

United Kingdom Dependent Territories

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General Remarks

1. *Introductory.* – Throughout its long history Great Britain acquired many overseas territories and possessions, great and small, in all the continents of the globe. They, with the mother country, were, until recently, known as the British Empire. Their political structures and their relationships with the United Kingdom were numerous and varied; and no two territories were identical in constitution or legal status. The policy of successive United Kingdom governments has been, and is, to grant independence to each overseas territory when the time is ripe. This is achieved, in the interests of the territory itself, by the introduction, gradually and by definite planned stages over a period of time, of a series of constitutional changes giving to the inhabitants of the territory an increasing measure of participation in their own affairs, the grant of internal self-government being the penultimate stage before the attainment by the territory of full independence. This process is still continuing. For some years past, however, the United Kingdom, together with her few remaining dependent territories and those now independent territories which have continued to be voluntarily associated with her and with each other, have been collectively known as the Commonwealth. The independent territories and certain of the other States of the Commonwealth with which the United Kingdom has a special relationship are dealt with elsewhere in this volume as separate sovereign states. It is now proposed to consider together in this place those countries which remain dependent territories of the United Kingdom. Arranged alphabetically they are as follows:

Antigua, Belize, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Brunei, Cayman Islands, Dominica, Falkland Islands, Gibraltar, Gilbert and Ellice Islands, Hong Kong, Montserrat, Pitcairn Islands Group, St. Christopher (St. Kitts), Nevis and Anguilla, St. Helena, St. Lucia, St. Vincent, the Seychelles,

Southern Rhodesia, Turks and Caicos Islands, Virgin Islands, the territory administered by the Western-Pacific High Commission, *viz.* the British Solomon Islands Protectorate; and the Anglo-French Condominium of the New Hebrides.

In dealing with these territories the strict alphabetical order set out above has not always been retained where a grouping of territories having geographical, historical, constitutional or other features in common has produced greater intelligibility or the saving of space (*see infra* 10).

While it is true, as indicated above, that no two territories possess identical governmental institutions, a number of general principles have nevertheless been applied in varying degrees to most territories in the course of the implementation of British colonial and foreign policy. This process has produced a pattern of similarity which now underlies the constitutional and legal structures of most of the remaining dependent territories. It is, therefore, proposed at this stage to set out a short summary of such principles in order to avoid repetition and overlapping when consideration is hereafter given in the limited space available to the essential characteristics of each individual territory. It will be assumed that the conditions set out below apply to each territory unless the contrary is stated in any national section.

2. *Types of territory.* – The territories here dealt with are either colonies, protected states, protectorates, associated states or condominiums. A colony is a territory over which the Crown (*i.e.*, the United Kingdom government) exercises absolute authority subject to such limitations as it may from time to time impose on its own exercise thereof, *e.g.*, by the grant of representative institutions to the inhabitants. A protected state has been defined¹ as “a territory under Her Majesty’s (*i.e.*, the Kingdom government’s) protection which has its own Ruler, together with regularly constituted executive government, legislature and courts, and in which Her Majesty has either no jurisdiction or

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¹ See *Roberts-Wray* 48.

jurisdiction within expressly defined limits". A protectorate is, in international law, a country which is under the protection of another and this includes a protected state; but the expression is used more narrowly in constitutional law where the status of a protectorate approximates more nearly to that of a colony except upon the question of nationality (see below). In the case of both protectorates and protected states their defence and external affairs are under the control of the United Kingdom government. In protectorates the internal administration of the country is usually as much under the control of the United Kingdom government as is that of a colony. All colonies and protectorates in the Commonwealth are under the control of the United Kingdom government although certain mandated or Trust territories are under the control of other member states of the Commonwealth such as Australia and New Zealand (see these national reports). Associated states are a new conception and will be described in due course later. In the case of a condominium, joint control of the territory is vested in two or more states.

The information contained *infra* 3, 5, 6, 7 and 8 applies, unless otherwise stated, to colonies and protectorates. The one example of a protected state will be dealt with when it is examined later on.

3. *Nationality.* – Those persons who are born in colonies (hereinafter briefly referred to as inhabitants) are British subjects and citizens of the United Kingdom and Colonies under the British Nationality Acts, 1948 to 1965, of the United Kingdom (11 & 12 Geo. 6, c. 56 to 1965 c. 34). Those who are born in protectorates or protected states are British Protected Persons under the same Acts and under the British Protectorates, Protected States and Protected Persons Orders in Council, 1949, 1965, 1969 and 1974 of the United Kingdom (S. I. 1949 no. 140; 1965 no. 1864; 1969 no. 1832; 1974 no. 1895). The basic conditions of acquiring and losing nationality or protected status are set out in those instruments. In view of the foregoing, and of the fact that the subject

of British nationality is fully dealt with in ch. I of the United Kingdom national report, there will be no section relating to nationality in any of the chapters relating to colonies, protectorates and the protected states unless special circumstances require such material to be supplied.

4. *Constitution.* – This is usually set out in Statutory Rules and Orders and Statutory Instruments of the United Kingdom government containing Orders in Council, Letters Patent and Instructions to the Governor (known as Royal Instructions)², varying in content and extent with the different requirements and state of progress of each territory. Every dependent state dealt with in this survey is a unitary state unless it is hereinafter expressly stated to be federal.

5. *Head of the State.* – The Head of the State in a colony or protectorate is H.M. the Queen of the United Kingdom of Great Britain and Northern Ireland (see United Kingdom national report ch. I) who is represented by a Governor, or other official. The head of a protected state is the Ruler; and the Queen is represented in the state by a United Kingdom official, usually a High Commissioner or Resident.

6. *Legislature.* – There is normally a legislature in and for the territory which is presided over either by the Governor, or by some other official or by an elected member. It consists in varying proportions of official and representative members. Of the latter, some may be nominated and some elected in manner directed in the constitutional instruments or in local legislation enacted in pursuance thereof. Laws made by the legislature may be assented to by the Governor, vetoed by him, reserved for H.M. pleasure (*i.e.*, that of the British government in London), or, even when assented to by the Governor, disallowed by the British government in London. In some territories the Governor has also a reserved power himself to legislate on certain matters. No law of a territory may conflict with United Kingdom legislation extending to the territory, *i.e.*, legislation which is

² United Kingdom Orders in Council, Orders, Letters Patent, Royal Instructions and similar subsidiary legislation are usually published in the volumes of Statutory Instruments (formerly known as Statutory Rules and Orders). Items of such legislation are either numbered in the S.I. series or, where the item is for technical reasons not strictly a statutory instrument, unnumbered. (In the latter case, it sometimes appears among the Statutory Instruments, but is at times included in an appendix at the end of the volume

concerned). In the former case reference is made to the items in this volume by quoting the year and number of the statutory instrument (*e.g.*, S.I. 1966 no. 1458); in the latter case reference is made to the year and the page number of the volume (*e.g.*, S.I. 1967 p. 5423). Where an item appears in the 1948 revised and consolidated edition it is quoted by reference to the number of the volume in Roman figures and the page in Arabic figures, *e.g.*, S.R.O. and S.I. Rev. XII p. 391.

“applied expressly or by necessary intendment”³ or may, subject to a number of qualifications, have extra-territorial effect.

7. *Executive.* – The executive power in a colony or protectorate resides in the Queen but it is exercised by the Queen’s Representative, usually the Governor. He is normally advised by an Executive Council which consists in varying proportions of *ex officio* or official, nominated or appointed; and elected members, but, until full independence is granted to the territory, the Governor is not bound to act upon the advice of his Council in all respects and is ultimately responsible for the government of the territory to United Kingdom ministers in London. The Executive Council also has the power to make subsidiary legislation under United Kingdom Acts of Parliament, Orders in Council or local laws. There is normally a local government system of councils for the towns, and councils or indigenous authorities for the rural areas.

8. *Courts.* – Each dependent territory has a judicial structure. It is usually established by United Kingdom legislation or Orders in Council, or by local legislation or decree. These courts include, first, a number of inferior courts of limited jurisdiction such as magistrates’ courts, district courts, justices of the peace and, in countries containing indigenous inhabitants, customary or “native” courts, including Muslim courts and mixed courts; and

secondly, a superior court consisting of a Supreme or High Court and sometimes also a Court of Appeal. All these, except the courts of justices of the peace and customary courts, are usually staffed by trained professional lawyers, and unless otherwise here stated, have jurisdiction in both civil and criminal matters. There is usually no separate constitutional or administrative judiciary. There is a chain of appeals from inferior to superior courts; and a final appeal lies from the highest superior court to the Judicial Committee of the Privy Council (a court in everything but name) sitting in London after (in some cases) an intermediate appeal to such regional Court of Appeal as may have been established for the territory and other adjacent territories. Prosecutions are normally conducted by a government official and are called public prosecutions. Provision usually exists, however, for private prosecutions to be brought also by individual citizens.

9. *Law applicable.* – This normally consists of an amalgam of different component parts. First there may be customary laws affecting the indigenous people who may inhabit the territory (Muslim law may be present as one form of indigenous law). Secondly there is the law introduced by the citizens of the colonial power or powers by which the territory has from time to time been occupied. This may be, *e.g.*, English law consisting of the common law, the principles of equity and the statutes of general application (including constitutional law) as at a particular date, or French law,

Arrangement of Individual Reports

First Group (I – V)

Gibraltar; The Seychelles; British Indian Ocean Territory; Brunei; Hong Kong

Second Group (VI – XV)

West Indies Associated States

A. Antigua; B. Dominica; C. St. Christopher (St. Kitts), Nevis and Anguilla; D. St. Lucia; E. St. Vincent

Montserrat; The Virgin Islands; The Cayman Islands; The Turks and Caicos Islands; Bermuda; Belize; St. Helena and De-

pendencies; Falkland Islands and Dependencies; British Antarctic Territory

Third Group (XVI – XIX)

Pitcairn Islands Group; The Gilbert and Ellice Islands; Territory Administered by the Western Pacific High Commission; The British Solomon Islands Protectorate; The New Hebrides

Fourth Group (XX)

Southern Rhodesia

³ Colonial Laws Validity Act, 1865 (28 & 29 Vict., c. 63) of the United Kingdom, s. 2.

according to the date and circumstances of occupation. This is sometimes referred to as the "basic" or "received" law and it applies so far only as the circumstances of the territory and its inhabitants permit, subject to such qualifications as local circumstances render necessary and subject to local legislation. Thirdly, there are the statutes and Orders in Council of the United Kingdom which have been passed or made for the territory or

which have been applied to the territory by legislation of the United Kingdom or of the territory. Fourthly, there are the laws of the territory itself, consisting of the statutes passed by the local legislature, the subsidiary legislation made by the executive body or by the subordinate law-making bodies such as local government authorities, and the case law emanating from the decisions of the local courts.

I. GIBRALTAR

A colony acquired by cession, now known as the City of Gibraltar. The territory is a narrow peninsula running southwards from the south-west coast of Spain with an area of two and a quarter square miles.

1. Constitutional System

There is a Governor, a Legislature called the Gibraltar House of Assembly with a majority of elected members, executive bodies called the Gibraltar Council and the Council of Ministers which have separate defined functions, and a judiciary.

2. Sources of Law

a. The *Constitution* is contained in the Gibraltar (Constitution) Order 1969 (S.I. 1969 p. 3602). It contains a declaration of fundamental rights.

b. The *Basic Law* consists of the common law and the rules of equity from time to time in force in England and the enactments specified in the Application of English Law Ordinance (Cap. 5 of the Laws), the list of which may be altered by resolution of the Legislature. There is no customary law.

c. The current collection of *legislation* is contained in The Laws of Gibraltar Revised Edition. This is a loose-leaf edition into which additions and amendments are continuously inserted.

II. THE SEYCHELLES

A colony acquired by cession from France. The colony consists of 86 islands in the Indian Ocean about 107 square miles in area. Port Victoria, the capital, is on the island of Mahé and is the only town of consequence.

1. Constitutional System

There is a Governor; a Legislative Assembly which consists of the Speaker, three *ex officio* members, namely the Deputy Governor, the Attorney-General and the Financial Secretary, and fifteen elected members; a Council of Ministers consisting of the Chief Minister; such number of other ministers (not exceeding four) as the Gov-

ernor acting after consultation with the Chief Minister may determine; the Deputy Governor, the Attorney-General and the Financial Secretary *ex officio*. The Governor also has reserved legislative powers in certain circumstances.⁴ In the exercise of his executive powers he must, subject to certain exceptions, consult the Council of Ministers.

There is also a judiciary. Appeals lie from the Supreme Court of Seychelles, in civil proceedings to the Civil Court of Appeal of Mauritius, and in criminal proceedings to the Seychelles Court of Appeal⁵; and thence in each case to the Privy Council as prescribed.

⁴ The Seychelles Order 1970 (S.I. 1970 p. 6728) s. 36.

⁵ The Seychelles Civil Appeals Order 1967 (S.I.

1967 p. 5414) and (Amendment) Order 1968 (S.I. 1968 p. 1949) and Courts Ordinance (Cap. 43) s. 11.

2. Sources of Law

a. The *Constitution* is contained in the Seychelles Order 1970 (S.I. 1970 p. 6728) and the Seychelles Royal Instructions 1970 (S.I. 1970 p. 6728 and 6762).

b. The Seychelles were a dependency of Mauritius until 1903 when they became a separate colony. The *Basic Law* of the Seychelles is therefore, like that of Mauritius (see national report), partly French and partly English. Some (but not

all) laws passed in Mauritius before 1903 were made applicable to the Seychelles expressly or by implication. There is no customary law.

c. The current collection of *legislation* is contained in *The Laws of Seychelles, Revised Edition, 1971* (7 vol.) and in subsequent annual volumes. There does not appear to be any current series of reported decisions of the courts. But see for the past *Bourke, A Digest of the Ruling Decisions of the Supreme Court of Seychelles from 1903-1933* (1934).

III. BRITISH INDIAN OCEAN TERRITORY

It consists of colonies acquired by cession. The Territory consists of the islands of the Chagos Archipelago, about 1200 miles north-east of Mauritius, the Aldabra Group and Farquhar and Desroches Islands in the Western Indian Ocean. The population is about 1500 persons and there are no towns.

1. Constitutional System

The Chagos Archipelago was formerly part of the dependencies of Mauritius; and the other islands were formerly part of the colony of the Seychelles. There is a Commissioner in whom legislative and executive power is vested subject to the qualifications mentioned below. Full legislative power is reserved to the United Kingdom government. The Magistrate's Court of the Seychelles, the Supreme Court of the Seychelles, the Civil Court of Appeal have each such respective original and appellate jurisdiction in respect of the Territory as they have in respect of the Seychelles. In addition, the Commissioner has power to appoint fit and

proper persons to be justices of the peace and peace officers.⁶

2. Sources of Law

a. The *Constitution* is contained in the British Indian Ocean Territory Orders 1965 and 1968 (S.I. 1965 no. 1920; 1968 no. 111) and the British Indian Ocean Territory Royal Instructions 1965 (S.I. 1965 p. 6440).

b. As to *Basic Law*, the laws existing before the severance from Mauritius and the Seychelles continue in force. In particular the Penal Code and the Criminal Procedure Code of the Seychelles have been applied to the Territory with such adaptations, modifications and exceptions as are necessary to bring them into conformity with the British Indian Ocean Territory Order 1965.⁷

c. There does not appear to be any current collection of *legislation* (other than Gazette copies of ordinances) or any series of reported decisions of the courts.

IV. BRUNEI

A British protected state. The State of Brunei occupies an area of 2226 square miles on the north-west coast of Borneo.

1. Constitutional System

a. *Nationality*. – The Brunei Nationality Enact-

⁶ Courts Ordinance 1965 (no. 3 of 1965) s. 3, 4, 9 and 10, and the Courts (Amendment) Ordinances (no. 1 of 1966 and no. 4 and 5 of 1967).

⁷ Penal Code and Criminal Procedure Code Ordinance 1965 (no. 1 of 1965) of the Territory.

ment, 1961 (no. 4 of 1961) provides that a subject of the Sultan shall have the status of a national of the State of Brunei, and lays down in detail other provisions as to this status. A person who is a citizen or national of Brunei is a British protected person by virtue of his connection with Brunei (British Protectorates, Protected States and Protected Persons Order 1974, S.I. 1974 no. 1895).

b. *State organs.* – (1) Brunei is a Sultanate with a Sultan, a Legislature, Executive and Judiciary. By the Brunei Agreement, 1959⁸ (as amended by the Brunei Agreement, 1972)⁹ which replaced the Treaties with Great Britain of 1847 and 1888 and the supplementary Agreement of 1905, it was agreed that the United Kingdom should continue to be responsible for the state's external affairs, that provision for the defence and security of the state should be a task to be shared between the United Kingdom and the state, and that the state should enjoy full internal self-government. There is a joint standing consultative body called the Brunei Defence Council consisting of representatives of the United Kingdom and the state.

(2) The Head of the State is the Sultan. He presides over the Privy Council and Council of Ministers. The Sultan has a reserved legislative power. He also has power to proclaim a state of emergency whereupon he has power to legislate by Order. He also has power to amend the Constitution after consultation with the Privy Council whose advice he is not bound to follow.

(3) The legislative body is the Legislative Council composed of six *ex officio* members; ten directly elected members; and five members nominated by the Sultan. The Sultan appoints the Speaker or President of the Legislative Council.

(4) The executive authority of the state resides in the Sultan. There is a Chief Minister who is appointed by, and is responsible to, the Sultan. The Council of Ministers is the Sultan's advisory body but he is not obliged to accept its advice. The Council consists of the Sultan as president, six *ex officio* members, four ministers who are either elected or nominated members of the Legislative Council and Her Majesty's (*i.e.*, the United Kingdom) High Commissioner in the State of Brunei. If a Council of Regency has been appointed the Regents are also members.

There is also a Privy Council which advises the Sultan as to the amendment of the Constitution,

the exercise of the prerogative of mercy, and honours. Other functions may be conferred on the Privy Council. It consists of the Sultan as president, six *ex officio* members and such other members as the Sultan may appoint, Her Majesty's High Commissioner in the State of Brunei and the Regents, if a Council of Regency has been appointed.

(5) The territorial authorities consist of District Councils. The majority of the members of District Councils are elected and the remainder nominated. The District Officer is the *ex officio* Chairman of each Council.

c. *The judiciary.* – (1) As to constitutional judiciary there exists under the provisions of the Constitution (*infra* 2a) an Interpretation Tribunal composed of three persons appointed by the Sultan. The Chairman is required to be an individual who holds or has held high judicial office. The Sultan has power to refer to the Tribunal questions involving the interpretation of the Constitution.

(2) As regards courts of general jurisdiction there are Magistrates Courts of three classes with limited civil and criminal jurisdiction according to their classes; the High Court consisting of a Chief Justice and a number of other judges; the Court of Appeal consisting of a President and two Judges of Appeal.

The High Court and the Court of Appeal are together called the Supreme Court (Supreme Court Enactment 1963, no. 2 of 1963). An appeal lies from the Court of Appeal to the Judicial Committee of the Privy Council.

The courts of the Chief Kathi and Kathis (Religious Council, State Custom and Kathis Courts Enactment 1955, no. 20 of 1955) have jurisdiction in matters in which the Muslim religion is involved. Appeals from these courts lie to the Sultan in Religious Council.

(3) There is no administrative judiciary.

(4) Prosecutions are conducted by the police and by government counsel under the supervision of the Public Prosecutor. The Attorney-General is the Public Prosecutor for the purpose of the provisions of the Criminal Procedure Code (R.L.B. 1951 Cap. 7).

2. Sources of Law

a. The *Constitution* of Brunei is contained in the following documents – (1) Constitution of the

⁸ Notification no. S. 109, Br.Subs.Leg. 1959 p. 310.

⁹ Notification no. 1, Br.Gov.Gaz. of 3 July 1972 p. 2.

State of Brunei 1959¹⁰ as amended¹¹; (2) Succession and Regency Proclamation 1959¹²; (3) Establishment of Council of Succession Proclamation 1966¹³ made under (2) above; and (4) Brunei Royal Instructions of 9 Nov. 1949.

b. The *Basic Law* is the common law of England together with the statutes of general application as administered or in force in England on 25 April 1951, certain applied United Kingdom enactments and certain laws of Malaya adopted under the Malayan Laws Adoption Enactment of Brunei (R.L.B. 1951 Cap. 3).

Muslim law is applied where appropriate, in accordance with the Religious Council, State Custom and Kathis Courts Enactment 1955 (*supra* 1c) as amended.

c. The current collection of *legislation* is contained in The Laws of Brunei, Revised Edition, 1951 (2 vol.), cited R.L.B., in a supplement called Enactments of Brunei, 1952-1955, in The Revised Edition of the Subsidiary Legislation of Brunei, 1956, and in subsequent annual publications, cited Br. Subs. Leg.

V. HONG KONG

A part of the territory, consisting of (1) the island of Hong Kong, (2) a portion of the Kowloon peninsula and (3) Stonecutters Island, is a colony ceded to Great Britain in 1842 and 1860. The remaining part, consisting of a strip of the mainland adjoining the above portion of Kowloon and a few islands, together known as the New Territories, was in 1898 leased by China to Great Britain for 99 years. The capital is Victoria on Hong Kong Island and there are a number of urban centres on the mainland and the other islands.

I. Constitutional System

a. *Nationality*. – More than half the inhabitants are citizens of the United Kingdom and Colonies by virtue of birth in the Colony or in Great Britain. The majority of the remainder are Chinese nationals.

b. *State organs*. – There is a Governor, a Legislative Council, consisting of official and unofficial

members, an Executive Council and a judiciary.

2. Sources of Law

a. The *Constitution* is contained in Hong Kong Letters Patent, 1917 to 1970,¹⁴ and Hong Kong Royal Instructions, 1917 to 1972.¹⁵

b. The *Basic Law* consists of such of the laws of England as existed when the Colony obtained a local legislature on 5 April 1843. Having regard to the wide applicability of the *Basic Law*, Chinese customary law applies only to a limited extent.

c. The current collection of *legislation* is contained in The Laws of Hong Kong Revised Edition. This is a loose-leaf edition into which additions and amendments are continuously inserted. The current series of reported decisions of the courts are called The Hong Kong Law Reports, 1905 –. See also *Addison* (comp. and ed.), *A Digest of Hong Kong Civil Case Law 1954-1968* (1970).

VI. WEST INDIES ASSOCIATED STATES

General. – These comprise certain islands in the Caribbean formerly forming part of either the Leeward or the Windward Islands Groups and

later of the Federation of the West Indies which was dissolved in 1962. The West Indies Act 1967 (c.4) of the United Kingdom made provision for

¹⁰ Notification no. S. 97, Br.Subs.Leg. 1959 p. 153.

¹¹ By Proclamations or Orders contained in Notifications no. S. 121, Br.Subs.Leg. 1961 p. 192; no. E. 2, Br.Enactments 1963 p. 5; no. S. 16 and S. 126, Br.Subs.Leg. 1963 p. 23 and 206; and no. E. 4, Br. Enactments 1964 p. 45.

¹² Notification no. S. 98, Br.Subs.Leg. 1959 p. 211.

¹³ Notification no. S. 123, Br.Subs.Leg. 1966 p. 125.

¹⁴ S.R.O. and S.I. Rev. X p. 20; S.I. 1950 p. 1545; 1955 p. 3188; 1960 p. 4169; 1967 p. 5419, and 1970 p. 6809.

¹⁵ S.I. 1955 p. 3190; 1967 p. 5417; 1969 p. 1748; 1970 p. 6806, and 1972 p. 4108.

the conferring on these former colonies, on such day or days as might be appointed, of a new status of association with the United Kingdom and for that status to be terminated at any time. The territories to which the Act related were Antigua; Dominica; Grenada; St. Christopher (St. Kitts), Nevis and Anguilla; St. Lucia and St. Vincent. All duly became associated states and were granted new constitutions by United Kingdom Orders in Council in 1967 except for St. Vincent which received its Constitution in 1969. Special provision was made for Anguilla in 1969 and 1971. Grenada ceased to be an Associated State in February 1974 when it attained full independence. Details of all these constitutions, except that of Grenada, are set out below.

The United Kingdom government has no responsibility for the government of any associated state except in respect of any matter relating to defence, external affairs, nationality or citizenship and the Succession to the Throne or the Royal Style and Titles; but the United Kingdom has power under the Act by Order in Council made at the request and with the consent of an associated state, to make any provision which appears to the United Kingdom government to be necessary or expedient for the peace, order and good government of that state. Subject to the above, an associated state has broadly the same legislative and executive powers as an independent state.

The Legislature of an associated state may, at any time, by a law made in accordance with the requirements of Schedule 2 to the Act terminate the status, as Grenada has in fact done. The requirements of Schedule 2 include an interval of not less than 90 days between the introduction of the Bill for the law and the beginning of the proceedings in the Legislature on second reading of the Bill; a majority of not less than two-thirds of all the elected members of the Legislature on third reading of the Bill; and a referendum approving the Bill by two-thirds of the votes validly cast thereat before the Bill is submitted to the Governor for his assent. There are variations for a bi-cameral Legislature.

The Act allows for the constitutions of the states to provide for separate citizenship of each state if and when the status of association with Britain is terminated. In the meantime a citizen of the United Kingdom and Colonies is permitted on the grounds of his connection with an Associated State to be known as a citizen of the United Kingdom, Associated States and Colonies.

Although associated with the United Kingdom, the states are not constitutionally associated with each other except to the extent that they share a common superior court structure. The West In-

dies Associated States Supreme Court Order 1967 (S.I. 1967 no. 223) made in pursuance of s. 6 of the West Indies Act 1967 (c.4) of the United Kingdom established a Supreme Court for all the associated territories called the West Indies Associated States Supreme Court which consists of a High Court of Justice and a Court of Appeal. The Court still retained its jurisdiction over Grenada after that country obtained its independence on 7 Feb. 1974 and the court was thereupon renamed the Supreme Court of Grenada and the West Indies Associated States (Grenada Constitution Order 1973, S.I. 1973 no. 2155, s. 105). The headquarters of the Supreme Court is in Grenada but a judge of the court is resident in each one of the Associated States which has in addition a resident subordinate judiciary. The High Court has such jurisdiction and powers, and the Court of Appeal such jurisdiction and powers to hear appeals, in relation to a state as in each case may be conferred upon the court by the Constitution or by any other law of the state. This Order and the Montserrat Order 1967 (S.I. 1967 no. 230) and the Virgin Islands (Courts) Order 1967 (S.I. 1967 no. 231) made in pursuance of the same section provide for similar jurisdiction and powers to extend to the last mentioned colonies (see these reports, *infra*). The West Indies Associated States (Appeals to Privy Council) Order 1967 (S.I. 1967 no. 224) confers a right of appeal to the Privy Council from a decision of the Court of Appeal in such cases as may be prescribed by or in pursuance of the constitution of a state. The Courts Order and the Appeals to Privy Council Order can be amended by an associated state in relation to that state by the same method as it is enabled to terminate its association with the United Kingdom (*supra*) or to amend its constitution (*infra*). The Montserrat (Appeals to Privy Council) Order 1967 (S.I. 1967 no. 233) and the Virgin Islands (Appeals to Privy Council) Order 1967 (S.I. 1967 no. 234) confer similar rights in respect of those colonies.

The reports of the cases decided in the superior courts and Court of Appeal of the Associated States appear in *The West Indian Reports 1959 -*, cited *W.I.R.* The reports of cases decided at first instance appear in *The West Indian Associated States Law Reports 1967 -*. Each state has a separate collection of its own statute law.

Before dealing briefly with the details of the structure of each associated state it is desirable to specify those elements which the constitutions of all the states have in common, *viz.*,

(1) H.M. The Queen is nominally a constituent part of the Legislature but Bills are assented to by the Governor in her name.

(2) The executive power is vested in Her Majesty but it may be exercised by the Governor. Subject to a few exceptions, the Governor must act in accordance with the advice of the Cabinet of the state consisting of the Premier and ministers, or in accordance with the advice of a minister

acting under the general authority of the Cabinet.

(3) The constitution of each state contains a declaration of fundamental rights and freedoms.

(4) The constitution of each state provides for the creation of a separate citizenship of the state in the circumstances mentioned above.

A. ANTIGUA

The territory consists of three islands: Antigua itself, which has an area of 108 square miles; the island Dependency of Barbuda of 62 square miles and the island Dependency of Redonda, which is uninhabited, of half a square mile. The capital is the town of St. John's.

1. Constitutional System

There is a Governor; a Parliament consisting of the Queen, a nominated Senate and an elected House of Representatives; a Cabinet consisting of a Premier, other ministers and the Attorney-General *ex officio* if he is not appointed a minister;

and a judiciary (see *supra* General).

2. Sources of Law

a. The *Constitution* is contained in the instruments mentioned in the General section (*supra*) and in the Antigua Constitution Order 1967 (S.I. 1967 no. 225, as amended by S.I. 1972 no. 301).

b. The *Basic Law* probably consists of the English law in force in 1632.

c. The current collection of *legislation* is contained in The Revised Laws of Antigua 1962 (9 vol.) and in subsequent annual volumes.

B. DOMINICA

The territory is an island of about 290 square miles in area. The capital is Roseau.

1. Constitutional System

There is a Governor; a Parliament consisting of the Queen and a House of Assembly, composed of a number of elected members corresponding with the number of the constituencies prescribed under the Constitution, and three nominated members; a Cabinet consisting of a Premier and not more than five other ministers and the Attorney-General *ex officio* when his office is a public office; and a judiciary (see *supra* General).

2. Sources of Law

a. The *Constitution* is contained in the instruments mentioned in the General section (*supra*) and in the Dominica Constitution Order 1967 (S.I. 1967 no. 226, as amended by S.I. 1971 no. 714).

b. The *Basic Law* probably consists of the common law and equity and the statutes of England in force on 7 Oct. 1763.

c. The current collection of *legislation* is contained in The Laws of Dominica, Revised Edition, 1961 (6 vol.) and in subsequent annual volumes.

C. ST. CHRISTOPHER (ST. KITTS), NEVIS AND ANGUILLA

The territory consists of the islands of St. Christopher (St. Kitts) (65 square miles in area), Nevis (36), Anguilla (35), and Sombrero (2). The capital of St. Christopher is Basseterre and of Nevis is Charlestown.

1. Constitutional System

There is a Governor; a Legislature consisting of the Queen and a House of Assembly composed of a number of elected members corresponding with

the number of constituencies prescribed under the Constitution and three or four nominated members; a Cabinet consisting of a Premier, other ministers and the Attorney-General *ex officio* when his office is a public office; and a judiciary (see *supra* General).

2. Sources of Law

a. The *Constitution* is contained in the instruments mentioned in the General section (*supra*) and in the St. Christopher, Nevis and Anguilla Constitution Order 1967 (S.I. 1967 no. 228). As a result of civil disturbances on Anguilla, the United Kingdom government, after consultation with the Associated State of St. Christopher, Nevis and Anguilla, decided that appropriate measures should be taken to restore law and order in Anguilla. As a result the Anguilla (Temporary Provision) Order 1969 (S.I. 1969 no. 371) was made in March 1969 under s. 7 (2) of the West Indies Act 1967 (c.4). This gave the United Kingdom government power to govern the

island through a Commissioner appointed by itself. Two years later the Anguilla Act 1971 (c.63) of the United Kingdom was passed giving power to Her Majesty by Order in Council to make provision for the government of Anguilla and to appoint a Commissioner having such functions as might be conferred upon him. In pursuance of this Act the United Kingdom government made the Anguilla (Administration) Order 1971 (S.I. 1971 no. 1235) defining the powers of the Commissioner. These include a power to make ordinances after consultation with the Anguilla Council. This is a body created by the Order and consists of seven elected members and six members appointed by the Commissioner.

b. The *Basic Law* probably consists of the English law in force in 1632.

c. The current collection of *legislation* is contained in The Revised Laws of St. Christopher, Nevis and Anguilla, 1961 and in subsequent annual volumes.

D. ST. LUCIA

The territory is an island of about 238 square miles in area. The capital is Castries.

1. Constitutional System

There is a Governor; a Legislature consisting of the Queen and a House of Assembly composed of a number of elected members, corresponding with the number of the constituencies prescribed under the Constitution, and three nominated members; a Cabinet consisting of a Premier and other ministers (the office of Attorney-General being the office of a minister), and a judiciary (see *supra* General). The Constitution s.36 (7) gives power to the House of Assembly to resolve that an appointed Senate be created. If the resolution is passed by a majority, the Constitution shall be amended in accordance with the provisions set out in the Second Schedule to the Constitution which

also include the composition of the Senate.

2. Sources of Law

a. The *Constitution* is contained in the instruments mentioned in the General section (*supra*) and in the St. Lucia Constitution Order 1967 (S.I. 1967 no. 229).

b. The *Basic Law* is French, with many importations and additions of English law.

c. The current collection of *legislation* is contained in St. Lucia Revised Ordinances, 1957 (7 vol.) and in subsequent annual volumes. There are also old volumes, printed separately, of the Civil Code of St. Lucia (London 1879), the Code of Civil Procedure of St. Lucia (London 1881) the Commercial Code of St. Lucia (London 1916) and the Criminal Code of St. Lucia (St. Lucia 1920).

E. ST. VINCENT

The territory consists of the island of St. Vincent and such of the Grenadine Islands as are not included in the State of Grenada. They together

occupy an area of about 150 square miles. The capital is Kingstown.

I. Constitutional System

There is a Governor and a Parliament consisting of the Queen and a House of Assembly composed of thirteen elected members and three nominated members; a Cabinet consisting of a Premier, other ministers and the Attorney-General *ex officio* when his office is a public office; and a judiciary.

2. Sources of Law

a. The *Constitution* is contained in the instruments

mentioned in the General section (*supra*) and in the St. Vincent (Constitution) Order 1969 (S.I. 1969 no. 1500).

b. The *Basic Law* probably consists of the common law and equity and the statutes of England in force on 7 Oct. 1763.

c. The current collection of *legislation* is contained in The Laws of St. Vincent, Revised Edition, 1966 (8 vol. and a supplementary volume) and in subsequent annual volumes.

VII. MONTSERRAT

A colony acquired by settlement. The territory is an island in the Caribbean 40 square miles in area. Plymouth is the only town.

I. Constitutional System

There is a Governor, a Legislative Council with a majority of elected members, an Executive Council and a judiciary. Final appeals lie through the West Indies Associated States Court of Appeal to the Privy Council (see *supra* West Indies Associated States *sub* General).

2. Sources of Law

a. The *Constitution* is contained in the Montserrat Letters Patent, 1959 to 1971;¹⁶ the Montserrat

Royal Instructions, 1959 (S.I. 1959 p. 3395), the Montserrat Electoral Provisions Order 1966 (S.I. 1966 no. 1402), the Montserrat Order 1967 (S.I. 1967 no. 230), the Montserrat (Governor) Order 1971 (S.I. 1971 no. 1740), and the Montserrat Constitution and Elections Ordinance, 1952 (no. 1 of 1952) (as amended).

b. The *Basic Law* is probably the English law in force in 1642.

c. The current collection of *legislation* is contained in The Revised Laws of Montserrat, 1962 (9 vol.) and in subsequent annual volumes. The reports of cases decided in the superior courts are reported in the West Indian Reports (see *supra* West Indies Associated States *sub* General).

VIII. THE VIRGIN ISLANDS

A colony acquired by settlement. The territory consists of 36 islands, 11 of which are inhabited, occupying an area of about 59 square miles to east of Puerto Rico.

I. Constitutional System

There is a Governor, a Legislative Council with a majority of elected members, an Executive Council and a judiciary. Final appeals lie through

the West Indies Associated States Court of Appeal to the Privy Council (see *supra* West Indies Associated States *sub* General).

2. Sources of Law

a. The *Constitution* is contained in the Virgin Islands (Constitution) Order 1967¹⁷, the Virgin Islands Constitution and Elections Ordinance 1954 (no. 7 of 1954)¹⁸, the Virgin Islands (Elec-

¹⁶ S.I. 1959 p. 3386, as amended by S.I. 1962 no. 1084; 1967 no. 230, and 1971 no. 873.

¹⁷ S.I. 1967 no. 471, as amended by S.I. 1971 no. 1240.

¹⁸ R.L.V.I. Cap. 129, as amended by subsequent Ordinances and United Kingdom Statutory Instruments.

toral Provisions) Order 1966 (S.I. 1966 no. 1457), the Virgin Islands (Courts) Order 1967, and the Virgin Islands (Appeals to Privy Council) Orders 1967 (S.I. 1967 no. 231 and 234).

b. The *common law of England* (so far as unaltered by statute law of the islands or of the United Kingdom applying to the islands) is in force in the islands.¹⁹ The principles of equity apply by virtue of certain provisions of the Supreme Court Act

(R.L.V.I. Cap. 76). In the absence of other statutory provision the Basic Statute Law is probably English law as at the dates of the settlement of the various islands in the group. There is no customary law.

c. The current collection of *legislation* is contained in *The Revised Laws of the Virgin Islands, 1961* (8 vol.), cited R.L.V.I., and in subsequent volumes.

IX. THE CAYMAN ISLANDS

A colony acquired by settlement. The islands consist of Grand Cayman, Cayman Brac and Little Cayman situated about 200 miles to the north-west of Jamaica and together occupying an area of about 100 square miles. The principal towns are Georgetown and West Bay on Grand Cayman. The islands were formerly a dependency of Jamaica.

1. Constitutional System

There is a Governor, a Legislative Assembly consisting of the Governor (or a Speaker if one is appointed), three official members appointed by the Governor and twelve elected members. There is an Executive Council consisting of three official members appointed by the Governor and four members elected by and from the elected members of the Legislative Assembly. There is also a judiciary. Appeals lie from the Grand Court of

the Cayman Islands to the Court of Appeal for Jamaica and thence to the Privy Council.

2. Sources of Law

a. The *Constitution* is contained in the Cayman Islands (Constitution) Order 1972 (S.I. 1972 no. 1101), the Cayman Islands Royal Instructions 1972 (S.I. 1972 p. 4111), and the Cayman Islands (Appeal to Privy Council) Order 1965 (S.I. 1965 no. 1862).

b. The *Basic Law* consists of the laws in force in Jamaica on 22 June 1863, and later applied Jamaican laws. There is no customary law.

c. The current collection of *legislation* is contained in *The Laws of the Cayman Islands, Revised Edition, 1963* (3 vol.) and in subsequent annual volumes.

X. THE TURKS AND CAICOS ISLANDS

A colony acquired by settlement. The territory consists of eight islands to the south-east of the Bahama Islands, two of which are inhabited. The total land area is about 166 square miles. There are a number of small towns and settlements. The colony has been at different times a dependency of the Bahama Islands and of Jamaica, but now has a separate administration.

1. Constitutional System

There is a Governor, a State Council with a majority of elected members, which has legislative and executive powers and which may act in

executive matters through committees established by the Governor. The Governor has a reserved legislative power and certain discretionary executive functions. There is a judiciary and appeals lie from the Supreme Court to the Court of Appeal of the Turks and Caicos Islands and thence to the Privy Council.

2. Sources of Law

a. The *Constitution* is contained in the Turks and Caicos Islands (Constitution) Order 1969 (S.I. 1969 no. 736, as amended by S.I. 1973 no. 599) and the Turks and Caicos Islands (Appeal to

¹⁹ Common Law (Declaration of Application) Act (no. 31 of 1705) (R.L.V.I. Cap. 14) s. 2.

Privy Council) Order 1965 (S.I. 1965 no. 1863, as amended by S.I. 1973 no. 1084).

b. The *Basic Law* of the colony is the same as that of the Bahama Islands. In addition there are applicable certain Acts of the Bahamas Legislature and certain Jamaican laws, passed in each case

when the islands were dependencies of those territories. There is no customary law.

c. The current collection of *legislation* is contained in The Laws of the Turks and Caicos Islands, Revised Edition, 1970 (3 vol.) and in subsequent annual volumes.

XI. BERMUDA

A colony acquired by settlement. The Bermuda or Somers Islands consist of about 150 islands in the Western Atlantic Ocean about 570 miles east of Cape Hatteras, North Carolina, occupying an area of 20 square miles. Hamilton and St. George are the two principal towns.

1. Constitutional System

There is a Governor; a bicameral Legislature consisting of an appointed Legislative Council and an elected House of Assembly. There is also a Cabinet consisting of the Premier and not less than six other ministers; a Governor's Council, for the purpose of considering matters for which the Governor is specially responsible under Constitution s. 62, which consists of the Governor, the Premier and not less than two nor more than three other ministers appointed in writing by the Governor after consultation with the Premier. There is also a judiciary, consisting of a Court of Summary Jurisdiction and a Supreme Court.

Appeals lie from the latter to the Privy Council.

2. Sources of Law

a. The *Constitution* is contained in the Bermuda Constitution Order 1968,²⁰ and the Parliamentary Election Act 1963 (no. 10 of 1963) of Bermuda²¹ as amended by Act no. 274 of 1967 of Bermuda. The Constitution contains a declaration of fundamental rights.

b. The *Basic Law* consists of the common law, the doctrines of equity, and the Acts of the Parliament of England of general application which were in force in England at the date when the islands were settled, *i.e.* on 11 July 1612. There is no customary law.

c. The current collection of *legislation* is contained in The Revised Laws of Bermuda, 1971 (7 vol.), cited R.L.B.; this is a loose-leaf edition.

XII. BELIZE

A colony acquired by settlement. Formerly named British Honduras, the territory has an area of 8866 square miles lying on the Caribbean coast of Central America and bounded by Mexico and Guatemala.

1. Constitutional System

There is a Governor, a bicameral Legislature called the National Assembly consisting of an elected House of Representatives and a Senate, an executive council called the Cabinet and a judiciary.

²⁰ S.I. 1968 no. 182, as amended by S.I. 1968 no. 463 and 726 and 1973 no. 233.

2. Sources of Law

a. The *Constitution* is contained in British Honduras Letters Patent 1964, 1968 and 1973 (S.I. 1964 p. 1136; 1968 p. 4104 and 5624; 1973 p. 4708), British Honduras Royal Instructions 1964 (S.I. 1964 p. 1148) and the British Honduras Constitution Ordinance 1963 (no. 33 of 1963) and the Belize Ordinance 1973 (no. 13 of 1973).

b. The *Basic Law* consists of the common law of England and all Acts in abrogation or deroga-

²¹ R.L.B. 1964, title 2 item 11.

tion or in any way declaratory of the common law passed before 1 Jan. 1899. There is no customary law.

c. The current collection of *legislation* is contained in *The Laws of British Honduras, 1958* (6 vol.) and in *The Subsidiary Laws of British Honduras, 1963* (4 vol.).²²

XIII. ST. HELENA AND DEPENDENCIES

A colony acquired by settlement. St. Helena is an island in the South Atlantic 47 square miles in area. Ascension and Tristan da Cunha are islands also in the South Atlantic of respectively 34 and 38 square miles in area and are dependencies of St. Helena. There are three other dependencies, *viz.* Nightingale, Inaccessible and Gough Islands. These are uninhabited except for a weather station on Gough Island.

I. Constitutional System

There is a Governor, a Legislative Council of *ex officio*, elected and temporary members, an Executive Council, Council Committees consisting of members of the Legislative Council or other persons, and a judiciary.²³ There is an Administrator, responsible to the Governor, in Ascension. There is an Island Council in Tristan da Cunha

consisting of the Administrator, three appointed members and eight elected members.²⁴

2. Sources of Law

a. The *Constitution* is contained in the St. Helena (Constitution) Orders 1966 and 1967 (S.I. 1966 no. 1458, 1967 no. 1138) and the St. Helena Royal Instructions 1966 (S.I. 1966 p. 5186).

b. The *Basic Law* consists of English law as it exists at any given time. There is no customary law.

c. The current collection of *legislation* is contained in *The Revised Edition of the Laws of the Colony of St. Helena, 1950* (1 vol.) and in subsequent annual volumes.

XIV. FALKLAND ISLANDS AND DEPENDENCIES

A colony acquired by settlement. The numerous islands are situated in the South Atlantic 480 miles north-east of Cape Horn. The Dependencies consist of South Georgia and the South Sandwich Group to the south-east of the Falklands. Stanley is the only town, and there are a number of small scattered settlements.

I. Constitutional System

There is a Governor, a Legislative Council of elected, nominated and official members, an Executive Council and a system of courts in the

islands. The courts are, however, not staffed by qualified lawyers. There is, in addition, a Court of Appeal²⁵ of professional judges which sits as required – usually outside the islands.

2. Sources of Law

a. The *Constitution* is contained in the Falkland Islands Letters Patent, 1948 to 1962,²⁶ Falkland Islands (Legislative Council) Orders in Council, 1948 to 1973²⁷, Royal Instructions of 13 Dec. 1948, 27 Nov. 1951, 15 Nov. 1955, 10 Sept. 1964 and 10 April 1973.²⁸

²² The latter are described on the binding as *The Subsidiary Laws of British Honduras, 1962*, although on the title page they are expressed to contain the subsidiary laws in force on 31 Dec. 1963.

²³ See the St. Helena Court of Appeal Order 1964 (S.I. 1964 no. 1845), the St. Helena Supreme Court Order 1969 (S.I. 1969 no. 857), and the Admiralty Jurisdiction (St. Helena and its Dependencies) Order 1969 (S.I. 1969 no. 858).

²⁴ Island Council Ordinance 1969 (no. 3 of 1969)

of Tristan da Cunha.

²⁵ See Falkland Islands Court of Appeal Order 1965 (S.I. 1965 no. 589) and Falkland Islands Court of Appeal (Appeal to Privy Council) Order 1965 (S.I. 1965 no. 591).

²⁶ S.R.O. and S.I. Rev. VII p. 586; S.I. 1954 p. 2991, and 1962 p. 1039.

²⁷ S.R.O. and S.I. Rev. VII p. 591; to S.I. 1973 no. 598.

²⁸ As to last three, see S.I. 1955 p. 3187; 1964 p. 5254, and 1973 p. 2635.

b. The *Basic Law* consists of the common law, the rules of equity and the general statutes in force in England on 22 May 1900. There is no customary law.

c. The current collection of *legislation* is contained in The Law of the Colony of the Falkland Islands and its Dependencies, Revised Edition, 1950 (2 vol.), and in subsequent annual volumes.

XV. BRITISH ANTARCTIC TERRITORY

A territory acquired by discovery, effective occupation, and subsequent administration. The occupation and administration have been primarily concerned with whaling and scientific projects. The territory was constituted by an Order in Council of 3 March 1962,²⁹ and comprises that part of the Antarctic continent which lies between 20°W and 80°W longitude, stretching south of 60°S to the South Pole. The territory includes the South Orkney Islands, the South Shetland Islands, Graham Land and the continental mainland contiguous to it. The South Orkneys and South Shetlands were formerly Dependencies of the Falkland Islands (*supra* XIV); South Georgia and the South Sandwich Islands were left as Dependencies of the Falkland Islands.³⁰ The territory covers an area of approximately three million square miles, including about one million square miles of sea which is reasonable accessible for whaling, sealing and fishing.

I. Constitutional System

The territory is administered by a High Commissioner and the holder of this office is the Governor of the Falkland Islands, who has power to delegate his functions. The High Commissioner has power, subject to disallowance by the Crown, to make laws by Regulation and to establish courts.³¹

A chain of bases at which work is done on surveying, geology and meteorology is maintained in the Territory and is operated by the British Antarctic Survey. At each base a member of the Survey party acts as magistrate; there is also a magistrate in South Georgia. Appeals lie to the Supreme Court of the Falkland Islands and thence

to the Privy Council.³²

2. Sources of Law

a. Under the provisions of the *Antarctic Treaty* of 1959,³³ to which the United Kingdom is a party, which sought to establish an effective and controlled demilitarisation of the land areas and ice shelves (but not the High Seas) south of latitude 60°S, it is provided in art. 4(2) that "... no acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of any existing claim, may be asserted while the present Treaty is in force."

The Treaty runs for a period of 30 years from its ratification by the 12 original Signatory States.³⁴ The United Kingdom did not, in the Order in Council of 1962, extend the territorial boundaries of the Falkland Islands Dependencies and the British Antarctic Territory (as it later became) which were defined by Letters Patent of 21 July 1908, and 28 March 1917.³⁵

b. The *Basic Law* of the Territory is as in the Falkland Islands.³⁶

c. The current collection of *legislation* is contained in the British Antarctic Territory Gazettes. By the Falkland Islands Laws (Application) Regulations 1967 to 1968 of the Territory (no. 2 of 1967 and no. 1 and 3 of 1968) certain laws of the Falkland Islands, additional to those applied as Basic Law (*supra* b), were applied to the Territory.

²⁹ British Antarctic Territory Order in Council 1962 (S.I. 1962 no. 400; see also S.I. 1964 no. 1396).

³⁰ *Roberts-Wray*, Appendix I 867-868.

³¹ *Ibidem* 868.

³² British Antarctic Territory Court of Appeal Order 1965 (no. 590 of 1965) and British Antarctic Territory (Appeal to Privy Council) Order 1965 (no. 592 of 1965).

³³ Cmnd. 913 (1959); TIAS 4780.

³⁴ Argentina, Australia, Belgium, Chile, France,

Japan, New Zealand, Norway, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom, United States of America.

³⁵ 101 B.F.S.P. 76; 111 B.F.S.P. 16. See S.R.O. and S.I. Rev. VII p. 583 and 585.

³⁶ Application of Colony Laws Ordinance (Falkland Islands Revised Laws, 1950, p. 707) s. 6 and Schedule; British Antarctic Territory Order in Council 1962 (*supra* n. 29) s. 13.

XVI. PITCAIRN ISLANDS GROUP

A colony acquired by settlement. The territory consists of Pitcairn, Henderson, Ducie and Oeno Islands, all situated in the Central Pacific. Pitcairn Island is inhabited by less than one hundred people and is 1.75 square miles in area. The other islands are uninhabited and were annexed and made dependencies of Pitcairn.

1. Constitutional System

a. *State organs.* – There is a Governor of the Islands. He has legislative and executive power in respect of the Islands. There is a Council constituted under the Local Government Ordinance 1964 (no. 1 of 1964) of the Colony presided over by the Island Magistrate who is elected triennially.

b. *The judiciary.* – There are (1) courts of limited jurisdiction in civil and criminal matters as follows: (a) the Island Court which consists of the Island Magistrate sitting with assessors (Justice Ordinance 1966, no. 1 of 1966); (b) the Subordi-

nate Court which is presided over by a magistrate (Judicature Ordinance 1970, no. 2 of 1970); (2) the Supreme Court which consists of such judge or judges as the Governor shall appoint. It has unlimited original jurisdiction in civil and criminal matters and a power of revision of the proceedings of the Island Court. Appeals lie to it from the Subordinate Court (Judicature Ordinance 1970, *supra*).

2. Sources of Law

a. The *Constitution* is contained in the Pitcairn Order 1970 (S.I. 1970 no. 1434) and the Pitcairn Royal Instructions 1970 (S.I. 1970 p. 6725).

b. The *Basic Law* is the substance of the law for the time being in force in and for England. There is no customary law.

c. A collection of the *legislation* of the colony is in course of preparation.

XVII. THE GILBERT AND ELLICE ISLANDS

A colony ceded by the inhabitants; except for Canton and Enderbury Islands which are under Anglo-American Condominium. The colony ceased to be administered by the Western Pacific High Commission on obtaining a new Constitution in 1970 (*infra* 2a). The territory comprises about 42 islands occupying about 324 square miles extending over more than two million square miles of the Pacific Ocean. There are sixteen islands in the Gilbert group, nine in the Ellice group, eight in the Phoenix group (in which Canton and Enderbury Islands are included), three in the Northern Line Islands and five in the Central and Southern Line Islands. The last group was incorporated into the Gilbert and Ellice Islands Colony by the Gilbert and Ellice Islands (Boundaries) Order 1971 (S.I. 1971 p. 6335). Ocean Island is also included in the territory.

1. Constitutional System

There is a Governor who is appointed by the Queen and has such functions as may be conferred upon him. There is a Legislative Council consisting of (1) the Chief Secretary, the Attorney-

General and the Financial Secretary (*ex officio*); (2) two public service members appointed by the Governor acting in his discretion from among persons who are public officers and (3) 28 directly elected members. There is an Executive Council consisting of (1) the Chief Secretary, the Attorney-General and the Financial Secretary (*ex officio*); (2) the public service members of the Legislative Council; (3) the Leader of Government Business and (4) four other persons appointed by the Governor after consultation with the Leader of Government Business from among the elected members of the Legislative Council – at least two from the electoral districts in the Gilbert Islands and at least one from the electoral districts in the Ellice Islands. The Governor is under an obligation to consult the Executive Council in the exercise of his powers subject to certain exceptions.

On all sixteen islands of the Gilbert group and the eight permanently inhabited Ellice Islands, local governments have been established under the Local Government Ordinance 1966 (no. 5 of 1966). These local governments, known as Island Councils, have power, subject to the approval of the Governor, to make bye-laws upon

a variety of matters. They have the overall responsibility of providing services for the general health, security and well-being of the inhabitants of the islands.

The High Court of the Western Pacific still has jurisdiction in the territory.³⁷ In addition there are courts of summary jurisdiction presided over by magistrates (Magistrates' Courts Ordinance 1963, no. 5 of 1963), and, subordinate to these, Island Courts presided over by Island Magistrates. Appeals lie from Island Courts to Magistrates' Courts (Island Courts Ordinance 1965, no. 10 of 1965).

2. Sources of Law

a. The *Constitution* is contained in the Gilbert and Ellice Islands Orders in Council, 1915, 1970 and 1971³⁸ and the Gilbert and Ellice Islands Royal

Instructions 1971 (S.I. 1971 p. 6336). The Order of 1970 contains a declaration of fundamental rights.

b. As to *Basic Law*, the High Court of the Western Pacific exercises its jurisdiction both as to civil and criminal matters upon the principles of, and in conformity with, the statutes of general application in force in England on 1 Jan. 1961, and the substance of the English common law and doctrines of equity and with the powers and according to the procedure and practice of English courts.³⁹ Island Courts may apply customary law in cases within their jurisdiction.

c. The current collection of *legislation* is contained in The Laws of the Gilbert and Ellice Colony, Revised Edition, 1952 (1 vol.) and in subsequent annual volumes.

XVIII. WESTERN PACIFIC HIGH COMMISSION: THE BRITISH SOLOMON ISLANDS PROTECTORATE

General. – The jurisdiction of the Western Pacific High Commission now extends only over the British Solomon Islands Protectorate.

The office of High Commissioner for the Western Pacific was created by the Pacific Order in Council 1893 (S.R.O. and S.I. Rev. VIII p. 597) now amended and partly superseded. There is a High Court of the Western Pacific which has jurisdiction over the territory. This was constituted by the Western Pacific (Courts) Order in Council 1961.⁴⁰ Appeals from the decisions of the Court lie to the Fiji Court of Appeal⁴¹ and thence to the Privy Council.⁴² The Order in Council provides that in territories where the High Court has jurisdiction it exercises it both as to civil and criminal matters upon the principles of, and in conformity with the statutes of general application in force in England on 1 Jan. 1961, and the substance of the English common law and doctrines of equity and with the powers and according to the procedure and practice of English courts.

The territory of the British Solomon Islands Protectorate consists of a large number of islands occupying about 11 500 square miles of land extending over 249 000 square nautical miles of the Pacific Ocean. The capital is Honiara on the island of Guadalcanal.

1. Constitutional System

There is a Governor who is appointed by the Queen and has such functions as may be conferred upon him. He is also High Commissioner for the Western Pacific. There is a Legislative Assembly consisting of the Deputy Governor, the Attorney-General and the Financial Secretary *ex officio* and 24 elected members. There is a Council of Ministers consisting of the Chief Minister; not more than four nor less than six other ministers as the Chief Minister shall determine appointed in accordance with the provisions of Constitution s. 29 from among the elected members of the Legislative Assembly; and the Deputy Governor,

³⁷ Western Pacific (Courts) Order in Council 1961 (S.I. 1961 no. 1500); for particulars see Territory administered by the Western Pacific High Commission (*infra* XVIII).

³⁸ S.R.O. and S.I. Rev. IX p. 655; S.I. 1970 p. 6765, and 1971 p. 6330.

³⁹ Western Pacific (Courts) Order in Council 1961

(*supra* n. 37) s. 15.

⁴⁰ S.I. 1961 no. 1506; and see S.I. 1967 no. 586.

⁴¹ Western Pacific (Courts) (Amendment) Order 1971 (S.I. 1971 no. 715); see also *supra* n. 40, S.I. 1961 no. 1506, s. 19 (1).

⁴² Western Pacific (Appeals to Privy Council) Order 1970 (S.I. 1970 no. 1435).

the Attorney-General and the Financial Secretary *ex officio*. The Chief Minister is elected as such by the elected members of the Legislative Assembly from amongst their number in accordance with regulations made for that purpose. The Governor must consult with the Executive Council in the exercise of his powers subject to certain exceptions. The Constitution contains a declaration of fundamental rights. Local Government Councils have been established by the Local Government Ordinance (Revised Laws 1969 *infra*, Cap. 14). All the members of the Councils are elected by registered voters. In addition to the High Court of the Western Pacific (*supra* General) there are Magistrates' Courts and Native Courts.

2. Sources of Law

a. The *Constitution* is contained in the British Solomon Islands Order 1974 (S.I. 1974 no. 1262) and the British Protectorates, Protected States and Protected Persons Order 1974 (S.I. 1974 no. 1895).

b. As to *Basic Law*, see general section (*supra*). Native Courts apply native customary law in cases within their jurisdiction.

c. The current collection of *legislation* is contained in The Laws of the British Solomon Islands Protectorate, Revised Edition, 1969 (6 vol.).

XIX. THE NEW HEBRIDES

An Anglo-French condominium. The territory, including the Banks and Torres Islands, consists of about 12 large and 60 small islands and is about 5700 square miles in area.

1. Constitutional System

There are British and French High Commissioners. They are represented in the islands by Resident Commissioners. Government is carried on by them in accordance with a Protocol signed in 1914, under which Great Britain and France have sovereignty over their own citizens and joint control over matters of common concern (see *infra* 2a at n. 43). Citizens of other countries resident in the territory are at liberty to choose the system under which they wish to live. Regulations are made by each High Commissioner (and by the British Resident Commissioner) for the nationals of his country; and by the two High Commissioners, jointly and with limitations, on matters of joint concern. The provisions of the British Nationality Act 1948 (as amended) apply to the New Hebrides as if it were a protected state (S.I. 1974 no. 1895).

In the judicial sphere there are both Condominium and National Courts. The former consist of Native Courts, Courts of First Instance and a Joint Court. The Joint Court has civil and criminal jurisdiction under the Protocol and appellate powers and powers of review in respect of the Native Courts and Courts of First Instance.

The British national courts consist of the High

Court of the Western Pacific (see *supra* XVIII *sub* General) and Magistrates' Courts. The French national courts consist of the *Cour de justice de paix à compétence étendue* and the *Tribunal criminel*.

2. Sources of Law

a. The *constitutional position* is set out in the Protocol and the agreements subsequently modifying it. These have been implemented so far as the United Kingdom is concerned by the New Hebrides Orders, 1922 to 1973⁴³ in the Schedules to which the Protocol and subsequent agreements are set out.

b. The *Basic Law* of the territory generally consists of the principles laid down in the Protocol, the joint regulations and the rules of the Condominium courts. The French law applicable as above consists of the laws of France extended to, or made for, the territory. The English law applicable consists of the statutes of general application in force in England on 1 Jan. 1961 and the substance of the English common law and doctrines of equity and the procedure of English courts. The native law applicable is the unwritten customary civil and commercial law and a code of native criminal law.

c. A consolidated version of the laws was published in 1966. It is typewritten and duplicated on foolscap sheets in loose-leaf form. It is supplemented by laws published as required in similar form.

⁴³ See S.R.O. and S.I.Rev. VIII p. 719, 757; S.I. 1955 no. 553; 1961 no. 1831; 1963 no. 1324; 1970 no. 950, and 1973 no. 1758. The British Nationality Act

1948 applies the New Hebrides as if it were a Protected State (see S.I. 1974 no. 1895).

XX. SOUTHERN RHODESIA

Theoretically still a colony acquired by conquest and subsequent settlement, it is officially named Southern Rhodesia although Northern Rhodesia was renamed Zambia on attaining independence in 1964. As a result of a Unilateral Declaration of Independence and a new illegal constitution, however, Southern Rhodesia claims to be an independent republic called Rhodesia. It has, however, not been recognised as such by any nation.

I. Constitutional System⁴⁴

a. *Nationality.* – The British Nationality Act, 1948 (11 & 12 Geo. 6, c. 56) of the United Kingdom conferred power on the then self-governing dominions and on Southern Rhodesia, although not possessing that status, to pass their own nationality and citizenship laws. This Southern Rhodesia did by enacting the Southern Rhodesian Citizenship and British Nationality Act 1949 (no. 13 of 1949).⁴⁵ The British Nationality Act 1948 of the United Kingdom provided (s.1) that Southern Rhodesian citizens should also be British subjects. The position is now governed by the Citizenship of Southern Rhodesia and British Nationality Act 1963 (no. 63 of 1963) of Southern Rhodesia, passed after consultation with the British government upon the dissolution of the Federation of Rhodesia and Nyasaland. The Act provides for the standard methods of acquiring and being deprived of nationality; and details need therefore not be set out here. The Citizenship of Rhodesia Act 1970 (no. 11 of 1970) passed by the illegal legislature (see *infra* ii (1)) purports to create and regulate a Rhodesian citizenship.

b. *Territorial division of the state.* – For administrative purposes Southern Rhodesia is divided into seven provinces which are in turn divided into a total of fifty districts.⁴⁶ The capital is Salisbury.

c. *State organs.* – The constitutional position is, at the time of writing, confused and obscure. As a result, it will be necessary to set out details of

two constitutions – the legal and the illegal. This will entail a considerable departure from the order of paragraphs and scheme of presentation of material which has been prescribed for this volume.

i. *The Legal Constitution*

The legal Constitution of Southern Rhodesia is contained in the Annex to the Southern Rhodesia (Constitution) Order in Council 1961 (S.I. 1961 no. 2314) (as amended) made under the Southern Rhodesia (Constitution) Act, 1961 (10 & 11 Eliz. 2, c.2) of the United Kingdom, subject to the provisions of the Southern Rhodesia Act 1965 (c. 76) of the United Kingdom and the Southern Rhodesia Constitution Order 1965 (S.I. 1965 no. 1952) made thereunder. (More will be said of this 1965 legislation below). Under the terms of the 1961 Constitution, Southern Rhodesia had internal self-government subject to a number of restrictions and qualifications. The Head of the State was the Queen of the United Kingdom who was represented in the territory by a Governor who was appointed by the Queen on the advice of the government of the United Kingdom and not of that of Southern Rhodesia but who acted on the advice of the Executive Council of Southern Rhodesia or of the appropriate minister unless the Governor was required by the Constitution or any other law to do otherwise in any particular case or situation. There was an elected legislature called the Legislative Assembly and a non-political and multi-racial Constitutional Council the function of which was to consider whether any Bills, or any Acts assented to after a Certificate of Urgency had been given, or any statutory instruments contravened the Declaration of Rights (see *infra* d (1)). There was an Executive Council composed of the Prime Minister and other ministers who had to be members of the Legislative Assembly. They met in unofficial Cabinet in a similar way to the United Kingdom ministers but the decisions of the Cabinet had to be implemented by an order of the Executive Council to give them legal validity.

⁴⁴ Throughout this chapter on Southern Rhodesia all legislation referred to will be Southern Rhodesian legislation (*infra* 2 c), unless otherwise stated; but it should be noted that the letters S.I. refer to United Kingdom statutory instruments.

⁴⁵ This Act was, by the Citizenship Law (Southern

Rhodesia) Order 1950 (S.I. 1950 no. 61) declared to be an enactment making provision for citizenship of Southern Rhodesia.

⁴⁶ General Administration Act (Cap. 63) and Southern Rhodesia Government Notices (S.R.G.N.) 254 and 255 of 1963.

ii. *The Illegal Constitution*

(1) *Effect of the Unilateral Declaration of Independence.* - On 11 Nov. 1965, a proclamation was made by the government of Southern Rhodesia containing a Declaration of Independence signed by the Prime Minister *Ian Smith* and the other ministers of the country. It purported to give to the people of Rhodesia a new constitution which was annexed to the Proclamation and which was very similar in form and content to the Constitution of 1961. Among a number of variations, however, it provided for a new official called the Officer Administering the Government to take the place of the Governor, conferred full legislative powers on the Rhodesian legislature and provided that future Acts of the United Kingdom Parliament should only apply to Rhodesia if extended to it by the Rhodesian legislature. The United Kingdom government thereupon directed the Governor to dismiss Mr. *Smith* and the other ministers, which he did some hours after the Declaration of Independence. The United Kingdom Parliament passed the Southern Rhodesia Act 1965 (c. 76) which came into force on 16 Nov. 1965, and gave powers to the United Kingdom government to legislate in respect of any unconstitutional action taken there. Thereupon the Southern Rhodesia Constitution Order 1965 of the United Kingdom (S.I. 1965 no. 1952) was made declaring the *Smith* Constitution void, forbidding laws to be made by the Legislature or business to be transacted by the Legislative Assembly and giving power to the Queen in Council to make laws for Southern Rhodesia and to a Secretary of State to exercise the executive authority of the territory. Mr. *Smith* and his colleagues disregarded their dismissal and the members of the Legislature disregarded the prohibitions placed upon them.

Although the Judicial Committee of the Privy Council decided in July 1968, in the case of *Madzimbamuto v. Lardner-Burke* ([1969] 1 A.C. 645), that the usurping authority then in control could not be regarded as a lawful government either *de jure* or *de facto* the decision was not recognised by the *Smith* regime or by the courts of Southern Rhodesia; and subsequent decisions of the latter have decided that the *Smith* regime has become the *de jure* government of the country.

On 20 June 1969, a referendum of voters was held at which proposals for the adoption of a republican form of government, and for a new constitution for Rhodesia as set out in a published White Paper (C.S.R. 32 - 1969) were approved. Thereafter the Constitution Amendment (no. 2) Act 1969 of Rhodesia (no. 42 of 1969) was passed

empowering the Legislature of Rhodesia to enact laws to give effect to the voters' decision. On 29 Oct. 1969, an Act entitled the Constitution of Rhodesia 1969 (no. 54 of 1969) was passed, purporting to have been enacted by "the Officer Administering the Government, as representative of the Queen's Most Excellent Majesty, by and with the consent of the Parliament of Rhodesia" providing for a new Constitution and repealing the *Smith* Constitution of 1965. This new Constitution was brought into force on 3 March 1970.

(2) *Head of State.* - It provides for a President of Rhodesia who is also Commander-in-Chief of the Armed Forces of Rhodesia and who is appointed by the Executive Council.

(3) *Legislature.* - The legislative power of Rhodesia is vested in the Legislature which consists of the President and the Parliament. The Parliament consists of a Senate and a House of Assembly. The Senate consists of 23 Senators of whom (a) ten are Europeans elected by an electoral college consisting of the European members of the House of Assembly; (b) ten are African chiefs (five from Matabeleland and five from Mashonaland) elected by an electoral college consisting of chiefs who are members of the Council of Chiefs; and (c) three are persons appointed by the President of Rhodesia. The Constitution Amendment Act 1974 (of Rhodesia) (no. 32 of 1974) gives power to the President to declare by Proclamation that there shall be 24 or 25 Senators of whom 4 or 5 shall be persons appointed by him and thereafter he may appoint an additional 1 or 2 persons to be Senators. Qualifications for and method of election or appointment to the Senate are governed by the Electoral Law for the time being in force. The Senate has a President elected in accordance with Standing Orders from among the members of the Senate and the House of Assembly who are neither ministers nor deputy ministers or from outside. The House of Assembly consists of 69 members of whom 50 are European members elected by the Europeans enrolled on the rolls of European voters for 50 European Roll constituencies; 16 are African members of whom 8 are elected - as to 4 by the Africans enrolled on the rolls of African voters for 4 African Roll constituencies in Matabeleland; and 8 are elected - one by each of 4 electoral colleges in Mashonaland and of 4 electoral colleges in Matabeleland. Qualifications for and methods of election to the House of Assembly are governed by the Electoral Law for the time being in force. Provision is made for the increase of the number of African members according to a complicated calculation when a Delimitation

Commission establishes by virtue of a certificate furnished by the Commissioner of Taxes that the aggregate of the income tax assessed on the income of Africans exceeds 16/66ths of the aggregate of the income tax assessed on the income of Europeans and of Africans. There is a Speaker who is elected by the House of Assembly in a similar way and from among the same persons as the President of the Senate.

The Legislature is the sovereign legislative power in and over Rhodesia.

(4) *Executive.* – The executive government of Rhodesia in regard to all aspects of its internal and external affairs is vested in the President acting, subject to certain exceptions, on the advice of the Executive Council which consists of the Prime Minister and such other persons, being ministers, as the President, on the advice of the Prime Minister, may from time to time appoint. The President has power, subject to certain conditions, to declare that a state of public emergency exists or a situation exists which, if allowed to continue, may lead to a state of public emergency.

(5) *Territorial authorities.* – The territorial authorities consist in (a) the urban areas, of municipalities, town councils, local government areas, local boards, incorporated town or city councils, and African townships, established under the Urban Councils Act 1973 (no. 12 of 1973) as amended, supplemented by Advisory Boards representative of African residential areas, established under the Africans (Urban Areas) Accommodation and Registration Act 1951 (Cap. 110 as amended); in (b) European rural areas, of rural councils established under the Rural Councils Act 1966 (no. 61 of 1966) as amended, and, in (c) African rural areas, of Native Councils established under the African Councils Act 1957 (Cap. 95 as amended) and the Native Councils Act 1957 (no. 19 of 1957). There are also the Council of Chiefs which functions at national level and the Provincial Assemblies of Chiefs in and for each province, established under the Council of Chiefs and Provincial Assemblies Act 1961 (Cap. 111), which act in an advisory capacity.

d. *The judiciary.* – (1) There is no constitutional judiciary or court for the interpretation of the Constitution as such; but there existed a Constitutional Council (see *supra* i.) which under the Constitution of 1961 was entrusted with the

responsibility of examining legislation to ascertain whether it contravened the Declaration of Rights and rendering a report on it. The Council thus had quasi-judicial interpretative powers in a limited field. This has been replaced under the Constitution of 1969 by the Senate Legal Committee as regards Bills and statutory instruments. The Constitution of 1969 s. 84 provides that no court shall inquire into or pronounce upon the validity of any law on the ground that it is inconsistent with the Declaration of Rights contained in that Constitution.

(2) As regards courts of general jurisdiction there are

(a) Magistrates' Courts established under the Magistrates' Court Act 1932 (Cap. 15 as amended) for each province or regional division created by the Minister of Justice from one or more provinces or portions of provinces under the General Law Amendment Act 1965 (no. 18 of 1965). The courts are staffed by a chief magistrate, regional magistrates, provincial magistrates, senior magistrates and magistrates. All classes of the magistracy have criminal jurisdiction according to their respective powers over all sections of the population, European and African. All classes of the magistracy, except regional magistrates, have civil jurisdiction according to their respective powers in cases concerning non-Africans and cases between Africans and non-Africans;

(b) African statutory and customary courts of various kinds which try civil cases between Africans, and also between Africans and non-Africans, in limited categories according to the respective jurisdictions of the courts. They also have limited criminal jurisdiction over Africans.⁴⁷ Appeals lie to tribal appeal courts and further appeals to the Provincial Commissioners in removal cases and to magistrates in criminal cases.⁴⁸ District Commissioners' courts also have original civil jurisdiction in African cases equivalent to that of a magistrate in other civil cases.⁴⁹ They also have powers of review and appeal over the proceedings of African civil courts;⁵⁰

(c) the Court of Appeal for African civil cases is composed of a President and two other members. The President must be a retired judge or an advocate of not less than twelve years experience. The other members must be or have been Native Commissioners of District Commissioners;⁵¹

⁴⁷ African Law and Tribal Courts Act 1969 (no. 24 of 1969) s. 12.

⁴⁸ *Ibidem* s. 21, 22 and 23.

⁴⁹ African Affairs Act 1928 (Cap. 92 as amended)

s. 9.

⁵⁰ African Law and Tribal Courts Act 1969 (*supra* n. 47) s. 20.

⁵¹ African Affairs Act (*supra* n. 49) s. 10.

(d) a number of courts of special jurisdiction established by legislation, such as Water Courts, Mining Commissioners Courts, Industrial Courts, Workmen's Compensation Courts, Special Courts for Income Tax, *etc.*, variously staffed, from which appeals lay to the Appellate Division of the High Court;

(e) the High Court was divided under the 1961 Constitution into a General Division and an Appellate Division. The General Division was composed of a Chief Justice and such puisne judges as might be appointed. It had full jurisdiction, civil and criminal, over all persons and all matters within Southern Rhodesia.⁵² It also has a power of review over inferior courts of law, tribunals and officials.⁵³

The Appellate Division was composed of the Chief Justice, the Judge President, such other judges of appeal as the Governor deemed necessary and such puisne judges of the High Court as might be designated by the Chief Justice with the consent of the Judge President to act as judges of the Appellate Division. It had jurisdiction to hear civil and criminal appeals from the General Division of the High Court, the Magistrates' Courts, the Court of Appeal for African civil cases and numerous other special courts and tribunals. Further appellate jurisdiction could be conferred upon it by Acts passed by the Legislature. The Appellate Division also had original jurisdiction to hear and determine applications by any person alleging that the provisions of the Declaration of Rights had been or were being contravened in relation to him, and also to hear any matter involving such a question referred to it by any other court (see *supra* n. 52).

Under the 1969 Constitution the judicial authority of Rhodesia is vested in the High Court of Rhodesia which shall consist of such Divisions and shall have such jurisdiction as may be prescribed by a law of the Legislature. The relevant Act is the High Court Act 1964, as amended by Acts no. 57 of 1969 and no. 37 of 1973; and there is

(f) the Judicial Committee of the Privy Council. Under the Constitution of 1961 an appeal lay as of right to the Judicial Committee of the Privy Council when any person was aggrieved by a determination of the Appellate Division in

respect of an alleged contravention of the Declaration of Rights contained in the Constitution. No appeal lay in any other cases but the Constitution conferred power on the Southern Rhodesian Legislature to make provision for appeals to be brought as of right. The *Smith* Constitution of 1965 purported to abolish the right of appeal which existed under the Constitution of 1961. No mention is made of the Judicial Committee in the Constitution of 1969, but s. 4 of the High Court Amendment Act 1969 (no. 57 of 1969) amends s. 12 of the principal Act to provide that there shall be no appeal from any judgment or order of the Appellate Division whether given on appeal from any court or otherwise.

(3) There is no administrative judiciary as such but the General Division of the High Court (see *supra* (e)) had, and the High Court still has, a supervisory jurisdiction and power of review over the proceedings of administrative and statutory tribunals, authorities and officials.

(4) All public prosecutions are commenced by the Attorney-General or by a member of his staff or by a Public Prosecutor attached to a subordinate court as his representative.⁵⁴ If the Attorney-General refuses to bring a prosecution, a private citizen who can show that he has suffered some substantial and peculiar injury from the commission of the offence may initiate a private prosecution.

2. Sources of Law

a. *Constitution.* — As stated above, the legal position is, at the time of writing, confused and obscure.

b. The *Basic Law* of the colony is the law which was in force in the Colony of the Cape of Good Hope on 10 June 1891, as modified by subsequent legislation having effect in Southern Rhodesia.⁵⁵ This Basic Law includes Roman-Dutch common law, some statutes of the United Kingdom and the statutes of the Cape up to 10 June 1891. Legislation passed in the Cape Colony after that date does not affect Southern Rhodesia. African customary law is also part of the Basic Law to a limited extent, *i.e.*, it is applied in civil cases between Africans, and also between Africans and

⁵² Constitution of 1961 s. 50 (as amended by Constitution Amendment Act 1964 (no. 13 of 1964)) and High Court Act 1964 (no. 22 of 1964).

⁵³ High Court Act (*supra* n. 52) s. 31 (1).

⁵⁴ Criminal Procedure and Evidence Act, 1927 (Cap. 31 as amended).

⁵⁵ See High Court Act, 1939 (Cap. 8 of 1939) s. 13, and the Constitution of 1961 s. 56E and Third Schedule as amended by the Constitution (Amendment) Act 1964 (no. 13 of 1964) s. 4 and 20, and the Constitution of Rhodesia 1969 s. 70.

non-Africans in limited classes of cases. Otherwise the law of Rhodesia applies. Where no express rule is applicable the court applies the principles of natural justice, equity and good conscience.⁵⁶

c. The *legislation* of Southern Rhodesia has been revised and consolidated in the Statute Law of Southern Rhodesia, 1963 (8 vol.), an official publication which contains amongst others, the following important statutes: Criminal Procedure and Evidence Act 1927 (Cap. 31 as amended), Mines and Minerals Act 1961 (Cap. 203 as amended), Bills of Exchange Act 1895 (Cap. 218 as amended), Companies Act 1952 (Cap. 223 as amended), Liquor Act 1953 (Cap. 234 as amended), Industrial Conciliation Act 1960 (Cap. 246), Workmen's Compensation Act 1960 (Cap. 248 as amended), Natural Resources Act 1941 (Cap. 264 as amended), Water Act 1927 (Cap. 268 as amended), Carriage by Air Act 1934 (Cap. 270) and Roads and Road Traffic Act 1954 (Cap. 289 as amended).

This consolidation is supplemented by the publication of annual volumes of legislation. Included in these volumes were the Copyright Act 1966 (no. 60 of 1966), the Land Tenure Act 1969

(no. 55 of 1969), the Electoral Act 1969 (no. 56 of 1969) and the Insolvency Act 1973 (no. 13 of 1973) in addition to others specifically referred to in the preceding text. There is also a considerable body of subsidiary legislation made by the Executive Council and by subordinate law-making bodies and officials. This is published at regular intervals in annexes to the Southern Rhodesia Government Gazette and is later incorporated into the annual volume of the legislation of the territory. A revised edition of legislation is now in course of preparation.⁵⁷

The more important collections of judicial decisions affecting Southern Rhodesia are the Cape Supreme Court Reports (1896-1911), the Southern Rhodesia High Court Reports (1911-1955), the Rhodesia and Nyasaland Reports (1956-1964), the Rhodesian Law Reports from 1964 onwards and, so far as African customary law cases are concerned, the reports of the Southern Rhodesia Native Appeal Court (1928-1940). Other cases can be found in the Southern Rhodesia Reports 1899 (one volume only), in the Appellate Division Reports of the Union of South Africa (1911-1946) and in the South African Reports from 1947 onwards.

XXI. SELECTIVE BIBLIOGRAPHY

See also on the law of the Anglophonic African countries the national report on Nigeria *sub XI*, and on that of the East African countries the national report on Tanzania *sub XI*.

General

Maxwell, A Legal Bibliography of the British Commonwealth of Nations (7 vol.) (ed. 2 London 1964); H.M. Government of the United Kingdom, A Year Book of the Commonwealth, 1974 (London 1974); Roberts-Wray, Commonwealth and Colonial Law (London 1966); Fawcett, The British Commonwealth in International Law (London 1963); Wilson (ed.), International and Comparative Law of the Commonwealth (Durham, N.C. 1968); Elias, British Colonial Law. A Comparative Study of the Interaction Between English and Local Laws in British Dependencies (London 1962); Anderson (ed.), Changing Law in Developing Countries (London 1963); British Institute of International and Comparative Law (ed.), Law in the West Indies. Some Recent Trends (London 1966); United Kingdom National Committee on Comparative Law (ed.), Law in the West Indies (London 1958); Chinese Law and Custom in

Hong Kong. Report of a Committee Appointed by the Governor in October 1948 (with comments) (Hong Kong 1953).

Constitutional System

De Smith, The New Commonwealth and Its Constitutions (London 1964); Keith, The Constitution, Administration and Laws of the Empire (London 1924); Wade and Phillips, Constitutional Law. An outline of the law and practice of the constitution, including central and local government and the constitutional relations of the British Commonwealth and Empire (ed. 4 London, New York, Toronto 1952); Berber, Die Rechtsbeziehungen der britischen Dominions zum Mutterland (Thesis, Ansbach 1929); Wrong, Government of the West-Indies (Oxford 1923); Ayearst, British West Indies. A Search for Self-Government (London 1960).

⁵⁶ African Law and Tribal Courts Act 1969 (*supra* n. 47).

⁵⁷ See Revised Edition of the Laws Act 1973 (no. 5 of 1973).

Sources of Law

Wade a.o. (ed.), Annual Survey of Commonwealth Law (London, since 1965); *Department of Technical Co-Operation* (ed.), Technical Co-Operation (London, since 1964 monthly); *Maxwell and Brown*, A Complete List of British and Colonial Law Reports and Legal Periodicals, Arranged in Alphabetical and Chronological Order with Bibliographical Notes (ed. 3 Toronto 1937); *McGowan*, A Guide to Commonwealth Law Reports, Legislation and Journals in the Lincoln's Inn Library (ed. 2 London 1967).

Historical Evolution

Claire Palley, The Constitutional History and Law of Southern Rhodesia 1888-1965, with special reference to Imperial control (Oxford 1966); *Spurdle*, Early West Indian Governments 1660-1783 (Palmerston North 1963); *Murray*, West Indies and the Development of Colonial Government 1801-1834 (Oxford 1965); Reports of the Commission of Inquiry Into the Administration of Civil and Criminal Justice in the West Indies (London 1827).

Private Law

Chinese Marriages in Hong Kong (A report by the Sub-Committee of the Hong Kong Bar Association on Chinese marriages) (Hong Kong 1967); *Holleman*, Shona Customary Law (with reference to kinship, marriage, the family and the estate) (Manchester 1969); *Meek*, Land Law and Custom in the Colonies (ed. 2 London 1949, reprint 1968).

Commercial Law

Christie, Rhodesian Commercial Law (Cape Town, Wynberg, Johannesburg 1961); *Naselewski*, Sale of Goods Act, 1893. Entstehung, Bedeutung und Anwendung in den Commonwealth-Ländern (Thesis, Hamburg 1971).

State Direction of Trade

Tunc (ed.), Les aspects juridiques du développement économique (Paris 1966); *Hope*, A Digest of Rhodesian Mining Law (Salisbury 1965).

(Completed in May 1974)