

THE 1970 CONSTITUTION FOR THE BRITISH SOLOMON ISLANDS

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Previous Evolution of the Legislature and Executive up to the 1967 Order in Council

The British Solomon Islands were declared a Protectorate in 1893 and for the first five years the establishment consisted of a Resident Commissioner and eight police recruited from Fiji. It was not until 1921 that the need was acknowledged for at least some consultation and advice in the governmental process: an Advisory Council was set up to consist of not more than four members, increased in 1927 to seven. All members were expatriates and it was not until 1950 that four nominated Solomon Islanders took their place on the Advisory Council. By 1958 the Council had grown into a larger body meeting twice annually and playing a more substantial part in government. In addition to four official members, there were five non-official members and five Solomon Islander members, all nominated.

In 1960 the first Legislative Council was established by Order in Council. This consisted of the High Commissioner, eleven ex-officio or official members and ten unofficial members, all nominated, of whom six were Solomon Islanders.

By 1964 it was already apparent that nomination of Solomon Islander members was an unsatisfactory method of representation and in the new Constitution of that year provision was made for only two of the ten unofficial members to be nominated. The remaining eight were to be elected, one in Honiara by direct election, the other seven by electoral colleges composed of local government councillors previously elected as such under a system of adult suffrage.

The electoral college concept worked but was not a true substitute for a direct election. By 1966 the Legislative Council had recommended an increase in size to comprise the High Commissioner plus twenty-nine members, three to be ex-officio, twelve to be public service, giving a majority of one official over fourteen elected members. There was also provision for two nominated non-voting members whom the High Commissioner could appoint at his discretion: but this discretion was never exercised. Apart from two Polynesian islands, Tikopia and Anuta, where no system of local government has yet been introduced, there is universal coverage of the Protectorate by local councils. Local government common rolls were accordingly adopted for central government elections and in 1967, when the next Constitution was introduced by Order in Council, thirteen members were directly elected on these rolls. In the fourteenth constituency, the Eastern

* Opinions and comments expressed in this article, which was written just before the constitution came into force, are those of the writer, and should not be taken expressly or impliedly to be those of the British Solomon Islands Government.

Outer Islands, the electoral college system was still necessarily employed because of the difficulties of communication and the special circumstances of Tikopia and Anuta.

The Executive Council which meets in private has been in existence since 1960 and the High Commissioner is required to consult it in the exercise of his powers unless a particular law enjoins that he need not do so or unless the Crown would sustain material prejudice. He need not consult the Council on matters in which he is empowered to act in his discretion or which are too unimportant to need consultation. Likewise if urgency dictates that he should decide without waiting to consult the Council he may do so and inform the Council later of his decision and the reason for not waiting to consult. In practice this means that the High Commissioner normally consults the Executive Council before ordering any Bill to be published and introduced into the Legislative Council and before making any subsidiary legislation.

The Executive Council will also advise the High Commissioner to publish draft White Papers on policy, including development plans, and provisionally agrees to the allocation of supplementary provision during the year and to the construction of the next year's budget. It is also kept informed by means of information papers about progress on matters in which it is interested, on which it has previously taken decisions or is likely to be consulted in future. It is not however a mini-cabinet, as only the ex-officio members automatically have portfolios and elected members do not accept the principle of collective responsibility nor indeed do they commit themselves to support in the Legislative Council decisions taken in the Executive Council. Moreover, the High Commissioner may act against the advice of the Executive Council, if in his judgment it is right to do so, although this has rarely occurred.

Under the 1967 Constitution, the Executive Council consisted of three ex-officio members and up to five others of whom only one might be a public service member. In practice there were four officials and four elected members, all appointed by the High Commissioner in his discretion from among the members of the Legislative Council. The High Commissioner was not a member as the Council advised him, although he was, as President, a member of the Legislative Council.

The 1967 Constitution allowed for a possible majority of elected members both in the Legislative and Executive Councils which could be achieved by the reduction in the number of appointments of public service members, if the principle of collective responsibility in the Executive Council was accepted. There was also provision for the High Commissioner to appoint a non-member Speaker (when he himself would cease to be a member) and to institute a Public Service Commission. None of these discretionary powers was exercised as during 1968 discussions were already taking place with elected members about the next constitutional stage.

It is, however, an interesting background to the 1970 Constitution that Solomon Islanders were first consulted about central government, and then only in the form of nominated Solomon Islanders, in 1950, and also that a Legislative Council has only been in existence for ten years and that the first direct elections, apart from the single urban election in Honiara in 1965, took place in 1967.

Where do we go from here?

1. *Are we on the right path?*

At the first meeting of the Council established under the 1967 Constitution, two related measures were presented to the new Council, the *Overseas Service Agreement (Ratification) Bill* 1968 and the *Income Tax (Amendment) Bill* 1968. These sought to ratify an agreement between the United Kingdom and the Protectorate Government whereby that portion of salaries of expatriate officers, representing the difference between local salary levels and overseas market levels, would be paid by the United Kingdom Government, together with certain fringe benefits including passages and educational allowances for children educated overseas. Previously the proportion of salary involved, called inducement allowance, had been paid locally and it had local tax deducted. But as the territory received an annual grant-in-aid from Her Majesty's Government the amount of tax collected was subtracted from the grant-in-aid due. Under the revised agreement the inducement allowances would be paid outside the territory but would be calculated as though tax had been paid in the Protectorate. The officer would thus get a reduced allowance net of tax and the allowance paid outside the territory would not be subject to Protectorate or United Kingdom tax.

All very logical. To be completely fair to the official side there was no attempt to cut this through the slips with a new Council fielding for the first time. Business simply took its course. But at once the new Legislative Council showed its mettle. The main issue was whether a discriminative tax advantage was being given to civil servants and once the word discrimination entered the debate the delicate relationships of local salaries and gross salaries naturally provided some by-play. In the event the official majority had to be used at the first meeting to carry the *Overseas Service Agreement (Ratification) Bill*, although the *Income Tax (Amendment) Bill* passed its third reading normally.

This positive confrontation with the official side, coupled with well thought out and constructive motions, a more lively use of question time and improved debating standards, immediately established the elected side of the Council as a strong political force: it also—and some of the elected members themselves were uneasy about this role—established it to some degree as an opposition to the civil service members.

Democracy on the Westminster pattern depends for its working on the party system with the inherent concept of a government and an opposition. In the Solomons, while there has been a number of political parties, none of them has survived as a viable organization with a party policy and all candidates for election stand as independents. The result, as I have indicated, is that the elected members have assumed the role of opposition. This concept has been further developed by the seating arrangements in the Legislative Council in which the benches of the public service and elected members face each other. Even an unwritten "whip" system has developed whereby on important issues elected members will vote together and on occasions call for a division to underline this and public service members may under instruction do likewise. Questions and motions, some of which are, not unnaturally in early political development, parochial in nature, are framed to highlight the faults, inefficiencies and non-performance by the civil service. This can provoke resentment among public service members who may be defensive where a frank admission would be the wiser course.

All of this adds up to a house divided in itself because of its structure instead of functioning as an integrated legislative body. Behind the public service members there lies the threat of the use of the official majority and behind that the unused support of the High Commissioner's reserve powers.

The Executive Council, if it developed along normal lines, would on the Westminster parallel ultimately be composed of Ministers appointed by the leader of the party in power. But the majority in the Legislative Council is until this year of public service members. The 1967 Constitution permitted the High Commissioner considerable latitude within a total permissive membership of eight in the constitution of the Executive Council. But as no acceptance of the principle of collective responsibility emerged he so arranged membership that in effect there was an equal balance of four official and four elected members. Meetings are held in private and elected members have no portfolios. An elected member may find himself asked to advise the High Commissioner to increase school fees whereas he has pledged himself at the polls to support free education. He may dissent and have his dissent recorded but however he advises there is nothing to preclude him from going into Legislative Council later and advising the opposite in very forceful terms.

Furthermore, only the Executive Council members have had opportunity to get to grips with a topic at the policy formulation stage—four out of fourteen elected members of the Legislative Council: and the Executive Council was not the best environment for the dissection of, for example, forestry policy. A formal policy paper would be prepared by officials and approved in the Executive Council for introduction in the Legislative Council by means of a notion for its adoption. There was thus the feeling that everything was cut and dried, had been prepared by officials who alone knew all the facts and that both Executive and Legislative Councils were being asked to rubber stamp a policy thought out by officials. It can be argued that in the full parliamentary system M.P's would have little say in policy formulation unless they were members of the cabinet: but there is a greater use of select committees and it is members of their own party who approve the policy at cabinet level and not a body including officials who may have prepared the basic policy papers, sitting as politicians in the Executive Council.

To sum up, the Legislative Council under the 1967 and previous Constitutions has, through the absence of political parties, stimulated a division between the public service and elected members: this has been deepened by the feeling that elected members whether on the Legislative Council or the Executive Council are cut off from policy making, are being asked to rubber stamp what are virtually official or administrative decisions and are a "front" to conceal the continued government of the country by the old colonial machinery. Where such beliefs are held, rightly or wrongly, the chances of emergence to self-government on a basis of mutual trust, respect and good-will are severely reduced.

2. *Does the Westminster pattern suit a small Melanesian country?*

The British form of democracy has unquestionably been one of the country's strongest assets through the ages. Like all institutions it has had to modify itself and evolve and we see now a great upheaval in local government in the United Kingdom twenty years after the British brand was being sold to Germany as an essential feature of the democratization process after the war: and the central government pattern has been repeatedly sold pack-

aged in several basic models to colonial territories since self-government became the declared aim for dependent territories. With chauvinistic logic it has been argued that if it is right for Great Britain it must be right for other countries. What has happened in former British dependent territories since self-government has been regarded as irrelevant. The rules of cricket stay the same: the new team either does not understand them or has not played itself in.

Can a system of democracy suitable for a country of 58 million people be telescoped down to suit a population of 152,000, a people with forty spoken languages and no written literature, with a population density of thirteen to the square mile, with the habit of agreeing by consensus rather than by majority vote and with a suspicion bred from a history of foreigners, foreign ideas and foreign motives? Can a country the size of the Solomons afford the trappings of a ministerial system, the prestige cars, offices and houses, the private secretaries and the entertainment account? Is there ultimately to be bicameral system and if so who is to make up the upper house? If there are to be Ministers, are there to be very few with broad portfolios or a larger number with individual subjects such as labour, education, etc? If few, does this run the risk of abuse? If many, where are they to come from?

These are but some of the questions that arise when considering the next stage of constitutional development and although different persons will give different answer to some of the questions, the conclusion appears incontestable that it would be wise to consider what choices alternative to the Westminster pattern lie open.

3. *Who should answer the questions?*

As in most other countries the villager in the Solomons has only a hazy idea of how government works. Local government is closer to him as he pays rates to it and obtains some visible benefits from it such as clinics, schools and water tanks. He is familiar with elections and understands the principle of representation up to a point but his councillor is rather an emanation of his area at the centre than someone who will represent popular opinion. He is qualified to ask for something concrete like a bridge or a wharf: but although he will be expected to express his individual views on abstract questions such as bride-price or alienation of land, his constituents will repudiate these if they disagree. What the Legislative Council is and what the role of the Legislative Council member is are even less understood. The member goes to a meeting twice a year in Honiara, the capital; he sometimes comes round and talks to his constituents before or after the meeting. He is a man of some importance and government officers treat him with deference. Sometimes one can hear him over the radio asking a question about some local problem.

With knowledge of politics at this stage the referendum—and there is no provision for this under the 1967 B.S.I. Order—or Commission approaches to ascertain what the next stage of political development should be, are unlikely to get very far. The High Commissioner accordingly sounded out the elected members who were most conscious of the defects of the existing system and having reached some consensus had prepared a draft Legislative Council Paper setting out interim proposals for the next constitutional stage. This paper was then published and comments were invited from all sections of the community. Wide publicity was given to the proposals by radic and

pamphlets in simple English and touring extension officers were instructed to explain the contents of the paper to villagers. A Select Committee of the Legislative Council containing three officials and all the elected members recommended the adoption of the proposals with very few amendments and the Committee's report was finally adopted unanimously by motion in the Legislative Council. Effectively the amendments by the Select Committee were confined to boundary changes in one district and an increased elected membership of seventeen. Very few comments were received from the general public.

The kernel of this process was that the electors knew little of the legislative or executive machinery but understood the principle of election. The Government accordingly leaned heavily and democratically on the views of elected members in framing new proposals which had the opportunity of being challenged or endorsed by the general public before being finally adopted.

The 1970 Constitution

The new Constitution was introduced by the British Solomon Islands Order 1970 made by the Privy Council on 24th March and takes effect from 10th April 1970.

The Legislative Council and Executive Council are abolished and are replaced by a Governing Council which will combine the functions of both. It will have seventeen elected members, three ex-officio and six public service members. When it sits as an executive body its proceedings will be in private but all legislative sessions will be held in public.

A number of committees of the Council, responsible to it and charged with responsibility for certain subjects, will be appointed and all elected members will serve on one or other of these committees. Chairmen of the committees will be appointed by the High Commissioner from members of the Governing Council and the intention will be to have elected members as chairmen as soon as suitability, experience and willingness to undertake the responsibility of the post allow. There will also be a Finance Committee of which the chairman will be the Financial Secretary and the chairmen of the committees will be members. It is written into the constitution that there will be an elected majority on all committees including the Finance Committee. It is intended to have the following committees initially in addition to the Finance Committee:

- Communications and Works
- Natural Resources
- Education and Social Welfare
- Health and Internal Affairs

Committees may summon Government officers or other persons to attend before them during their deliberations and the Chief Secretary will have the right to attend any committee meeting. If he attends a meeting of the Finance Committee, which will also be a general purposes committee, he will preside but the Financial Secretary will remain as a member and retain his right to vote. The Chief Secretary in such circumstances will have no original vote but a casting vote if need arises.

It is intended that a senior civil servant will act as adviser to each elected chairman and each committee will have its own clerk. Committees are likely to meet every two months initially and the Finance Committee pos-

sibly each month. The Governing Council is likely to sit thrice a year both in legislative and executive sessions. Chairmen of committees are expected to live in Honiara.

The High Commissioner will continue to have certain reserve powers and certain subjects such as defence, external affairs, police and internal security, and the public service will not come under the purview of a committee.

As before, there will be discretionary powers for the High Commissioner to appoint a Speaker and a Public Service Commission, although it is possible that the existing Public Service Advisory Board which advises the High Commissioner on public service appointments and satisfactorily isolates appointments from the political machine, will continue, at least for some time.

As in previous Constitutions, ability to comprehend English is a qualification for election and civil servants are debarred from being elected members. They may obtain approval to stand and if elected they are granted leave of absence from their posts without pay, to preserve their pension rights. If they are not elected they return to duty. Thus a civil servant can be elected, will not perform his civil service duties while in the Governing Council, but if not returned on the next occasion may resume his civil service post.

A great deal of the day to day work now performed at official level will continue to be performed in that way. When decisions of importance are required these will be submitted to the appropriate chairman who will either decide himself under delegated powers or refer the matter by means of a paper to his committee. If legislation is involved the committee may decide on drafting instructions. If it is major legislation these may be referred to the Governing Council in executive session for approval. All legislation will go to the Governing Council in executive session either for advice to make, as regards subsidiary legislation, or for advice to publish and introduce into the legislative session as regards main legislation. Procedure for approving Bills will be as in the former Legislative Council with three readings, while White Papers are likely to be the subject of reports direct from the committees to the Governing Council in legislative session. It is clear however that procedures may have to be adapted in the light of experience.

Some of the Advantages

For the first time Solomon Islander politicians will be directly associated with policy making in committee, will have the responsibility for the activities and efficiency of departments and be able to summon Heads of Departments and officials to explain Government policies and actions. The chairmen, who with the exception of the chairman of the Finance Committee are all likely to be elected members within the next few years, will have the day to day decisions to take on the subjects within their portfolios, and will be an integral part of the Government machine with definite recognizable responsibility. They will have to submit reports of their committees for approval in Governing Council and will be expected to introduce and reply to motions and to answer questions. There will inevitably be a closer relationship between the politicians and the civil service and between the nine public service members and the seventeen elected members who will be

working together on the committees and not be identifiable as opposing groups in the Governing Council.

More importantly the new procedures will give politicians training in government and the exercise of responsibility. Even if the system failed as an effective method of government, the training element will not be lost. Had the 1970 Constitution trodden the next step in colonial evolution on the Westminster pattern, a ministerial system and further advance to self-government on orthodox lines were almost certain. The 1970 Constitution is empirical and can be further modified to suit local needs. If, however, it fails it will still be possible to revert to the Westminster type constitution and the chairmen would have had practice in exercising quasi-ministerial powers. The bet is well hedged.

Lastly a group of people sitting down together to thresh a problem out is far more Melanesian in character than a formalized debate in the legislature where the issue is finally put to a vote: and once a decision is reached in committee it is more likely to be accepted. This was one of the strong arguments made by Solomon Island politicians for introducing the system.

Some of the Risks

There is always the danger that constitutional progress is not moving fast enough. This is a matter of judgment. A very considerable increase in powers, the move to unofficial majorities in all committees and the new Governing Council, standards of education and the need for experience in political responsibility perhaps argue that the step forward is sufficiently large. But Her Majesty's Government has always made clear that it will be primarily influenced by the judgment of the local people and it will be for them to determine how far the new system suits their aspirations.

As in all legislatures where there is a mixture, however proportioned, of elected and appointed or ex-officio members, successful operation depends on good-will and trust. It is still possible to say one thing in committee and the opposite in Governing Council. This could, if overdone, cause tensions as could the occasional or repeated exercise of the High Commissioner's reserve powers where he considers that he should run counter to the advice given. Yet the commonsense and goodwill which have prevailed in the past are good auguries for the future.

The committee system has its dangers. A committee has been defined as a device invented by civil servants to avoid the need to take decisions. It is true that committees are slow and cumbersome but local experience with select committees has also demonstrated their use for reaching agreement in less formal surroundings than the Council Chamber and with less rigorous rules of procedure. The system has been tried before in Ceylon under the Donoughmore Constitution from 1931 to 1947, and also in the Seychelles, St. Helena and Turks and Caicos Islands. It has parallels in the Channel Islands and in local government. The system tottered to a standstill in Ceylon in 1947 and was severely criticized. It has been abandoned in the Seychelles perhaps because there is a developed party system which is absent in the Solomons. In Ceylon it was described as a centrifugal form of government in that it lacked the cohesion of a cabinet. As the pace of government quickened and as individual committees became more immersed in their subjects they moved further out on to the circumference and lost more and more touch with each other. Yet this is something which can be guarded against by informal meetings of chairmen, by the cohesive operation of the

Finance and General Purposes Committee, and by liaison between officials advising chairmen and the clerks to committees.

Greater understanding by the voter of the system of government and its adoption as a local and not imposed foreign institution will require careful publicity. Members and political chairmen will have less time than hitherto to visit all their constituents and keep them regularly informed and the state of development of communications compared with that in advanced countries must be borne in mind. Yet somehow a stronger bond between the governors and the governed must be created. The Governing Council and the committees must guard against a political weightlessness where they can gyrate before a watching public who have little comprehension of what the system is all about. The gardens and fishing grounds are real: the debating chamber and committee rooms are, at present, in outer space.

The Melanesian Component

Although Melanesia had no written language, was deeply segmented by the separation of islands, by kinship grouping and by language, there are many common concepts running through the area which are important in evolving political institutions.

While some chiefs took office because of their descent, the "big men" of Melanesia such as *nwane inoto* of North Malaita, were confirmed in their position by their people. Even where chiefs were hereditary a weak man could be set aside in favour of a brother and a chief could be deposed for excesses. There has thus always been a strong element of election, of approving the system of government however limited in scope. This is important in absorbing democratic institutions and may give this area a better start than one where the chiefly system is more highly developed.

Secondly, there has always existed strong mutual responsibility between the governed and the governors. Once the selection of the leaders has been made they have a responsibility to their people and the people to the leaders. Malinowski in *Crime and Custom* has this to say:

"In primitive cooperation the keynote is given by a definite system of division of operations and a rigid system of mutual obligations into which a sense of duty and the recognition of the need of cooperation enters side by side with the realisation of self interest, privileges and benefits."¹

W. G. Ivens writes in *Melanesians of the South East Solomons*:

"The good chief and the commoner regarded one another as mutually dependent on each other."²

It was a feeling among the elected leaders in the Protectorate that they were not adequately reflecting their responsibility to their people that has led to the formulation of the 1970 Constitution and "a system of division of operations" describes accurately the system of committees.

Thirdly, the chiefs and the "big men" of Melanesia have always had to take into account the will of the people. Dr. C. E. Fox writes further in *The Threshold of the Pacific*:

"A chief . . . would not moreover do anything against the general opinion of the village expressed quite freely by all its members."³

¹ at p. 20.

² at p. 255.

³ at p. 299.

Also W. G. Ivens in *Melanesians of the South East Solomons*:

“They (the chiefs) exercised no form of Government in our sense of the term. . . . The behaviour of the community was regulated by an intuitive sense of what was right and proper, by what Dr Rivers calls ‘group sentiment’ and by customary practices.”⁴

There is accordingly the likelihood that elected members will be expected to represent the will of their constituencies at least on major issues and if they do not do so the elective principle inherent in tradition is unlikely to favour their chances at the polls at the next elections.

Lastly, there is the consensus principle. In matters of importance it is usual for the issues to be threshed out and for all present to have their say. The committee system reflects this practice and there is more likely to be agreement in the Governing Council if it is known that elected members in majority on the committee in question have together come to certain conclusions.

In short, the traditional patterns of authority and the traditional democratic practices are being synthesized in the system of central government enshrined in the 1970 Constitution.

It was said of a chief on Small Malaita, “*ha’odo iola*”—“he keeps the canoe on a straight course”.⁵ It is to be hoped that the same can be said of the new system of government after a period of trial.

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⁴ at p 128

⁵ Ivens, W G , *Melanesians of the South East Solomons*, p 125.