

> *"This Constitution is the supreme law of Grenada and ..... if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".*

No such provision appears in the domestic law of the United Kingdom *[28].*

Although, then, Britain, the home of the Westminster model of Government has a Parliament that is not expressly subject to any domestic supreme law,

exports of that Model have varied from the pattern. Such exports across the Commonwealth do go with a Parliament that is, as in Grenada, subject to the supreme law of the Constitution.

This clause says explicitly that the Constitution is the supreme law of the land. This supreme law clause entails that all organs of the State, including the Legislative organ or Parliament, are subject to the Constitution. This Constitution imposes the conditions of law-making and regulates the power to make law.

And, of course, a Legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law *[29]*. There are numerous judicial pronouncements that a Parliament that may fully legislate, subject to the Constitution establishing that Parliament, is controlled by that Constitution *[30]*.

In exercising its wide law-making power, Parliament may be able to follow its ordinary procedure or may have to observe special procedures, depending on the subject matter of its legislation.

Ordinary Parliamentary Procedure

Usually, Parliament is regulating ordinary matters, as carnival celebrations, taxing concerns and traffic issues.

Ordinary matters, then, do not raise any question regarding the Constitution.

When dealing with ordinary matters, Parliament follows its ordinary Parliamentary procedure. This procedure requires that the passage of a measure, such as a Bill for an Act of Parliament, in a House obtain at least the vote of a simple majority of that House. A simple majority is the majority of those members of a House present and voting at the relevant sitting, as long as those present and voting constitute a quorum *[31]*.

The Constitution itself says so, in section 43(1). This says that, save as otherwise provided in itself, the Constitution, any question proposed for decision in either House shall be determined by a majority of the votes of the members present and voting.

The person presiding in a House has no original vote ordinarily. He shall not vote on any question unless the votes on that question are equally divided.

When the votes are equally divided, he has a vote to decide the question one way or the other, a casting vote, by section 43(2). Sometimes he has only an original and not a casting vote *[32]*.

But there is a special situation regarding a presiding officer of the House of Representatives, the Speaker, who is not an elected member of the House. He has neither an original nor a casting vote. If he is presiding when the votes of the members are equally divided, the motion is lost, by section 43(3).

The Making of Acts of Parliament

This is a good time to explain how an Act of Parliament is made. An Act starts off in Parliament usually as a Bill, though a Bill may rather infrequently be preceded by a discussion paper commonly known as a White Paper. Three readings have to be given to a Bill before it may be passed by a House. A reading of a Bill by a House takes place when the House takes note of its presence before the House. A Bill is not read word by word or at all literally.

The critical reading is the second reading. It is at this stage that the Bill is fully debated. This is a debate on the broad principles of the Bill. The public usually finds this debate exciting, as members of the House engage one another openly and thoroughly in the cut and thrust of parliamentary debate. Here may be seen parliamentary debate in all its splendour and richness.

This is in complete contrast to the proceedings which take place immediately after this debate. After this debate, either the Bill is sent to a special select committee of the House which committee may include outsiders or it remains with all the members of the House sitting as a Committee of the Whole House. Usually, the Bill stays with the Committee of the Whole House.

This Committee examines the Bill clause by clause, for technical improvements. There is no debate as such here. The public might find these Committee proceedings unexciting, but it is a necessary exercise, in which focus is on the details of the Bill.

When the House accepts that these Committee proceedings have been completed, the second reading of the Bill is completed.

The Bill can then go on to the third reading. Usually there is no further debate here. But even at this stage the Speaker has sometimes allowed full debate on a Bill.

Each reading should normally take place in a separate sitting or meeting of a House, under the Standing Orders of the Houses. So usually the passage of a Bill by a House should require three separate sittings. But a House may elect to take more than one reading in the same sitting, thus waving its Standing Orders.

After a Bill is read three times and passed in both Houses, it goes to the Governor-General for his assent, and on obtaining this assent the Bill becomes law, an Act of Parliament. The matter of the assent is pursued below *[33]*.

So a law is made by Parliament when a measure for that law, called a Bill, is passed by both Houses and assented to by the Governor-General.

There are, however, profound limitations on the law-making authority of the Senate. This reflects the reality that the persons chosen directly by the people to represent them and run the country sit, not in the Senate, but in the House of Representatives. It would therefore be anti-democratic to allow the Senators to block measures sent across to them by the Representatives.

The voting of money to the Executive, the Government in Cabinet, by the Legislature, Parliament, is vital for the Government to maintain supplies to the Nation. A nominated Senate cannot be allowed to block supplies from reaching the Government on their way across from the elected Representatives.

So, while a Bill other than a money Bill may be introduced in either House, only in the House of Representatives may a money Bill be introduced, as stipulated by section 46(1).

Section 49(1) defines a money Bill. It is a public Bill dealing with taxation, the public debt, charges on public money, accounts of public money, and public loans. The Speaker of the House decides whether a Bill is a money Bill.

The Senate cannot veto a money Bill sent over to it by the House. All the Senate can do is to delay such a Bill, and only for one month, by section 47. After one month, the Bill, once passed by the Representatives and assented to by the Governor-General, becomes law despite the Senate's non-approval.

Nor can the Senate veto a Bill other than a money Bill sent across to it by the House. The Senate can merely delay such a Bill, and then only for six months, under section 48.

The Assent

After a Bill has been passed by both Houses, or by the Representatives alone exercising their unilateral law-making power, the Bill is submitted to the Governor-General for his assent. The Governor-General has to signify that he assents or that he withholds assent. Section 45(2) says so.

If he withholds assent, the Bill does not become law. The law of the Constitution, section 45(2), certainly does give the impression that he may withhold assent. But, by conventions of the Constitution, it would be almost unthinkable for a Governor-General to withhold assent unless he is tired with the job *[34]*.

It may happen that a Governor-General picks up an infelicity in a Bill sent for his assent. He should draw this to the attention of the Prime Minister or the Speaker, no doubt informally at first, and leave it to the House to decide what to do. Surely the House would graciously adopt the wisdom of His Excellency. But if the House insists, he cannot refuse assent with constitutional propriety.

The convention is that the Governor-General shall assent to a Bill. When he so assents, the Bill becomes law, by section 45(3).

So convention gives the Grenada Constitution the same effect that is expressly spelt out in certain other Caribbean Constitutions. For example, the St. Lucia Constitution says that when a Bill is presented to the Governor-General for assent, *"he shall signify that he assents"*.

The Grenadian Governor-General does not have the veto power expressly given the American President, let alone the even more invincible veto possessed by the Guyanese President.

Publication in Gazette

When the Governor-General assents to a Bill, making it become law, he shall cause that law to be published in the Gazette as law, by section 45(3).

Section 45(4) says that *"No law made by Parliament shall come into operation until it has been published in the Gazette"*. This is very interesting. For it is believed that even delegated legislation may come into operation at common law before it is published.

However, just as Parliament may postpone the coming into operation of a law, so too Parliament may, by section 45(4), make laws with retrospective effect.

Constitutional Amendment Procedure: Entrenchment

So wide is the law-making power given to Parliament by the Constitution that any limitation imposed by the Constitution upon Parliament is one, not of substance, but rather of manner and form. There is no provision of the Constitution which is beyond alteration by Parliament, as long as Parliament follows the procedure set out by the Constitution for effecting the relevant change.

The Constitution itself says so. Section 39(1) states that *"Parliament may alter any of the provisions of this Constitution"*. But, in so doing, by that clause itself, Parliament must proceed *"in the manner specified in the following provisions of this section"*.

The Constitution then sets out certain requirements as to the *"manner"* or procedure for changing its various provisions. These oblige Parliament to observe in relation to legislation amending the Constitution, procedures more difficult than those governing the passage of ordinary legislation. The Constitution is thus protected against change by the ordinary Parliamentary procedure. Its provisions are accordingly said to be entrenched.

Entrenchment devices are really a matter for advanced study, being rather complicated. They are not fit for full treatment in a book of this kind. The reader who wants to pursue this is referred to other works *[35]*. It is sufficient here merely to give a general appreciation of entrenchment.

General Entrenchment

To the extent that the Constitution requires a more rigorous procedure than the ordinary Parliamentary procedure for its own amendment, every provision of the Constitution is entrenched.

Section 39(2) ensures this. It says that a Bill to alter the Constitution shall not be regarded as being passed by *"the House of Representatives" unless on its final reading [36] in that House the Bill is supported by the votes of "not less than two-thirds of all the members of the House" [37].*

The reference to *"all members of the House"* is to be noted. Ordinarily, the person presiding in a House has no original vote, he shall not vote on any question unless the votes on that question are equally divided, and then he has only a casting vote *[38].*

The situation is quite the opposite with a Bill to amend any provision of the Constitution. Here, the person presiding in the House of Representatives, the Speaker, has only an original and not a casting vote. Indeed, if the Speaker is not an elected member of the House, he has neither an original nor a casting vote on a Bill to amend the Constitution *[39].*

Notably, also, no special majority vote is needed in the Senate if the Senate is passing a Bill amending the Constitution. So the ordinary Parliamentary procedure applies to such Bills in the Senate *[40]*, quite rightly *[41].*

Deep Entrenchment

Several provisions of the Constitution are deeply entrenched.

A Bill to alter these provisions needs the two-thirds vote of the House of Representatives just considered. Also a 90 day period must elapse between the first and second readings of the Bill in that House. Then the Bill needs at least two-thirds of all the votes validly case at a referendum, an electoral vote on that particular issue *[42].*

Further, the Bill has to be accompanied by certificates from the Speaker of the House of Representatives and, where referenda are relevant, the Supervisor of Elections, stating that the requisite Parliamentary and referenda votes were obtained *[43].*

Thus deeply entrenched are the more sacrosanct provisions of the Constitution. These include the entrenching clause itself, the provisions protecting the fundamental human rights and freedoms of the individual, those safeguarding the Judiciary, those securing the public service, and those establishing monarchical Parliamentary democracy.

The Strong and The Week

Although a particular provision may itself be entrenched at only the lighter of the two levels of entrenchment, its amendment may require abiding by heavier entrenching demands. The amendment of the provision lightly entrenched necessitates the alteration of more heavily entrenched provisions *[44]*.

Implied Repeal

The 1985 Phillips Constitution Review Commission considered certain aspects of entrenchment.

The Commission felt that the deeply entrenching devices, entailing referenda requirements, should not apply to legislation catering for regional political unity. This is quite remarkable. One would have thought that drives towards such unity should be deliberately subjected to the full involvement of the people. This surely calls for referenda exercises.

One however does share the anxiety felt by the Commission regarding the possibility that an Act can repeal a provision of the Constitution, once that Act meets the stipulated requirements, even though Parliament might not have expressly contemplated such repeal. This is implied repeal. The Commission wants safeguards against implied repeal.

They recommend that the Constitution should require that a Bill for amending the Constitution should specifically say that its mission is to amend the Constitution. One endorses this recommendation.

Void To That Extent

If an Act of Parliament is inconsistent with the Constitution, and is not passed in accordance with the relevant requirements regarding Constitutional change, that Act is void to the extent of such inconsistency. This has already been seen *[45]*.

It may be possible to cut out the void provisions of the Act and still leave intact a coherent piece of legislation. The remaining parts thus left intact are valid in law. The void parts are said to be severed from the good ones *[46]*.

On this principle, some of the laws passed by the People's Revolutionary Government (PRG), and validated by Parliament after the Restoration, may be valid. This leaves aside the question whether the PRG was legitimate on the basis of necessity or by virtue of having been accepted by the people as an effective *de facto* Government *[47]*.

Parliamentary Priviliges

Section 50(3) says that, for the purpose of the orderly and effective discharge of the business of the Houses of Parliament, Parliament may make provision for the powers, privileges and immunities of the Houses and their committees.

Relatedly, subject to the Constitution, each House may, by section 50(1), regulate its own procedure and may in particular make rules for the orderly conduct of its proceedings.

Accordingly, Parliament has enacted legislation enunciating its own privileges *[48]*. Additionally, each House has its own Standing Orders, regulating its own procedure and providing for the orderly conduct of its proceedings.

These legislative provisions according the Grenada Parliament the stipulated privileges are grounded in necessity. It was once felt that colonial legislatures, as that of Grenada before independence, had an inherent right to all the privileges enjoyed by the British House of Commons, on which the Grenada House of Representatives is patterned.

Those privileges enjoyed by the British House of Commons are enveloped in the law and custom of Parliament, the *lex et consuetudo Parliamenti*. They derive from that House being historically a Superior Court of Law as part of the

High Court of Parliament, a status no longer as such enjoyed by that House, though still exercised by its companion, the House of Lords. Those privileges included the power to penalise members as well as non-members, called strangers, for disobeying its commands.

But, over time, the privileges of colonial legislatures were limited by the courts to such privileges as were necessary to their existence and to the proper exercise of their functions. So they could regulate their proceedings. But they could not penalise members or strangers for disobeying their commands, that had to be left to the law courts *[49]*.

This is where privileges legislation comes in, to enable the Grenada Houses the better to maintain and protect their decorum. These provisions prohibit persons who are not members of a House, called strangers, from clapping, shouting or otherwise showing favour for or against any Member of that House.

It makes no difference that it is the taxes of the strangers that pay Members of the Houses.

If strangers in the gallery clap or otherwise interrupt a House after having being warned against doing so, the person presiding may order that the gallery be cleared by the order-keepers of the House, the Mace-bearers. The Mace-bearers may call on the police for help with evicting the offending strangers if necessary.

In April 1987, certain young Ministers resigned from the Cabinet in protest against Government's plans to retrench some 1800 public workers, Government's refusal to negotiate properly with trade unions representing public workers, and Government's fiscal policy [50]. When those Ministers delivered resignation speeches in the House of Representatives, people in the gallery loudly clapped them encouragingly. The Speaker, Sir Hudson Scipio, had the gallery cleared.

The Grenada parliamentary privileges legislation accords to members of the two Houses, among other facilities, freedom from suit for what they say in parliamentary debates. This is a necessary condition for the effective performance of their parliamentary responsibilities. The legislation immunises members from arrest for civil debt.

Director-General Breaches Privilege

It is a breach of the privileges of a House of Parliament to scandalise or ridicule or bring into contempt the House, or any of its committees or any of its members in relation to his performance as such member.

The House of Representatives considered that there was such a breach in 1988.

The Select Committee of the House of Representatives on the Public Accounts, popularly called the Public Accounts Committee (PAC), was over the period 1986-1987 investigating the failure of the Treasury to produce for audit the Government's Accounts for 1971 to 1985. As is the custom, the Committee was chaired by the Leader of the Opposition, who was then Phinsley St. Louis.

In the course of its work, the Committee interviewed the public officer in charge of the Ministry under which the Treasury falls, the Ministry of Finance. That officer is the Permanent Secretary, otherwise known as the Director-General of Finance, who was then Lauriston F. Wilson Jnr.

In consequence of that interview, Mr. Wilson wrote Mr. St. Louis on 12 January 1988 accusing the PAC of subjecting him unfairly to *"an inquisition"*. Mr. Wilson charged that even before carrying out its investigation, the Committee had already made up its mind that he was the one at fault for the failure being considered.

Mr. Wilson accused the PAC of being *"thoroughly biassed"* against him. So, he said, the inquiry was an *"apparently malicious masquerade"*. Mr. Wilson copied this letter to the highest authorities in the land. And he wrote another letter to Mr. St. Louis on 18 January, 1988 materially reinforcing his allegations against Mr. St. Louis and the PAC.

The PAC on 28 January, 1988 considered these allegations to be a *"contempt"* for its members, and by implication, the House itself. They saw the letters as a *"breach of the privilege of the peoples' representatives in Parliament"*. They decided to suspend their work until this matter was resolved. They so submitted in their interim report to the House.

The House thereupon appointed a Select Committee, headed by Hon. Tillman Thomas, to go into the matter. Mr. Thomas is himself a Lawyer. Also, the Attorney-General. Mr. Daniel C. Williams, an elected member of the House, sat

on this Committee. This Thomas Committee recommended to the House that Mr. Wilson should be required to apologise to the PAC and the House for the statements in issue.

This recommendation was accepted by the House on 2 September, 1988. That day, the House resolved that the Permanent Secretary should be required to so apologise. This direction was relayed to the Permanent Secretary by letter from the Clerk of the House. On 16 September, 1988, the Permanent Secretary, Mr. Wilson, wrote the House, through the Clerk, apologising as required. This apology was accepted by the House on 5 December, 1988. Thus was atoned Mr. Wilson's breach of the privilege of the House and its Public Accounts Committee.

Speaker's Leave

The priviliges legislation prohibits the unauthorised publication of proceedings of a House. Likewise it prevents one from leading in a law court, evidence of proceedings of a House without first securing the permission of the relevant presiding officer to do so. Failure to obtain such permission has fatally flawed litigation in other countries with similar legislation.

A member of the House of Representatives wanted to challenge in Court the way in which Parliament was in August 1989 prorogued by the Deputy to the Governor-General, whose substantive post was Speaker of the House. The Member sought the permission of the Speaker to lead in court evidence of the proceedings of the sitting of the House immediately preceding the prorogation. The Speaker refused, in a manner pursued below *[51]*.

Parliament and The Executive

As seen already, in Grenada, the Constitution is the supreme law, prevailing over all organs of the state, including Parliament *[52]*.

This might raise the question whether the Parliament of Grenada is a delegate of the people, having only such powers as are delegated to it by the people speaking in and through their Constitution. The idea that a Parliament of the Grenadian type is such a delegate has been called *"nonsense" [53]*.

If the idea did have merit, one would have to reflect that a delegate may not delegate his powers unless expressly or impliedly permitted to do so. this is sometimes expressed by the maxim *delegatus non potest delegare*. Further, there is the separation of powers doctrine which strives to prevent dictatorship by forbidding too much power being concentrated in any one authority, by separating the areas of power.

Together, the maxim against delegation and the doctrine of the separation of powers led to the belief that the United States Congress could not delegate legislative power to the Executive. But this had to be reconsidered to accommodate the realities of modern government. So today Congress may lay down the principles of legislation and leave it to the Executive to fill in the details.

Yet the USA is considered to be the most rigid exponent of the separation of powers. Still, it is recognised that the American version of the separation of powers is not as relevant to the Caribbean as is the British rendition *[54]*. Here, the separation of powers really has to do with protecting the Judiciary from Parliament and the Executive.

It does not seek to separate Parliament from the Executive, the way the United States Constitution does. A Westminster type Parliament operates through a committee system in which Parliament delegates to the Executive. A House may constitute itself into a Committee of the Whole House. It may have standing committees, lasting for a Session or set up an ad hoc Committee to deal with a particular matter.

The Grenada Constitution makes the Executive depend on Parliament for money and legislation. A Prime Minister may therefore have to return to Parliament after feeling he no more needed Parliament and could limp along to the end of the term without going back to Parliament *[55]*.

The Constitution requires one to belong to either of the two Houses of Parliament if one is to be in the Cabinet. By section 59(3), Cabinet is collectively responsible to Parliament for the way the country is run. Breach of this doctrine of Cabinet collective responsibility is a matter which a Prime Minister would himself address *[56]*. But Parliament too can enforce this accountability by Questions and Motions.

Indeed, section 58(6)(a) recognises that Parliament can dismiss the Executive by passing a vote of no-confidence in the Government. Fear of this being a real possibility, necessarily occasioned by rather unusual circumstances *[57]*, may panic a Prime Minister into invoking section 52(1). This empowers him to have Parliament prorogued or dissolved. After resorting to prorogation to ward off an impending no-confidence motion, he might find events mocking him into going back to Parliament for money he urgently needs *[58]*. Then might he find himself crushed between a stone and a hard place.

So, although Parliamentary control of the Executive may exist rather in theory than in practice in Grenada as elsewhere *[59]*, the Grenada Constitution does not separate the Executive from the Legislature.

Summoning, Prorogation, Dissolution

Just as a University has its academic year, Parliament has its parliamentary year. A parliamentary year is known as a Session of Parliament. A Session, then, is a period over which Parliament meets from time to time, beginning with the first meeting of a House after Parliament has been put on holiday (prorogued) or dissolved and continuing until terminated by another holiday (prorogation) or dissolution. Parliament does not meet every day during the Session. Rather, it tends to meet once a month.

A meeting of Parliament is called a Sitting. A Sitting may be completed in one day, or it may continue for more than one day. So a Sitting is a meeting of a House going on continuously without adjournment to another and different Sitting.

An adjournment is the putting off of further proceedings in a House to another date by means of a Motion. An adjournment may end a Sitting or it may preserve that Sitting for another date. Certainly, when a House adjourns without fixing a date, sine die, the adjournment ends the Sitting. In other cases, the effect of an adjournment depends on whether a House had completed its business when it took the adjournment.

A short break during a day's proceedings, for example to take lunch, is not an adjournment. Such a break is called a suspension, and it does not require a Motion. But an adjournment always needs a Motion.

During the 1988 budgetary exercises, at the sitting of the House of Representatives on 26 April, 1989, the NNP Government had less members present in the House than the NDC Opposition. Without any elected member putting any motion for an adjournment, the Speaker, Sir Hudson Scipio, suddenly on his own adjourned the House to the next day. On that later day, Government reinforcements were brought in and they had their own way. The NDC Opposition promptly wrote the Speaker officially complaining about his action *[60]*.

Each session of Parliament has to be held at such place within Grenada and shall commence at such time as the Governor-General may by Proclamation appoint, under section 51(1). But Parliament always meets in Session at its own chambers, at its historic York House, in the capital City of St. George's. Each session tends to begin around October-November.

Section 51(1) requires that there shall be a Session of Parliament once at least every year. It adds that a period of six months shall not intervene between the last Sitting of Parliament in one Session and the first Sitting thereof in the next Session. The Standing Orders of each House require the Houses to sit at least once a month.

While a Session of Parliament is summoned by the Governor-General, a Sitting of a House is called by the Presiding Officer of that House. In each case, the disposition of the Minister of Parliamentary Affairs, traditionally the Prime Minister, would be ascertained.

Prorogation

Section 52(1) says that *"The Governor-General may at any time prorogue ..... Parliament"*.

To prorogue Parliament is to put Parliament in recess or holiday at the end of one Parliamentary year, and in readiness for the start of the next ensuing Parliamentary year.

The prorogation power is historically a prerogative power. As such, it is exercised in accordance with the advice of the Prime Minister. In any case, section 62(1) says that in exercising his functions, the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the

general authority of the Cabinet unless he is expressly required to act in accordance with some other advice or in his own deliberate judgment. Either way, then, prorogation is the work of the Prime Minister.

Not till August 1989, has the exercise of the prorogation power attracted wide public interest.

On 4 August, 1989, the House of Representatives met and continued debate on the 1989 budget. When the time came for the adjournment, Francis Alexis was still making his contribution to the debate, he had not yet completed his speech. Prime Minister Blaize moved that the House be adjourned *sine die*, that is, without fixing a date for the resumption. Opposition Leader George Brizan moved that the House be adjourned to 25 August, 1989. This motion was carried.

Keith Mitchell at once inquired whether he would get a chance to move the motion he had earlier told the Speaker he wanted to move although he had not seen to it that the motion was set down on the Order Paper or Agenda . This motion was one of no-confidence in the Government of Prime Minister Blaize, he Mitchell having been just fired from the Cabinet by Blaize, in the wake of a bitter power struggle being waged by Mitchell against Blaize.

The Speaker, Sir Hudson Scipio, assured Mitchell that he Mitchell would have all the chance he wanted to move his no-confidence Motion on the resumption on 25 August, 1989.

Meanwhile, Opposition Leader George Brizan of the NDC also filed a no-confidence Motion. This he wanted debated on the resumption on 25 August, 1989. By this time, Mitchell too had regularised his own no-confidence motion.

Blaize now had five members of the House supporting him, making his voting strength six. He and his five supporters no longer materially belonged to NNP. Indeed he had by then announced the formation of his own party The National Party (TNP), which he later denied but still later confirmed. The NDC too had six members in the House. The other three were from NNP, two of whom had left Blaize in solidarity with sacked Keith Mitchell.

On 22 August, 1989, three days before the House was due to resume its Sitting of 4 August, on 25 August, Parliament was prorogued. The prorogation proclamation was signed by the same Sir Hudson Scipio, not of course as

Speaker, but as Deputy to the Governor-General, standing in for the Governor-General Sir Paul Scoon who was overseas on leave.

Coming in those circumstances, that prorogation attracted widescale controversy. Francis Alexis, as a Member of the House of Representatives, took steps to challenge in the High Court the exercise of the prorogation in that setting. He argued that

> *"Prorogation can only be invoked when Parliament has completed its business for a Session. But in the instant case, Prorogation was used to prevent the House from completing its business".*

He complained that

> *"the Prorogation cut me off in midstream, brutally violating the right in the House to complete its business before Prorogation".*

So wrote Alexis to the Speaker on 9 October, 1989. His argument then was that prorogation is intended to mark the completing by the House of its business for a Session. By contrast, he felt, prorogation was here used to frustrate the House from carrying out its clearly expressed intention of resuming on 25 August to continue its business.

In order to put that argument in court, Alexis needed to refer in court to the proceedings of the House on 4 August. The Parliamentary privileges legislation required him to obtain permission of the Speaker to do that. In his letter of 9 October, 1989, to the Speaker, Alexis sought such permission.

Replying on 12 October, 1989, Speaker Scipio referred to section 52(1) enabling the Governor-General to prorogue Parliament. And, Scipio added,

> *"in the light of that Constitutional provision I regret that I cannot grant the request contained in your letter".*

Dissolution

Parliament may at any time be dissolved by the Governor-General, under section 52(1). In exercising this power, he ordinarily has to act in accordance with the advice of the Prime Minister, as section 52(4) says. Dissolution here is effected by a proclamation issued by the Governor-General.

Unless sooner dissolved, Parliament continues for five years from the date of its first sitting after a dissolution and then stands dissolved, under section 52(2). There is a flaw in this. A Prime Minister can extend the life of his Parliament as long as he can. The counting of five years should start from the date of the respective general election.

However, when the five-year term as measured by the Constitution runs out without Parliament having previously been dissolved, Parliament then stands dissolved by automatic operation of the Constitution. Even then, it might be tidier for the Governor-General to issue a proclamation dissolving Parliament. But it makes no difference that a mere few days before such ultimate dissolution date, the incumbent Prime Minister dies and a new Prime Minister is appointed.

This happened in 1989. The life of the Parliament elected on 3 December, 1984 and which first met on 28 December, 1984 was expiring automatically on 28 December, 1989. Nine days before that final dissolution date, on 19 December, 1989 Prime Minister Blaize died, and his Deputy, Ben Jones, was that same 19 December appointed Prime Minister by Governor-General Sir Paul Scoon. Parliament was nonetheless dissolved eight days later, by Governor-General Sir Paul Scoon, acting on the advice of newly appointed Prime Minister Jones, one day before the 28 December automatic dissolution date.

If the majority of all the members of the House of Representatives pass a resolution that they have no-confidence in the Government, then, the Prime Minister has three days within which to either resign or advise a dissolution. If he fails to make such election, the Governor-General may, in his own deliberate judgment, dissolve Parliament, by section 52(4).

In deciding whether to do anything, and if so, what, in the event of the Prime Minister failing to elect, a Governor-General might feel advised to consult his principal, Her Majesty the Queen. For if he decides to fire the Prime Minister or dissolve Parliament, his replacement by the Queen might be advised by a

recalcitrant and stubborn Prime Minister. He might therefore wish to know in advance how Her Majesty is likely to respond to such an advance from the Prime Minister.

Of course, if the Governor-General feels sufficiently strong about the situation, he would act accordingly and face the consequences head on.

In any event, there is a serious lacuna in the provisions regarding the passage of a no-confidence motion. These provisions do require the Prime Minister to make his election within three days of the passage of the motion. But these provisions do not say how soon the dissolution must be if he elects for dissolution.

In theory, then, even after the motion is passed and the Prime Minister opts for dissolution, if he is extremely recalcitrant and stubborn he can still limp on for a while. Worse, even after his own sweet dissolution date finally comes, he can still go on for another ninety days before holding elections *[61]*. In this scenario, a Prime Minister who has about seven months to go before the end of his term need not worry about a no-confidence motion. It is just that no Prime Minister wants the record to show that such a motion actually carried against him *[62]*.

The Constitution should be amended to correct this malady. It should say that if such a motion is passed, the Governor-General shall within three days revoke the appointment of the Prime Minister and at the same time appoint a new temporary Prime Minister. It should add that in any event the Governor-General shall dissolve Parliament within seven days and general elections shall be held within two months.

The office of Prime Minister may be vacant and the Governor-General may consider there is no prospect of his being able within a reasonable time to make a new appointment to that office. Whether there is no such prospect is a matter for his own deliberate judgment. If he so decides that there is no such prospect, he shall dissolve Parliament under section 52(4).

The vacancy in the office of Prime Minister occasioned by the death in office of Prime Minister Herbert Blaize in December 1989 brought on much controversy about dissolution of Parliament in the context of the appointment of a Prime Minister. This has already been fully considered above *[63]*.

Emergency Recall

Between the dissolution of Parliament and the holding of general elections, the House and the Senate may be summoned or recalled for the particular purpose of servicing a state of emergency.

A declaration of a state of emergency made by the Governor-General lapses after 7 days if Parliament is sitting or after 21 days if Parliament is not sitting unless it is approved by a resolution of both Houses of Parliament.

For the purpose of passing such resolution, the House and the Senate may be summoned by the Governor-General even though Parliament at the time stands dissolved. In that case, those who were members of the House and the Senate immediately before the dissolution shall be deemed still to be members of those Houses.

But when summoned for this special purpose, a House of Parliament shall not transact any business other than debating and voting upon such a resolution. These matters are regulated by section 17(8).

After a dissolution comes a general election. Elections are considered in the next chapter.

Footnotes

1. The term "the House" refers to the House of Representatives, the elected House, as distinct from the Senate, the nominated House, considered below, text after note 12, unless otherwise indicated.
2. Chapter 5 text after note 14.
3. Sections 30(a), 32(2)(c).
4. The term "Commonwealth citizen" has such meaning as Parliament may prescribe, section 111(1).
5. These include holding office involving responsibility for elections to the House; conviction for parliamentary election offices; holding public office. See section 31(2)(3)(4).
6. Section 33(2)(a). Standing Order No. 7 paragraph 3 of the Standing Orders of the House makes his seat vacant if he is absent from three consecutive meetings of the House without permission from the Speaker.
7. Section 33(2)(c).

8. The Phillips Constitution Review Commission Report, November 1985, pp. 47-48, Appendix IV.
9. See note 8 above, at pp. 51, 102.
10. Text after note 4.
11. Text after note 5.
12. In the absence of both Speaker and Deputy, the House is presided over by a member, not being a Minister or Parliamentary Secretary, selected for the purpose. Section 41(2)(b)(c).
13. See text after note 2 above.
14. Section 26(1)(5)(6). See text after note 4 above.
15. Section 26(2)(4). See text to note 5 above.
16. Section 27(2)(a). The Standing Orders of the Senate, Standing Order No. 67 paragraph (3), make his position vacant if he is absent from five consecutive meetings of the Senate without permission from the President of the Senate. See note 6 above.
17. Section 27(2)(b)-(e) (3).
18. Text after note 9.
19. In their absence, note 12 above applies, by section 41(1)(c).
20. Text after note 9.
21. S. McIntosh, Grenadian Voice newspaper, 21 June, 1986, at page 12.
22. Except regarding the electing of the Speaker or the President: section 40(1)(2).
23. RE EUSI KWAYANA (1980) 29 W.I.R. 130 (C.A. - Guyana).
24. PETRIE v. ATTORNEY-GENERAL (1968) 14 W.I.R. 292, 301 (Bollers C.J. - Guyana).
25. THEBERGE v. LAUDRY [1876-77] A.C. 102 (P.C) [Canada].
26. (1968) 12 W.I.R. 311 (H.C. - Grenada).
27. IBRALEBBE v. R. [1964] A.C. 900, 923 (P.C.) [Sri Lanka (Ceylon)].
28. This supreme law clause of the Grenada Constitution has only a very rough approximate in the Law of the European Communities, which applies to the UK.
29. BRIBERY COMMISSIONER v. RANASINGHE [1964] A.C. 172, 197 G (P.C.) [Sri Lanka (Ceylon)].
30. COLLYMORE v. ATTORNEY-GENERAL (1967) 12 W.I.R. 5 (C.A. - Trinidad & Tobago), [1972] A.C. 972 (P.C.); HINDS v. R. [1977] A.C. 195 (P.C.) [Jamaica].
31. On quorum, see text after note 23 above.
32. See text after note 37 below.
33. Text before and after note 34.
34. See Sir Fred Phillips, Freedom in the Caribbean (1977), 109.
35. Alexis, Changing Caribbean Constitutions (1983), 10-49.
36. On the readings of a Bill, see text before note 33 above.

37. This also applies to the Courts Order and section 3 of the W.I.A.S. (Appeals to Privy Council) Order 1967. These were suspended by People's Laws Nos. 1 & 4 of 1979, but have now been reinstated. See chapter 7 text after note 57.
38. See text to note 32 above.
39. Section 43(2) Proviso. Also, see text after note 32 above.
40. On such procedure, see text after note 33 above.
41. The 1985 Phillips Constitution Review Commission wants a requirement that amendments of the Constitution should need a two-thirds Senate majority. But a nominated Senate cannot legitimately be empowered to veto constitutional amendments proposed by an elected House.
42. Section 39(5)-(7).
43. Section 39(8)(a). The Speaker's certificate is also needed regarding Bills amending generally entrenched provisions.
44. See AKAR v. ATTORNEY-GENERAL [1970] A.C. 853 (P.C.) [Sierra Leone]; McLEOD v. ATTORNEY-GENERAL (1982) 6 W.I.L.J. 261 (C.A. - Trinidad & Tobago), on appeal (1984) 32 W.I.R. 450 (P.C.).
45. Text to note 28 above.
46. HINDS v. R. [1977] A.C. 195 (P.C.).
47. See chapter 7 text after note 60 below.
48. The Legislature (Privileges, Immunities and Powers) Act 1968, Act No. 24 of 1968.
49. KIELLEY v. CARSON (1842) Moo P.C. 63 [Canada]; RE EWART (1864) 2 Stephen's Rep. 1079 (S.C. - Jamaica).
50. George Brizan and Francis Alexis. They also left the ruling NNP of PM Herbert Blaize. Tillman Thomas too left that party in solidarity with Brizan and Alexis. So too did Senator Jerome Joseph. Before that, Kenny Lalsingh and Phinsley St. Louis had already done so. They all constituted the core of the new party NDC.
51. Text after note 59.
52. Text to note 28.
53. J.A.G. Griffith, "The Political Constitution", (1979) 42 M.L.R. 1, 3.
54. Sir Allen Lewis, "The Separation of Powers: Its Relevance for Parliamentary Government in the Caribbean", [1978 October] W.I.L.J. 4, 6-7.
55. Prime Minister Blaize found himself in this position late in 1989. He needed money in December 1989 to pay public workers back-pay for 1987-1989 under a collective bargaining agreement between Government and the three trade unions representing the workers. This was after he had Parliament prorogued in August 1989, in the circumstances discussed in the text after note 60 below. A Proclamation by Governor-General Sir Paul Scoon dated 8 December, 1989 issued under section 51(1) summoned

a special session of Parliament for 14 December, 1989 on which latter day the House of Representatives approved a resolution authorising the Minister of Finance, Prime Minister Blaize, to borrow $25M for the purpose.

56. On Friday 10 April, 1987, Brizan and Alexis each made a speech in the House discussing the Government policies referred to at text to note 50 above. The next Monday, PM Blaize asked them to clarify publicly that they were not being critical of Government. They refused, and instead resigned from the Cabinet that day. In 1989, when another Cabinet Minister, Keith Mitchell, openly engaged Mr. Blaize in a bitter power struggle the latter summarily dismissed Mitchell that August, citing breach of collective responsibility.
57. In Grenada, the Executive usually numerically preponderates the House, thus ruling out a no-confidence motion. Mr. Blaize too got such a majority in the December 1984 elections, when his NNP won 14 of the 15 seats in the House. But by late August 1989, only 5 other MPs supported him, 8 of his erstwhile colleagues having by then abandoned him. So, by late August 1989, 2 no-confidence motions awaited him in the House, one by Brizan leading the official NDC Opposition and the other by Mitchell. These motions were to be debated on 25 August, but on 22 August, Blaize had Parliament prorogued.
58. See note 55 above.
59. See chapter 7 text after note 51 below.
60. Phinsiey St. Louis et. al. to Mr. Speaker Scipio, 27 April, 1989.
61. Section 53(1).
62. This was the position with Mr. Blaize in August 1989, with constitutional dissolution due December 1989. When the Government of Nauru was defeated on a no-confidence motion on 17 August 1989, elections were not held until December 1989.
63. Chapter 3 text after note 40.

CHAPTER 5

ELECTIONS AND VOTING

In the preceding chapter we looked at the circumstances in which Parliament is dissolved *[1]*. The dissolution of Parliament heralds the coming of a poll to elect members to the House of Representatives in a new Parliament.

Fixing Election Date

Within three months after Parliament is dissolved, a general election of members of the House of Representatives has to be held. The particular time at which the election is to be held within that three month period is fixed by the Governor-General. Section 53(1) says so. But section 62(1) requires him to do so in accordance with the advice of the Prime Minister *[2]*. The point is that the fixing of an election date is a matter for the Prime Minister. So, while Parliament is in being, even though the Prime Ministership becomes vacant in a minority government merely nine days before the constitutional automatic dissolution date, a Governor-General may not wish to fix an election date himself.

If the Governor-General considers that he simply cannot identify anyone who can be appointed Prime Minister, he will have no choice but to dissolve Parliament and fix an election date himself. But once the Governor-General considers that he can appoint someone as Prime Minister, he may prefer to appoint that person and let the appointee name the election date.

It is the expectation of the Constitution that an election date will ordinarily be fixed by a Prime Minister. And it is quite understandable that a Governor-General would prefer it this way.

Apparently this was the view taken by Governor-General Sir Paul Scoon on 19 December, 1989. That day, Prime Minister Blaize of the TNP died, leaving his TNP with only 5 out of the 15 seats in the House of Representatives. The

NDC official Opposition of George Brizan had 6 seats, while the other NNP Opposition of Keith Mitchell had 3 seats. This was a mere nine days before Parliament was due to be dissolved by automatic operation of the Constitution.

Sir Paul appointed Deputy Prime Minister Ben Jones as Prime Minister to continue the TNP minority government and to advise on an election date. It was better for Sir Paul to have proceeded this way rather than to have sought to set the date himself.

In the end, Mr. Jones advised Sir Paul to fix 13 March, 1990 as the date, and Sir Paul complied. So a general election was held that day, producing an NDC Government led by Prime Minister Nicholas Brathwaite.

A general election is an election by all the constituencies across the State of their respective Members of Parliament in the House of Representatives at the same time, meaning in effect, on the same day. A by-election is an election by only one or some of the constituencies of their respective members of the House of Representatives, to fill a vacancy or vacancies in that House occurring for whatever reason.

If a vacancy occurs too close to a dissolution of Parliament to make a by-election tenable, the filling of the vacant seat might have to await the holding of the ensuing general elections. Thus, nine days before Parliament was due to be dissolved by automatic operation of the Constitution on 28 December, 1989 the Representative for Carriacou and Petit Martinique, Prime Minister Blaize, died on 19 December. No by-election could be held to fill the vacancy. That seat remained vacant until general elections were held in 1990; when it was won by Nicholas Brathwaite of the National Democratic Congress (NDC), who was then chosen to be Prime Minister.

Constituency Boundaries Commission

For the purpose of the election of members of the House of Representatives, Grenada has to be divided into constituencies. Section 54 requires this.

Towards this end, the Constitution, in section 55, establishes a Constituency Boundaries Commission. Its Chairman is the Speaker of the House of Representatives. Of its four other members, all appointed by the Governor-

General, two are elected by the Prime Minister and the other two by the Opposition Leader, under section 55(1).

The 1985 Phillips Constitution Review Commission felt that the Chairman should be a person who has held high judicial office and who does not hold any other office. He should be appointed by the Governor-General acting in his own deliberate judgment. The thinking is that the Speaker is not a suitable Chairman since his being elected Speaker necessarily means that he is more than sympathetic to the Government. One can support that. But one can hardly endorse the Phillips Commission further suggestion that the other members should be appointed from among the Permanent Secretaries. For the Prime Minister has a veto over their appointment, and he can transfer them at will *[3]*. So putting them on the Boundaries Commission exposes them to unnecessary pressure.

Quite rightly, therefore, the present Constitution disqualifies public officers from sitting on the Boundaries Commission. Also thus disqualified are Senators and members of the House of Representatives (except in the case of the Chairman). Section 55(2) says so.

The Chairman vacates his office when he ceases to be Speaker. The other members vacate at the next dissolution of Parliament after their appointment, or if any of the disqualifying circumstances set out in the preceding paragraph arises in relation to them. These matters are regulated by section 55(3).

The Chairman cannot be removed while he is Speaker. Other members may be removed from office for inability to discharge their functions. That inability may arise from infirmity of mind or body or any other cause; or for misbehaviour. But, says section 55(4), not otherwise. And the removal can take place only if a judicially qualified tribunal recommends this to the Governor-General *[4]*.

The Commission may regulate its own procedure. It may act despite any vacancy in its membership, or the presence or participation of non-members. It takes majority decisions *[5]*.

Very importantly, by section 55(9), in the exercise of its functions under the Constitution, the Commission shall not be subject to the control or direction of any other person or authority. This means that the Commission is expected by

the Constitution to act in an independent way. This is critical, considering the essential mission of the Commission, considered next.

Reviewing Constituency Boundaries

The essential mission of the Constituency Boundaries Commission is to review the number and boundaries of the constituencies into which Grenada, Carriacou and Petit Martinique is divided, and report to the Governor-General periodically *[6]*.

The report of the Commission reviewing the decision of the State into constituencies is expected to take either of two eventualities.

The Commission might simply report that there is no need to alter the existing number and boundaries of constituencies *[7]*. The Commission report laid in the House of Representatives on 4 August, 1989, took this approach.

Or the report might recommend changes in the number and boundaries of the constituencies into which the State should be divided. Such changes should reflect the need for all constituencies to contain such equal numbers of inhabitants as is reasonably practicable. But in order to ensure adequate representation of sparsely-populated rural areas, the Commission may consider density of population, means of communication, geographical features and the boundaries of administrative areas *[8]*.

If the Commission recommends constituency changes, the draft of an Order for giving effect to those recommendations will be made by the Governor-General *[9]*. This draft Order may or may not contain modifications to those recommendations.

The Prime Minister has to lay this draft Order before the House of Representatives for its approval. The draft Order may make provision for any matters which appear to the Prime Minister to be incidental to or consequential upon the other provisions of the draft, by section 56(3). The Commission report of 1991 recommended an increase in the number of constituencies from fifteen to seventeen. But this report was not laid before the House before the end of the 1991 parliamentary year.

Where the draft Order seeks to modify the Commission's recommendations, the Prime Minister shall lay before the House together with the draft Order a

statement of the reasons for the modifications. If the motion for the approval of the draft is rejected by the House, or withdrawn, the Prime Minister shall amend the draft and lay the amended draft before the House *[10]*.

If the draft is approved by resolution of the House, the Prime Minister shall submit it to the Governor-General for an Order to be made in terms of the draft *[11]*. This Order comes into force upon the next dissolution after it is made, under section 56(6). So it applies to the general election held immediately after it is made. This means that a report for a change has to be tabled before the start of voter registration for the relevant general election. For voters have to be registered in relation to specific constituencies.

As just stated, an Order re-aligning the constituencies comes into force upon the next dissolution of Parliament after it is made. Before such dissolution, can Parliament constitutionally pass an Act in pursuance of such an Order? The High Court has said it is unable to see how the passing of such an Act in those circumstances contravenes the Constitution. But the Court did not decide the point *[12]*. Certainly, no attempt may be made to give effect to such an Order before the relevant dissolution.

This confirmatory Order recites that a draft of itself has been approved by a resolution of the House. The question of the validity of this Order shall not be enquired into in any court of law. Section 56(7) says so.

The unfair re-aligning of constituencies is called gerrymandering. The view once prevalent that gerrymandering could not be questioned in court has changed to enable such questions to be raised in court *[13]*.

So, the fact that the Constitution says that the validity of a Constituency Boundaries Order shall not be enquired into in court should not be taken too literally. Despite this ouster clause, questions may arise as to defects in the Order going to its root, or jurisdiction, or *vires*. Such defects make the matter triable by the courts without the aid of any other enabling provision *[14]*.

Number of Constituencies

There are today fifteen (15) constituencies across Grenada, Carriacou and Petit Martinique. Each constituency is represented in the House of Representatives by one Representative, elected by the voters in the manner set out below *[15]*.

Grenada therefore has single member constituencies, typical of countries in the Westminster model of parliamentary democracy.

Of those nominated to contest an election in a constituency, the candidate obtaining the highest number of votes is the winner of the election. He is the Representative. He does not need an absolute majority of the votes validly cast at election, a simple majority of those votes suffices. This is the first past the post system.

The Supervisor of Elections

The Constitution requires that there shall be a Supervisor of Elections. It charges him with the duty of exercising general supervision over the registration of voters in elections for choosing members of the House of Representatives and over the conduct of such elections. These are the functions which the Constitution, section 35(1), requires the Supervisor to carry out *[16]*.

The Supervisor is a public officer designated to be Supervisor by the Governor-General, acting in his own deliberate judgment, under section 35(2).

Whenever the Supervisor considers it necessary or expedient so to do, he may report to the House on the exercise of his functions, through the Minister responsible for parliamentary elections, by section 35(5).

In the exercise of the functions which the Constitution requires the Supervisor to carry out, he shall not be subject to the direction or control of any other person or authority. This provision, section 35(6), requires the Supervisor to act independently in supervising parliamentary elections. The importance of this cannot be exaggerated. So much does the integrity of the electoral system depend upon the Supervisor and his subordinate officers.

The 1985 Phillips Constitution Review Commission recommended that responsibility for supervising the registration of voters and conducting elections should move from the Supervisor and vest in the Constituency Boundaries Commission. This body would have these duties in addition to its existing charge of reviewing the number and boundaries of the constituencies, a matter considered above *[17]*.

The Phillips Commission would make the Supervisor become the chief administrative officer of the Boundaries Commission. He would thus be made

subject to the direction and control of the Commission in the exercise of his functions.

If this is to be done, the Speaker could no longer be the Chairman of the Commission. Rather, the Chairman would have to be an independent person, such as an independent retired judicial officer as recommended by Sir Fred Phillips and his colleagues. Or, the Supervisor would find himself in a rather invidious situation, having to take orders from a Speaker who might even be prepared to adjourn the House without a motion so as to protect the Government.

This writer, while still a Minister of Government, had made a similar proposal in his written submission to the 1985 Phillips Commission. That submission recommended that the Constitution establish an independent Elections Commission to watch over the re-aligning of constituency boundaries, the registration of voters and the conduct of parliamentary and local government elections.

Further, the submission felt that:

> *"The Constitution should charge this Commission with ensuring that equal media broadcasting time on Government-run radio and television is afforded after nomination day to any political party nominating candidates for at least fifty percent of the number of seats being contested in that election".*

It helps to preserve the integrity of the electoral process if legislation forbids a person to be nominated as a parliamentary candidate in an election for which he is an election officer. Such provisions would render void the election of a person as the Representative for a constituency if that person was an enumerator for a polling division in that same constituency in the election in which he is so voted in. The Supreme Court of Grenada quite rightly interpreted such provisions in this way. Very unfortunately, the Eric Gairy government retroactively altered those provisions to allow one of their members to hold on to the seat *[18]*.

Voters and Voting

Every Commonwealth citizen who has attained eighteen years of age and who possesses such qualifications relating to residence or domicile in Grenada as Parliament may prescribe, shall be duly entitled to be registered in a constituency as a voter in parliamentary elections under any electoral law. This is so unless he is disqualified by the electoral law from being so registered. Once so registered, such a person is duly entitled to vote in parliamentary elections. The Constitution so ordains *[19]*.

Provisions prescribing residence and domicile qualifications have been enacted by Parliament *[20]*. A Grenadian is entitled to be registered and to vote once he is domiciled in Grenada, that is, once he has Grenada as his true permanent home. It makes no difference that he actually resides abroad for the time being. He does not have to be residing in Grenada for any particular time. But a Commonwealth citizen other than a Grenadian must have been residing in Grenada for the twelve months immediately preceding his being registered as a voter.

The Constitution does not itself regulate the manner in which voting should take place. It leaves that to the law other than itself. It says, in section 32(1), that the manner in which elections to the House shall take place may be prescribed by or under any law, subject, of course, to what the Constitution itself provides.

But the Constitution does make clear that the secrecy of the actual casting of a vote is sacrosanct. Section 32(3) stipulates that in any election of members of the House, the votes shall be given by ballot in such manner as not to disclose how any particular person votes. And, by section 32(1), the voter chooses his Representative directly, not through any electoral college or other medium exercising a choice independent of the voter.

If people justifiably think that the voting process has been so corrupted that it is pointless their taking part in it, democracy is threatened. Democracy cannot survive unless parliamentary elections are free and fair, and indeed are seen to be so.

A political party which keeps itself in office in a manner suggesting it is cheating or rigging the elections cannot expect to enjoy the respect of the people.

Moreover, rigging alienates the people from the democratic process. Once the people are alienated from the system of government in their country, their system is at risk.

Nothing can be said for the failure to afford reasonable opportunities for registered voters to cast their votes, by, for example, not providing sufficient ballot papers. This failure is such a blatant denial of the precious right to vote that it must vitiate the elections in a constituency so affected. The Eastern Caribbean Supreme Court rightly so held, annulling elections in a constituency in Antigua in 1989 *[21]*. It must be passing strange that there are insufficient ballot papers in a country whose Government is never slow to claim that the country is prospering financially.

The courts do well to set their faces firmly against such spectacles. For these occurrences sadly disgrace the virtues of democracy. And the matter of preserving inviolate the actual exercise of voting and the general conduct of elections is of critically vital importance. Nothing less is at stake here than the very survival of democracy.

Footnotes

1. Chapter 4 text before and after note 61.
2. Chapter 3 text after note 41.
3. See chapter 8 text after note 38 below.
4. Section 55(4)-(7).
5. Section 55(7)(8).
6. It should also do so between 2 and 5 years from its last report. Section 56(1)(2).
7. Section 56(1)(b).
8. Section 56(1)(a) importing sched. 2 to the Constitution.
9. The draft is actually made by the Cabinet, and passed on to the Governor-General for his patronage.
10. Section 56(4)(5).
11. The Order is actually made by the Cabinet, see note 9 above.
12. RE HERBERT BLAIZE, Suit No. 19 of 1972, judgment 31 January, 1972 (H.C. - Grenada).
13. BAKER v. CARR (1962) 369 U.S. 186; REYNOLDS v. SIMS (1964) 377 U.S. 533.
14. See RE LANGHORNE (1969) 14 W.I.R. 353, 357B (Luckhoo C. - Guyana).
15. Text after note 18.

16. Other electoral functions may also be prescribed for him by Parliament. In carrying out any of his electoral functions, the Supervisor may give directions to registering officers, presiding officers or returning officers. See section 35(4)(7).
17. Text after note 5.
18. NEDD v. SIMON (1972) 19 W.I.R. 347 (C.A. - W.I.A.S.). Then see the House of Representatives (Elections) (Amendment) Act 1972, Act No. 27 of 1972.
19. Section 32(2)(3).
20. The Grenada Citizenship Act 1976, Act No. 12 of 1976.
21. HALSTEAD v. THE RETURNING OFFICER April 1989 (ECSC, Redhead J.) [Antigua].

CHAPTER 6

LOCAL GOVERNMENT

The Constitution clearly contemplates that there would be some system of Local Government in Grenada, Carriacou and Petit Martinique.

Take the human rights guarantee in the Bill of Rights affording protection against discrimination referable to race, place of origin, colour, creed or sex. That guarantee does not apply to a law providing standards or qualifications *[1]* set for appointment to any office "in the service of a local government authority" *[2]*.

More particularly, the Constitution, section 107(1), provides that

> *"There shall be a Council for Carriacou and Petit Martinique, which shall be the principal organ of local government in those islands".*

Justification

That the framers of the Constitution specifically spoke of local government in Carriacou and Petit Martinique is noteworthy. They might very well have had to mind the secession of Anguilla from St. Kitts and Nevis. This event has been blamed, partly at least, on the neglect of Anguilla by the central government in St. Kitts, and on the lack of authority in Anguilla to look after its own affairs in the context of local government *[3]*.

More generally, local government enhances participatory democracy, by enabling people in their local communities to help shape the future of their communities. It makes people better understand the problems that face the central government and the Nation as a whole.

It provides a corps from which national leaders can emerge. Local government therefore strengthens parliamentary democracy. This is of crucial importance in Grenada today, given that parliamentary democracy has been severely tested here over the years, even to the extent of there having been a left-wing revolution.

The 1985 Phillips Constitution Review Commission endorsed the proposition that local government buttresses parliamentary democracy.

Grenadians well recall what a fine job was done by the old local government authorities before they were piteously abolished by the Eric Gairy Government in 1969. They were urban oriented, and elected on a franchise ridiculously restricted to those who had wealth or big jobs. But, for all their faults, those local government authorities made rather useful contributions to education, sanitation, cemetery maintenance and the upkeep of certain other public amenities.

Understandably, therefore, the promise made by the NNP in the 1984 general election campaign to restore a refurbished local government system won the NNP immeasurable popularity. And the NNP Government under Prime Minister Herbert Blaize did set up a Ministry of Local Government, headed by this writer, charged with responsibility for restoring local government.

Location

A Constitution is not the place for spelling out the details of a local government system. This is better left to Acts of Parliament. So, the Constitution, section 107(2), says that the Council for Carriacou and Petit Martinique whose establishment it provides for *[4]*, *"shall have such membership and functions as Parliament may prescribe"*.

The 1985 Constitution Commission felt that the Constitution should require that once Parliament passes legislation prescribing these matters, the amending of such legislation should need the assent of the Council, given by resolution. Also, the Commission would like to see the provisions of the Constitution catering for local government in Carriacou and Petit Martinique, section 107 *[5]*, deeply entrenched, entailing a two-thirds referendum vote for their alteration.

Legislation in Parliament

The Ministry of Local Government set up by Prime Minister Blaize in December 1984, did proceed to have drafted the legislation needed to restore local government. There were four Bills, drafted with technical assistance from Mr. Llewellyn John, a former Local Government Minister of Guyana, whose services to Grenada were funded by the Commonwealth Fund for Technical Co-operation (CFTC). These Bills were all approved by Cabinet.

One of these four Bills was actually passed by Parliament and became law on 30 May, 1986. This was the Local Government (Elections) Act 1986 *[6]*. This provides for the registration of voters for elections to local government authorities.

The other three Bills all got their first reading in the House of Representatives on 14 May, 1986. These were the District Boards, Village Councils and Town Councils Act 1986; the St. George's Corporation Act 1986; and the Carriacou and Petit Martinique County Council Act 1986.

Together, these three Bills provided for the planned new system of local government. It was to be a two-tiered system. At the lower level were village councils and town councils across the State. At the higher level were District Boards, one each for St. George's Outer Parish and the other parishes, St. David's, St. Andrew's, St. Patrick's, St. Mark's and St. John's. Also at this higher level were the Municipal Council for the capital City of St. George and the County Council for Carriacou and Petit Martinique.

Generally, the local government authorities were to have certain responsibilities regarding education, public health, roads, and cemeteries. The County Council of Carriacou and Petit Martinique would have had wider powers, including responsibilities regarding postal services and tourism development.

The Retreat

At a public meeting at St. Paul's, St. George's, in September 1986, the Minister of Local Government, this writer, told the audience that certain elements in the Government were not anxious to have local government restored. A certain

cabinet colleague of his had just then told a journalist that local government was not a priority.

Shortly afterwards, in February 1987, a Cabinet reshuffle saw this writer being relieved of the portfolio of local government. His successor, Mr. George McGuire, was a member of the Cabinet when Cabinet unanimously approved the local government package. Yet, he now stated that this earlier package needed simplifying. NNP had retreated from local government.

There is still no local government in Grenada today. The expectation of the framers of the Constitution, and of the people as a whole, that there would be local government is still being frustrated.

Second Time Around

The new Government, the NDC led by Nicholas Brathwaite, like the NNP turned TNP before it, has made the restoration of local government a key-point policy.

This writer has again been given responsibility for making a reality of the plans of the new government to restore local government. It would be interesting to see what happens this second time around.

Footnotes

1. Not being standards or qualifications referable to race, place of origin, colour, creed or sex.
2. Section 13(5).
3. Sir Fred Phillips, Freedom in the Caribbean (1977), 98-106.
4. See text after note 2 above.
5. See text after note 2 and text to note 4 above.
6. Act No. 26 of 1986.

CHAPTER 7

THE JUDICIARY

In a free society, the Judiciary have a critical role to play. In the context of the free parliamentary democracy the 1974 independence Constitution seeks to entrench in Grenada, its preamble records Grenadians as committing ourselves to the rule of law *[1]*. A prime cornerstone of the rule of law is the independence of the Judiciary, as an integral part of the separation of powers *[2]*.

This independence of the Judiciary assures the individual that when he has a dispute, especially with agents of the State, his case will be tried by independent Judges. This independence of the Judges enhances the fairness of the trial and the impartiality of the Judge.

This way, individuals will be prepared to take their legal disputes to the courts, and will feel no need to try to take the law into their own hands. When individuals take the law into their own hands, a free for all is indicated. This leads to vigilantes and duels, a risk to societal peace, the opposite to the law and order that characterises a parliamentary democracy.

A Tale of Two Levels

A discussion on the Judiciary of Grenada today has to take place on two levels, each parallel to the other.

On one level is the system of the Judiciary provided for in the provisions of the 1974 independence Constitution. These provisions, along with the rest of that Constitution, were suspended in 1979 by those who revolutionarily took over the government from Eric Gairy by force of arms and called themselves the People's Revolutionary Government (PRG), led by its Prime Minister, Maurice Bishop *[3]*. Those provisions remained suspended till 16 August 1991, even though the rest of the Constitution had already been recommissioned *[4]*.

On the other level is the system of the Judiciary introduced by the PRG outside the Constitution, by an ordinary law.

The Constitutional Judiciary

The 1974 independence Constitution adopted for Grenada the Supreme Court established for the then West Indies Associated States *[5]* by the West Indies Associated States Supreme Court Order 1967 made by the United Kingdom *[6]*. This is the instrument called the Courts Order, and its court is now referred to as the Eastern Caribbean Supreme Court. That West Indies Associated State Supreme Court comprised a High Court of Justice and a Court of Appeal, from which appeals lay to Her Majesty's Privy Council in the United Kingdom.

As an Associated State between 1967 and 1974, Grenada at the time shared that system with its sister Associated States. When Grenada moved on to independence in February 1974, the first Associated State to do so, a move since followed by all the others, Grenada retained its membership in this sub-regional Court system. The Court then became known as the Supreme Court of Grenada and the West Indies Associated States, as referred to in section 105(a) of the Grenada Constitution.

With all the other Associated States following Grenada's move from associated statehood to independence, the former West Indies Associated States became the Organisation of Eastern Caribbean States *[7]*. Just as Grenada in its independence Constitution, equally the others retained membership in that Court system. The Court thus became the Eastern Caribbean Supreme Court, a change of name never strictly applicable in Grenada *[8]*.

Section 105(a) of the Grenada Constitution says that

> *"references to this Constitution shall be construed as including references to the Courts Order, which ..... shall continue to have effect as part of the law of Grenada and for that purpose ..... the Supreme Court established by the Courts Order shall be styled the Supreme Court of Grenada and the West Indies Associated States".*

Of similar effect is a provision in the general interpretation section of the Constitution, section 111(3). This says that

> *"in this Constitution references to the Court of Appeal, the High Court and the Judicial and Legal Services Commission are references to the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Courts Order".*

This Courts Order is entrenched into the Constitution at the deeper of its two levels of entrenchment. So an amendment to the Courts Order requires the approval of the people in a referendum vote, apart from the stipulated vote of two-thirds of all the members of the House of Representatives *[9]*.

The 1974 Court

By the interplay of the Grenada independence Constitution and the Courts Order, pre-revolution independent Grenada shared with its fellow OECS member states a sub-regional Supreme Court. This Supreme Court was a superior court of record *[10]*. It comprised a High Court of Justice and a Court of Appeal, from which appeals lay to the Privy Council.

Matters regarding the composition of the Court, and the appointment and tenure of its Judges are provided for in the Courts Order. These provisions seek to safeguard the independence of the Judiciary, as required by the separation of powers *[11]*.

Composition of Court

The judges of this High Court are the Chief Justice and six Puisne Judges.

The judges of this Court of Appeal are the Chief Justice, who is President of the Court, and two Justices of Appeal.

Appointment of Judges

The Chief Justice is appointed by Her Majesty by Letters Patent. This means that the Appointment is made by the Lord Chancellor of the United Kingdom on the advice of the Prime Ministers of the participating countries.

The Justices of Appeal and the Puisne Judges are appointed on behalf of Her Majesty by the Judicial and Legal Services Commission established by the entrenched Courts Order.

This Commission comprises the Chief Justice as Chairman; such Justice of Appeal or Puisne Judge as is from time to time designated in that behalf by the Chief Justice; a person appointed by the Chief Justice with the concurrence of at least four of the participating Prime Ministers.

This third person must have been a judge of a Commonwealth superior court of record. Also on the Commission are two Chairmen of the Public Services Commissions of two of the participating States designated by the Chief Justice.

Great care has therefore been taken in putting together the Judicial and Legal Services Commission, to ensure the independence of this body, the body responsible for appointing the Justices of Appeal and the Puisne Judges. Consistently, the tenure of the Commissioners, and their financial security too, is very well protected.

Thus, its members are not removable without the approval of judicially qualified tribunals, and, in the case of the members who are Judges, without the approval of the Privy Council *[12]*. Likewise, the Courts Order adds, the members of the Commission other than the Chief Justice and the Justice of Appeal or Puisne Judge shall be paid a remuneration prescribed by the Chief Justice and charged on the Consolidated Fund of the participating States.

Financial Security of Judges

The salaries and pensionable allowances of the regional Judges are stipulated by the entrenched Courts Order. These may be altered by order made by the Judicial and Legal Services Commission with the concurrence of the Heads of Government. But they cannot be reduced.

Nor are the terms and conditions of the office of a Judge applicable upon his appointment to be made less favourable during the currency of his appointment. Where he is entitled to exercise an option in relation to his salary or terms and conditions, the option exercised by him shall be deemed to be in his favour.

The salary and pensionable allowances of the regional Judges are, by the entrenched Courts Order, charged on the Consolidated Fund of the participating States *[13]*.

Tenure of Judges

A Judge of that Court of Appeal holds office until he attains 65 years of age, and a Puisne Judge till 62. But the Judicial and Legal Services Commission, with the concurrence of the Heads of Government of all the participating States, can permit a Judge to continue in office after attaining the prescribed age for not more than three years. Such continuance in office is not restricted to completing unfinished business; rather, the continuing Judge may embark upon new business *[14]*.

A Judge of this Supreme Court is removable from office only for misbehaviour; or for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause. He is not removable on any other ground. The Courts Order entrenched into the Constitution says so.

When the question of the removal of a Judge for inability or misbehaviour arises, a strict procedure has to be followed. The request for removal has to come, in the case of the Chief Justice, from a participating Prime Minister to the Lord Chancellor of Great Britain, and in the case of another Judge, from the Commission to the Chief Justice.

When that request is made, a judicially qualified tribunal has to go into it. This tribunal would be appointed by the Lord Chancellor if the removal of the Chief Justice is sought, and by the Chief Justice if the removal of another Judge is sought. In each case the tribunal would report to its respective appointer.

If the tribunal recommends that the Judge be not removed, the Judge is not removable, and that is the end of the matter.

If the tribunal recommends that the question of the removal of the Judge should be referred by Her Majesty to the Judicial Committee of the Privy

Council in the United Kingdom, it may be so referred. Only if the Judicial Committee advises Her Majesty that the Judge ought to be removed for inability or misbehaviour, could he be removed. The Chief Justice would then be removed by order of Her Majesty, and any other Judge by order of the Commission.

It is difficult to conceive of a more formidable procedure for removing one of these Judges *[15]*, short of involving the wholly inappropriate mechanism of a referendum vote by the people.

Jurisdiction

By the Courts Order, the process of the Supreme Court runs throughout the participating States. Any judgment of the Court has full force and effect and can be executed and enforced in any of the States.

The Courts Order says that the Supreme Court shall have, in relation to a member State, such jurisdiction and powers as might be conferred on it by the Constitution or any other law of that State.

Accordingly, the independence Constitution of Grenada, in provisions well entrenched, confers upon the Court jurisdiction over certain matters. These are discussed next.

Parliamentary Membership Disputes

Section 37 vests the High Court with jurisdiction to determine disputes as to whether a person was validly appointed a Senator or elected a Representative or chosen as Speaker when he is not an elected member of the House.

Appeals lie from such determinations to the Court of Appeal as of right.

That this jurisdiction is, for the Court, new, peculiar or special, has already been seen *[16]*.

Human Rights Adjudication

The Constitution protects the fundamental human rights and freedoms it guarantees the individual in the chapter cherishingly called the Bill of Rights, chapter 1. These rights and freedoms are discussed below *[17]*.

The presence of the Bill of Rights with the various restrictions and limitations it imposes on Parliament no less than on the Executive, argues for a power, better still a duty, on the Court to review Acts of Parliament, and actions of the Executive, for inconsistency with the Bill of Rights. The logic is that if the review discloses such inconsistency, the Court would be obliged to grant due redress, striking down the offending Act to the extent of the inconsistency.

The limitations and restrictions leave one "in no doubt that our Supreme Court has been constituted, and is, the guardian of the Constitution, so it is not only within its competence but also its right and duty to make binding declarations, if and whenever warranted, that an enactment passed by Parliament is *ultra vires* and therefore void" for infringing the Bill of Rights. So said Chief Justice Wooding of Trinidad and Tobago, speaking in terms applicable to Grenada, spelling out the doctrine of judicial review of legislation *[18]*.

This doctrine of judicial review of legislation has long been accepted by systems with written Constitutions comprising supreme law, as is the Constitution of Grenada *[18A]*. This is so unless special provisions require otherwise.

This has been so at least ever since Chief Justice Marshall of the United States Supreme Court laid down in 1803 that this Court has the power to review Acts of Congress, the American equivalent of the Grenadian Parliament. He held that, on such review, the Court may strike down Acts of Congress for inconsistency with the Federal Constitution of the United States *[18B]*.

That this power of judicial review is granted by the Grenadian Constitution is put beyond doubt by the Constitution itself. Section 16 contemplates that a person might wish to allege that any of the human rights provisions of the Bill of Rights has been, is being or is likely to be contravened in relation to himself or a detainee. If so, without prejudice to any other action lawfully available regarding that matter, he "may apply to the High Court for redress", under section 16(1).

Much ado used to be made about whether the appropriate procedure for making such an application was an originating summons or a motion or a writ of summons *[19]*. But good sense at length prevailed when the Privy Council ruled that words identical with section 16(1), barring contrary provisions:

> *"are wide enough to cover the use by an applicant of any form of procedure by which the High Court can be approached to invoke the exercise of any of its powers" [20].*

In any event, section 16(6) empowers the Chief Justice to make rules regarding the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by these remedies provisions of the Bill of Rights. The Supreme Court (Constitutional Redress - Grenada) Rules 1968 *[21]* govern here *[22]*. These say that such an application may be made by motion, or a writ of summons claiming a declaration or an injunction or other appropriate order *[23]*.

So, in Grenada, the Courts have no excuse for ensnaring themselves pursuing *"the shadow of procedure" [24]*.

Section 16(2) gives the High Court original jurisdiction to hear and determine such an application. It adds that, on such an application, the High Court *"may make such declarations or orders, issue such writs and give such directions as it may consider appropriate"* for the purpose of enforcing or securing the enforcement of any of the provisions of the Bill of Rights.

These provisions clearly empower, rather obligate, the High Court to guard the Bill of Rights against Parliament, let alone the Executive. By these provisions

> *"the court is the custodian and guardian of the Constitution, seeking as it must at all times to prevent encroachment on or violation of the rights, to the depths of its power, be it against Government or legislature" [25].*

On these provisions, the Constitution recognises contraventions, *"however arising"*. When the Court is alerted to a threatened or actual violation of a

guaranteed right, its immediate reaction, under these provisions, must be *"Now, whoever or whatever you are, show cause why !" [26].*

This right of access to the High Court is fundamental. An Act which seeks to take it away without duly amending the Constitution is illegal *[27]*, even in respect of an emergency *[28].*

The High Court may decline to exercise this power to give constitutional redress if it is satisfied that adequate means of redress for the contravention alleged are or have been available under any other law. Section 16(2) says so *[29].*

The courts claim that they cannot grant coercive remedies against the State to enforce the Bills of Rights, such as an injunction or a mandamus. Some think that such remedies should be available here *[30].* Certainly, damages are granted here. Damages were awarded against the State when a Trinidadian High Court Judge wrongfully committed a person to prison allegedly for contempt of court, thus depriving the latter of his personal liberty without due process of law. That this was a new remedy being fashioned by the Court out of these remedies provisions, was expressly acknowledged by the courts *[31].*

The courts have not yet directly decided whether these remedies lie in respect of the activities of persons not being public authorities. Indications are that they are inclined to confine these remedies to the activities of public authorities. But they may be prepared to hold that contraventions of the guaranteed rights constitute new wrongs in the law of tort when they occur as between private individuals. This recognises that these rights are guaranteed primarily, but not exclusively, against governmental power *[32].*

Notably, section 3(6), in the Bill of Rights, specifically ordains that *"any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person "* (emphasis supplied).

Regarding rulings by the High Court on such human rights matters as these *[33]*, appeals lie as of right to the Court of Appeal, and thence to the Privy Council *[34].*

The actual exercise by the courts of this duty of guarding the Bill of Rights has been the subject of much discussion elsewhere, and, in so far as is relevant in this book, is further touched on below *[35].*

General Constitutional Adjudication

The Constitution gives the Courts authority to undertake general constitutional adjudication. One refers here to adjudication regarding those clauses of the Constitution other than the provisions in the Bill of Rights in Chapter 1.

Section 101(1) says that

> *"any person who alleges that any provision of this Constitution (other than a provision of Chapter 1) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief".*

This section 101 adds that "the High Court shall have jurisdiction on an application made under this section" to determine whether any such non-Bill of Rights general constitutional provision has been or is being contravened and to make a declaration accordingly. Further, it adds, the Court may grant

> *"such remedy as it considers appropriate, being a remedy available generally under the law of Grenada in proceedings in the High Court" [36].*

Appeals lie from the High Court to the Court of Appeal as of right, under section 103(a).

The full import of these provisions becomes clearer when they are read in the context of the supreme law clause of this Constitution. This clause, section 106, says that

> *"This Constitution is the supreme law of Grenada and ..... if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".*

As supreme or fundamental law, the Constitution constitutes a yardstick against which other laws, or actions taken by State functionaries under such other laws, may be measured for their invalidity.

Also, the Constitution abounds with limitations on Parliament and the Executive. Thus, section 38 says that the power of Parliament to make laws is *"subject to the provisions of this Constitution"*. Similarly, section 39, the section entrenching the Constitution *[37]*, says that Parliament may alter the Constitution *"in the manner specified"* in the entrenching section.

Taken together, these factors all show conclusively that the Constitution requires the Courts to review Acts of Parliament, and actions of the Executive, for inconsistency with the Constitution. Acts of Parliament that are inconsistent with the Constitution are to be struck down by the Courts as being void.

Even with less compelling factors than these, such judicial review has been culled from other Constitutions. This is particularly so in the leading case on the matter, from the USA *[38]*.

Provisions such as these in Grenada found judicial review. But the courts have tended to abstain from deciding the substantive constitutional issues presented to them. The courts have preferred instead to fault applicants on procedural technicalities.

Consider what happened when Herbert Blaize, then Opposition Leader, sought to have election legislation declared null and void. The Court held that an order from the Court that legislation is null and void is not a remedy available generally under the law of Grenada, in the context of these remedies provisions *[39]*. That was a most unfortunate ruling, and it typifies the absurdities that can result when courts hurriedly flee their duty to guard the general provisions of the Constitution against violations by Parliament and the Executive *[40]*.

These general remedies provisions empower the Chief Justice to make rules regarding the practice and procedure to be followed in relation to the jurisdiction and powers hereby conferred, just as in the human rights remedies provisions *[41]*. Rules so made say that an application under these general remedies provisions may be made either by motion supported by affidavit or by filing a writ of summons claiming a declaration and praying for relief *[42]*.

Referring Constitutional Questions

In proceedings in a court or tribunal, a question may arise as to the contravention of a provision of the Constitution, whether one in the Bill of Rights or in the general provisions. Such a question may be determined by that Court itself if that court is the Court of Appeal or the High Court or a court martial. The situation is quite different if it is another court, for example, a magistrate's court.

If the question concerns the Bill of Rights, the person presiding in the magistrate's court may refer the question to the High Court for the High Court to decide the matter. Indeed, the magistrate shall do so if any party to the proceedings so requests. But he need not make the reference in either case if he thinks that the raising of the question is merely frivolous or vexatious *[43]*.

If the question concerns the general provisions of the Constitution, if the magistrate is of opinion that the question involves a substantial question of law, he shall refer the question to the High Court *[44]*.

The Constitution does not say how the reference is to be made. But rules prescribed by the Constitution and made by the Chief Justice address this issue.

These rules say that any question referred to the High Court regarding the Bill of Rights shall be referred by way of case stated. The case shall be signed by the person who presided in the court in which the question arose and it shall set forth the facts which have been proved or admitted and the question which is referred to the High Court for its decision *[45]*.

No such specific rule governs references regarding the general provisions of the Constitution. One here has to fall back on the provision that the jurisdiction and powers conferred on the High Court by the general remedies provisions shall be exercised in accordance with the practice and procedure for the time being in force in relation to civil proceedings in the High Court *[46]*. It would be better for rules to say specifically how these references should be made, to facilitate the tribunals concerned *[47]*.

A Superior Court of Record

The upholding of the Rule of Law requires not only that there be independent and impartial Judges, but also that they have certain jurisdiction. This is quite apart from the jurisdiction conferred upon them by the Constitution itself.

This requirement is met by a certain provision in the Courts Order 1967, creating a regional Supreme Court, which Order is imported into the Constitution by the Constitution itself, as seen above *[48]*. This order, section 4(1), says that the regional Eastern Caribbean Supreme Court it creates shall be *"a superior court of record"*.

This provision is replicated in the West Indies Associated States Supreme Court (Grenada) Act 1971, of Grenada *[49]*. This Act provides that, in relation to Grenada, the regional Court created by the Courts Order shall have materially the same jurisdiction as that enjoyed by the High Court of Justice in England. The High Court of Justice in England is *"a superior court of record"*.

That the Eastern Caribbean Supreme Court is a superior court of record, by itself, gives its jurisdiction protection by the Constitution. Because it is a superior court of record, it has unlimited jurisdiction both in criminal and civil matters.

Parliament certainly can pass ordinary legislation setting up tribunals staffed by persons other than the independent and impartial Judges commissioned by the Constitution and the Courts Order. But Parliament cannot give these tribunals substantial parts of the jurisdiction vested in the regional Court by virtue of this Eastern Caribbean Supreme Court being a superior court of record.

Thus Parliament cannot thereby give such other tribunals exclusive jurisdiction over criminal offences involving the unlawful possession or use of firearms. Such a tribunal or a division thereof may not exercise powers analogous to those wielded by the regional Court.

If such a tribunal is to enjoy such powers, it cannot comprise three magistrates sitting together when the only similarity between them and the regional Judges is that they are all appointed by the Governor-General on the advice of the Judicial and Legal Services Commission.

If such magistrates are to share in this jurisdiction, they must first be accorded the entrenched independence of the regional Judiciary. Otherwise, to

give to magistrates powers analogous to those of the regional Judiciary is to encroach unconstitutionally upon the terrain of the regional Court, thus violating the separation of powers. The result is the same if authority to determine the severity of criminal punishment, a judicial function, is given to a review board whose members are not the regional Judiciary *[50]*.

The Privy Council

The Constitution, section 104, gives considerable jurisdiction to the Judicial Committee of the Privy Council, Her Majesty in Council.

In several instances, appeals lie as of right from the Court of Appeal to the Privy Council. Included here are appeals in any civil or criminal proceedings involving the interpretation of the Constitution. Also included are civil proceedings where the matter in dispute is of the value of fifteen hundred dollars or more.

Appeals lie to the Privy Council with the leave of the Court of Appeal. These include cases where in the opinion of the Court of Appeal the question for appeal is one that, by reason of its general or public importance or otherwise, ought to be submitted to the Privy Council. Also included are decisions in any civil proceedings.

Appeals lie to the Privy Council with the special leave of the Privy Council from any decision of the Court of Appeal in any civil or criminal matter.

Also, no Judge of the High Court or Court of Appeal may be removed from office without the Privy Council advising Her Majesty that he ought to be removed for inability or misbehaviour. That the Courts Order entrenched into the Constitution says so has already been seen *[51]*.

The Separation of Powers

The preservation of civic freedom and human rights requires that no one person or body of persons should have all the different kinds of powers in a State, these kinds being legislative, executive and judicial. There should therefore be a separation of powers.

This is not a rigid doctrine. It admits of exceptions. The Constitution of Grenada requires members of the Executive, the Cabinet, to belong to the Legislature, Parliament. This is typical of the Commonwealth, although in the USA the Constitution forbids Cabinet members to belong to the Legislature, Congress. Further, in theory, Parliament is independent of Cabinet, and indeed controls Cabinet. In practice, it is the other way round, Cabinet controls Parliament. All of this has been seen above *[52]*.

What the separation of powers does demand in a free society is this. The judiciary, at least the Judges of the Supreme Court, must be independent of, or separated from, both the legislative and the executive branches of government *[53]*.

That the Courts Order incorporated and entrenched into the Constitution affords the Supreme Court Judges independence from Parliament and Cabinet has just been seen. It must therefore be said that under the Constitution, the Supreme Court Judiciary is adequately separated from both Parliament and Cabinet.

This is in keeping with the declared view of the Privy Council that a Constitution patterned on the Westminster model, like that of Grenada, is based on the separation of powers *[54]*.

It is imperative to separate the judiciary from the other organs of government because the judiciary has a responsibility to make judgments on the constitutionality and the legality of the actions of these other organs. If the judiciary is to be able to do so fearlessly and impartially as between Citizen and State, the judiciary must be independent of, separated from, those other two organs.

The Privy Council has put it thus:

> *"Under a Constitution on the Westminster model ..... which is based on the separation of powers, while it is an exercise of the legislative power of the State to make the written law, it is an exercise of the judicial power of the State (and consequently a function of the judiciary alone) to interpret the written law when made and to declare the law where it still remains unwritten" [55].*

The Rule of Law

The independence of the judiciary, as the key facet of the separation of powers, is critical to the preservation of the rule of law. For it is the judiciary that is charged by the Constitution with ensuring that the law is applied evenly to all. And it is this evenness of application of the law that is the hallmark of the rule of the law.

The rule of the law is a concept of varying content. International jurists meeting at Delhi, India, in 1959, thought the rule of law necessitates that a Constitution should be supreme over Parliament and should have a Bill of Rights. That Delhi Declaration wanted such a Constitution to be safeguarded by an independent judiciary.

Obviously, these criteria are met by the Grenada Constitution. Oddly, though, England, where the phrase "the rule of law" was popularised, does not have such a Constitution.

Basically, however, the rule of law stipulates that officials of the State should not have arbitrary power over the individual. Rather, such officials should be answerable to independent tribunals of law for their actions, at least where these actions impinge upon the rights guaranteed to the individual by the Bill of Rights. Also, where a person's criminal charges or civil rights are being determined, he is entitled to the protection of the principles of natural justice *[56]*.

Revolutionary Suspension

The regional Court system just described was suspended by the PRG twelve days after the PRG revolutionarily seized office by force of arms on 13 March, 1979. The PRG under Prime Minister Maurice Bishop so suspended that system on 25 March, 1979. That day, their first legislative act, People's Law No. 1, suspended the Constitution as of Revolution Day, 13 March, 1979. That same day too, their People's Law No. 4 repealed the West Indies Associated States Supreme Court (Grenada) Act 1971, an Act considered above [56A].

That regional court might also have responded to the revolutionary events by withdrawing its services from Grenada in the wake of the revolution. The person

who was on Revolution Day the Judge of that Court assigned to Grenada, Nedd J., testifies that this Court did so withdraw its services, or was unwilling to serve under the revolution *[57]*.

In any event, by the combined suspension of the Constitution and the repeal of the 1971 Act, the PRG ensured that the Supreme Court established by the Constitution, the West Indies Associated States Supreme Court, had no jurisdiction while Grenada was in revolution.

The Revolutionary Judiciary

Having pushed aside the West Indies Associated States Supreme Court, the PRG simultaneously established their own Supreme Court, by People's Law No. 4 of 1979. This new Supreme Court of Grenada consisted of a High Court and a Court of Appeal.

Composition of Court

By People's Law No. 14 of 1979, the Court of Appeal comprised three Judges or Justices of Appeal, one of whom was the President; and the High Court Judges were not to exceed two, one of whom was the Chief Justice.

In November 1979, provisions were made for five Justices of Appeal, three of whom would constitute the Court. It was changed back to three in 1980, and again put at five in October 1983, just before the PRG collapsed.

Appointment of Judges

The PRG Supreme Court judges were selected all by the Prime Minister in consultation with the Public Service Commission, the Governor-General making the formal appointment, under section 3(1) of People's Law No. 14 of 1979. Under the PRG there was no Judicial and Legal Services Commission, the regional one having been put away with the Constitution.

This method of appointing the PRG judges differed markedly from that pertaining to the Constitution's judges which involved Her Majesty and the regional Judicial and Legal Services Commission, as just seen.

Tenure and Other Terms

The PRG judges were appointed on such terms and conditions as might be determined by the Governor-General, on the advice of the Prime Minister *[58]*.

These judges therefore did not legally enjoy any of the guaranteed tenure or the protected other terms and conditions accorded the Constitution's judges, considered earlier in this chapter.

Jurisdiction

Section 4 of People's Law No. 14 of 1979 said that there shall be vested in the Court of Appeal and the High Court all such jurisdiction and powers as were on Revolution Day vested in the Constitution's Court of Appeal and High Court respectively by Act No. 17 of 1971 met above. This Act No. 17 of 1971 gave those courts the jurisdiction and powers inherent in the status of a superior court of record, as seen earlier in this chapter.

Obviously, the Constitution having been suspended, there was no question of giving to the PRG courts the jurisdiction vested in the Constitution's courts by the Constitution itself to guard the Constitution against attack by Parliament and Cabinet.

The PRG and the Privy Council

On 10 November, 1979, the PRG said, in section 10 of People's Law No. 83 of 1979, that the judgment of its Court of Appeal shall be "final and conclusive". This could only mean that appeals could no longer go beyond a Grenadian Court of Appeal, to the Privy Council.

This was spelt out that same day, 10 November, 1979. Section 2 of People's Law No. 84 of 1979 laid down that as from Revolution Day, 13 March, 1979, appeals to Her Majesty in Council were abolished. Decisions of the Privy Council, whether given before or after Revolution Day, were to have no binding legal force in Grenada.

Some have no difficulty with the retention of jurisdiction in the Privy Council over an independent Caribbean State. Even Republicanism has been considered compatible with sending appeals to the Privy Council and leaving

their Lordships with purview over the matter of removal of local judges. This is the position in Trinidad and Tobago.

But others see the complete removal of the jurisdiction of the Privy Council over an independent Caribbean State as the severing of *"the last link with the old imperial structure"*. They consider the continuance of that link after independence as an *"anachronism"*, whose discontinuance is *"as essential as was the adoption of republican status to give effect to the final political emancipation of the people" [59].*

Surely, the retention of the Privy Council jurisdiction over a Caribbean state after independence is based, at bottom, on a certain premise which exists at least psychologically, even if unconsciously. This is that there is a need to have the decisions of Caribbean judges overlooked by outsiders, since the Caribbean judges might not be able to cope fully with the requirements of a final judiciary.

What is really needed in the Caribbean is a final appellate Caribbean Court of Appeal to serve the Commonwealth Caribbean as a whole. Its judges, to be appointed by a regional Judicial Service Commission, would have to be given adequate security of tenure, and other proper terms and conditions of service. This Court would replace the Privy Council. This would be a very glorious development, lifting Caribbean jurisprudence appreciably.

Which Court?

On 19 October, 1983, Prime Minister Maurice Bishop and several of his PRG loyalists were killed at the revolutionary army's headquarters at Fort Rupert *[60]*. This was within hours of Bishop having being released by some of the hundreds, if not thousands, of people who had marched to his official residence at Mt. Wheldale, near Government House, to release him from the House arrest to which he had for days been subjected by certain of his PRG colleagues. The PRG was then imploding, changing into the Revolutionary Military Council (RMC), and ending finally with a US-led multi-national military intervention that same October.

Some of Bishop's PRG colleagues, including his Deputy Prime Minister Bernard Coard, were arraigned for his murder.

These former PRG members, including former PRG Ministers Bernard Coard and Selwyn Strachan, were being tried before the High Court set up by the PRG when they were PRG Ministers. They objected that this High Court was unconstitutional, that their own People's Laws creating it were invalid.

The Constitution had largely been restored by then. But by Proclamation No. 3 of 1983, issued on 4 November, 1983, Governor-General Sir Paul Scoon, referring to the PRG laws, had declared that *"the existing laws continue to be in force in Grenada"*. And the provisions of the Constitution applying to Grenada the Regional Eastern Caribbean Supreme Court established by the Courts Order 1967, seen above *[61]*, had not yet been restored.

Yet it was this Eastern Caribbean Supreme Court the former PRG Ministers were now saying should try them. And they argued that despite their having already abolished appeals to the Privy Council in November 1979, the Privy Council still had jurisdiction in Grenada.

These submissions that the PRG Supreme Court was unconstitutional were made to, and had to be decided by, that same Court, the Court which still dispensed justice in Grenada.

Nedd C.J. held that the Courts created by the Revolution were valid. He based this ruling, in **MITCHELL v. DIRECTOR OF PUBLIC PROSECUTIONS** (No. 1) *[62]*, on two grounds.

First, he ruled that the Revolution had become legitimate in law so that its actions were valid, since it had firmly established itself in fact and was accepted by the people in reality. He said

> *"There is no doubt that the revolution was a popular one and welcomed by the majority of the Grenadians ..... it had remained in power for 4 1/2 years" [63].*

This legitimacy in law gave the PRG the right to create its own legal order, its own criterion of legality or *grundnorm*, including its own Supreme Court.

Secondly, he considered that the doctrine of necessity justified the PRG in creating its own Supreme Court. He was satisfied that the regional court had withdrawn its services from Grenada, or was unwilling to serve Grenada, in the

wake of the revolution. As a result, Chief Justice Nedd reasoned, "those in power in the State were entitled to take such steps as were necessary to ensure that there was a judiciary". Because of the *"need"* to replace the regional Court, "a public necessity had arisen for the judiciary to be enabled to function urgently, properly and adequately". The creating of the new Court *"supplied that need" [64].*

Moreover, the Chief Justice ruled, once the independence regional judicial system had collapsed with its retreat or its suspension by the PRG, there was no court in Grenada from which an appeal could be made to the Privy Council. For provisions in Grenada affording appeals to the Privy Council refer to appeals from the regional court system. So if the regional court system no longer exists, no appeal could go to the Privy Council, quite apart from the PRG law specifically abolishing appeals to the Privy Council *[65].*

Dissatisfied, the applicants appealed to the Court of Appeal.

This was not the first time that a Court in the Commonwealth had to decide questions of legitimacy arising out of revolutionary activities. These issues had arisen before, in Pakistan, Uganda, Cyprus, Rhodesia and the Seychelles. Cases on revolution in these countries were cited to the Court of Appeal. So too was a plethora of academic writings, especially those of Hans Kelsen propounding his pure theory of law *[66].*

The view of Nedd C.J. that the PRG had become a legitimate government *de jure* appealed to only one of the three Judges in the Court of Appeal, Liverpool J.A.. The other two, Haynes P. and Peterkin J.A. would not agree that the PRG, a government *de facto*, had been so accepted by the people of Grenada as to have become a legitimate government *de jure.*

However, all the Judges who sat on this matter ruled that the Courts created by the Revolution could try those accused of murdering Bishop, being valid. Haynes P. and Peterkin J.A. would not go as far as Nedd C.J. and Liverpool J.A. and legitimise the PRG *de jure*, so as to clothe its Court with full legality. But Haynes P. and Peterkin J.A. agreed with Nedd C.J. that the laws promulgated by the PRG derived their legality from the doctrine of necessity.

The Legitimacy Principle

Haynes P. laid down what he considered to be principles of revolutionary legality judicially sound and consistent with the political democratic ideology of Grenada.

Said he:

> *"for a revolutionary government to achieve **de jure** status, that is, to become internally a legal and legitimate Government, the following conditions should exist: (a) the revolution was successful, in that the Government was firmly established administratively, there being no other rival one; (b) its rule was effective, in that the people by and large were behaving in conformity with and obeying its mandates; (c) such conformity and obedience was due to popular acceptance and support and was not mere tacit submission to coercion or fear of force; and (d) it must not appear that the regime was oppressive and undemocratic" [67].*

Haynes P. did not want to encouragepower-seeking politicians or over-ambitious army officers to embark upon romantic outings passing for revolution. For him, the touchstone is the wish of the people. He says that

> *"A revolutionary regime should not be accorded legitimacy by this Court unless it is satisfied that, on the whole, the regime had the people behind it and with it. Legality should be achieved only if and when the people accept and approve for in them lies political sovereignty ..... it is that [approval] which should give legitimacy to a successful and effective revolutionary regime" [68].*

And it was on this requirement, that a revolutionary regime needs public approval if it is to be legitimate, that Haynes P. found the PRG wanting. He found there was "a lack of sufficient proof of that popular acceptance and support which would have legitimised the regime" *[69]* That is why he could not find that the regime ever actually became a *de jure* government.

That too was the view of Peterkin J.A.. He noted that the PRG kept the 1974 independence Constitution in suspension, without publishing any other form of Constitution, and without canvassing the approval of the people in any form of elections. So, in his view, never during its existence could *de jure* status have been conferred upon the PRG.

Liverpool J.A. also saw importance in the approval of the people. He said that revolutionary legality or *de jure* status ultimately depends on consent or acceptance by the people. But he was satisfied that there was *"unqualified support for the PRG" [70].*

It would have been exciting to see Liverpool J.A. reconcile this assessment that the PRG enjoyed *"unqualified support"* with the fact that the PRG kept the Constitution in suspension, peremptorily closed down independent newspapers, jailed people just because they were involved in publishing such papers, jailed so many people without charge or trial, and would not keep its promise to hold elections. Such circumstances made Aubrey Fraser refuse an invitation extended to him by the PRG to sit on their Court of Appeal *[71].*

Yet, it is better to hold with Liverpool J.A. and Nedd C.J. that the PRG had become a government *de jure* so that its Courts were generally valid, rather than go with Haynes P. and Peterkin J.A. and give those Courts validity only during necessity.

The Doctrine of Necessity

Haynes P. said that whether the court reads necessity into the written Constitution as an implied constitutional provision thereof or regards it as a purely *extra* doctrine, necessity is a constitutional source of validation of unconstitutional acts.

He laid down conditions requisite to the existence of necessity to be that:

"(i) *an imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function to the State;*

(ii) *there must be no other course of action reasonably available;*

(iii) *any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;*

(iv) *it must not impair the just rights of citizens under the Constitution;*

(v) *it must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such" [72].*

On these principles, Haynes P. would not disagree with Nedd C.J. that the laws made by the PRG establishing the new Courts were validated on the legal basis of necessity. It made no difference if it was the fault of the revolutionaries that the regional Court removed itself from Grenada. For necessity applies regardless of whose acts cause the crisis that brings on the necessity. Recognising the new court out of necessity is necessary to avoid a vacuum or hiatus in the legal system.

The Difficulty

There is a fundamental difficulty inherent in the majority Court of Appeal ruling that the Supreme Court created by the PRG has validity only on the basis of necessity. By nature, necessity is only temporary.

So, a court whose legality is based on necessity is by definition only of temporary validity. The validity is effective only during the existence of the necessity. This necessity is surely apt to outlast the period of the actual revolutionary process. But if and when the necessity ends, steps must be taken *"within a reasonable time"*, as Haynes P. puts it.

By contrast if the Nedd-Liverpool approach were taken, the PRG-created courts would last unless and until a subsequent Government provided otherwise. But in the necessity formula, when the necessity ends, if a proper court is not instituted within a reasonable time, there could well theoretically be a vacuum in the court system.

Before that reasonable time expires, either effective steps be taken to resume Grenada's participation in the pre-revolution regional Supreme Court, or constitutional legislation be passed to establish another Supreme Court in its place. The Government will have to act with reasonable despatch. A specific timetable might not be set.

But a court of necessity, as the PRG-created Supreme Court, *"cannot be given indefinite recognition for the future"*, in the words of Peterkin J.A. *[73]*.

This can reduce the Judiciary to the ridiculous situation in which, virtually everytime the court sits, it says it expects that at its next sitting it would be advised as to what steps have been taken to replace the court of necessity by a permanent constitutional court *[74]*. No real advice is given, but business goes on as usual. When will necessity run out? No one knows. There is something of a farce here. All this would have been obviated by the Nedd-Liverpool ruling that the court had on-going validity based on the acquired legitimacy of its creator, the PRG. A restored Parliament would be free to revert to the regional court.

The Only Court

According to the Supreme Court established by the PRG and surviving through necessity, this Court is the only Court capable of exercising superior jurisdiction over Grenada. So those accused of murdering Bishop could not get this Court to refer to the pre-Revolution regional Supreme Court for adjudication the question whether the PRG-created Court had jurisdiction to try them. For the pre-Revolution regional Supreme Court had no jurisdiction over Grenada during their trial, and there was no court other than the PRG-created court which could try them *[75]*.

Indeed, Liverpool J.A. considered that the PRG had effectively in law abolished appeals to the Privy Council by its People's Law No. 84 of 1979 seeking to do so. Haynes P. did not reach this issue. But the Privy Council too was prepared to uphold that law, brushing aside what they considered to be highly arguable questions surrounding it *[76]*.

Preferred Option

The question arises whether Grenada should return to the Eastern Caribbean Supreme Court or should constitutionalise the PRG-created Supreme Court.

The protected tenure of office and guaranteed other terms of service enjoyed by the regional judiciary have already been seen *[77]*. Of course, if the PRG-created Court were constitutionalised, similar treatment could be accorded the local judiciary. But this would still lack the safeguards inherent in a regional system. Moreover, historically, in the Caribbean, regional courts have consistently entered profound judgments, conducing to the building of an impressive body of jurisprudence.

No wonder the Phillips Commission recommended Grenada's return to the regional system. And one agrees with the Commission that the retention or otherwise of appeals to the Privy Council should be a matter of common action by the States participating in that regional system. One hopes, though, that before long the Privy Council would be replaced by a Caribbean Court of Appeal.

The Magistracy

Magistrates are members of the judiciary. Magistrates occupy the lower level of the judiciary, the higher level being made up of the Judges of the High Court and the Court of Appeal, or the Supreme Court.

Far more litigation is disposed of by magistrates than by the higher judiciary.

Under the independence Constitution, magistrates belong, not to a regional service, but to the Grenada public service. Still, section 88 of the Constitution entrusts the appointment and disciplining of magistrates to the regional Judicial and Legal Services Commission acting through the Governor-General. When the Courts Order was in suspension, the regional Judicial and Legal Services Commission was replaced by the local Public Service Commission.

The protected tenure of office and guaranteed other terms of service assured the higher judiciary ought, at least in part, to be extended to magistrates. When the regional Judicial and Legal Services Commission exercises disciplinary control over magistrates, the situation is tolerable.

But there is no reason why the Constitution should not say that magistrates are removable only for the inability or misbehaviour for which Supreme Court Judges are removable under the Constitution. Equally, the salaries of magistrates ought to be charged by the Constitution on the Consolidated Fund, just as happens with members of the Public Service Commission, the Director of Public Prosecutions and the Director of Audit.

After all, the average Grenadian who seeks justice under the law interfaces more with magistrates than with judges. So, to secure the judges but leave the magistrates exposed is to that extent to leave the administration of justice unprotected. More prestige ought to be afforded magistrates to ensure that the administration of justice is secure and safeguarded where the individual meets justice most.

Footnotes

1. On the rule of law, see text after note 55 below.
2. See text after notes 11 and 51 below.
3. On this revolution, see chapter 1 text after note 11 above.
4. See text before note 61 above.
5. These were the then semi-independent Antigua, Dominica, Grenada, St. Kitts & Nevis, St. Lucia and St. Vincent; all now fully independent states. They, with the colony of Montserrat, now make up the Organisation of Eastern Caribbean States (OECS). Montserrat, the British Virgin Islands and Anguilla could share in the court.
6. S. I. No. 223 of 1967.
7. See note 5 above.
8. The Eastern Caribbean Supreme Court (ECSC) is strictly a product of the ECSC Agreement 1982, which replaced the WIASC Agreement 1967. Grenada signed the 1967 Agreement, but not the 1982 Agreement.
9. On entrenchment, see chapter 4 text after note 35 above.
10. On "a superior court of record", see text after note 47 below.
11. See text after note 51 below. See Alexis, H. Aubrey Fraser: Eminent Caribbean Jurist (1985), 40
12. On the removal of the Judges, see text after notes 5 and 58 below; on the PSC Chairmen, see chapter 8 text after note 11 below.

13. The Consolidated Fund is discussed at chapter 10 text before note 1 below.
14. SOOKOO v. ATTORNEY-GENERAL (1985) 33 W.I.R. 338 (P.C.) [Trinidad & Tobago].
15. Only the removal of Judges entails reference to the Privy Council.
16. Chapter 4 text to note 24.
17. Chapter 9.
18. COLLYMORE v. ATTORNEY-GENERAL (1967) 12 W.I.R. 5, 9. See Alexis, note 11 above, at pp. 33-36.

18A. See text after note 36 below.

18B. MARBURY v. MADISON (1803) 5 U.S. (1 Cranch) 137.

19. PIERRE v. MBANEFO (1964) 7 W.I.R. 433 (C.A. - Trinidad & Tobago); JAUNDOO v. ATTORNEY-GENERAL (1968) 12 W.I.R. 221 (C.A. - Guyana); BYFIELD V. ALLEN (1970) 16 W.I.R. 1, 58 (Graham - Perkins J.A. - Jamaica).
20. JAUNDOO v. ATTORNEY-GENERAL (1971) 17 W.I.R. 141, 146 (P.C.) [Guyana].
21. S.R.O. No. 41 of 1968.
22. These pre-Constitution Rules have effect under the Constitution by virtue of section 1(2), Schedule 2 to the Constitution Order.
23. Section 3.
24. M.C. Okpaluba, "Fundamental Human Rights", in Independence for Grenada - Myth or Reality? (I.I.R, U.W.I., St. Augustine, Trinidad & Tobago 1974), 90.
25. JAUNDOO v. ATTORNEY-GENERAL (1968) 12 W.I.R. 221, 243 (Luckhoo J.A. - Guyana).
26. Ibid at pp. 245 (Luckhoo J.A.), 254 (Cummings J.A.).
27. YEARWOOD v. ATTORNEY-GENERAL (1977) 3 C.L.B. 593 (H.C. - St. Kitts & Nevis); FARRELL v. ATTORNEY-GENERAL (1979) 27 W.I.R. 377 (C.A. - W.I.A.S.) [Antigua].
28. ATTORNEY-GENERAL v. REYNOLDS [1980] A.C. 637 (P.C.) [St. Kitts & Nevis].
29. Phillips Constitution Review Commission Report, at p. 28; A.R. Carnegie, "Judicial Review of Legislation in West Indian Constitutions", [1971] P.L. 276, pp. 283 - 284; abjuring contrary views in JAUNDOO v. ATTORNEY-GENERAL [1971] 17 W.I.R. 141 (P.C.) [Guyana]; CAMACHO & SONS LTD. v. COLLECTOR OF CUSTOMS (1971) 18 W.I.R. 159 (C.A. - W.I.A.S.) [Antigua].
30. Chuks Okpaluba, Judicial Review of Administrative Action in Guyana (1972), 4.
31. MAHARAJ v. ATTORNEY-GENERAL (No. 2) [1979] A.C. 385 (P.C.).
32. See ibid at pp. 396-397 (Lord Diplock); THORNHILL v. ATTORNEY-GENERAL [1981] A.C. 61 (P.C.) [Trinidad & Tobago]; BANTON v. ALCOA MINERALS (1971) 17 W.I.R. 275, 290A (Graham - Perkins J. - Jamaica). Then see Lord Diplock, "The Protection of the Law", [1978 October] W.I.L.J. 12, 13, 15.

33. Also on the matter whether inferior tribunals should refer such matters to the High Court, regarding which, see text after note 42 below.
34. Sections 103, 104(1)(a)(c).
35. See Alexis, "Human Rights Adjudication in the Caribbean Community", in Caribbean Perspectives on International Law and Organizations (B.G. Ramcharan & L.B. Francis ed. 1989), 343-391. Then see chapter 9 below.
36. Section 101 (2)(3).
37. On entrenchment, see chapter 4 text after note 35 above.
38. MARBURY v. MADISON (1803) 5 U.S. (1 Cranch) 137 (Marshall C.J.).
39. RE HERBERT BLAIZE, H.C. Suit No. 19 of 1972, judgment 31 January, 1972 (H.C. - Grenada).
40. GORDON v. MINISTER OF FINANCE (1968) 12 W.I.R. 416 (H.C. - St. Lucia).
41. Section 101(4). See text before note 21 above.
42. Section 8(1), The Supreme Court (Constitutional Redress - Grenada) Rules 1968, S.R.O. No. 41 of 1968. See note 22 above.
43. Section 16(3)(4).
44. Section 102.
45. Section 7, The Supreme Court (Constitutional Redress - Grenada) Rules 1968, S.R.O. No. 41 of 1968.
46. Ibid section 9.
47. Sir Fred Phillips, Freedom in the Caribbean (1977), 136.
48. Text after note 2.
49. Act No. 17 of 1971 [Grenada].
50. HINDS v. R [1977] A.C. 195 (P.C.) [Jamaica]; FARRELL v. ATTORNEY-GENERAL (1979) 27 W.I.R. 377 (E.C.C.A.) [Antigua]. On the separation of powers doctrine, see, further, text after note 51 below.
51. Text after note 14.
52. Chapter 4 text after note 51.
53. Sir Allen Lewis, "The Separation of Powers: Its Relevance for Parliamentary Government in the Caribbean", [1978 October] W.I.L.J. 4.
54. See text to note 55 below. See Alexis, note 11 above, at p. 40.
55. CHOKOLINGO v. ATTORNEY-GENERAL (1980) 32 W.I.R. 354, 358 (Lord Diplock for P.C.) [Trinidad & Tobago].
56. Alexis, Changing Caribbean Constitutions (1983), 83-86.
56A. Text to note 49.

57. MITCHELL v. DIRECTOR OF PUBLIC PROSECUTIONS (No. 1) [1985] LRC (Const.) 127, 145, 146 (H.C. - Grenada).
58. Section 4(5), People's Law No. 83 of 1979, read with section 3, People's Law No. 25 of 1980, and section 3 People's Law No. 30 of 1983.
59. Dr. M. Shahabuddeen, Constitutional Development in Guyana (1978), 571. This is being reconsidered by the T & T (Hyatali) Constitution Review Commission 1987-90.
60. So called after Bishop's father, Rupert Bishop, who had been killed in the 1974 struggles leading up to the 1979 Revolution. It was before, and now is again, called Fort George.
61. Text after note 8.
62. [1985] LRC (Const.) 127 (H.C. - Grenada).
63. Ibid at p. 143.
64. Ibid at pp. 145, 150.
65. Ibid at p. 151.
66. To Kelsen once a new regime has success in overthrowing an old government, and the people conform to the new order, thus giving the new order effectiveness or efficacy, the new regime is lawful from its inception and the old constitution is annulled. It does not matter what is the motive of the revolution.
67. MITCHELL v. DIRECTOR OF PUBLIC PROSECUTIONS (No. 1) [1986] LRC (Const.) 35, 71 - 72.
68. Ibid at p. 72.
69. Ibid at p. 74.
70. Ibid at p. 116.
71. See Alexis, note 11 above, at pp 22-25.
72. Ibid at pp. 88 - 89.
73. Ibid at p. 121.
74. MITCHELL v. DIRECTOR OF PUBLIC PROSECUTIONS (No. 2), Civil App. No. 3 of 1986, 17 May, 1986 (Peterkin J.A. for C.A. - Grenada).
75. Ibid.
76. MITCHELL v. DIRECTOR OF PUBLIC PROSECUTIONS (No. 1) (1985) 32 W.I.R. 241 (P.C.) [Grenada]. Chiefly among these questions was the matter whether the Constitution could be retrospectively amended to deny past Privy Council decisions effect in Grenada, as that law sought to do.
77. Text after note 11.

CHAPTER 8

THE ADMINISTRATIVE SERVICE

The political directorate, the Cabinet, needs a corps of competent and loyal employees on whom it can depend if it is to be able to implement its policies as the Government. In no State does a new Cabinet remove all the State employees who served another regime and appoint its own wholly new corps.

Rather, State employees are generally permanent employees, who serve Government after Government. These employees provide the administrative service that keeps the wheels of the administration of the State rolling from day to day, forever. By contrast, ruling from time to time, Governments come and Governments go. So it is in Grenada.

Since State employees have to serve varying Governments, these employees need certain consideration. They have to be protected against those in one Government who might be minded to see as unacceptable partisanship the competent and loyal service provided by them as employees to another Government.

State employees must give their all to the Government of the day. In return, they should not have to worry that giving their best to one government might incur for them the wrath of another government. The answer is to give appropriate legal protection and security to State employees.

Restoring Morale

The need to ensure that State employees are not prejudiced by one government solely because they served another government competently and diligently is particularly important in Grenada today.

Otherwise, a public officer who diligently served the pre-Revolution Government of Sir Eric Gairy might have been *"mannersed"* by the Revolutionary Government of Maurice Bishop. Then, public officers who

arduously worked for the State during the Revolution, motivated by the political classes prescribed for them by the Revolution, might have been retrenched in the Restoration Government of Herbert Blaize.

That kind of buffeting and battering of government workers would have considerably damaged the morale and the self-confidence of the public service.

In fact, the 1985 Phillips Constitution Review Commission felt they detected evidence that this had happened. The Commission noted that there was *"undoubtedly a severe decline in the morale of the public service"*. They said that the restoration of morale and confidence in political and administrative institutions and leadership is essential, if the Grenada public service is to regain a positive self-image and self-confidence.

The Commission considered that two different kinds of remedies need to be combined to safeguard the public service against excessive political interference or administrative distortion.

One is the evolving of sound organisational structures and systems and professionalism in management. This calls for a modern career merit system. That is beyond the scope of this book. The other is the insulating of public officers against partisan political considerations, according them sound institutional protection against political interference. This is relevant to this book, as a study on the Constitution.

In particular, it is specially relevant to our concern in this chapter, the administrative service. The administrative service provided by State employees may be grouped into different categories. There is the Civil Service. This is sometimes called the Public Service, using this term narrowly *[1]*. There is also the Teaching Service, the Police Service and the Legal Service.

The Public Service

Broadly, the public service comprises all those workers employed by the State in civil employment, as distinct from employment in the disciplined military or para-military forces including the prison service *[2]*. The main exceptions are Ministers, Members of Parliament, Members of the Services Commissions, and Supreme Court Judges *[3]*.

This is the sense in which we generally use the term the public service here. So when we speak of public workers or public officers we include all civil workers including teachers, but excluding police officers, prison officers and the main exceptions just listed, unless otherwise specifically stated.

Public officers are full-time permanent employees of the State, who continue to hold office regardless of changes of Government or among Ministers. The public service is thus a body of politically non-partisan career workers serving the State irrespective of who is the Government of the day, as seen already *[4]*.

Department of Government

Every public officer belongs to a department of government. A Ministry consists of one or more such departments. A department of government comprises, in addition to public officers, members of the political directorate, the Government. Chiefest among the members of the political directorate in a department would be a Senior Minister. He would usually have with him as a junior colleague from the Government either a Minister of State or a Parliamentary Secretary.

The political directorate in the department exercises general direction and control over the department, by section 67 of the Constitution. They are responsible for the policies, plans and programmes of the department, in accordance with the decisions of Cabinet, so that individual Ministerial responsibility merges into collective Cabinet responsibility *[5]*.

The actual execution of those policies, plans and programmes is carried out by the career public officers, the administrative service, sometimes called the bureaucracy.

Subject to the general direction and control exercisable by the political directorate over a department, every department is headed by a public officer, usually called a head of department. A number of departments put together is called a Ministry. Subject to the general direction and control exercisable by the political directorate, a Ministry is under the supervision of a public officer. He is called the Permanent Secretary, by section 67. He answers to the Minister in his Ministry.

The public officer who supervises the department called the Cabinet is the Secretary to the Cabinet. He is supervised by the Minister directly responsible for his department, the Prime Minister, who presides over the Cabinet.

The Cabinet Secretary has charge of the Cabinet Office, by section 68. In accordance with such instructions as may be given him by the Prime Minister, the Cabinet Secretary is responsible for arranging the business of Cabinet and keeping its records. He conveys the decisions of Cabinet to whoever has to carry out a ruling of the Cabinet, called a Conclusion.

The Public Service Commission

The Grenada Constitution has one body looking after the public officers. This is the Public Service Commission. By contrast, some other Caribbean Constitutions have different Commissions looking after the different Services, such as a Judicial and Legal Services Commission, which Grenada too has known *[6]*.

Generally, control of the public service is vested by the Constitution in the Public Service Commission (PSC). It is this Commission that has power to appoint persons to hold or act in offices in the public service, including power to confirm such appointments, by section 84(1).

By those same provisions, the PSC has power to exercise disciplinary control over persons holding or acting in such offices. This includes power to grant leave; and power to remove persons from such offices, manifestly, though, no longer at its own sweet pleasure *[7]*.

There are instances in which the PSC does not enjoy such powers over public officers. But these are few. They are considered below *[8]*. In the generality of cases, it is the PSC that has constitutional superintendence over public officers, any of which powers it may delegate to any of its members *[9]*.

The Public Service Commission comprises a Chairman and four other members. The Chairman and two other members are selected by the Prime Minister. The two other members are chosen by the Prime Minister after he consults the Public Workers' Union and the Grenada Union of Teachers, the agreement of these two bodies being necessary to the appointments here. The

formal appointment in all five cases is made by the Governor-General, under section 83(1) *[10]*.

A person may not sit on the Commission if he is a Representative or a Senator, or a Supreme Court Judge, or a public officer. And the tenure of a member is three years *[11]*.

The grounds on which a member of the PSC may be removed are restricted. He may be removed for inability to exercise the functions of his office, whether arising from infirmity of body or mind or any other cause. Also, under section 83(5), he may be removed for misbehaviour.

And his removal for such inability or misbehaviour requires observance of strict procedures. Following a report by the Prime Minister to the Governor-General that the question of removing a member ought to be investigated, the Governor-General appoints a judicial tribunal to conduct such investigation. This tribunal consists of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a Judge of a Commonwealth Supreme Court.

This tribunal enquires into the matter and reports to the Governor-General, recommending whether the member ought to be removed. If the tribunal recommends against removal, that is the end of the matter, ending any suspension of the member *[12]*. Only if the tribunal recommends removal may the member be removed, by the Governor-General *[13]*.

Should PSC Include Public Officers

The Phillips Commission would like to see two members of the Public Service Commission being appointed from among the Permanent Secretaries by the Governor-General in his own deliberate judgment. Excluding public officers from membership of the PSC is said to be necessary to protect public officers generally against the exercise of favouritism and nepotism by both the political directorate and influential public officers. The Phillips Commission rejected this as anachronistic and naive. But in the relatively constant job-contact between a Permanent Secretary and his subordinates prevailing in Grenada, feelings between them can sometimes run high. Suspicion should be avoided as far as possible.

The Phillips Commission think that Public Service Commissioners drawn from outside the public service might be more susceptible to political pressure than those from within. This can hardly be so when the matter of transferring Permanent Secretaries lies in the hand of the Prime Minister *[14]*. And if outside Commissioners lack first-hand information on the needs of the public service, they can use personal interviews to supplement documentation submitted in support of departmental recommendations regarding the exercise of their powers.

Independent Body

The power in the PSC to govern public officers generally, and the care taken in constituting the PSC, all seen above *[15]*, require the inclusion in the Constitution of section 83(12). This says that

> *"The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority".*

This protective clause shields the Commission from legislative and executive interference, making it an independent and politically neutral body, as with other bodies similarly protected *[16]*.

This clause seeks to guard against a repetition of the 1961 interference by the political executive of Grenada under Eric Gairy in the running of the public service. Sir Eric at the time improperly interfered with the administration of the service, by intimidating the service into condoning financial irregularities committed by the political directorate. His attempt to get the court to stop an enquiry into this matter failed *[17]*.

The enquiry proceeded and found a sorry story of illicit political interference in the public service surrounding what has come to be called squandermania committed by the political directorate *[18]*. It was unpardonably bad in the view of the British, then ultimately responsible for Grenada. For they suspended the Constitution which had only that year, 1962 been introduced to give the political executive certain financial powers.

The existence of the protective clause in question is a recognition of the fact that the political directorate is at times not averse to interfering improperly with the administrative service. Even magistrates administering justice, let alone police officers carrying out their duties, are not beyond the reach of such attempted interference by the government. Grenada on the dawn of independence saw the Gairy Government interfering politically with magistrates and the police. The 1974 Duffus Commission of Inquiry so reported *[19]*.

The kind of protective clause being considered might not always ward off interference. Such a clause shielded a very important public officer, the Attorney-General who was also the Director of Public Prosecutions in 1976, who was a non-Grenadian. Still Gairy prohibited him from returning to Grenada, adding that the ban would be lifted only when the officer agreed to obey orders from the political directorate *[20]*.

But a Constitution must proceed on the basis that its provisions would be honoured. On this basis, the Constitution seeks in this kind of clause to shelter its beneficiary, such as the PSC, from illegitimate interference by Parliament and Cabinet.

It should be noted, however, that the Constitution, quite rightly, leaves the Commission amenable to judicial scrutiny. Section 111(11) refers to provisions in the Constitution saying that a person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any function under the Constitution. It says that no such provision shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with the Constitution or any other law *[21]*.

So this latter provision, section 111(11), expressly qualified the protective clause in section 83(12), as a proviso to it. And this section 111(11) makes it clear that the court can give redress if actions taken by or in the name of the Commission are not authorised by law.

If, therefore, a delegate of the Commission unauthorisedly sub-delegates his power, the court can step in *[22]*. Or if the Commission disciplinarily dismisses a public worker without first giving him an opportunity to be heard in his own defense *[23]*. Or if the Commission in any other way acts without jurisdiction

or authority, or exceeds its permitted jurisdiction or authority *[24]*. In other words, the Commission must always act *intra vires*, within its legal remit. It is not allowed to act *ultra vires*, outside its legal authority. This is the *ultra vires* doctrine. These are now long-settled principles of law *[25]*.

Other provisions also aim at promoting the independence of the Commission. Thus, section 83(3) forbids a person from holding any public office before three years expire since the last day he served on the Commission. The idea is that he must not compromise his position on the Commission, nor take undue advantage of it, with an eye on landing himself in a lucrative or prestigious place in the public service. Again, the salaries and allowances of members of the Commission are charged by the Constitution of the Consolidated Fund, a mechanism discussed below *[25A]*.

Regulating Procedure

Procedurally, the Commission has plenty leeway. It may act despite any vacancy in its membership or the absence of a member. It can act by an absolute majority, a majority of all its members. And its proceedings are not invalidated by the presence or participation of an outsider, according to section 83(14).

Section 83(13) says that *"The Commission may by regulation or otherwise regulate its own procedure" [26]*. This is not a power to create substantive offences for which a public officer may be disciplines. The Privy Council has so ruled, regarding Trinidadian provisions on all fours with these Grenadian provisions *[27]*.

Oddly, though, the Privy Council there added that those provisions do however enable the Commission to stipulate penalties for offences created by others or for breaches by officers of the implied terms of their contracts. Surely, what is critical is not so much the creating of a substantive offence, serious though that is, but rather the apportioning of penalties for offences. Therefore, if the Commission cannot create offences, still less should it be able to set penalties.

Dismissal at Pleasure

Before independence, public officers could be dismissed at the pleasure or whim of the State, for no reason or for any reason, without a hearing and without compensation. This power to dismiss at pleasure was no prerogative power. It was a term implied by the unwritten common law into the contract of employment between the Crown and the employee. This peculiar implied term could not be overcome by express terms in the contract, only by statute.

Then came the independence Constitution, vesting in the Public Service Commission the authority over public officers examined in this chapter, including power to appoint, to discipline and to remove public officers. These Grenadian provisions reflected similar provisions in the Trinidadian independence Constitution.

The whole purpose of those Trinidadian provisions, the Privy Council has said, is to have the PSC insulate public officers from political influence exercised directly upon them by the Government of the day. And this, they added, is an overwhelming reason why power in the PSC to remove public officers *"must be understood as meaning 'remove for reasonable cause' ..... and not as embracing any power to remove at the Commission's whim"*. In their Lordship's view, to construe those provisions otherwise would be to frustrate their whole purpose. And this, it should be noted, was in a case in which a senior Police Officer was dismissed *[28]*.

Their Lordships added that dismissal at pleasure contradicts the guarantee of the right of the individual to equality of treatment from public authority. This right to equality protects one from discrimination by reason of race, origin, colour, religion or sex. Dismissal of individual members of a public service at whim is, they stated, the negation of equality of treatment. Provisions comparable to those in Trinidad and Tobago guaranteeing such equality of treatment appear in the Grenada Constitution. The principles enunciated in that Trinidadian case should therefore apply no less to Grenada *[29]*.

The Police

It would have been noted that the foregoing case in which the Privy Council looked askance at dismissal at pleasure had to do with the dismissal of a senior police officer, Assistant Superintendent of Police Endell Thomas. Mr. Thomas fell under the jurisdiction of a service commission similar to that of the PSC of Grenada, namely the Police Service Commission of Trinidad and Tobago.

The PSC of Grenada has constitutional control over police officers below the rank of Commissioner of Police but above the rank of Sergeant. These are the Inspectors, Assistant Superintendents, Superintendents, Assistant Commissioners and the Deputy Commissioner.

The power to appoint these members of the Royal Grenada Police Force, to discipline them, and to remove them is vested in the Public Service Commission, by section 89(2). That the Commissioner of Police is empowered to recruit to all ranks below Inspector may be acceptable. But the empowering of the Commissioner of Police to dismiss from these ranks all by himself, is not defensible, just as one should reject the empowering of the Commissioner of Prisons to dismiss any of his officers *[30]*. These dismissal powers should be within the purview of the PSC.

The Public Service Commission has a certain role to play in the appointment and removal of the Commissioner of Police. The Governor-General has to act on the advice of the PSC in these matters. But the Prime Minister has a veto on the appointment of any person to hold or act in that post, by section 89(1). Materially, therefore, such an appointment lies in the hand of the Prime Minister.

Although not public officers as such, police officers do carry out an essentially executive function, namely, the maintenance of law and order. Whereas public officers in the civil service are obliged to abide by directives from the political directorate, police officers executing characteristic police duties such as arresting people for crimes are not allowed to follow directives from the political directorate.

But in maintaining law and order generally, the police do act in aid of the Executive. To this extent, the police too belong to the administrative service. That the police are agents of the Executive in this sense has been specifically recognised by the Privy Council *[31]*.

Should there be, then, a Police Service Commission having the same authority over police officers that the Public Service Commission has over public officers? The 1985 Phillips Constitution Review Commission recommended the creation of a Police Service Commission. Interestingly, they want the Chairman of the Public Service Commission to be also Chairman of their suggested Police Service Commission. The Chairman of the Public Service Commission could certainly sit on the Police Commission as an ex-officio member, but perhaps he should not chair it. Otherwise, one could support Sir Fred Phillips.

Special Public Officers

There are certain public officers whose service is governed by special provisions in the Constitution. Usually, the appointment and removal of these special public officers would be determined by a somewhat complicated formula.

One such case has already been seen, that of the Commissioner of Police. He is appointed on the advice of the Public Service Commission, by the Governor-General. But his appointment is subject to a veto exercisable by the Prime Minister *[32]*. So, while the Constitution does not enable the Prime Minister to actually select the Commissioner, the Prime Minister can ensure that the person who is appointed is not wholly objectionable to him.

Director of Audit

A quite important public office is that of the Director of Audit. This office is established by the Constitution itself, in section 82(1).

The Constitution, section 82(2), requires the Director of Audit to audit and report on all public accounts of Grenada, including the accounts of all officers and authorities of the Government *[33]*. His report on such accounts goes to the Minister of Finance, who, by section 82(4), has to lay such reports before the House of Representatives.

The Director of Audit has power appropriate to his functions. Thus, by section 82(3), he has access to all documents he thinks he needs. He is not to take instructions from anyone in carrying out his constitutional mission. For section 82(6) says that in exercising those functions, "the Director of Audit shall

not be subject to the direction or control of any other person or authority", the kind of protective clause just discussed *[34]*. Accordingly, his salary and pensionable allowance are charged by the Constitution on the Consolidated Fund *[35]*.

A person is appointed to hold or act in the post of Director of Audit on the advice of the Public Service Commission, by the Governor-General. Before tendering such advice, the Commission has to consult the Prime Minister. But the Constitution does not give the Prime Minister the veto on such appointment that it gives him in relation to the Commissioner of Police *[36]*.

The removal of the Director of Audit before attaining the prescribed age *[37]*, is subject to the restricted removal controls constructed by the Constitution itself, met above when discussing the early removal of members of the Public Service Commission *[38]*.

Permanent Secretaries

Another category of special public officers comprises the Cabinet Secretary, Permanent Secretaries, heads of departments of government, and deputy heads of departments of government. Nowadays, the public officer who is the administrative head of the Ministry of Finance is referred to as the Director-General of Finance, but the Constitution knows him as the Permanent Secretary.

The power to appoint persons to hold or to act in these offices, to discipline them, and to remove them has to be exercised in accordance with the advice of the PSC, by the Governor-General *[39]*. But in all these matters the PSC has to consult with the Prime Minister, and indeed the Constitution empowers him to veto those appointments *[40]*.

Other Cases

There are still other occasions on which the PSC has to involve specified functionaries when exercising certain powers *[41]*.

Thus, appointments by the PSC to any office of the Governor-General's personal staff require the concurrence of the Governor-General, by section 84(4).

Consider, too, the offices of the Clerk of the House of Representatives, or the Clerk of the Senate, or a member of the staff of either of those Houses. Before appointing, disciplining or removing such officers, the PSC has to consult with the Speaker of the House or the President of the Senate as the case may be *[42]*.

Legal Officers

Provisions establishing an Eastern Caribbean judicial system, and entrenched in Grenada by the Constitution *[43]*, but suspended by the PRG *[44]*, have now been recommissioned. Those provisions, however, set up an OECS Judicial and Legal Services Commission.

Then the Constitution vests in that Commission authority to appoint, discipline and remove certain key legal officers. These include the office of Attorney-General when this is held by a public officer as distinct from a politician. Others are the Director of Public Prosecutions, Magistrates, the Registrar of the Supreme Court, and any public office in the department of either the Attorney-General or the Director of Public Prosecutions.

The Constitution says that the power to appoint persons to hold or act in these offices, and to discipline or remove them, shall be exercised by the Governor-General, in accordance with the advice of the Judicial and Legal Services Commission *[45]*. By certain laws productive of the 1979 Revolution, but no longer operative, provisions in the Constitution mentioning the "Judicial and Legal Services Commission" were to be construed as references to the "Public Service Commission" *[45A]*.

Attorney-General

The Constitution requires that there be an Attorney-General, and makes him "the principal legal adviser to the Government of Grenada", under section 70(1).

The office of Attorney-General may be either the office of a Minister or that of a public office, by section 70(2).

When the office is held by a politician, its holder, a Minister, sits in the Cabinet. In this case, his appointment, tenure and conditions of office are governed by the rules normally applicable to Ministers, discussed above *[46]*.

When the office is held by a public officer, he is an *ex officio* member of the Cabinet in addition to the Ministers, by section 59(2). His appointment, disciplining and removal are then governed by the special provisions governing key legal officers just considered *[47]*. In this case, by section 70(3), he may, if qualified, be appointed to hold or act in the offices of both the Attorney-General and the Director of Public Prosecutions simultaneously. He then, by section 70(4), enjoys the constitutional entitlements attaching to the office of Director of Public Prosecutions, discussed next below.

Director Of Public Prosecutions

Section 71(1) requires that there shall be a Director of Public Prosecutions (DPP), and makes his office a public office.

In order to be DPP, one must be qualified to practise as an advocate in a Commonwealth Court having unlimited jurisdiction in civil and criminal matters. Also, he must have been qualified for at least five years to practise as an advocate or solicitor in such a court. Section 86(4) so stipulates.

The Constitution is this punctillious about his qualifications as the DPP has pivotal functions to perform regarding criminal justice, vested in him by the Constitution. Thus, he may institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence allegedly committed by that person. He may take over and continue any such criminal proceedings instituted or undertaken by any other person or authority. He may discontinue any such criminal proceedings at any stage before judgment is delivered.

But the DPP cannot discontinue an appeal by a person convicted in any criminal proceedings. Nor can the DPP discontinue proceedings at the stage where a case has been stated or a question of law referred at the instance of a person so convicted.

The DPP may exercise those powers himself directly or through other persons acting on his general or special instructions.

Only the office of the DPP may take over and continue or discontinue criminal proceedings instituted or undertaken by another person or authority.

These powers are vested in the DPP to the exclusion of any other person or authority, by section 71 *[48]*.

In exercising these functions, the DPP *"shall not be subject to the direction or control of any other person or authority"*. Nor is the DPP subject to such direction or control in exercising the function vested in him by the Constitution to prosecute any person who sits or votes in either House of Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so. Section 71(6) says so. The meaning of provisions of this type has been fully discussed earlier in the chapter *[49]*.

The salary and pensionable allowances of the DPP are charged by the Constitution on the Consolidated Fund, a protective mechanism considered later on *[50]*.

Consistently, while the DPP may be removed before attaining the prescribed age *[51]*, his removal is controlled by the strictly regulated special removal requirements set by the Constitution seen above *[52]*. His other disciplining, and his appointment too, are governed by the special provisions regarding key legal officers considered above *[53]*.

The Ombudsman

The kind of protection afforded by the Constitution to such key administrative offices as the Director of Audit and the Director of Public Prosecutions, considered above *[54]*, is what one expects to be extended to the Ombudsman when Grenada introduces him, by whatever name. So one suggests that his post be entrenched into the Constitution, by an appropriate amendment to the Constitution. This too was the thinking of the 1985 Phillips Constitution Review Commission.

This Constitution Commission was right in recommending that an appointment to the office of Ombudsman should be made by the Governor-General in his deliberate judgment after consulting the Prime Minister and the Leader of the Opposition. This should produce the broad consensus desirable in relation to an appointment to this important constitutional office.

But whatever might be the procedure for his appointment, one anticipates that, in exercising his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority.

His functions no doubt will be to investigate and report on complaints by individuals that they have been the victims of injustice resulting from maladministration on the part of any public functionary, any department of government, or any other public authority whether of the central government or any local government authority. Maladministration may be actions or omissions.

He will surely be reporting to the Houses of Parliament on his investigations. It would be better too if he is empowered to make specific recommendations for redress, including recommendations for monetary compensation, where he finds that a complaint within his jurisdiction has been substantiated.

One will be shocked if his removal from office is not subject to restricted removal controls. These will have to confine his removal to circumstances indicating inability or misbehaviour, and only in accordance with strict procedures entailing intervention by a judicial tribunal, as apply to the Director of Public Prosecutions *[55]*.

Notably, the Constitution Commission was consistently pressed to recommend the creation of the office of Ombudsman, by many witnesses complaining about persistent bureaucratic abuses. The Commission felt that in the special circumstances of Grenada over the decade 1973-1983, the Ombudsman could usefully aid good administration and maintain public confidence in governmental processes.

The Commission accepted that the Ombudsman can help correct administrative errors more speedily, informally and with greater regard to the individual justice of the case than is possible by the ordinary legal process of the courts. They see him, not as a substitute for, or a rival to, but rather as a necessary complement to the Courts and Parliament.

The matter of the role and functions of an Ombudsman in a modern-day parliamentary democracy is discussed elsewhere by this writer *[56]*.

Protecting Pensions

Protection for administrative offices recognises that the giving of service by such officers entitles them to certain consideration after they cease working for the state.

The Constitution contemplates that a public officer may be required to retire on abolition of his office or for the purpose of reorganising his Ministry or Department. Such an officer, section 84(8) says, shall be entitled to pension or retiring benefits as if he had attained the compulsory retiring age.

These provisions clearly catch a decision by Government to retrench or retire public workers on the ground that the offices of such workers are being abolished or that their department is being reorganised. A policy of such retrenchment was adopted and applied by the Government in 1987. The extra-legal consequences resulting from that policy apart *[57]*, the Act passed by Parliament to facilitate the retrenchment *[58]* must be read subject to the Constitution.

The Constitution is rather anxious that the pension benefits of public officers be protected. By *"pension benefits"* it means any pension, compensation, gratuity or other like allowances for persons in respect of their service as judges or public officers; or for their widows, children, dependants or personal representatives regarding such service *[59]*. It insists that pension benefits already accrued to a public officer should not later be made less favourable to him *[60]*.

At times a person may be entitled to exercise an option as to which of two or more pension laws he wants applied to him. For his protection, the Constitution, section 92(3), says that the law for which he opts shall be deemed to be more favourable to him than the other laws.

The Constitution seeks to ensure that funds are available for the payment of pensions. Section 92(4) charges all pension benefits on the Consolidated Fund. It adds that this is subject to the exception allowing such benefits to be charged upon or duly paid out of some other fund. Great care has to be taken that this exception is not abused. Rather, there should be proper adherence to the requirement that pension benefits be charged on the Consolidated Fund, a mechanism discussed below *[61]*.

It may at times be necessary to decide whether a pension benefit should be refused outright, or withheld, or reduced or suspended. The Constitution says

that a law may grant such a discretion to a person or authority. But the Constitution adds that no pension benefit may be thus refused, withheld, reduced or suspended without the concurrence of the Public Service Commission *[62]*.

Public Service Board of Appeal

A public officer disciplined by the Public Service Commission or its delegate may wish to appeal such disciplinary decision. He may so appeal, to the Public Service Board of Appeal.

This Public Service Board of Appeal is established by the Constitution itself, section 90(1). It comprises a Chairman selected by the Governor-General in his own deliberate judgment, another member chosen by the Prime Minister, and a third member named by the Public Workers' Union (PWU) and the Grenada Union of Teachers (GUT). The formal appointment in each case is made by the Governor-General.

Members of this Board cannot be Representatives or Senators. They hold office for three years. They are removable before, but only for inability or misbehaviour, and in accordance with restricted removal controls entailing intervention by a judicial tribunal *[63]*, as apply to members of the Public Service Commission, seen above *[64]*.

The idea is that the Board be independent. So, section 90(10) says that, in exercising its functions under the Constitution, the Board *"shall not be subject to the direction or control of any other person or authority"*. The role of this kind of protective clause has been fully discussed above *[65]*.

Similarly, the salaries and pensionable allowances of members of the Board are charged by the Constitution on the Consolidated Fund, a measure considered below *[66]*.

Every decision of the Board requires the concurrence of an absolute majority of its members, that is, a majority of all its members, by section 91(4). Subject to that requirement, it may act despite any vacancy in its membership or the absence of any member, under section 91(7).

The Board may block off appeals to itself regarding public officers whose emoluments are below such sum as it may prescribe, or regarding such

disciplinary decisions as it prescribes. But the Board may not cut off access to itself regarding decisions to remove a public officer from office *[67]*.

A public officer may appeal to the Board against any decision regarding which the Governor-General has to act on the advice of the Public Service Commission (PSC), or any decision of the PSC itself to discipline or dismiss him. These include decisions made by the PSC on appeal from or confirming decisions of any of its delegates, or decisions of such a delegate himself. An officer may appeal any decision of the PSC concurring in the refusal, withholding, reducing or suspending of his pension benefits regarding his service as a public officer. Section 91(1) regulates these matters.

On appeal, the Board may affirm or set aside the decision appealed against or make any other decision which could have been made by the authority from whom the appeal lies, by section 92(3).

A government decides to retrench, dismiss, public officers. It enacts legislation saying it is doing so for reasons amounting to incompetence or non-performance of duties on the part of the public officers. If a person affected is a public officer whose disciplining rests with the PSC, certain consequences are required by the Constitution.

First, his removal is a matter for the PSC. And, by the rules of natural justice, his removal should be wholly invalid if the PSC decided to remove him without first giving him an opportunity to appear before them and put his case against being so removed. Second, as seen in this discussion, the officer has a right of appeal to the Board of Appeal in these circumstances.

So, if the retrenchment legislation bars him from access either to the PSC or the Board of Appeal, that Act contradicts the Constitution. To be valid, that Act needs to be a proper amendment of the Constitution, requiring the vote of two-thirds of all the Representatives, in accordance with the scheme of entrenchment discussed above *[68]*.

If the Retrenchment Act 1987 authorises retrenchment for incompetence or non-performance, it certainly seeks to bar access to the PSC and the Board of Appeal. Nor did it have the majority vote of two-thirds of all the elected members of this House, the six members then in Opposition voted against.

Public Service Ministry?

The 1985 Phillips Constitution Review Commission recommended the establishment of a Ministry of the Public Service. They want this Ministry to be given responsibility for the creation of new posts, classification and pay, and general conditions of service. They hope thereby to enhance personnel administration and organisational development.

They see the holder of the top administrative post in this new Ministry as the most senior Permanent Secretary, and the Head of the Civil Service. They envisage this suggested Ministry as an executive arm of the PSC.

Statutory Bodies

Just as the Constitution establishes such administrative authorities as the PSC, so too Acts passed by Parliament set up bodies to assist in delivering administrative services to the public. Such a body thus set up by or under an Act of Parliament is a statutory corporation.

An old example was the Central Water Commission, parented by the Water Supply Act 1969 *[69]*. This Act sought to ensure that the public was provided with a sufficient and reliable supply of water. The Act required the Minister responsible for water to ensure that there was in place the body responsible for administering the Act from day to day. This body was the Central Water Commission, now the National Water and Sewerage Authority (NAWASA).

The Minister could not put on the Commission whoever he wanted. The Act itself stipulated who should be on the Commission. Nor could the Commission embark upon just whatever project pleased it. As an organ of State or of public administration, the Commission had to keep within the powers afforded it by its legal source of authority, its constituent Act. The Commission, then, always had to act *intra vires*, within its legal authority; it could not act *ultra vires*, outside its legally permitted sphere. This is the *ultra vires* doctrine, already met above *[70]*. These principles apply equally to NAWASA.

Parent provisions may even seem to enable administrative authorities to act in their own subjective determination. But no matter how widely cast such provisions might seem, there is always a remit within which these authorities

must keep, or else the courts may interfere. To hold otherwise is to concede arbitrary powers to these bodies, whereas arbitrary powers have no place where there is the rule of the law.

It makes no difference that a statutory body might have acted under instructions from a Minister. No Minister has authority to give illegal instructions to a public body. Thus, the Antiguan Courts interfered when the Collector of Customs complied with unconstitutional instructions from a Minister, to refuse a person licence to import goods only because that person supported the Opposition *[71]*. Nor need it matter that administrative measures made under statutory powers might actually have been laid before Parliament. The Courts may still intervene.

Legislation setting up an administrative authority may enable a Minister to give specific instructions to that body. In that case The Minister may direct that body on what decision should be reached on matters regarding which he may give such instructions. That decision need not be on a matter of general policy. Sometimes, the legislation enables him to give directions only on general policy matters. Here, he may not direct the corporation on specific matters not entailing general policy considerations.

These are the board principles governing the miscellany of statutory corporations in Grenada, looking after such concerns as electricity, telephone, national insurance, and airports.

Administrative Bodies

Government at times set up a body and tells it to look after some area of concern, without enacting legislation regulating its composition, powers and procedure.

Though sometimes called statutory corporations, these bodies clearly do not qualify for such status. For they are not the product of any written law defining their ambit. They are rather like committees, mere administrative bodies. They exist at the pleasure of the Minister setting them up. This kind of body too is however, subject to the ultra vires doctrine considered above *[72]*.

Bodies may be set up under the prerogative, the residue of arbitrary power legally left in the hands of the Sovereign or Crown. But prerogative powers are themselves now circumscribed by the *ultra vires* doctrine, rendering them amenable to judicial review *[73]*. All the more so, then, are non-statutory powers not prerogative in nature subject to judicial review *[74]*.

Footnotes

1. See text to notes 2-3 below.
2. Grenada Constitution section 111(1).
3. Grenada Constitution section 111(2).
4. See text before note 1.
5. On collective Cabinet responsibility and individual Ministerial responsibility, see chapter 3 text after note 58 above.
6. References to such a Commission in the Grenada Constitution sections 86, 111(3) are to the Commission established by the Eastern Caribbean States Supreme Court Order once in abeyance after having been suspended by the short-lived PRG.
7. On the abolishment of dismissal at pleasure, see text after note 27 below.
8. Text to notes 32-42.
9. Or to any public officer, but here it needs the consent of the PM: section 84(2). See too section 83(13), mentioned in note 26 below.
10. A substitute Chairman may be designated from among the ordinary members by the Prime Minister: section 83(9)(10).
11. Section 83(2)(4).
12. If the question of removal has been referred to the tribunal, the Governor-General on the advice of the PM may suspend the member: section 83(8).
13. Section 83(5)-(9).
14. Section 85(2).
15. Text after note 7.
16. E.g. the Public Service Board of Appeal, see text to note 65 below.
17. GAIRY v. LLOYD (1962) 4 W.I.R. 413 (S.C. - Windward Islands & Leeward Islands).
18. Report of the Commission of Inquiry into the Control of Public Expenditure in Grenada during 1961 (1962) Cmnd. 1735.
19. Report of the Duffus Commission of Inquiry into the Breakdown of Law and Order and Police Brutality, in Grenada, February 27, 1975.
20. Trinidad Guardian, 14 August, 1976, page 1, cols. 8-9.

21. See Alexis, "The Life of RE FISHER", [1978 October] W.I.L.J. 65.
22. RE SARRAN (1969) 14 W.I.R. 361 (C.A. - Guyana).
23. EVELYN v. CHICHESTER (1970) 15 W.I.R. 410 (C.A. - Guyana).
24. RE LANGHORNE (1969) 14 W.I.R. 353 (C.A. - Guyana).
25. RE FISHER (1966) 9 W.I.R. 465 (S.C. - Jamaica) to the contrary is an aberration, not to be followed. See Alexis, "The Life of RE FISHER", [1978 October] W.I.L.J. 65.

25A. Chapter 10 text after note 2, regarding section 80(5).

26. Section 83(13) adds that the PSC may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority of the Government for the purpose of the exercise of its functions.
27. THOMAS v. ATTORNEY-GENERAL [1982] A.C. 113 (P.C.) [Trinidad & Tobago].
28. Ibid. at pp. 124-127. But see text after note 26 above. The officer was Assistant Superintendent of Police Endell Thomas.
29. See further Alexis, Changing Caribbean Constitutions (1983), 147-149, 190.
30. Regarding police officers, see section 89(3). Regarding Prison Officers, see People's Law No. 11 of 1980, Prisons Act 1980, section 11.
31. THORNHILL v. ATTORNEY-GENERAL [1981] A.C. 61 (P.C.) [Trinidad & Tobago]. See too MAHARAJ v. ATTORNEY-GENERAL (No. 2) [1979] A.C. 385 (P.C.) [Trinidad & Tobago].
32. See text after note 30.
33. Also, the accounts of all courts in Grenada, every commission established by the Constitution, and the Clerk to the Houses of Parliament. By section 82(5) Parliament may prescribe additional functions for him regarding the accounts of the Government or of other public authorities.
34. Text after note 14.
35. Section 80(5). See chapter 10 text after note 2 below.
36. See section 87(1)-(3). Then see text to note 32 above.
37. The age of 55 years or such other age as Parliament may prescribe, by section 87(5)(10).
38. See text after note 11; then see section 87(6)-(9).
39. Section 85(2), Proviso (b).
40. Section 85(2), Proviso (a).
41. See section 84(6) where the PSC has to consult the Judicial and Legal Services Commission, regarding which latter Commission, see chapter 7 text after note 11 above.
42. Section 84(5). On these offices, see chapter 4 text after notes 9 and 17 above.
43. See chapter 7 text after note 4 above.
44. See chapter 7 text after note 56 above.
45. Sections 86(1), 88(2).

45A.People's Law No. 15 of 1979, section 3(1), Governor-General's Order 9 November, 1984.
46. Chapter 3 text between notes 43 and 65.
47. Text after note 43.
48. Section 71(2)-(5).
49. Text between notes 14 and 25.
50. Chapter 10 text after note 2 regarding section 80(5).
51. The age of 55 years or such other age as Parliament prescribes: section 85(5)(10).
52. See section 86(6)-(9). Then see text after note 11 above.
53. See section 86(2). Then see text after note 42 above.
54. Text after notes 32 and 42.
55. See text after note 50 above.
56. Alexis, Changing Caribbean Constitutions (1983), 209-246.
57. Two Ministers, Alexis and Brizan, resigned from the Herbert Blaize Cabinet in April 1987, due in large measure to this retrenchment. Parliamentary Secretary Tillman Thomas and Senator Jerome Joseph resigned same day from the Government on the same issues. See chapter 3 note 30 above.
58. The Public Service Re-Organisation Act 1987, Act No. 9 of 1987.
59. Sections 92(5)-(7), 93(6).
60. Section 92(1)(2).
61. Chapter 10 text before note 1.
62. Section 93(1)-(4). On the Commission, see text after note 6 above.
63. Section 90(2) -(9).
64. Text after note 11.
65. Text after note 14.
66. Chapter 10 text before note 1.
67. Section 91(5). By section 91(6), the Board may, with the consent of the Prime Minister, confer powers or impose duties on any public officer or any authority of the Government for the purpose of the exercise of its functions.
68. Chapter 4 text after note 35 above.
69. Act No. 23 of 1969.
70. Text after note 21.
71. CAMACHO & SONS LTD. v. COLLECTOR OF CUSTOMS (1971) 18 WIR 159 (C.A. - WIAS).
72. Text after note 21.
73. GOURIET v. UNION OF POST OFFICE WORKERS [1978] AC 435.
74. R. v. CRIMINAL INJURIES COMPENSATION BOARD, Ex p. LAIN [1967] 2 QB 864.

CHAPTER 9

THE FUNDAMENTAL RIGHTS AND FREEDOMS

The Constitution has a chapter containing provisions for protecting the enjoyment of the fundamental human rights and freedoms of the individual. This chapter is endearingly called the Bill of Rights. This, chapter 1, is considered by some to be *"the most sacrosanct part of the Constitution" [1].*

The General Rights

The Bill of Rights recites that every person in Grenada is entitled to the fundamental rights and freedoms it protects. These it says he is entitled to, whatever his race, place of origin, political opinions, colour, creed or sex.

These rights and freedoms include the right to life, liberty, security of the person and the protection of the law. There is freedom of conscience, expression, assembly and association. One has the right to the privacy of his home and other property. There is freedom from deprivation of property without compensation. The right to work is mentioned.

These entitlements are referred to in section 1, and are elaborated on in more detailed provisons subsequently.

On approaching these provisions one must bear in mind a certain essential principle underlying the interpretation of a Bill of Rights. This is that *"the provisions in the Constitution touching fundamental rights must be construed broadly and liberally in favour of those on whom the rights have been conferred" [2].*

The Usual Exceptions

But no right is absolute. There are limitations on the guaranteed rights and freedoms. One's enjoyment of these rights and freedoms is subject to respect for

the rights and freedoms of others and for the public interest, as section 1 says. The enjoyment of a right entails the observance of societal obligations.

Often, therefore, the Bill of Rights says that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of its provisions to a certain extent. This is the extent to which the law in question is reasonably required in the interests of defence, public safety, public morality, public health; or for the purpose of protecting the rights and freedoms of other persons; or for preventing or detecting crime. But even such a law is invalid if it is not reasonably justifiable in a democratic society. These are the usual exceptions.

Agencies Addressed

The command to respect the rights and freedoms guaranteed to the individual by the Bill of Rights provisions of the Constitution is addressed to all agencies of the State.

These rights, the courts have said *"cannot be withdrawn or limited by any action of the Executive and ..... are deeply entrenched against interference by Parliament" [3].* In other words, the protection of the Bill of Rights avails against public authorities. And *"in this context, 'public authority' must be understood as embracing local as well as central authorities and including any individual who exercises functions of a public nature" [4].* These functionaries include police officers *[5]*, and High Court Judges *[6]*. These principles are now well established *[7]*.

Every Person in Grenada

Noticeably, the Bill of Rights extends its rights and freedoms to *"every person in Grenada"*, according to section 1. Equally, it consistently repeats that *"no person"* shall be denied its rights and freedoms.

So, to be entitled to these rights, one does not have to be a citizen of Grenada *[8]*, generally speaking *[9]*. Nor are these rights enjoyable only by a natural person, a human being. These rights may be claimed by an entity made a person by law, such as a corporation or a company *[10]*.

Personal Physical Rights

Some of the guaranteed rights protect the body, the person, of the individual, and his right to enjoy personal liberty.

Right to Life

In order to enjoy any right at all, one has to be alive. The most sacrosanct of the rights is the right to life. Section 2(1) ordains that no person shall be deprived of his life intentionally. This is so even if he is a member of a Grenadian disciplined force, by section 18(3).

But section 2 carves certain exceptions out of this right to life. The right is not violated if one dies in execution of a court sentence for a criminal offence for which he has been lawfully convicted. So hanging for murder is considered constitutional *[11]*.

Nor is the right violated if he dies through the use of force reasonably justifiable for certain purposes. These include the defence of any person from violence, or the defence of property; the arresting of a person or preventing his escape from lawful detention; the suppressing of a riot, insurrection or mutiny; the preventing of a person from committing a criminal offence. To die as the result of a lawful act of war is not to be denied the right to life.

Inhuman Treatment

The State is not allowed to mutilate or otherwise torture a person. By section 5(1), no person shall be subjected to torture or to inhuman or degrading punishment or other treatment. This is so even if one is a member of a Grenadian disciplined force, by section 18(3).

It allows for any description of punishment that was lawful in Grenada immediately before the commencement of the Constitution, such as the capital punishment of hanging for murder *[12]*. But it rejects mandatory detention at hard labour during the Governor-General's pleasure *[13]*.

Liberty

A person is guaranteed his personal liberty, by section 3(1). If persons are lawfully assembled together, and the police forcibly remove them unlawfully, this may violate their right to personal liberty *[14]*.

But the law may authorise the deprivation of one's liberty in certain cases. He may be arrested upon reasonable suspicion of his having committed, or being about to commit, a criminal offence. He may be imprisoned by order of a court for a criminal offence for which he has been convicted, or restrained to be brought before a court under the order of a court. He may be controlled to prevent the spread of an infectious or contagious disease, or to care for him or to protect the community from him if he is of unsound mind, addicted to drugs or alcohol or is a vagrant.

He may be deprived of his liberty to confine him within a specified area within Grenada. If he is not a citizen of Grenada, he may be prevented from entering Grenada unlawfully, or he may be expelled, deported, from Grenada *[15]*.

Arbitrary Search

The searching of a person entails an interference with his liberty, a restraint upon him. He is protected against arbitrary, illegal searches. The sanctity of his person must remain inviolate. Section 7(1) lays down that, except with his own consent, no person shall be subjected to the search of his person.

This, of course, is not to say a person may never be searched. The freedom from invasion of his person is subject to the usual exceptions, met above *[16]*. These protect such concerns as public safety and public order. These exceptions enable the police to search a person whom they reasonably believe to be carrying on him narcotic drugs or illegal arms or ammunition.

The Protection of the Law

With or without searching a person, the police may decide to arrest him on what they consider to be reasonable suspicion that he committed, or is about to

commit, a criminal offence, as has just been seen. He would then be tried as a criminal, unless sooner released.

It is better that a few guilty persons should escape detection, conviction and punishment, than that one innocent person should be kept under suspicion of crime, convicted and punished. The guilty should be punished, while the innocent go free. There are safeguards to achieve these objectives. They exist in provisions of the Bill of Rights designed to secure the individual the protection of the law.

Natural Justice

The case of a person charged with a criminal offence, no less than the case of a person whose civil rights or obligations are being determined, shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law *[17]*. These are the broad requirements of the popular rules of natural justice *[18]*.

These rules insist that those canons of decency and fairness which express the notions of justice cherished by civilised peoples should extend even toward those charged with the most heinous offences.

This doctrine of natural justice is sometimes called the procedural due process of law.

These rules of natural justice apply widely. Even an alien has to be given an opportunity to be heard before the State may execute an order expelling him from the State *[19]*.

Early Trial

A criminal charge has to be tried within a reasonable time. One who is arrested or detained has to be brought before a court without undue delay, and tried within a reasonable time. Otherwise he should be released, though further proceedings may later be brought against him *[20]*.

The idea is that a person who is arrested or detained, or otherwise facing a criminal charge, is entitled to an early trial, or else released. But what is an early

trial depends on all relevant circumstances, varying from situation to situation. What may be an undue delay in one case may be an early trial in another *[21]*.

Fair Hearing

A person facing a criminal charge is entitled to be afforded an opportunity to get a fair hearing, at which he can defend himself. So too the hearing of a determination of a person's civil rights or obligations has to be fair.

He must know the charge against which he has to defend himself. He has to be informed as soon as reasonably practicable, in a language he understands, and in detail, of the nature of that charge *[22]*.

He must be given adequate time and facilities to prepare his defence. He is entitled to defend himself before the court in person, or, at his own expense, by a legal representative of his own choice. He may call his own witnesses, and examine those called against him *[23]*.

Since one is entitled to this opportunity to be heard properly, his trial should not take place in his absence. Unless, of course, he consents to being tried in his absence. He is not to be forced to be present. He may refuse the opportunity to be present. Nor may he complain if he conducts himself in such a way as to render impracticable the continuation of the proceedings in his presence. If he so conducts himself, the court may order him to be removed, and the trial may proceed in his absence. These various provisions are made in section 8(2).

Consider defendants who continually chant, stomp their feet, clap, and do other such things to interrupt the court trying them. They may be ordered out of court while the proceedings go on. This principle is clear, however controversial might be its application in a particular case. Such controversy has arisen regarding the Maurice Bishop murder trial.

Nineteen persons were accused of murdering Prime Minister Maurice Bishop on 19 October, 1983. Included among the accused was Bishop's former Deputy, Bernard Coard. They continually interrupted the trial court by chanting, stomping, clapping and such other strategies. Everytime they did so, Byron C.J. (Ag.) would put them out of court and continue the trial before the jury in their absence. Fourteen of the accused persons, including Coard and his wife Phyllis, were convicted of murder and sentenced to hang *[24]*.

Appealing, they argued that, among other things, the trial was nullified by being conducted in their absence. It would have been most interesting to hear what would have been said on this by the President of the Court of Appeal, that distinguished jurist of the criminal law, Haynes P. of Guyana. But unfortunately he passed away before the appeal could be concluded. That appeal was eventually dismissed on 12 July 1991 *[25]*.

Impartiality

The guarantee that a criminal charge has to be tried by an independent and impartial court, entitles one to freedom from bias.

A court may not convict one because of prejudices formed against him before or outside the trial. This is designed to protect one against such injustices as trial by newspaper.

A magistrate tells a person appearing before him as an accused that if the accused ever again appears before him, he would imprison the accused. The accused later appears before the magistrate and is imprisoned. That sentence and conviction may not stand. It may offend the rule against bias. A Grenadian magistrate once found this out *[26]*.

The guiding principle has long been stated. It is not merely of some importance, but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done *[27]*.

The Golden Thread

There are several other principles ensuring that one accused of crime is afforded the protection of the law. Some of these need not detain us too long. These include the ones requiring that trials be generally held in public, prohibiting the retroactive creating of offences or increasing of penalties, forbidding the subjecting of a person to double jeopardy, and entitling a person to say nothing at his trial *[28]*. But attention must be given to that golden thread which runs throughout the criminal law.

This golden thread is that a person shall be presumed to be innocent until he is proved or has pleaded guilty. This is entrenched in the Grenadian Bill of Rights *[29]*.

Anyone who has served as a juror in a Grenadian Assize knows this only too well. This is emphasised for him equally by the prosecution, the defence, and the presiding judge. The juror is told that this golden thread means that the accused does not have to prove his innocence; that rather it is for the prosecution to prove his guilt, and this must be done beyond all reasonable doubt.

Compensating Unlawful Arrest

A person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person. Or, section 3(6) adds, the arrested person may get compensation from any other person or authority on whose behalf the arrest or detention was carried out.

Consider where a High Court Judge unlawfully causes a person to be arrested or detained by a police officer, for a contempt of court not committed. The person arrested can get compensation from the State on whose behalf the Judge and the police officer acted *[30]*.

Noticeably, this section 3(6) specifically affords constitutional redress in respect of the activities of a private individual, whereas the courts tend to block contitutional redress in such situations *[31]*.

Man is a Social Being

One takes for granted the prohibition in section 4 against slavery and forced labour. Of more practical relevance is the recognition shown by the Bill of Rights for the philosophical pronouncement that man is a social being, needing to move about and mix with his fellow men.

Freedom of Movement

The Bill of Rights says that no person shall be deprived of his freedom of movement. This means, section 12(1) says, he has a right to move freely throughout Grenada, to reside in any part of Grenada, with immunity from expulsion from Grenada.

This guarantee is subject to the usual exceptions for such concerns as public safety, public order and defence. Thereby the State may expel or deport aliens, as distinct from citizens of Grenada *[32]*. The State may also restrict the extent to which public officers may leave Grenada *[33]*. If the freedom of movement of a Grenadian is curtailed, if he is detained, to preserve public order, he is entitled to have his case reviewed by an independent and impartial tribunal *[34]*.

Often an individual wants to have another person stopped from leaving the State because the latter owes some debt to the former. He cannot believe when he is told that this is not permitted. The Constitution does however allow a court to restrict a person's right to leave Grenada because of proceedings against him regarding criminal offences or for his extradition or deportation *[35]*.

Also the Constitution enables restrictions to be imposed on the right of a person to leave Grenada that are reasonably required to secure the fulfillment of any obligations imposed on that person by law. But such a law has no effect to the extent that it is shown not to be reasonably justifiable in a democratic society *[36]*.

The Carriacou Connection

There has long been an on-going sea traffic between the islands of Carriacou and Petit Martinique on the one hand and the island of Grenada on the other. Boats moving from the islands of Carriacou and Petit Martinique to the island of Grenada from time to time bring, not only passengers, but also a variety of goods.

Every now and then, customs officers and police officers swoop down on these boats in St. George's, in the island of Grenada, searching them and their passengers. Goods would be seized. And criminal prosecutions brought against persons in possession of those goods. The question arises whether these searches

and seizures are a violation of the guaranteed freedom of movement throughout the State.

The 1985 Phillips Constitution Review Commission considered that these searches constitute a *"glaring and unacceptable instance of discrimination against the people of these islands"* of Carriacou and Petit Martinique. The Commission advised that *"any law authorising these searches is unconstitutional since it contravenes the freedom of movement guaranteed by section 12 of the Constitution"*.

Assembly and Association

People congregate together in assemblies for discussion and social intercourse, and form themselves into associations for their mutual benefit and protection. The Constitution enshrines these rights to assemble and associate.

Section 11(1) says that no person shall against his consent be hindered in the enjoyment of his freedom of assembly and association. It adds that this means the individual has a right to assemble freely and associate with others. In particular, he may form or belong to trade unions or other associations for the protection of his interest.

If persons lawfully assemble at a particular place, and their liberty to be there is admittedly violated by the police in unlawfully driving them away, their right to assemble and associate is surely violated. It is no answer to say they could assemble elsewhere *[37]*.

Naturally, freedom to associate necessarily implies a right not to be compelled to associate. The two are so inextricably bound up together as to constitute one integral freedom. Take an Act of Parliament deeming all cane-farmers to be members of a certain cane-farmers' association and compelling them to support that association financially. This may violate the right to associate, by infringing the right not to be compelled to associate *[38]*.

Public officers may be subjected to special restrictions without their rights here being violated. Also, this freedom of assembly and association is subject to the usual exceptions, seen above, protecting such concerns as public order.

Thus, the State may take measures that are reasonably justifiable for preserving public order at public meetings, public processions and marches *[39]*. It is not reasonably justifiable to condition the holding of public meetings on the granting of permission by a functionary, e.g., the Chief of Police, in his absolute discretion. But the courts usually refuse to interpret legislation as conferring unfettered discretion *[40]*.

The public has an interest in the exercise of the rights to hold public meetings, to demonstrate, and to protest. These are often the only means of peacefully ventillating grievances effectively *[41]*.

Equally, the public has a vested interest in promoting orderly social change. Persons have the right to associate together in trade unions of their choice. They should also thereby have the right to foster the legally permitted objectives of such an association, such as the right to engage in free collective bargaining. This advances orderly social change. Judicial pronouncements sharply differentiating between the association and its legally permitted objectives *[42]*, are therefore difficult to support.

Intellectual Rights

Every Grenadian is constitutionally assured of his intellectual rights. He is free to apply his mind to think according to his ability. In order to enhance his thinking, he may speak freely to his fellow-men, discussing ideas fully.

Free Conscience

Everyone has a conscience, his own concept of right and wrong. He resents the taking of unfair advantage. He loves kindness.

It is right therefore that the Bill of Rights says that, except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience. This protection in section 9(1) extends this freedom to thought, belief and religion. The right to religion is spelt out in detail, to embrace virtually every facet of freedom of religion, including freedom from having to take an oath which is contrary to one's religion *[43]*.

There are the usual exceptions, for such concerns as public order.

One might not be allowed to contend that his freedom of conscience prevents him from serving on a jury in that his conscience forbids him to judge others *[44]*.

Free Expression

A Grenadian cherishes the right to speak according to his conscience. He insists on being free to express himself.

The Constitution agrees with him. Section 10(1) lays down that no person shall be hindered in the enjoyment of his freedom of expression. This entitles him freely to hold opinions, receive ideas and information from others, and communicate ideas and information to others. His correspondence should not be interfered with.

The right to free expression is understood as embracing freedom of the press, so very important to the health of parliamentary democracy.

Restrictions may be imposed on public officers. Also, there are the usual exceptions for such concerns as public order and public safety. These are considered as permitting the State to expel an alien for the public good *[45]*; and to prohibit making statements at public meetings and processions capable of stirring up racial hatred or racial violence *[46]*.

The right to free expression is subject to measures for maintaining the authority and independence of the courts, by section 10(2)(b). A newspaper may not with impunity say that *"some of them judge and them ..... could take bribe"*. The editor of a newspaper carrying such a statement may find himself being incacerated for contempt of court *[47]*.

Another limit to free expression embodies measures that are reasonably required for protecting the reputations, rights and freedoms of others, to the extent reasonably justifiable in a democratic society, by section 10(2)(b).

Under this facility, it has been held that the State may require a newspaper proprietor to deposit with the State money or other security such as insurance policies or bank guarantees. These are required, to be drawn against in case libel judgments are awarded against the newspaper *[48]*.

This ruling causes one some discomfort. It has within it the seeds for enabling libel deposit requirements to sprout into disguised oppression of the press.

The same may be said of newspaper licence fees. When the fee is seen as a tax, its imposition is simply a device for raising revenue, which is wholly unobjectionable. The worry starts when the fee becomes so exorbitant as to expose it to be really a disguised unconstitutional abrogation of press freedom. If the fee is so manifestly excessive as to indicate that it is aimed at preventing the publication of newspapers, one is justified in concluding that its imposition is not reasonably required for the raising of revenue. The Privy Council itself has shown appreciation for this reasoning *[49]*.

Then there are those measures prohibiting the importation of printing material except under licence granted by competent authority obliged to obey instructions from a Minister. A Court has upheld such measures, saying they directly affect only imports, and do not directly affect freedom of expression *[50]*. Clearly, such measures do directly affect freedom of expression, the imported newsprint being central to the enjoyment of the right to communicate ideas by the free press.

This *"direct impact"* test can undermine a Bill of Rights, unless applied against the State and in favour of the individual. It is weighted too heavily against the individual and too much in favour of the State. It must be preciously rare, if at all, that action by the State could be made out to be directly impacting negatively on a fundamental right as such. The test is apt to lead to aburdity, bedevilling the Bill of Rights *[51]*.

No Discrimination

There being a right freely to think and express oneself, section 13(1) logically says that no law shall make any provision discriminatory of a person. Nor, section 13(2) adds, shall one be treated in a discriminatory manner by any public functionary.

This means, section 13(3) explains, one should not be treated prejudicially different from others due wholly or mainly to his political opinions or creed, or to his race, place of origin, colour or sex.

Just because a person is an active participant in politics with an opposition party does not entitle the Minister of Education to order that the person be refused a teaching post. To hold otherwise, is to produce *"a miscarriage of justice" [52].* That a person is a known supporter of an opposition party does not entitle the Minister of Trade to order that he be refused a licence to import goods for the purposes of his trade *[53].*

Nor is one to be prejudicially discriminated against because of his race *[54].*

This guarantee to freedom from discrimination entitles the individual to equality of treatment from any public authority in the exercise of public functions. This entitlement should disable the State from dismissing public officers at pleasure or whim. For *"dismissal of individual members of a public service at whim is the negation of equality of treatment"*. These are the words of the Privy Council *[55].*

Otherwise, standards or qualifications may lawfully be required of members of the public service, the disciplined forces, or those serving in a local government authority, under section 13(5). Public officers may also be further restricted. There are the usual exceptions for such concerns as public order and public safety.

Aliens are not on par with citizens of Grenada, by section 13(4)(a). Also, the nature and special circumstances pertaining to some persons may make it reasonably justifiable in a democratic society to give them special privileges or place them under disabilities. So says section 13(4)(b), providing for what is called affirmative discriminatory action, to correct unacceptable inequalities and imbalances.

Notably, the anti-discrimination clause prohibits discrimination based on sex. This should entitle women to equal pay for equal work as men. Other dimensions to this aspect of the clause need to be developed.

The anti-discrimination clause surely requires that children born out of wedlock (illegitimates) be accorded the same legal rights and legal status as are enjoyed by children born in wedlock (legitimates). Indeed, such reform is now commonplace in societies comparable to that of Grenada.

Property Rights

It is in the nature of a free society to acknowledge and protect property owned by private individuals. The Constitution of Grenada constructs a free society. The Constitution therefore protects the right of the individual to own and enjoy private property without unnecessary interference by the State.

No Uncompensated Deprivation

Section 6(1) says that no property of any description shall be compulsorily taken possession of. Nor shall any interest in or right over any property be compulsorily acquired, except under a law providing for the prompt payment of full compensation.

The Constitution itself, section 6(2), gives to the person whose property is thus acquired, a right of direct access to the High Court for determining certain matters germane to the acquisition. These are his interest in the property, the legality of the deprivation, the amount of compensation to which he is entitled, and the matter of ensuring that he obtains prompt payment of that compensation. He is entitled to remit his compensation overseas, subject to reasonable restrictions regarding the manner of remittance and subject to court judgments against him *[56]*.

This right to property is not violated by taking property for breach of the law, or in execution of orders of a court in civil proceedings, or where the property is dangerous or is injurious to public health. Measures may be taken to conserve natural resources or to promote agriculture. Steps may be taken to ensure proper town and country planning. The State may deal with the property of certain incapacitated persons, such as minors under 18 years of age and persons of unsound mind *[57]*.

The right to property is not violated by the taking of property under measures that are reasonably justifiable in a democratic society in satisfaction of a tax, rate or due, by section 6(6)(a).

So, when Parliament levies taxes on the individual, he cannot invoke these provisions entitling him to compensation for the compulsory acquisition of his property. Parliament can impose taxes, including new ones, in ordinary Acts

without paying compensation. Arguments to the contrary, attacking for example, a new withholding tax, are facile *[58]*.

Once a measure is a tax, compensation is irrelevant. It makes no difference what name is given to the impost. It is all the same whether an impost on incomes and profits is called an *"unemployment levy"* or one on newspapers is styled a *"newspaper licence fee" [59]*.

Sometimes a measure presented as a tax is not a tax. The classic definition of a tax is an imposition compelled by a public authority for public purposes.

If a measure ostensibly resembling a tax is not a tax, the uncompensated deprivation of private property resulting from such measure would be unconstitutional. This was the fate of a forced loan by the State from compulsory savings on the emoluments of individuals for financing development works, and a sugar-cane cess collected by government from cane-farmers and turned over to a private association for its own use *[60]*.

The protection is against the State's compulsorily acquiring private property without paying compensation to the owner, whether the property be land, or money, or management rights in the case of a managing director or shareholder *[61]*, or whatever else. It is one thing to control foreign exchange transactions. It is another thing to seize privately owned certificates of title to investment securities abroad, without compensation, without the owners having done anything wrong. This is unconstitutional *[62]*.

The guarantee is to *"prompt"* compensation. Eleven months after lands belonging to Franco Thomas had been compulsorily acquired on 27 February, 1976, the Eric Gairy government was still refusing even to enter into negotiations for the payment of compensation. The court, in THOMAS & MACLEOD v. ATTORNEY-GENERAL *[63]*, ruled that this violated the guarantee to *"prompt"* compensation. They declared that the landowner was entitled to have a board of assessment appointed to determine this compensation.

But the voice of the court went materially unheeded. This kind of treatment was meted out to a good many persons by the Gairy government. In Grenada it is said *"do so en like so"*. When Maurice Bishop's PRG took property from Eric Gairy and his close ally Derek Knight without compensation, these two gentlemen complained to the courts at the first available opportunity.

Two wrongs don't make a right. The PRG took Gairy's property under a law they made which had no provision for paying compensation. And indeed none was paid. This is necessarily violative of the clause in the Constitution entitling one to compensation if his property is compulsorily acquired. This did not worry the PRG as they had put the Bill of Rights out of commission.

But once the Bill of Rights was re-commissioned, the PRG laws confiscating the property of Eric Gairy and allies of his such as Derek Knight were at risk. The courts had no choice but to declare that the deprivation of the property of these persons, such as Derek Knight, in those circumstances was unconstitutional *[64]*.

Of course the State may compulsorily acquire private property for public purposes, such as building roads, schools, medical centres, playing fields and airports. But appropriate compensation must be paid. Armed soldiers and police officers may not take possession of privately owned lands without compensation, supervising the ploughing up of such land and the uprooting of the owner's agricultural produce *[65]*.

Further Reforms

The 1985 Phillips Constitution Review Commission wants the compulsory acquisition provisions to be made even stricter against the State than at present. They suggest that when private property is being compulsorily acquired, title should not vest in the State until after the payment of due compensation. They would let title pass earlier only when the property acquired is needed as a matter of emergency and to safeguard against delays in the court process for settling disputed quantification of compensation.

The Act satisfying the provisions of the Bill of Rights regarding compulsory acquisition, the Land Acquisition Ordinance *[66]*, makes *"conclusive"* the good faith of those authorising the acquisition and the reasonableness of the acquisition of the property stated for the acquisition. The Phillips Commission consider that the Act should not seek to make the acquisition instrument *"conclusive"* of these matters. Rather, these should be matters to be determined by the courts.

Additionally, the Commission counsels, provisions should be made for revesting the property in the private owner if the court holds that the requirements regarding compulsory acquisition have not been complied with.

Arbitrary Entry or Search

Compulsorily acquiring or possessing property is not the only way the State may seek to deprive one of the enjoyment of his property. Also violative of this enjoyment is the arbitrary entry on to or search of private property by the State. Section 7(1) therefore says that no person shall be subjected to the search of his property or the entry by others on to his premises.

Of course a man cannot use his property in an anti-social way. His freedom from the arbitrary entry on to or search of his property is subject to the usual exceptions. Also excepted are measures for town and country planning, the development of mineral resources, the development of any property for a purpose beneficial to the community, and for enforcing a court order. Armed with a warrant to search private property, the police may search such property. They do this to protect public safety, public order, and the rights of others.

A State of Emergency

There may be times when the national security of the State is gravely threatened.

Persons may be preparing to overthrow the government and install others in government in a manner contrary to the Constitution. This actually happened on 13 March, 1979, when Maurice Bishop led a left-wing Revolution which overthrew the Eric Gairy government, resulting in Bishop becoming Prime Minister, heading the People's Revolutionary Government (PRG). Bishop himself was revolutionarily overthrown in October, 1983, by colleagues of his, who then set up the Revolutionary Military Council (RMC) headed, formally at least, by army commander Hudson Austin. The whole revolutionary process collapsed later that month, with US and Caribbean troops militarily intervening in Grenada.

Short of outright Revolution, persons may engage in actions productive of public disorder on such a scale as to endanger the security of the State.

Indeed, a natural disaster, such as a hurricane, may be such as to put at risk the security of the State.

In such of these circumstances, section 17(1) empowers the Governor-General to declare that a state of emergency exists, by publishing a Proclamation in the Gazette saying so. An emergency also exists, under section 18(2)(a), when Her Majesty is at war.

Such a Proclamation needs to be approved by a resolution of both Houses of Parliament, supported in each House by a majority of all its members, if it is to endure beyond a limited time *[67]*. This resolution remains in force for not more than six months at a time. It may be revoked by another resolution, just as the Governor-General's Proclamation may be revoked by another Proclamation from him *[68]*. After Parliament has already been dissolved, and before ensuing general elections are held, Parliament may be summoned or recalled only for the specific purpose of debating and voting upon such a resolution, by section 17(8).

The Constitution does not expressly empower the Governor-General to restrict human rights during an emergency as by ordering preventive detention. And when the liberty of the individual is involved, we cannot go beyond the natural construction of the law. One should therefore recognise that the Constitution does not itself empower the Governor-General to curtail human rights during an emergency, rather than to twist the Constitution to force it to give him such powers. This is now accepted by the highest judicial authorities *[69]*.

But this does not make the emergency toothless. Section 14 says that Parliament may make a law authorising that, during an emergency, measures may be taken to deal with the prevailing situation. And there is such a law in force *[70]*. Once that law authorises the taking of measures that are reasonably justifiable for dealing with the emergency situation, nothing contained in or done under that law violates the right to personal liberty or freedom from discrimination.

The emergency measures have to be reasonably justifiable. If they are dictatorial and expedient, they are unconstitutional *[71]*. In any event, when a person is detained by virtue of such a law, the Gazette notifying his detention, he is entitled to be given a statement in writing specifying *"in detail"* the grounds

of his detention. If the grounds given are vague, and not detailed, a detention would be vitiated *[72]*.

By section 15, the detention shall be reviewed by an independent and impartial tribunal, presided over by a lawyer appointed by the Chief Justice. The detainee can have his lawyer make representations to the tribunal. He may appear before the tribunal in person or by his lawyer. Not more than one month after a person is detained, he is entitled to have his case reviewed. Failure to honour this entitlement may invalidate the detention *[73]*.

The tribunal may make recommendations concerning the continuing of the detention. But the detaining authority is not obliged to accept those recommendations. Yet, the findings of the tribunal carry weight. A tribunal observes that there is no evidence against one detained for encouraging civil disobedience. The State concedes there is no evidence. Still the detention is continued for several weeks. This calls for exemplary damages. A man cannot be detained only because he supports Her Majesty's Loyal Opposition *[74]*.

Redress for Human Rights Violations

A right without a remedy for its violation is not of much worth. It is so with the ordinary law, which knows the maxim *ubi ius ibi remedium*: where there is a right there is a remedy. It must be even more so with the constitutional Bill of Rights.

The Constitution does afford remedies to the individual for violations of his guaranteed rights. That the Supreme Court is commissioned by the Constitution to grant such remedies is well established, and has been considered above *[75]*.

Pre-Constitution Laws

Caribbean independence Bills of Rights preceding that of Grenada, such as that of Jamaica, say that nothing contained in or done under the authority of laws in force on the commencement of the Constitution shall be held to be inconsistent with the Bill of Rights. This clause, if taken literally, saves a pre-Constitution law from inconsistency with the Bill of Rights regardless of the manifest conflict

between them. This Bill of Rights existing laws saving clause has produced results considered by some to be unfortunate *[76]*.

Those results cannot apply to Grenada. For Grenada has no such Bill of Rights existing laws saving clause. Rather, the Grenada constitutional instruments have a quite sensible provision on the matter. This is that

> *"The existing laws shall, as from the commencement of the Constitution, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Courts Order" [77].*

This provision requires that pre-Constitution laws be made to conform with the Constitution. It means that it is the Constitution that is to prevail over an existing law in the case of conflict between the two. It entails that as from the commencement of the Constitution, *"all existing laws ..... must be repealed to the extent of their inconsistency with the Constitution" [78].*

A pre-Constitution law might afford the State dictatorial powers, expedient for dealing with an emergency. The Bill of Rights authorises only measures that are reasonably justifiable for dealing with an emergency. The pre-Constitution law is to that extent void for repugnancy with the Bill of Rights. A pre-Constitution Act gives the Chief of Police an unfettered discretion to grant permission to hold public meetings. The Bill of Rights permits only reasonable derogations from the right to hold public meetings. The Act is void to that extent *[79]*.

New Rights

It is the Jamaica type Bill of Rights existing laws saving clause which has accounted largely for the teaching that Caribbean Bills of Rights know no rights which were unknown to pre-Constitution laws *[80]*. Thus, the guaranteed protection against being tried twice for an offence has been equated with the pre-Constitution rules regarding *autrefois acquit [81]*.

Even where that type of clause appears, there has recently been a growing judicial preparedness to recognise new rights under the Bill of Rights.

In a truly historic example, the Privy Council has held for a right to damages from the State in public law for being wrongfully committed to prison by a High Court Judge for contempt of court *[82]*.

In a Jamaican case in 1985, it was argued that there was no right to a speedy trial because the pre-Constitution law gave no such right and the Constitution creates no new rights. The Privy Council rejected this, saying

> *"if the common law did not provide for 'a fair hearing within a reasonable time by an independent and impartial court established by law' it is quite plain that the express words of section 20(1) of the Constitution sufficed to confer such a right" [83].*

And the Jamaican type Bill of Rights existing laws saving clause does not appear in Grenada. All that Grenada has is the provision expressly requiring that pre-Constitution laws be made to conform with the Constitution, as seen already *[84]*. One notes in this respect that the preamble to the Grenadian Bill of Rights, section 1, says that Grenadians are entitled to *"the right to work"*.

They Compare

The provisions of the Bill of Rights guaranteeing human rights and freedoms in the Grenada Constitution compare favourably with Bills of Rights provisions elsewhere in the Commonwealth.

The Phillips Commission too was of this view. It said that it

> *"considers those provisions adequate, given strong judicial institutions to provide a legal basis for the enjoyment by Grenadians of human rights parallel in quality to those enjoyed by any nation on earth".*

Yet, one may sympathise with an associate member of the Commission who felt that this is no adequate explanation why no change is needed to the Bill of Rights *[85]*. There is always room for improvement.

Footnotes

1. Sir O. Roy Marshall, A Look at the Law and its Administration in the Commonwealth Caribbean (1973), 17. See too Alexis, "Human Rights Adjudication in the Caribbean Community", in Caribbean Perspectives on International Law and Organizations (B.G. Ramcharan & L.B. Francis ed. 1989), 343-391.
2. DWARKADAS SHRINIVAS OF BOMBAY v. THE SHOLAPUR SPINNING & WEAVING CO. LTD. [1954] 41 All India Rptr. (S.C.) 119, 138 (BOSE J.).
3. ATTORNEY-GENERAL v. RYAN [1980] A.C. 718, 728 (Lord Diplock for P.C.; [Bahamas].
4. THORNHILL v. ATTORNEY-GENERAL [1981] A.C. 61, (Lord Diplock for P.C.) [Trinidad & Tobago].
5. THORNHILL v. ATTORNEY-GENERAL [1981] A.C. 61 (P.C.) [Trinidad & Tobago]. See Alexis, "After THORNHILL - Does Anything Remain of the Bill of Rights?", [1977] W.I.L.J. 24, 26-29.
6. MAHARAJ v. ATTORNEY-GENERAL (No. 2) [1979] A.C. 385 (P.C.) [Trinidad & Tobago].
7. SMITH v. L.J. WILLIAMS LTD. (1982) 32 W.I.R. 395 (C.A. - Trinidad & Tobago). See Alexis, note 1 above, at 344-350; and text to notes 30-31 below.
8. On citizenship, see sections 94-100.
9. There are certain exceptions, e.g. regarding freedom of movement, see text to note 15 below.
10. SMITH v. L.J. WILLIAMS LTD. (1982) 32 W.I.R. 395 (C.A. - Trinidad & Tobago).
11. DE FREITAS v. BENNY [1976] A.C. 238 (P.C.) [Trinidad & Tobago].
12. Section 5(2). See DE FREITAS v. BENNY [1976] A.C. 238 (P.C.) [Trinidad & Tobago].
13. HINDS v. R. [1977] A.C. 195 (P.C.) [Jamaica].
14. RAMSON v. BARKER (1982) 33 W.I.R. 183 (C.A. - Guyana).
15. Section 3(1)(i)(j), read with section 12. This deportation power has been invoked rather regularly in Grenada, both before and after the 1979 Revolution.
16. See section 7(2); then see text after note 2 above.
17. Section 8(1)(8).
18. See H.W.R. Wade, Administrative Law (5th ed. 1982), 413-510; S.A. de Smith, Judicial Review of Administrative Action (4th ed. 1980), 156-277; Alexis, Aspects of Judicial Review of Administrative Action in the Commonwealth Caribbean (Ph. D thesis, Cambridge, 1980) 254-416.
19. BRANDT v. ATTORNEY-GENERAL (1971) 17 W.I.R. 448 (C.A. - Guyana).
20. Sections 8(1), 3(3).

21. R. v. OGLE (1968) 11 W.I.R. 439 (H.C. - Guyana); SANDIFORD v. DIRECTOR OF PUBLIC PROSECUTIONS (1979) 28 W.I.R. 152 (H.C. - Guyana); BELL v. DIRECTOR OF PUBLIC PROSECUTIONS (1985) 32 W.I.R. 317 (P.C.) [Jamaica].
22. Sections 8(2)(b) (8), 3(2).
23. Section 8(2)(c)-(f). On legal representation, see ROBINSON v. R. (1985) 32 W.I.R. 330 (P.C.) [Jamaica].
24. One accused person was released before the trial ended, another was completely acquitted, three others were convicted of manslaughter, in R. v. MITCHELL, H.C. Criminal Case No. 19 of 1984, judgment 4 December, 1986 (H.C. - Grenada).
25. MITCHELL v. THE QUEEN, C.A. Crim. Apps. Nos. 4-20 of 1986 (C.A. - Grenada).
26. MASON v. CHIEF OF POLICE (1965) 10 W.I.R. 249 (C.A. - Winward Islands & Leeward Islands) [Grenada].
27. R. v. SUSSEX JUSTICES, Ex p. McCARTHY [1924] 1 K.B. 256, 259 (Lord Hewart C.J.). See Alexis, "Reasonableness in the Establishing of Bias", [1979] P.L. 143.
28. Section 8(9)-(10); (4); (5)-(6)(11)(c); (7).
29. Section 8(2)(a), 11(a). See FAULTIN v. ATTORNEY-GENERAL (1978) 30 W.I.R. 351 (C.A. - Trinidad & Tobago).
30. MAHARAJ v. ATTORNEY-GENERAL (No. 2) [1979] A.C. 385 (P.C.) [Trinidad & Tobago].
31. See text before note 7 above, and chapter 7 text after note 31 above.
32. Contrast BRANDT v. ATTORNEY-GENERAL (1971) 17 W.I.R. 448 (Full C.A. - Guyana) with MINISTER OF HOME AFFAIRS v. FISHER [1980] A.C. 319 (P.C.) [Bermuda].
33. Section 12(3)(f).
34. Section 12(3)(a), (4), (5).
35. Section 12(3)(c)(g). See ROOPNARINE v. BARKER (1981) 30 W.I.R. 181 (H.C. - Guyana).
36. Section 12(3)(h).
37. But see RAMSON v. BARKER (1982) 33 W.I.R. 183 (C.A. - Guyana).
38. TRINIDAD ISLAND-WIDE CANE FARMERS' ASSOCIATION v. SEEREERAM (1975) 27 W.I.R. 329 (C.A. - Trinidad & Tobago).
39. RE CLARKE (1971) 17 W.I.R. 49 (H.C. - Barbados); FRANCIS v. CHIEF OF POLICE [1973] A.C. 761 (P.C.) [St. Kitts & Nevis].
40. See CHIEF OF POLICE v. POWELL & THOMAS (1968) 12 W.I.R. 403 (H.C. - St. Kitts & Nevis); then see FRANCIS v. CHIEF OF POLICE [1973] A.C. 761 (P.C.) [St. Kitts & Nevis]; ATTORNEY-GENERAL v. ANTIGUA TIMES [1976] A.C. 16 (P.C.) [Antigua].

41. HUBBARD v. PITT [1976] Q.B. 142 178F (Lord Denning MR); H.A. Fraser, "Public Order in the Commonwealth Caribbean", [1979 May] W.I.LJ. 47.
42. COLLYMORE v. ATTORNEY-GENERAL (1967) 12 W.I.R. 5 (C.A. - Trinidad & Tobago), [1970] A.C. 538 (P.C.).
43. Section 9(2)-(4).
44. RE DARIEN (1974) 22 W.I.R. 323 (S.C. - Jamaica).
45. SCHMIDT v. HOME SECRETARY [1969] 2 Ch. 160.
46. RE CLARKE (1971) 17 W.I.R. 49 (H.C. - Barbados).
47. CHOLOKINGO v. LAW SOCIETY (1978) 30 W.I.R. 372 (C.A. - Trinidad & Tobago).
48. ATTORNEY-GENERAL v. ANTIGUA TIMES [1976] A.C. 16 (P.C.) [Antigua].
49. Ibid. at pp. 31-32.
50. HOPE v. THE NEW GUYANA CO. LTD. (1979) 26 W.I.R. 233 (C.A. - Guyana).
51. As in the HOPE case, note 50 above; and in RAMSON v. BARKER (1982) 33 W.I.R. 183 (C.A. - Guyana)..
52. Sir Fred Phillips, Freedom in the Caribbean (1977), 132, criticising BYFIELD v. ALLEN (1970) 16 W.I.R. 1 (C.A. - Jamaica). Also critical are Sir O. Roy Marshall "A Clash of Pedagogues", [1971] J.L.J. 12; C. Okpaluba, "Fundamental Human Rights," in Independence for Grenada: Myth or Reality? (1974), 86.
53. CAMACHO & SONS LTD. v. COLLECTOR OF CUSTOMS (1971) 18 W.I.R. 159 (C.A. - W.I.A.S.) [Antigua].
54. R. v. DRYBONES (1970) 9 D.L.R. (3D) 437 (S.C. - Canada).
55. THOMAS & MACLEOD v. ATTORNEY-GENERAL (1977) 23 W.I.R. 491 (C.A. - W.I.A.S.) [Grenada], see text after note 62 below.
56. Section 6(4)(5).
57. Section 6(6)(a)(b)(7).
58. BATA SHOE CO. v. INLAND REVENUE COMMISSIONER (1976) 24 W.I.R. 172 (C.A. - Guyana).
59. MOOTOO v. ATTORNEY-GENERAL [1979] 1 W.L.R. 1334 (P.C.) [Trinidad & Tobago]; ATTORNEY-GENERAL v. ANTIGUA TIMES [1976] A.C. 16 (P.C.) [Antigua].
60. INLAND REVENUE COMMISSIONER v. LILLEYMAN (1964) 7 W.I.R. 496 (B.C.C.A.) [Guyana]; TRINIDAD ISLAND-WIDE CANE-FARMERS' ASSOCIATION v. SEEREERAM (1975) 27 W.I.R. 329 (C.A. - Trinidad & Tobago).
61. YEARWOOD v. ATTORNEY-GENERAL (1977) 3 C.L.B. 593 (H.C. - St. Kitts & Nevis); INLAND REVENUE COMMISSIONER v. LILLEYMAN (1964) 7 W.I.R. 496 (B.C.C.A.) [Guyana]; ATTORNEY-GENERAL V. LAWRENCE (1983) 31 W.I.R. 176 (Eastern Caribbean C.A.) [St. Kitts & Nevis].

62. D'AGUIAR v. ATTORNEY-GENERAL (1962) 4 W.I.R. 481 (S.C. - British Guiana) [Guyana].
63. (1977) 23 W.I.R. 491 (C.A. - W.I.A.S.) [Grenada].
64. ATTORNEY-GENERAL v. KNIGHT, Civil App. No. 9 of 1988 (C.A. - Grenada).
65. JAUNDOO v. ATTORNEY-GENERAL (1968) 12 W.I.R. 221 (C.A. - Guyana); ATTORNEY-GENERAL v. HERBERT (1975) 22 W.I.R. 527 (C.A. - W.I.A.S.) [St. Kitts & Nevis].
66. Cap. 153, 1958 Revised Laws of Grenada.
67. By section 17(2), without such parliamentary approval, the Proclamation can last only 7 days if made when Parliament is sitting, and 21 days in other cases.
68. Section 17(3)(5)(6).
69. ATTORNEY-GENERAL v. REYNOLDS [1980] A.C. 637 (P.C.) [St. Kitts & Nevis]; WEEKES v. MONTANO (1970) 16 W.I.R. 425, 431 (Hassanali J. - Trinidad & Tobago); to be preferred to R. v. ATTORNEY-GENERAL, Ex p. GRANGE (1976) 23 W.I.R. 139 (S.C. - Jamaica).
70. The Emergency Powers Act 1987, Act No. 17 of 1987.
71. CHARLES v. PHILLIPS & SEALEY (1967) 10 W.I.R. 423 (C.A. - W.I.A.S.) [St. Kitts & Nevis]; HERBERT v. PHILLIPS & SEALEY (1967) 10 W.I.R. 435 (C.A. - W.I.A.S.) [St. Kitts & Nevis].
72. Section 15(1)(a); HERBERT v. PHILLIPS & SEALEY (1967) 10 W.I.R. 435 (C.A. - W.I.A.S.) [St. Kitts & Nevis]; ATTORNEY-GENERAL v. REYNOLDS [1980] A.C. 637 (P.C.) [St. Kitts & Nevis].
73. KELSHALL v. PITT (1971) 19 W.I.R. 136 (H.C. - Trinidad & Tobago); R. v. MINISTER OF NATIONAL SECURITY, Ex p. GRANGE (1976) 24 W.I.R. 513 (S.C. - Jamaica); both to be preferred to R. v. ATTORNEY-GENERAL, Ex p. GRANGE (1976) 23 W.I.R. 139, 143 (Smith C.J. - Jamaica).
74. ATTORNEY-GENERAL v. REYNOLDS [1980] A.C. 637 (P.C.) [St. Kitts & Nevis], affirming (1977) 24 W.I.R. 552 (C.A. - W.I.A.S.).
75. Chapter 7 text after note 16.
76. Alexis, "When is 'An Existing Law' Saved?" [1976] P.L. 256.
77. Grenada Constitution Order 1973, Sched. 2, section 1(1).
78. CHIEF OF POLICE v. POWELL & THOMAS (1968) 12 W.I.R. 403, 415 I (Glasgow J. - St. Kitts & Nevis).
79. HERBERT v. PHILLIPS & SEALY (1967) 10 W.I.R. 435 (C.A. - W.I.A.S.) [St. Kitts & Nevis]; CHIEF OF POLICE v. POWELL & THOMAS (1968) 12 W.I.R. 403 (H.C. - St. Kitts & Nevis).

80. Sometimes the courts assume the framers never intended to introduce new rights. Other times, they say so because the preamble to the Bill of Rights says every person "is entitled" to the guaranteed rights. Neither of these is a solid foundation.
81. DIRECTOR OF PUBLIC PROSECUTIONS v. NASRALLA [1967] 2 A.C. 238 (P.C.) [Jamaica].
82. MAHARAJ v. ATTORNEY-GENERAL (No. 2) [1979] A.C. 385 (P.C.) [Trinidad & Tobago].
83. BELL V. DIRECTOR OF PUBLIC PROSECUTIONS (1985) 32 W.I.R. 317 (P.C.) [Jamaica]. Jamaica section 20(1) is identical with Grenada section 8(1), see text to note 17 above.
84. Text to note 77.
85. Simeon McIntosh, Grenadian Voice, 21 June, 1986, p. 11.

CHAPTER 10

PUBLIC FINANCE

The Government raises revenues through taxes, rates, levies and such other impositions. Also, it gets grants from friendly governments. Further, it makes loans from various sources, such as its own National Insurance Scheme (NIS), the banks and other lending agencies both local, regional and international.

The Consolidated Fund

Revenues or other monies raised or received by the Grenada government are generally required by the Constitution, section 75, to be paid into a certain fund, called the Consolidated Fund.

There may be revenues and other monies that may by law be made payable into some other fund established for a specific purpose, as recognised by section 75. These are public funds other than the Consolidated Fund. Otherwise, public revenues concerning the central government are payable into the Consolidated Fund.

The withdrawal of monies from the Consolidated Fund is strictly regulated. No monies shall be withdrawn from the Consolidated Fund except to meet expenditure that is charged upon that Fund by the Constitution or by a law enacted by Parliament. Such withdrawal may also be authorised by an Appropriation Law or under the four-month special warrant substitute appropriation *[1]*. Section 76(1) says so.

Similarly, no monies shall be withdrawn from any public fund other than the Consolidated Fund without authorisation by or under a law, in accordance with section 76(3).

By section 75(4), the manner in which withdrawals may be made from any public fund may be prescribed by Parliament.

Special Charges on Fund

The Constitution itself makes certain special charges on the Consolidated Fund. Parliament too may of course make charges on the Consolidated Fund and on other public funds, under section 75(2). Indeed, even when the Constitution itself charges certain salaries and allowances on the Consolidated Fund, the amount of such salaries and allowances is left to be prescribed by Parliament. This is to accommodate changes needed to be effected to make such amount commensurate with the office to which those salaries and allowances attach *[2]*.

These are the salaries and allowances of the Governor-General, members of the Public Service Commission, members of the Public Service Board of Appeal, the Director of Public Prosecutions and the Director of Audit. The Constitution, section 80(5), charges the salaries and allowances of these dignitaries on the Consolidated Fund, and requires Parliament to prescribe the amounts.

When so prescribed by Parliament, those amounts shall not be altered to the disadvantage of the respective dignitary after his appointment. When his salary or pensionable allowance depends upon his option, the salary or terms for which he opts shall be deemed to be more advantageous to him than any others for which he might have opted *[3]*.

The salaries and allowances of these functionaries are treated with such care in order to safeguard the independence of these functionaries from Cabinet and Parliament. This hospitality applies to the Supreme Court Judges under the original provisions of the independence Constitution *[4]*. Once in abeyance after having been suspended by the PRG of March 1979 - October 1983, these were reinstated in August 1991.

So no longer today in Grenada do Supreme Court Judges hold office on such terms and conditions as the Prime Minister advises the Governor-General to set *[5]*. This was wholly unsatisfactory. Happily the settlement in the Constitution has been reinstated, by the recommissioning of those provisions in the Constitution as such. Likewise, similar provisions should now be introduced for the Magistrates, to give them a facility they have never enjoyed.

The Public Debt

Another special impost made on the Consolidated Fund by the Constitution itself, section 81(1), is the public debt. All debt charges for which Grenada is liable shall be a charge on the Consolidated Fund, by section 81(1).

The State incurs debt from time to time for various purposes, to build roads or modernise sewerage systems for example. The debt may be in the form of liquid cash or credit on equipment or such like. The sources may be varied, as those mentioned in the first paragraph of this chapter.

Other debt charges include interest, sinking fund charges, the repayment or amortization of debt and all expenditure regarding the raising of loans on the security of the Consolidated Fund and the service and redemption of the debt thereby created, as stated in section 81(2).

Appropriation Law

Most of the withdrawals from the Consolidated Fund are authorised by an Appropriation Act. This requires full discussion.

By section 77(1), the Minister of Finance has a duty to cause to be prepared and laid before the House of Representatives in each financial year, general Estimates of Revenue and Expenditure for the next following financial year. These general estimates of revenue and expenditure are called the budget. In Grenada, a financial year is any period of twelve months beginning on 1st January, or such other date as Parliament may prescribe *[6]*. No other date having been prescribed by Parliament, the financial year runs from 1st January to 31st December, the same as the calendar year.

This means that the estimates for a new year coming up should be presented before the end of the outgoing year. But, prior to financial year 1991, it never worked. Rather, it has tended to be presented during the third month of the financial year to which it relates.

Such general estimates of revenue and expenditure are normally approved by the House of Representatives easily. For the government, by definition, has the majority in the House, ordinarily *[7]*. And the estimates are a major policy statement of the government, perhaps indeed its most important such statement. Therefore, all members of the House belonging to the party in government are

expected to vote for the estimates, and not even be critical in their support for it *[8]*.

When the estimates are approved by the House of Representatives, a Bill is introduced in the House providing for the issue from the Consolidated Fund of the sums necessary to meet the expenditure estimated to be spent in the approved estimates. Revenue from local sources is generally raised from direct income tax or indirect taxes such as the value added tax and consumption based taxes.

The expenditure side of the estimates and the Appropriation Act show what are the top priorities of the government. What the government values more, it spends on more, generally. One therefore notes the relative share of the expenditure allocated to education, housing, medical care, the productive sectors of the economy such as agriculture and tourism, infrastructure, or, for example, the military.

Special Warrant

As said already, the Appropriation Bill for a given financial year tends to be introduced into the House, not before that year begins, but during that year. Of relevance here are provisions in the Constitution for the four-month substitute appropriation.

By these provisions, Parliament may legislate that if the Appropriation law for a financial year is not in operation when that year starts, the Minister of Finance may authorise the withdrawal of monies from the Consolidated Fund. He may do so to meet expenditure necessary to carry out Government services for the first four months of the financial year *[9]*.

This kind of authorisation is called a special warrant. It follows that this special warrant has been in common use in recent years *[10]*.

Indeed, in 1989, the time for which the special warrant could operate almost expired without the Appropriation Bill being passed. The estimates were laid before the House so late that the Bill all but ran out of time. The Prime Minister, as Minister of Finance, Herbert Blaize, wanted to get the Bill passed on the sixth last day before the expiry of the special warrant period. But on that day there were less Government members in the House than Opposition members.

To avoid a vote on the matter being taken, and so to save the Government being defeated on the budget, the Speaker, Sir Hudson Scipio, adjourned the House without a motion to do so being put. This was quite improper of him, he had no authority to do that.

The House resumed on the fifth last such day. On that day the Government brought in reinforcements to ensure the passage of the Bill through the House. The Government had their way that day. The 1989 budget accordingly just about made it through in the nick of time.

Had time run out without the budget being approved by the House, the Government could not have operated a budget for 1989 unless seriously compromising the Constitution. Of course, a Cabinet must get supplies from Parliament if it is to keep the State going. Equally, though, a Cabinet must so conduct the Nation's affairs in a businesslike manner that there should be no need to stretch the Constitution to accommodate it.

If the Appropriation Bill is introduced into the House without the relevant Estimates of Revenue and Expenditure having been previously laid before and approved by the House, the Constitution is being violated. It is a situation not in compliance with the Constitution, however difficult it might be for one to get redress from the courts for this violation of the Constitution *[11]*.

Supplementary Estimates

In respect of any financial year, monies expended on a project might exceed the amount allocated to that project by the Appropriation law. The expenditure budgeted to that purpose is overspent, cost overruns are said to have been incurred *[12]*. Or a need may arise for expenditure authorised by Cabinet for a project to which no funds have been appropriated by the Appropriation law. Either case necessitates a Supplementary Estimate, showing the sums so overspent or required to be spent.

Like the principal general estimates of revenue and expenditure, a supplementary estimate has to be laid before the House of Representatives. When it is approved by the House, a supplementary Appropriation Bill is introduced in the House. This will provide for the issue from the Consolidated Fund of the sums necessary to meet the expenditure so overspent or required to

be spent. It will appropriate those sums to the purposes specified in its provisions. This is catered for in section 77(3).

In any one financial year, more than one supplementary estimates may be needed.

Related to the supplementary estimate is a Contingencies Fund, provided for by section 79. Parliament thereby may provide for the establishment of a Contingencies Fund to finance an urgent and unforseen need for expenditures for which no other provision exists.

By this facility, Parliament may authorise the Minister of Finance to make advances from that Fund to meet such a need. Where any such advance is made from the Contingencies Fund, a supplementary estimate and a supplementary Appropriation Bill would be needed to replace the amount so advanced.

Audit of Public Accounts

The different authorities of the State of Grenada have a variety of accounts. These accounts are referred to as the public accounts. These public accounts are constitutionally expected to be prepared annually. Responsibility for ensuring that these public accounts are so prepared lies chiefly with the Accountant-General and the administrative head of the Ministry of Finance, the Permanent Secretary of the Ministry of Finance, who in these days is loosely called the Director-General of Finance.

These public accounts are to be audited by the Director of Audit, whose office is a public office. He is to report on his audited findings to the Minister of Finance for laying before the House of Representatives. The Constitution gives to the Director of Audit and his subordinates access to all documents which in his opinion relate to any of the accounts falling within his domain. The Constitution adds that, in exercising the functions vested in him by itself, the Director of Audit shall not be subject to the direction or control of any other person or authority *[13]*.

The auditing of the different public accounts of Grenada has indeed been rather behind date over the years.

A contributory factor to this is that the governments between 1967 and 1979 had never been particularly fastidious in enhancing audit elegance. This same

attitude had got that government under Eric Gairy into trouble with the British government over financial accountability during the colonial days *[14]*.

Second, the Opposition in Parliament at the time, under Herbert Blaize, was not very effective, neither in terms of influence or numbers. Thirdly, the Opposition in Parliament was not assisted by the Government in carrying out their responsibility to help ensure that the accounts were audited.

The Opposition does have a responsibility in this matter. The Leader of the Opposition is the Chairman of the standing committee of the House of Representatives which is charged with scrutinising the reports of the Director of Audit and the audited accounts of expenditure from public funds. This committee, called the Public Accounts Committee, can summon persons, such as the Director of Audit and the Accountant-General, to appear before it and give evidence. None of the three members of this Committee shall be a Minister. It is constituted on a motion by the Minister of Finance under the Standing Orders of the House.

Efforts are being currently made to update the public accounts. The Director of Audit has over the last few years been submitting public accounts audited reports *[15]*. And the Public Accounts Committee of the House of Representatives has also been very active, achieving good results, including a written apology from the Director-General of Finance for slanting their high authority *[16]*.

Footnotes

1. The four-month substitute appropriation proceeds on a special warrant. See text after note 9 below.
2. Section 80(1)(2).
3. Section 80(3)(4)(6).
4. The West Indies Associated States Supreme Court Order 1967, S.I. 1967 No. 223, section 11(1), entrenched into the Constitution by section 39 of the Constitution.
5. People's Law No. 83 of 1979 section 4(5) read with People's Law No. 25 of 1980 section 3.
6. Section 111(1).
7. See chapter 4 note 57 and accompanying text above.

8. See chapter 4 notes 50 and 56 and accompanying text above.
9. Section 78 imported by section 76(1)(b).
10. The Herbert Blaize 1984-1990 administration used it every single year.
11. GORDON v. MINISTER OF FINANCE (1968) 12 W.I.R. 416, 420I-421A (H.C. - St. Lucia).
12. A cost overrun is quite different from the improper diverting of funds from projects approved by Cabinet to projects not approved by Cabinet and never even known to the Ministry of Finance.
13. Section 82.
14. An inquiry found that there had been squandermania by the Government headed by Eric Gairy. See Report of the Commission of Enquiry into the Control of Public Expenditure in Grenada during 1961 (1962 Cmnd. 1735). As a result, the Constitution was suspended, and new elections were held, which Gairy lost.
15. Director of Audit, Report on the Audit of the Accounts, 1976, 1977, 1978, 1979, 1980, 1981, all tabled in the House of Representatives between 5 December, 1988, and 4 August, 1989.
16. See chapter 4 text after note 50 above.

CHAPTER 11

CONCLUSION

The 1974 independence Constitution of Grenada does safeguard parliamentary democracy, the independence of the judiciary, the rule of law and the basic human rights of the individual. These are four major objectives which a Constitution should strive to protect and enhance.

But merely to entrench in a Constitution provisions pursuing these objectives is not enough, important though this is. For, *"whatever constitutions we adopt, what we need above all else is the will and the conscience to work them satisfactorily" [1].*

Most provisions of the Constitution are certainly deeply entrenched *[2].* But this is really to safeguard those provisions against change by Parliament using its ordinary legislative process. It is protection against abuse by a government that is disposed to obeying the Constitution.

Entrenchment is no protection against the overt subverter. Those who used armed force to overthrow the system prevailing in March 1979 consistently suspended the Constitution and kept it out of commission as long as they were in government. As the 1985 Phillips Constitution Review Commission remarked, *"Entrenchment offers no safeguard against violent revolution".*

By their oath of office Ministers of Government oblige themselves to honour, uphold and preserve the Constitution of Grenada *[3].* Adherence to this obligation should enhance the prestige of the Constitution and help retard conditions for the overthrow of the Constitution.

The point is that those holding high offices of State have a bounden duty to create and maintain conditions healthy to the nurturing and growth of the Constitution. They must comport themselves with the dignity appropriate to their high office. They should observe morality in public affairs, recognising that they

are the servants of the people, and not their masters. They are to govern with a humane hand, according due respect to the rights of the individual.

In this, the government has to be helped by the governed. The condition upon which God gave liberty to man, it is said, is that man should practice eternal vigilance.

No Constitution, no Supreme Court, can by itself be an adequate substitute for eternal vigilance against the threat of destruction of constitutional government. It is all the same whether the destruction is by force of arms, or by tyrannical abuse of governmental power falling short of revolutionary abrogation of the Constitution, as the Phillips Commission noted.

This vigilance made Grenadians reject such abuses of their pre-Revolution independence Constitution as the repeated human rights violations and the insistent improper interference by the Executive with the police and the magistracy. This vigilance made Grenadians resist the abuses of the Revolution, including imprisonment without charge or trial, and the continued suspension of the Constitution.

All the provisions of that Constitution have now been reinstated. The last of its provisions to be recommissioned were those applying to Grenada the regional Eastern Caribbean Supreme Court, known to the Grenada Constitution as the Supreme Court of Grenada and the West Indies Associated States. These last provisions were restored on 16 August 1991.

The next step would be to reform the Constitution comprehensively, building upon the foundation laid by the 1985 Phillips Constitution Review Commission. Ample opportunity must be afforded the people to participate fully in this process of Constitution reform.

The more a Constitution reflects the realities of the society to whom it relates, the better may it withstand efforts intended to weaken or capable of weakening the stature and the fabric of the Constitution. Promoting people's participation in Constitution reform is advancing the extent to which the Constitution would accommodate and enhance national development.

The NDC of Nicholas Brathwaite, voted into Government on 13 March, 1990, has promised fundamental constitution reform. A starting point can be the work

of the 1985 Phillips Constitution Review Commission. It should be of great interest to see what will come of the NDC commitment to constitution reform.

With comprehensive Constitution reform based on people's participation, we Grenadians can fashion ourselves a Constitution that would be apt to take us into the next century, the 21st century.

Footnotes

1. Sir Fred Phillips, Freedom in the Caribbean (1977), 212.
2. On entrenchment, see chapter 4 text after note 35 above.
3. Grenada Constitution section 65 and sched. 3.

APPENDIX

On 14 February, 1985 the Governor-General of Grenada, Sir Paul Scoon, appointed the Grenada Constitution Review Commission. Its Chairman was Sir Fred Phillips. Its other members were Professor Ralph Carnegie, Mr. Brynmor Pollard, Mr. John Barrymore Renwick, and Mr. A. Michael Andrew. It had an associate member, Professor S. McIntosh. Its secretary was Mr. Bernard Gibbs. The Commission reported on 5 November, 1985.

The Terms of Reference of this Grenada 1985 Phillips Constitution Review Commission were as follows:-

"1. To examine, study and enquire into the Grenada 1973 Constitution and other related laws and matters.

2. After due examination and study, to report in writing making such recommendations and providing for consideration any amendments, reforms and changes in the Constitution and related laws as are in the opinion of the Commissioners necessary and desirable for promoting the peace, order and good Government of Grenada and in particular for -

(i) Maintaining democratic institutions and ensuring that parliamentary democracy is given such constitutional protection as can effectively prevent its destruction;

(ii) Ensuring that no person might serve as Prime Minister for more than ten consecutive years;

(iii) Ensuring a system of free periodic elections for representative Government;

(iv) *Ensuring that elected parliamentary representatives are subject to recall by their respective constituents for persistent malrepresentation or other sufficient cause in the view of the Constituents;*

(v) *Encouraging a wider participation by the citizens of Grenada in the democratic processes of Government both at parliamentary level and at local government level, and ensuring that the people of Carriacou and Petit Martinique have a special position in the administration of their own affairs in the State;*

(vi) *Strengthening and maintaining the independence of the judiciary;*

(vii) *Safeguarding the fundamental and basic human rights, liabilities, liberties and freedoms of the individual and ensuring that there is no discrimination in the national life of the State;*

(viii) *Preventing corruption in the public life of the State and safeguarding public funds."*

EPILOGUE

The final restoration of all those provisions of the 1974 independence Constitution still in abeyance, since having been revolutionarily suspended in 1979, took place on 16 August 1991.

Those still suspended provisions of the Constitution were on that day re-commissioned as part of a package enacted by the Parliament of Grenada under the government of Prime Minister Nicholas Brathwaite.

This package also provided for Grenada's return to the regional Eastern Caribbean Supreme Court, otherwise known as the Supreme Court of Grenada and the West Indies Associated States, comprising a High Court and a Court of Appeal.

The passage and promulgation of this legislation was in pursuance of a decision taken by the OECS Heads of Government Conference in Grenada on 20 June 1991, to re-admit Grenada to that Court on 1 August 1991.

This legislative package was passed in the House of Representatives on 26 June 1991 and in the Senate on 5 July 1991. On 19 July 1991 Governor-General Sir Paul Scoon assented to the legislation and issued a Proclamation setting the appointed day for the legislation to come into effect as 1 August 1991. But because of certain events which need not be gone into here, this Proclamation was on 30 July itself revoked, by the Governor-General on the advice of the Cabinet. This revocation was challenged before the Court of Appeal of Grenada. The contention was that the Governor-General could not revoke a Proclamation issued by him to bring an Act into force. But that submission was rejected, the Court relying particularly on certain provisions of the Interpretation Act. *[1]*

Another Proclamation was issued by the Governor-General on the afternoon of 15 August 1991. This followed another meeting of the OECS Heads of Government in Antigua that morning, and the commutation the evening before to life imprisonment of the death sentences imposed on those convicted of murdering Maurice Bishop and his colleagues.

This Proclamation of 15 August 1991 set 16 August 1991 as the new date for the legislation to come into effect. And on 16 August the legislation did come into force.

The centrepiece of the package was the Constitutional Judicature (Restoration) Act 1991, Act No. 19 of 1991. This provided that all provisions of the Constitution suspended by the revolution and not yet brought back into force should be restored as from the appointed day. It made the same provision regarding the 1967 Courts Order establishing the regional Supreme Court. It likewise so stated respecting the 1967 Privy Council Appeals Order, providing for appeals from the regional Supreme Court to the Privy Council.

Another part of the package revived the 1971 Act regulating the functioning of the regional Supreme Court in Grenada. It had been repealed by the revolution. That 1971 Act was revived by the West Indies Associated States Supreme Court (Grenada) Act (Re-enactment) Act, 1991, Act No. 20 of 1991.

During the revolution, appeals from Magistrates in Grenada were heard by the local Chief Justice. With Grenada's return to the regional Supreme Court, appeals from Magistrates will again go to the regional Court of Appeal. This will be secured by the Magistrates (Judgements) Appeals Act 1991, Act No. 22 of 1991.

Of course, the court system set up by the revolution was dismantled by this package. In particular, the Constitutional Judicature (Restoration) Act 1991 abolished the Supreme Court, comprising a High Court and a Court of Appeal, established by the revolution.

The abolishing of the Supreme Court set up by the revolution and the re-commissioning of the Supreme Court established by the Constitution and the Courts Order were reflected in the general interpretation legislation. These changes were recognised by the Interpretation and General Provisions (Amendment) (No. 2) Act 1991, Act No. 21 of 1991.

It was so extremely critical to get right this restoration legislative package that the Attorney General decided to draw upon the learning and experience of colleague regional jurists in putting it together.

He told the House of Representatives so during the second reading debate on the package. He especially singled out for credit here Mr. Justice J.D.B.

Renwick, Q.C. of the OECS Secretariat in St. Lucia and former Attorney-General of Trinidad & Tobago Mr. Karl Hudson-Phillips, Q.C.

This final restoration of the constitutional judicature was simply in keeping with the ruling of the Supreme Court created by the revolution.

Sir Archibald Nedd in the High Court of that Court and Justice of Appeal Nicholas Liverpool of the Court of Appeal of that Court had considered that the PRG Supreme Court had permanent legality. They based this on the legitimacy which they saw its PRG creators as having acquired from having been accepted by the people of Grenada, Carriacou & Petit Martinique.

But the majority of the Court of Appeal had ruled otherwise. President J.O.F. Haynes and Justice of Appeal Neville Peterkin had ruled that the PRG Supreme Court could endure only so long as necessity required.

This necessity materially expired when the Maurice Bishop murder proceedings were finally determined by the PRG Court of Appeal on 12 July 1991. On that day, the appeals in those proceedings against convictions and sentences for the murder of Prime Minister Maurice Bishop and several other persons were all dismissed. This paved the way for Grenada's return to the regional Supreme Court, accomplished just over a month later.

The fortunes of the Constitution have thus gone full circle. This has taken it from original proclamation at independence day, to revolutionary suspension on revolution day, to initially partial and then ultimately final restoration with the return of parliamentary democracy.

It is expected that the review work done on the Constitution by the 1985 Phillips Review Commission will now be addressed in earnest by the Nicholas Brathwaite government.

The idea is to draw upon the work of that Commission, while also enabling the people to participate fully in fashioning for themselves a Constitution that accords with their national psychology.

A Constitution that is the fruit of such genuine people's participation will better enable the people to achieve their national aspirations. A Constitution so reformed will be apt to withstand whatever tests it might be subjected to by unfolding events.

A Constitution reformed in accordance with the philosophy of letting the people's voices be heard will be a lasting tribute to the ingenuity of the people of Grenada, Carriacou and Petit Martinique.

Footnote

1. MITCHELL v. THE QUEEN (No.2), Court of Appeal Motion No.1 of 1991 (C.A. - Gda. 8 August 1991)

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