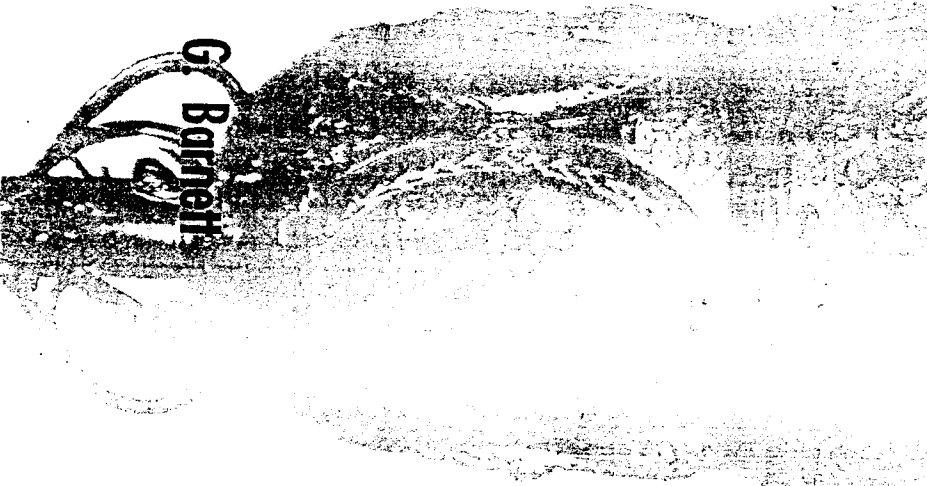


The Jamaican **CONSTITUTION**

Basic Facts and Questions

Lloyd G. Barrett



PREFACE

It is thirty years since the 1962 Independence Constitution was made. Of our present population, only a small percentage had the opportunity to participate in the discussions which led to its adoption. A new generation of politicians is now coming into positions of leadership. The time is therefore ripe for a review of the Constitution, not necessarily to throw overboard all that we have but to consider carefully what sort of changes should be made.

Most persons agree that there are some weaknesses in the present Constitution and that there is room for improving some of its provisions. For the general public to participate effectively in the discussions, it is necessary for us to have a clear knowledge of its basic provisions, to appreciate how it works and to understand some of the questions which arise for consideration.

The author has written this booklet in an effort to assist the public to learn the basic facts and to become aware of some important questions about constitutional review and reform.

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1 HISTORICAL INTRODUCTION

After the English captured Jamaica in 1655 a government patterned on the constitutional system in England was quickly established for the benefit of the Englishmen who came to settle in the island. A Governor was appointed and a Council set up to advise him. An Assembly was established for the purpose of passing laws and raising taxes, and the Council became a sort of second legislative house of the local Parliament.

The economy of the Country was based on the sugar plantations owned by the white settlers. They imported black slaves from Africa to work on the plantations. Although the blacks soon came to outnumber the whites, as slaves they hardly had any legal rights. They were treated in law as objects possessed by the planters in the same way as their cattle and were therefore excluded from the constitutional process. They had no votes and were not represented.

As time passed many of the plantation owners chose to live in England. The sugar plantations were inefficient. When opposition to the cruelty of the slave trade led to its abolition in 1807 the planters' supply of cheap labour was greatly reduced. Things grew from bad to worse. The black population increased its resistance to slavery. Progressive church leaders joined in the campaign against slavery. The white planters who controlled the Assembly refused to pass any laws for the improvement of the condition of the slaves and resisted emancipation. In 1833 the British Government against the resistance of the white minority passed the Abolition of Slavery Act.

Emancipation did not give the black majority any political rights. The whites continued to control the Assembly and to resist any proposals put forward for social reform, especially as these would involve their paying more taxes. The dispute between the Governors and the Assemblymen became bitter. At the same time the discontent of the emancipated slaves was growing. They were paid very low wages. They were thrown off the lands on which they had

settled and established their small farms. There were no social services for them. The Magistrates were corrupt and biased against them. In this atmosphere rebellion was inevitable and in 1865 violence broke out in St Thomas.

The Morant Bay Rebellion was brutally suppressed by the racist Governor Eyre. But the Assembly did not survive. The British Government abolished it and established Crown Colony Government by which the Governor ruled with almost absolute authority. This system was gradually modified by the re-introduction of an elected legislature but the franchise was strictly limited by property qualifications. The black majority, being poor, therefore had very little say in the Government.

In the 1930s popular discontent grew because of the depressed economic conditions, and there were organised labour disturbances and political protests. Demands were made not only for social reforms but also for constitutional changes. In 1944 an important breakthrough was achieved. Universal Adult Suffrage by which each adult citizen became eligible to vote was introduced. An Executive Council which included members elected on this broad-based franchise was established to formulate government policy. Party political organisations came to play an effective constitutional role by contesting the elections and participating in the forming of the Executive Government as well as the Parliamentary Opposition.

There were gradual improvements in this system until in 1959 internal self-government was achieved. However, Jamaica was still a British Colony.

On the break-up of the West Indian Federation, Jamaica demanded its Independence. The British Government agreed. A Constitution was drafted in Jamaica. The normal legal progression, however, required a United Kingdom Act of Parliament. The Jamaica Independence Act 1962 was passed by the British Parliament and an Order in Council made by the Queen in England to bring the Constitution into force.

*References - The Jamaica (Constitution) Order in Council, 1962
The Jamaica Independence Act 1962 (U.K.)*

Question

1. Should the Constitution, when amended, be completely re-enacted in Jamaica so that it no longer bears the foreign label of an Order in Council?

2 CITIZENSHIP

When Jamaica gained independence in 1962, Jamaicans became citizens of the new Nation State of Jamaica. For a country to be recognized as a State, it must have a permanent population, a defined territory and a Government. Citizenship is important in many ways. The citizen owes allegiance to the State of which he is a member. He must obey its laws and pay its taxes. The State in turn has the responsibility to protect its citizens from external attack and from internal disorder and crime. A citizen's travel abroad is facilitated by the passport issued by the Government of his State. He is entitled to work without having to obtain a work permit. He normally qualifies to use the social services provided by the Government. In a Democratic State, he is entitled to participate in the elections of the Government.

Under our Constitution, a person may become a Jamaican citizen in four (4) principal ways:

1. Under the law of the soil if he was born in Jamaica;
2. Under the law of the blood, if although born outside of Jamaica, his father was a citizen of Jamaica at the time of his birth;
3. In the case of a woman if she marries a male Jamaican citizen and registers as a Jamaican citizen;
4. Under a law made by Parliament which permits a foreigner to become naturalised as a Jamaican citizen.

Parliament is also given the power to make laws to permit a Jamaican citizen to give up his Jamaican citizenship and to deprive Jamaican citizens of their citizenship.

In three (3) situations the Constitution treats men and women differently:

- (a) It does not permit the husband of a citizen to obtain citizenship merely by registration;
- (b) It does not give citizenship to the child of a female Jamaican citizen where that child is born outside of Jamaica; and
- (c) It denies citizenship to the child born in Jamaica where his father was a diplomat serving in Jamaica at the time of his birth but not if it is his mother who was the diplomat.

*References - Constitution, Chapter II
The Jamaican Nationality Act*

Questions

2. Should the Constitution be amended so as to impose controls on the power of Parliament to make laws which may deprive Jamaicans of their Jamaican citizenship?
3. Should the Constitution be amended to remove the three (3) areas in which men and women are treated differently?
4. Should the Constitution be amended to control the power of Parliament to make laws which may confer Jamaican citizenship on foreigners, for example, by allowing them to purchase Jamaican citizenship as a means of encouraging foreign investments?
5. Should it be possible to confer honorary Jamaican citizenship on foreigners and if so, should they have equal rights with Jamaicans?

3 HUMAN RIGHTS

An important function of a written Constitution is to state and define the basic rights and freedoms of the people and to restrict the power of the Government and its agents to violate those rights and freedoms.

Jamaicans had struggled over generations to obtain these rights. By our adoption of the common law and the parliamentary democratic system we had come to enjoy many of these rights to a greater or lesser extent. But many of these rights were not protected by laws and others were restricted by existing laws. In a practical way many of the underprivileged of the society did not effectively enjoy these rights. The declaration in the Constitution that every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, is therefore not strictly true.

The Bill of Rights provisions of the Constitution are patterned on the Universal Declaration of Human Rights and the European Convention of Human Rights.

The Constitution states that each person has the right, (whatever his race, place of origin, political opinions, colour, creed or sex) to each and all of the following rights and freedoms:

- (a) Life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) Freedom of conscience, of expression and of peaceful assembly and association; and
- (c) Respect for his private and family life.

The fundamental rights and freedoms of the individual are, however, subject to respect for the rights and freedoms of others and for the public interest.

The Constitution safeguards the right to life, protects the individual

from unlawful arrest or detention, guarantees his freedom of movement into and within Jamaica, prohibits the imposition of torture or inhuman or degrading punishment or treatment; protects the citizen against the compulsory take-over of his property; protects the privacy of his home and property; guarantees him due process of law in legal proceedings; protects his freedoms of conscience, religion, speech, assembly and association and prohibits discrimination against him on the basis of his race, place of origin, political opinions, colour or creed.

Where a person's rights are violated or threatened, he may apply to the Court so as to obtain a remedy for the infringement, or an order to stop it from happening or continuing.

The protection of fundamental rights and freedoms granted by the Constitution is greatly weakened by the provision that a pre-Independence, and therefore colonial law, which infringes the fundamental rights and freedoms must nevertheless be upheld by the Courts because it existed before the Constitution came into effect.

Parliament can also suspend the Fundamental Rights and Freedoms by passing a law by a two-thirds majority in both Houses of Parliament and no referendum will be needed. Furthermore, a person who seeks to challenge unconstitutional action by a public authority or officer, must show that his personal interests are directly affected or threatened and that no other ordinary legal remedy is available to him.

References - Constitution, Chapter III and Section 50

6. Should the Constitution be amended to make it clear that the Bill of Rights chapter seeks to express International Human Rights principles and should be interpreted to give effect to those principles?
7. Should the provision which preserves colonial laws be removed from the Constitution?
8. Should the power of Parliament to suspend or override the fundamental rights provisions be subject to a referendum?
9. Should the provision against discrimination include discrimination on ground of sex or physical disability?
10. Should additional rights, such as the right to information on public affairs, the right to free primary education, to leave Jamaica, to legal representation provided by the Government in all serious criminal cases and human rights applications and the right to protection against environmental pollution be added to the fundamental rights provisions of the Constitution?
11. Should a responsible association or person be able to challenge unconstitutional action in the public interest even if his personal rights and freedoms are not directly affected, and the existence of some alternative legal remedy cease to be a barrier to constitutional remedies for infringement of fundamental rights?

4 HEAD OF STATE

The citizen's relationship with the State is not limited to legal responsibilities and rights. There is a sense of belonging which is important for national unity and pride. The Head of State is supposed to embody this sense of national unity and pride. Such a person should stand out as the representative of the common ideals, principles and hopes that we all share.

The Queen

Throughout its colonial history, Jamaica became attached to the monarchical tradition and Jamaicans paid homage to the person sitting on the British Throne. When the Constitution was being drafted, our political leaders rejected suggestions that Jamaica should become a Republic. The Constitution, in entrenched provisions, states that the Parliament of Jamaica consists of "Her Majesty, a Senate and a House of Representatives" and that "the executive authority of Jamaica is vested in Her Majesty". Accordingly, as Jamaicans, we have no true choice as to who is our formal Head of State. That is determined by the laws and Parliament of the United Kingdom.

The Governor-General

The Constitution states that there shall be a Governor-General of Jamaica appointed by the Queen who holds office during Her Majesty's pleasure and is her representative in Jamaica. By convention or an unwritten rule of constitutional practice, the Governor-General's appointment and duration of service is decided on the advice of the Prime Minister of Jamaica.

At present, the duties of the Governor-General are mostly formal. In certain important matters, he must act in accordance with the advice given to him by the Prime Minister. These include the appointment

and removal of Ministers of Government and the dissolution of Parliament. In appointing the thirteen (13) Government members of the Senate, he acts on the advice of the Prime Minister and in appointing the eight (8) Opposition Senators, he acts on the advice of the Leader of the Opposition.

In some cases, the Governor-General acts in his own discretion. These include the appointment of the Prime Minister and Leader of the Opposition, although in these cases the Constitution states the basis on which he should exercise this power, namely, that the appointees have the support of their party colleagues in the House of Representatives. In other minor matters, such as the appointment of his personal staff, the Governor-General is authorised to act in his own discretion.

It has been suggested that the Governor-General's functions should be expanded to include in particular, the appointment of independent persons who perform politically sensitive functions or have important public duties in areas in which it is desirable that they should be impartial and uninfluenced by partisan prejudices.

Of the four (4) Governors-General since Independence, all but the first have been native born Jamaicans. It is generally felt that the holders of this office have demonstrated the necessary ability and dignity and have earned the respect of the Nation. There is no good reason therefore, why the formal Head of State should not be chosen from Jamaicans who would best be symbolic of our national culture, feelings and aspirations.

References - Interpretation Act, (U.K.)

Act of Succession (U.K.)

Constitution, Chapter IV

Constitution, Sections 60-80

Questions

12. Should Jamaica become a Republic and Jamaicans cease to owe allegiance to the British Crown?
13. If yes, should the local Head of State be elected or nominated and by what system?
14. Should the term of his office be specified, and if so, what length of time should one person be permitted to hold the office?
15. Should the functions of the Governor-General be extended to appointing, in his own discretion, those persons who should be politically independent?

5 PARLIAMENT

The organ of government which makes laws for a country is called the legislature. Under our Constitution, Parliament is the legislative organ. We have a bi-cameral Parliament, that is to say, a Parliament of two (2) separate Houses.

The House of Representatives

The first House is the House of Representatives. This House consists of the elected representatives of the people. The Island is divided into geographical constituencies. These may number between 45 and 60. The system of election is called the first-past-the-post system. Each constituency elects one (1) representative. The person with the highest number of votes is declared the winner. Thus, if there are several candidates he may not get as many as half the votes cast.

The Right To Vote

Resident Jamaican citizens of eighteen (18) years and over who register in accordance with the Representation of the People Act, are entitled to vote. Each person has only one legal vote and should only vote in one constituency.

This Constitution does not give the citizen an enforceable legal right to vote. He may therefore be omitted from the electoral list and elections may proceed although many eligible persons who wish to be registered have not been registered.

The Electoral System

This system may result in a Party winning a large majority of seats without obtaining a majority of the votes of all the electors. It may also result in a Party with less than the majority of the votes in the country winning a substantial majority of the seats. This is primarily

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because of the unevenness in the number of electors in each constituency. These results are more likely to happen if there are more than two (2) Parties which attract substantial support from voters, but so far third parties have not gained much support in Jamaica. Nevertheless, some persons suggest that a system of proportional representation should be introduced to reduce the risks of unfair or distorted results, and to encourage the development of new parties. Proportional representation seeks to give to a party the number of seats which directly reflects the percentage of popular votes it wins. The system can be very complicated and sometimes causes weak government by failing to ensure that the government has a workable majority. The first-past-the-post system usually results in one Party having a clear and decisive majority.

The registration of voters, the division of the country into constituencies and the administration of elections, used to cause bitter conflicts between the political parties as these processes were often unfairly carried out. An Electoral Advisory Committee was established in 1979 to take over the responsibility for these areas. It consists of Government and Opposition nominees and independent persons appointed by the Governor-General. This system has worked well and rebuilt confidence in the process.

The Senate

The second House of Parliament is the Senate. It consists of thirteen (13) members appointed by the Prime Minister and eight (8) by the Leader of the Opposition. It is therefore essentially partisan in its membership. It has been proposed that the membership of the Senate should be expanded to include non-partisan and independent persons who reflect some of the major areas of public life. These additional members, it has been suggested, would be appointed by the Governor-General/President after consultation with non-political organisations and interests.

If there is no Leader of the Opposition in Parliament, because one Party holds all the seats as in 1983 when the People's National Party boycotted the Elections, or if no one is willing to carry out the functions of that office, the Prime Minister will have the power to appoint the remaining eight (8) Senators.

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Qualifications of Parliamentarians

The qualifications for membership of the Senate and House of Representatives are the same. Jamaicans and other Commonwealth citizens who at the time of their appointment or nomination are twenty-one (21) years and upwards and have been ordinarily resident in Jamaica for the immediately preceding twelve (12) months, are qualified to be members of the Senate or House of Representatives. Members of both Houses are eligible for re-election or re-appointment for as many terms as they desire.

Functions and Powers of Parliament

The Independence Act terminated the power of the United Kingdom Parliament to legislate for Jamaica. The only legal restriction on the law-making power of Parliament is that it must conform with the Constitution. Proposals for new laws or the amendment of existing laws are presented to Parliament in the form of Bills or Draft laws. Money Bills can only be introduced in the House of Representatives but all other Bills may be introduced in either House. In practice, however, most Bills are introduced in the House of Representatives. The Constitution gives Parliament the power to make laws for the "peace, order and good government of Jamaica".

Parliament is also responsible for conducting debates on public affairs. Ministers are under a duty to answer questions asked by Members about their Ministries and Departments. In practice, there has been a limited number of debates on Private Members' Motions and great delays or failure of Ministers to answer questions.

The powers of the Senate are limited. Its function is to revise Bills which have passed through the House of Representatives; delay and propose amendments to such Bills, initiate Bills, debate matters of public interest, direct questions to Ministers on matters of public concern and air the grievances of the Society.

The Senate cannot delay a Bill indefinitely. If it makes amendments to the Bill, it is sent back to the House of Representatives but this House need not accept the proposed amendments. If the Senate rejects or amends a Bill twice and the House of Representatives does not accept the view of the Senate, the Bill will be presented to the Governor-General for assent and then becomes law. If the House of Representatives insists, the Senate can only delay a Bill for seven (7)

months. Nevertheless, this interval in which legislation is debated twice in separate Houses, permits new points of view to be expressed by both Parliamentarians and the public. There have been many cases in which Bills have been passed through the House of Representatives and have had to be withdrawn or amended because of the criticisms made by the public or in the Senate debates.

The practice and procedure of each House of Parliament are laid down by the Standing Orders established by itself. The rules relating to the establishment of Committees, the conduct of debates and the behaviour of members are set out in these Standing Orders.

Parliamentary Privilege

The Constitution grants freedom of speech to Members of Parliament which is in effect an immunity from civil or criminal proceedings. Thus, a citizen cannot sue a Parliamentarian for a statement made in the Parliament which defames him, however false and malicious it may have been. Members are also protected from arrest for civil debts during the Sessions of Parliament.

The Two-Party System

Parliament is organised on a bi-partisan basis. The Government Members led by the Prime Minister sit on one side and the Opposition Members on the other. The Constitution provides for the appointment as Leader of the Opposition that Member of the House of Representatives who is best able to command the support of the largest group of Non-Government Members. The function of the Opposition in Parliament is to examine Government's proposals, criticize them, put forward alternative proposals, demand explanations from the Ministers regarding their administration and air public grievances. The Opposition therefore presents itself as an alternative Government which is able and ready to take over from the Government in office.

The Life of Parliament

Each Parliament has a maximum life of five (5) years counting from its first sitting. During this period, a member continues to sit unless he resigns, Parliament is dissolved or he does something which dis-

qualifies him from holding the office. Parliament may be dissolved at any time on the advice of the Prime Minister or if a resolution is passed by more than half of the membership of the House of Representatives that they have no confidence in the Government. The power of the Prime Minister to advise when Parliament should be dissolved gives him the facility to fix the election date for his own or his Party's advantage and to influence Members of his Government and Party to support him.

References - Constitution, Chapter V

Representation of the People Act

Standing Orders of the Senate and House of Representatives

Senate and House of Representatives

(Powers and Privileges) Act

Questions

16. Should there be one or two (1 or 2) Houses of Parliament or should the Senate be abolished?
17. If we keep the Senate, should its membership be enlarged, and if so, what system of selection of Senators should be adopted?
18. Should the age qualifications of Senators be the same as members of the House of Representatives?
19. Should the citizen be given an enforceable legal right to be registered as an elector and to vote?
20. Should the right to vote be entrenched as a fundamental right?
21. Should the first-past-the-post system be retained or should a system of proportional representation be introduced?
22. Should the Electoral Advisory Committee be incorporated in the Constitution entrenched and given protection against political domination?
23. Should Members of Parliament be required to reside in the Constituency which elects them?
24. Should Parliamentarians be protected by absolute privilege when they make false and malicious statements against other persons or should they lose their immunity if malice is proved against them?
25. Should the Constitution provide a method by which the elected Members of Parliament may be removed from the House or recalled because of lack of performance or incompetence?
26. Should a maximum be fixed for the number of terms that a Member of Parliament or Senator may hold those positions?
27. Should the term or duration of each Parliament be for a fixed period and should that period be shortened from five (5) years to four (4) years?

6 THE POLITICAL EXECUTIVE

The executive organ of Government is responsible for formulating policies, implementing programmes, initiating proposals for legislation and taxation. Under the Constitution, the executive authority is exercised by the Governor-General directly or through officers subordinate to him. The Prime Minister and the Ministers of Government are the principal executive officers.

The Cabinet System

The Governor-General must appoint as Prime Minister, the member of the House of Representatives who is best able to "command the confidence" of a majority of the members of that House. The Prime Minister then selects the Ministers and Parliamentary Secretaries to be appointed by the Governor-General. Not less than two (2) nor more than four (4) of the Ministers have to be appointed from the Senate. The others must come from the House of Representatives. The Prime Minister and the Ministers so appointed form the Cabinet. The Prime Minister presides in the Cabinet, which must consist of at least eleven (11) Ministers. There is no other limit to the overall size of the Cabinet. Cabinet Ministers may be put in charge of one or more subjects or departments of Government, for instance, Education, Finance, Labour and the Registrar General's Department. These areas of responsibility are called portfolios. But sometimes Ministers are appointed without portfolios.

In addition, a person is selected by the Prime Minister for appointment as Attorney-General. This person need not be a Senator or Member of the House of Representatives. In fact, he need not be a qualified lawyer. He is nevertheless by the Constitution, the principal legal adviser to the Government. Usually, he is appointed from the Senate or House of Representatives and is often a Cabinet member as well.

The Cabinet as the principal instrument of policy, is charged with the general direction and control of the Government and is collectively responsible for its administration to Parliament. In our strong two-party system, the Prime Minister will ordinarily be the leading Parliamentarian of the Political Party which has the majority of members in the House of Representatives and he selects as Ministers and Parliamentary Secretaries, persons from his own Party.

Cabinet Ministers exercise general direction and control over the work falling in their portfolios. They are individually responsible for their portfolios to Parliament. In carrying out their functions, they are assisted by junior Ministers or Ministers of State and Parliamentary Secretaries. The day to day and detailed administration of the work and departments is under the supervision of Permanent Secretaries who are public officers.

The political executive is therefore at the hub of the governmental machinery. This system may be described as the Parliamentary Cabinet System, to stress that the executive leadership of the Government is derived from, based in and responsible to Parliament. An alternative system which is to be found in many countries is the Presidential System.

The Presidential System

It has been suggested that Jamaica should not merely change to a Republican form of Government, but should adopt the Presidential System. This would be a radical change from our present Parliamentary Cabinet System in which the principal Executive Officer, the Prime Minister, is selected on the basis that he commands a majority of the elected Parliamentarians. In this system, the political head of the Government is not selected from the elected legislature. Usually, he is directly elected by the entire country in a separate election. In many cases, as in the United States of America, there is a strict separation between the Executive and the Legislature. Not only is the President not a member of the Legislature but his Cabinet is not selected from legislators.

The Presidential System places the legislature in a position where it may provide a check on executive power. It also allows the President a wide scope for appointing his Cabinet. It must be noted that it will only provide an effective check on the Executive if the person

elected as President does not control the Party which wins the majority of seats in the elected House and if the elected members are not readily influenced by the President and his principal political agents. On the other hand, in a Presidential System, if the elected President's Party also wins most seats in the elected House, the combination of Presidential powers with the personal political base of his direct election will tend to make him a virtual dictator for the period of his office.

In addition, in the Presidential System, the President is able to appoint to his Cabinet persons who are not acceptable to the public and must exclude persons who by their election have demonstrated some popular support.

Changing The Government

The Government which is in office comes to an end when Parliament is dissolved for a new General Election to be held. As we have seen, the life of Parliament is fixed at a maximum of five (5) years but the Prime Minister may call the Elections at any time before the end of that period if he thinks it suits him. If the majority of the Members of the House of Representatives vote for a resolution of no-confidence in the Government, the Governor-General must dissolve Parliament and call new Elections. The loss of a vote on any other Motion or proposal will not automatically put an end to the Government.

If the elected House, by a majority of all the members, vote that the appointment of the Prime Minister should be revoked, the Prime Minister has the power to prevent the revocation of his appointment by requiring that the Parliament be dissolved and new Elections held. Thus, rather than giving up office he can bring down the entire Government.

References - Constitution, Chapter VI

Questions

28. Should Jamaica adopt a Presidential System of Government?
29. If the present system is retained, should a specific procedure for selecting the Prime Minister be established?
30. Should the Head of the Political Government have the power to appoint to his Cabinet persons who are not members of either House of Parliament and if so, should that power be unlimited?
31. Should the Constitution state that the Attorney-General must be a qualified Attorney-at-Law?
32. Should there be a maximum limit placed on the size of the Cabinet?
33. Should the Head of the Political Government be entitled to require that General Elections be called if the elected House votes in favour of his dismissal from office?

7 THE OFFICIAL EXECUTIVE

Public administration is conducted by a vast range of persons and organisations: civil servants, subordinate employees, contract officers, local government bodies and employees, statutory authorities and other individual and corporate functionaries. Some of these authorities are set up by the Constitution itself.

The Privy Council

The Privy Council consists of six (6) members appointed by the Governor-General after consultation with the Prime Minister. It is responsible for advising the Governor-General on the exercise of the prerogative of mercy, including the grant of pardons, and the reduction of sentences. The Constitution does not state that the Privy Council should hear representations from persons who are affected by its decisions regarding the exercise of the prerogative.

The Privy Council also hears appeals by public officers and members of the armed forces in disciplinary proceedings.

The Director of Public Prosecutions

The Office of the Director of Public Prosecutions is another important public office directly established by the Constitution. The Director of Public Prosecutions has the power to start and carry on criminal proceedings, as well as to stop them. He is not subject to the direction or control of any other person in his exercise of these important functions.

Public Service Commission

The Constitution has established a Public Service Commission which is responsible for the appointment, promotion, dismissal and disciplinary control of public officers. The members of the Commission

are appointed by the Governor-General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. They hold office for a fixed term and can only be removed for good reason. The purpose of these provisions is to protect permanent public officials from political domination and to ensure that their appointments and promotions are based on merit and that they cannot be dismissed for political reasons. The Constitution gives the Public Service Commission immunity from challenges in the Courts as to the correctness of its decisions affecting the welfare and future of public officers. It should be noted, however, that even if the Leader of the Opposition objects and the Governor-General does not approve, the Prime Minister can insist that his recommendations be implemented.

High Officials

The Financial Secretary and Permanent Secretaries are appointed by the Governor-General on the advice of the Public Service Commission after consultation with the Prime Minister. The transfer of such officers from one Ministry to another is based on the Prime Minister's recommendations.

The appointment of Ambassadors, High Commissioners and principal diplomatic officers is effected on the advice of the Prime Minister. In the appointing of such highly important public officers, the Prime Minister clearly has significant influence. The explanation for this is that it was thought that since these persons participate in the formulation of policy, have to work closely with the Ministers and act on their behalf, then the Ministers should feel comfortable in working with them.

Statutory Authorities

Many important public functions are performed by statutory authorities. Under the laws establishing such authorities, it is usually stated that the members of the Board and its employees are not public officers and therefore they are denied the constitutional protection of the Public Service Commission. These Boards are usually selected by the Minister, and in many cases their staff are appointed in consultation with or at the direction of the Ministers. The new trend of contracting out public functions to private interests will also increase

the power of Ministers to exert political influence on those who perform public administration.

Local Government

Some administrative functions of Government are in nature local and are regarded as best carried out by local authorities. In Jamaica, the Local Government authorities are the Kingston and St Andrew Corporation in the Corporate Area and the Parish Councils in the other parishes. Normally, Local Government should have its own elections, its own powers of raising taxes and particular areas of activity. The Constitution does not mention or protect Local Government. It is very unusual for this to be done. It would require extensive and detailed provisions to secure the local system of elections, financial resources, and range of powers and responsibilities.

Parliamentary Ombudsman

In many cases, citizens are affected by the abuse by public officers of their powers and by unfair administrative action. Many of these wrongs cannot be remedied by legal action in the Courts. To deal with complaints of such nature, the office of Parliamentary Ombudsman was established by Parliament. The Ombudsman investigates complaints, makes recommendations to the responsible Minister and if satisfactory action is not taken in any such matter, submits a report to Parliament.

*References - Constitution, Sections 82-96, Chapters IX and X
The Kingston and St Andrew Corporation Act
Parish Councils Act
The Ombudsman Act*

Questions

34. Should the method of appointing the Privy Council be changed to ensure representation of wider segments of the Society?
35. Should the exercise of the Prerogative of Mercy be subjected to review by the Courts?
36. Should the Privy Council be obliged to hear representations from the persons affected by its decisions?
37. Should the decisions of the Public Service Commission and of the Privy Council be open to judicial review?
38. Should the method of appointment of the members of the Public Service Commission be changed, and if so, how?
39. Should the powers of the Public Service Commission with respect to the offices of Permanent Secretaries and Diplomats be increased?
40. Should the powers of the Public Service Commission be expanded to cover statutory bodies and any other agencies of Government?

8 PUBLIC FINANCE

Under the Constitution, the Executive is required to follow certain rules in the administration of public finance so that Parliament may have the opportunity to examine and criticize its activities.

Estimates and Expenditure

Before the end of the financial year on the 31st of March each year, the Minister responsible for Finance must lay before the House of Representatives estimates of revenue and expenditure for the coming year. Only Ministers may propose new expenditures or increases in the Estimates. The Minister must also introduce the Appropriation Bill, which states the amount to be spent by each government department. Thus, both the proposals for raising revenue and the expenditure of public funds must be approved by the House of Representatives. The House examines the Estimates in detail in meetings of its Finance Committee.

No payments may be made out of public funds without a warrant signed by the Minister. Expenditure in excess of the approved Estimates and the provisions of the Appropriation Acts, is often undertaken and afterwards approved in Supplementary Estimates and Appropriation Acts.

The House may also by resolution authorise expenditure of public funds by "a vote on account" before the passing of the Appropriation Act. The Minister is empowered to maintain a Contingency Fund into which part of the public revenues is paid and from which to make advances to meet unforeseen needs.

Auditor-General

The Constitution provides for the appointment of an Auditor-General by the Governor-General on the recommendation of the Public Service Commission. He is given similar protection to that of the

Director of Public Prosecutions so as to be independent of the political directorate. His duty is to examine the public accounts to find out whether the accounts are true and accurate, the accounting rules have been followed and all expenditure has been properly made. The Auditor-General submits his reports to Parliament.

The House of Representatives, through its Public Accounts Committee examines the reports. It may question Government Officers and report to the House on the conduct of any department and whether explanations given have been satisfactory or not.

Revenues and Taxation

All revenues have to be paid into the Consolidated Fund. Most of the national revenue comes from taxation. Most of the tax laws authorise the Minister to alter the tax rates. Thus, taxes are usually increased by the Orders of Ministers and are only subsequently submitted to the House for approval and confirmation. In addition, the Minister is authorised to raise loans up to a certain maximum. This maximum is often exceeded and the approval of Parliament obtained only subsequently.

*References - Constitution, Chapter VIII
The Loans Act
The Financial Administration and Audit Act*

Questions

41. Should stricter provisions be made to control expenditure in excess of what has been approved by Parliament?
42. Should the Minister of Finance be able to increase taxes by Orders made prior to approval of the House?
43. Should it be possible to impose or authorise retroactive taxation or the back-dating of new or increased taxes?
44. Should a Government's power to increase taxes be limited by requiring a special majority where the proposed increase is above a certain percentage?
45. Should the Minister be able to borrow money in the name of the country without being first authorised by Parliament and should the power to borrow so as to increase the National Debt over a certain maximum require a special majority in the House?
46. Should the Constitution guarantee that the Auditor-General has adequate resources to carry out his functions?
47. Should provision be made for the Committees of the House responsible for supervision or examination of public finance and accounts, to engage the services of accounting and technical experts to assist them?

9 THE SECURITY FORCES

One of the main functions of Government is to maintain law and order and to protect the community against external aggression. The Police and Military Forces are responsible for the carrying out of these functions.

The Police

The Constitution does not describe police officers or what their functions are. It establishes the Police Service Commission which is responsible for the appointment, promotion and disciplinary control of police officers. The security of tenure of the Commission is given the same protection as the Public Service Commission. The appointment of the members of this Commission is under the complete control of the Prime Minister. Disatisfaction with this system of appointment has been voiced. The Constitution does not deal with the Defence Force at all. It is therefore not protected by the constitutional mechanism of a Service Commission.

The principal section of the Police Force is the Jamaica Constabulary Force. This Force is supplemented by the Island Special Constabulary Force and the Rural Constabulary of District Constables. The duties of the members of the Constabulary Force are to keep watch by day and night, preserve the peace, detect crime, arrest and prosecute persons who commit crimes. The policeman has wide powers of arrest which extend to most minor offences. Various laws give him powers of entry into private premises, of search and of seizure of property.

A constable is required to act without favour or affection, malice or ill-will. There have nevertheless been numerous and persistent complaints of abuses of power by the police and of their being influenced by corrupt, personal or political motives. The situation has worsened because of the extensive use of the wide powers granted by the Suppression of Crimes Act.

The Army

The Defence Force has a regular and a reserve force. The Defence Act provides for the establishment of a Defence Board. The Prime Minister has a very strong say in selecting its members. The members of the Defence Force are subject to military law, as well as civilian law. They may be tried by Courts-martial, as well as the ordinary courts, and may appeal to the ordinary courts against their conviction by a Court-martial. The Defence Force is charged with the defence and maintenance of order in Jamaica and such other duties as may be stated by the Defence Board. The Governor-General may order that the whole or any part of the Defence Force shall be employed out of or beyond Jamaica. The Defence Force has frequently been used to assist the Police in carrying out their duties.

The Constitution states that any person who is a member of any Force which succeeds to the functions of the Jamaica Constabulary Force shall be subject to the control of the Police Service Commission. Unfortunately, it does not specifically require the same where another Force is sharing in the exercise of those functions.

References - Constitution, Section 1(1), Chapter IX, Part 2

The Jamaica Constabulary Force Act

The Constables (Special) Act

The Defence Act

The Suppression of Crimes Act

Questions

48. Should the Constitution set out clearly what Security Forces may be created and maintained in Jamaica?
49. Should the Constitution restrict the authority of Parliament or the Executive to create new or additional Security Forces?
50. Should Government be required to prohibit or limit the formation of private security organisations or the size of such organisations?
51. Should the Constitution define or require a definition of "arrestable offences" so as to control the abuse of police powers of arrest?
52. Should the Security Forces be represented in the membership of the Police Service Commission?
53. Should the decision on appointments to the Police Service Commission be removed from the ultimate discretion of the Prime Minister, and if so, to whom should it be given?
54. Should the Defence Board be established by the Constitution and be appointed in the Prime Minister's discretion or by some other Authority?

10 JUDICIARY AND COURTS

It is an important function of a Constitution to provide the means for settling disputes between citizens and between individuals and the State, which cannot be settled by negotiation. The Judiciary is the independent organ of State which is entrusted with the task of deciding on legal disputes.

The Court System

In Jamaica, there are many Courts which carry out this function. The Court of Appeal and the Supreme Court are the superior Courts established by the Constitution. There are also the Revenue Court, which is a superior Court, and the Gun Court, which is a mixture of superior and inferior Courts established by Parliament. The inferior Courts are the Family Courts, the Traffic Court, the Resident Magistrate's Courts, Juvenile Courts and the Courts of Petty Sessions. They are constituted by Acts of Parliament. Appeals may also be taken from Jamaica to the Judicial Committee of the Privy Council in England.

Jurisdiction of the Courts

The Petty Sessions Courts try a number of minor offences. Resident Magistrates conduct preliminary inquiries into serious offences and if a *prima facie* case is shown, commit the accused to stand trial in the Circuit Court which is part of the Supreme Court. The Resident Magistrates also try a wide variety of criminal and civil cases. Their jurisdiction in civil cases is mainly limited by the value of the claim or property involved. The Supreme Court has unlimited jurisdiction in civil matters. It deals with divorces, land and commercial claims. The Supreme Court Judges sitting in the Circuit Courts preside over the trials of persons committed on serious charges. Constitutional cases are normally heard by a Full Court of three (3) Supreme Court Judges. Other important cases, such as *habeas corpus* applications and

proceedings challenging judicial or executive action, are heard by a similarly constituted Court.

Appeals from all the inferior Courts, other than Petty Sessions go to the Court of Appeal. Petty Sessions appeals are taken to a Judge of the Supreme Court in Chambers.

Terms of Service of Judicial Officers

The Chief Justice is Head of the Judiciary; but the President of the Court of Appeal is Head of the Court of Appeal. The Chief Justice only sits in the Court of Appeal if four (4) other Judges of Appeal are sitting and he is invited to do so by the President of the Court of Appeal.

The Chief Justice and President of the Court of Appeal are appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. The other Superior Court Judges, the Resident Magistrates, the Judges of the Traffic and Family Courts and the Registrars of the Court of Appeal and Supreme Court are all appointed by the Governor-General on the advice of the Judicial Service Commission. Justices of the Peace who sit in Petty Sessions are appointed by the responsible Minister on the recommendations of Parish Committees. The Judicial Service Commission consists of the Chief Justice, the President of the Court of Appeal and three (3) other persons, appointed by the Governor-General on the recommendation of the Prime Minister, after consultation with the Leader of the Opposition. One of the appointed members must be a retired superior court Judge and the other two are nominees of the General Legal Council, a body which is primarily made up of attorneys-at-law. The appointed members serve for a fixed term of three (3) years.

Apart from resignation or retirement, a Judge may only be removed from office for inability to discharge his duties, or misbehaviour and only after a special judicial inquiry. The salaries, allowances and benefits attached to a Judge's office cannot be removed or decreased while he holds the office. Judges are therefore fairly well protected against direct political pressure. The political Executive is however responsible for fixing their emoluments and this could be an instrument of political influence. It has been suggested that the Constitution should provide an independent mechanism for dealing with such matters.

Odd pages
to be filed

Trial By Jury

In recent years the right to trial by jury has been diminished and many serious offences are now tried by Judges or Resident Magistrates sitting alone. The Constitution does not protect the right to trial by jury and it could be completely abolished by Parliament.

References - Constitution, Chapter VII

The Judicature (Supreme Court) Act
The Judicature (Appellate Jurisdiction) Act
The Judicature (Resident Magistrate's Court) Act
The Justices of the Peace Jurisdiction Act

Questions

55. Should appeals from Jamaica to the Privy Council in England be abolished? If the answer is yes, should such appeals be taken to some other Court?
56. Should the appointment of Judges be open to public or Parliamentary discussion before confirmation?
57. Should the present system of appointing the Judicial Service Commission, the Chief Justice and the President of the Court of Appeal be retained?
58. Should inability of a Judge to discharge his functions include persistent failure to deliver judgments within a reasonable time?
59. Should the right to trial by jury be protected by the Constitution?

11 AMENDING THE CONSTITUTION

The Constitution was formed after negotiations and represents the consensus arrived at by the Leaders of the two (2) major political Parties. There was concern that no one Party or Group should be able to change important provisions easily. For this reason, a complicated amendment procedure was established with four different grades of difficulty.

Ordinary Amendment Procedure

The first or ordinary procedure deals with those Sections which were not considered vital to Democracy and the protection of political minorities. These Sections can be amended by an Act of Parliament which is passed in both Houses by a majority of their entire membership. Usually, the Government would be in a position to change these Sections as it would normally control the majority in both Houses. It seems, however, that there are some important matters which were left in this group, e.g. Citizenship, the Qualifications of Voters and the Right to Vote, the tenure of Office of Parliamentarians, and the Establishment of the Office of Leader of the Opposition.

Special Acts Procedure

The second Group is very limited. In two (2) cases, the constitutional provisions can be amended by Special Acts. These are the changing of the prescribed voting age and the modification of the fundamental human rights provisions. In the first case, the Special Act only requires a majority of all the members of both Houses to support it but in the second, a majority of two-thirds of all the members is required.

Ordinarily Entrenched Provisions

In the third Group are the provisions which are ordinarily entrenched. Repeal or amendment of these provisions require the support of two-thirds of all the Members of both Houses. In addition, in such cases, the amending Bill may not be presented to the Governor-General for signature unless a period of three (3) months has elapsed between the introduction of the Bill in the House of Representatives and its debate, and a further period of three (3) months between that debate and its passing through that House. If the Senate does not support the Bill with the necessary majority after it has been set back a second time, the Bill must be submitted to the electorate in a referendum and the amendment will only pass if it gains three-fifths of the votes cast. The provisions falling in this group include the sections relating to the independence of Judges, the Services Commissions and the Director of Public Prosecutions, the drawing of boundaries of Constituencies and the role of Parliament in public finance.

Deeply Entrenched Provisions

The most deeply entrenched provisions are subject to a procedure similar to the ordinarily entrenched provisions but the amendment must in any case be submitted to the electorate in a referendum, and will only be passed if it obtains the support of a majority of the electors who vote. If it has been rejected in the Senate, it must then receive a two-thirds majority of the electors voting, for it to come into effect. This group includes the position of the Queen as Head of State, the requirement for Parliament to meet periodically, the dissolution of Parliament and the supremacy of the Constitution over other laws.

References - Constitution, Sections 49-51

Questions

60. Should the amendment procedure be changed, and if so, how?
61. Should some of the entrenched provisions be given less protection or should other provisions be given greater protection?