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## MAURITIUS: CONSTITUTIONALISM IN A PLURAL SOCIETY

"A daintie island of good refreshing . . . there is not under the sunne  
a more pleasant, healthy and fruitful piece of ground for an island  
uninhabited."  
(PETER MUNDY, navigator, c. 1638.)

MAURITIUS, *l'Ile de France*, was ceded to the Crown in 1814. It became an independent member of the Commonwealth on March 12, 1968, and was elected to membership of the United Nations by acclamation on April 24. Between 1957 and 1966 eleven Commonwealth countries in Africa, peopled by less sophisticated inhabitants, had preceded Mauritius along the same road. Why did Mauritius lag behind? Only by outlining some of the special problems affecting Mauritius can this question be answered. Such an outline, albeit inadequate to portray a complex scene, will also help to explain the peculiar features of the independence constitution.

### I. BACKGROUND <sup>1</sup>

Mauritius is small, remote and overpopulated. Its economy is seriously vulnerable to fluctuations in world commodity prices. Intricate communal problems have stunted the growth of national consciousness and have too often dominated political controversy in modern times. In many developing countries some of these difficulties are present in a more acute form; but the Mauritian blend is unique.

Geography has been unkind to Mauritius. The island lies far out in the Indian Ocean, more than 500 miles to the east of Madagascar. Together with Rodrigues, a smaller island another 360 miles to the

<sup>1</sup> There is no standard work on Mauritius, and next to nothing has been published on the fascinating political contortions of the last few years; the writer is obliged to resist any temptation to fill this gap. General historical accounts can be found in P. J. Barnwell and A. Toussaint, *A Short History of Mauritius* (1949) and Auguste Toussaint, *History of the Indian Ocean* (1966). Detailed factual information is collected in the *Annual Reports* (H.M.S.O.); the latest is for 1966. Burton Benedict, *Mauritius: Problems of a Plural Society* (1965) is a good short survey of the main contemporary issues.

east,<sup>2</sup> it has an area of 760 square miles<sup>3</sup>; the islands are frequently smitten by cyclones.

Unfortunately, the population is now more than 800,000, an extraordinary figure for a tiny agricultural country, and despite a recent decline in the birth-rate it may well exceed two millions by the end of the century.<sup>4</sup> The soil is fertile, but no mineral resources have yet been discovered, and the economy is overwhelmingly dependent on sugar, which accounts for 97 per cent. of the country's exports. The sugar industry in Mauritius is highly efficient. But the present world market price of sugar does not even cover the cost of production. The standard of living, still significantly higher than in the large majority of African and Asian countries, has been maintained by virtue of the Commonwealth Sugar Agreement, under which two-thirds of the sugar crop is sold, largely to the United Kingdom, at a high price.<sup>5</sup> Unemployment and underemployment are rife; some progress has been made towards diversification of the economy by the development of light industry, tourism and tea production, but there are too few jobs to provide for the growing body of school-leavers.<sup>6</sup> Foreign investment and international aid are sorely needed; they are also sorely needed by a great number of competitors. Emigration is acting as a palliative to the problem of over-population; but the Mauritians who leave tend to be those with specialised skills whom the country can ill afford to lose. Shortly before independence Mauritius received from the United Kingdom a substantial grant of budgetary aid; this was the first occasion on which Mauritius had received direct aid for such a purpose.

Communal problems in Mauritius, though undoubtedly serious, are not necessarily desperate. Mauritius has no long history of bloody inter-communal disorders—the rioting between Muslims and Creoles early in 1968, resulting in twenty-seven deaths, was unprecedented—or residential segregation; nor is there an indigenous population outnumbered by immigrants of a different race or culture. The only important indigenous inhabitant was the dodo. The Dutch, fitful

<sup>2</sup> Rodrigues, little known to the outside world and difficult to reach (see Quentin Keynes, "Island of the Dodo" (1956) 100 *National Geographic Magazine* 77, 93, 99, 102–104), produces livestock and vegetables. Till independence it was administered as a dependency of Mauritius. For Rodriguan separatism, see pp. 612, 613, 622, *post*.

<sup>3</sup> Mauritius (with Rodrigues) also has two remote island dependencies, Agalega and Cargados Carajos. A former dependency, the Chagos Archipelago, was detached in 1965; see p. 609, *post*. See generally, Sir Robert Scott, *Limuria: the Lesser Dependencies of Mauritius* (1964); F. D. Ommaney, *The Shoals of Capricorn* (1952).

<sup>4</sup> Cf. Richard Titmuss and Brian Abel-Smith, *Social Policies and Population Growth in Mauritius* (1961), Chap. 3. The guess made in the text above is perhaps a conservative estimate.

<sup>5</sup> £47 10s. a ton in 1968, well over three times the world market price at the time of independence.

<sup>6</sup> For a comprehensive analysis of the basic problems, see J. E. Meade, *The Economic and Social Structure of Mauritius* (1961).

colonists, gave Mauritius its name; before they left in 1710 the dodo was dead. They were succeeded by the French, who established themselves in strength; they planted sugar, introduced French culture and African slaves, and begat many children of mixed blood. Although French rule was brought to an end during the Napoleonic Wars, the impact of France, and of the Franco-Mauritian settlers who still control the sugar industry, remains profound in Mauritius today. For example, among nearly all elements in the population French is spoken more fluently than English, and English is spoken with a French accent.<sup>7</sup> But British political institutions and ideas have prevailed—Franco-Mauritian political and social attitudes have tended to remain pre-revolutionary—and even French civil law has yielded some ground to English innovations.

In 1835 the slaves were emancipated. About this time, the first Indian indentured labourers were brought in to work on the sugar estates. Most of the labourers were prevailed upon or chose to make their homes in Mauritius, and by 1861 two-thirds of the population were of Indian origin.<sup>8</sup> Indian immigration had almost ceased by the end of the nineteenth century, and Indo-Mauritians can rightly claim to be as fully Mauritian as the "General Population"—the French and Creole<sup>9</sup> sections of the population.

At the 1962 Census, the population was broken down into four main groups. Approximately half the population described themselves as belonging to the Hindu section of the population, one-sixth as Muslims, 30 per cent. as members of the "General Population" and 3 per cent. as Chinese. The General Population is overwhelmingly Roman Catholic and varies in colour from white to black with numerous intermediate gradations of brown. Many Chinese are also Roman Catholics. The principal communal divisions in Mauritius are religious or cultural; they are not primarily ethnic, and today they have little to do with colour.

## II. CONSTITUTIONAL AND POLITICAL DEVELOPMENT TILL 1967

Till 1948 public affairs in Mauritius were dominated by British officials and Franco-Mauritian settlers. A few coloured men—Ollier, Newton, the Laurents, Rivet, and later Anquetil and Rozemont—

<sup>7</sup> The official language of the Legislative Assembly is still English (Independence Constitution, s. 49), though members may address the chair in French. For political reasons the Opposition has urged the adoption of French as a second official language; the Government has resisted this demand on the ground that it would lead to further demands for the instatement of Hindi, Urdu and other languages, with a consequential growth of linguistic communalism.

The nearest approach to a *lingua franca* in Mauritius is Creole, basically a French *patois*; the language has hardly any literature.

<sup>8</sup> See generally Burton Benedict, *Indians in a Plural Society* (1961).

<sup>9</sup> Originally the word "Creole" meant a French settler. Nowadays it usually denotes a non-white Mauritian who is not exclusively of Indian or Chinese origin, though sometimes persons of mixed race are called "coloured" and black Mauritians "Creoles." The term "Creole" also refers to a language (note 7, *supra*).

were to make their mark in politics,<sup>10</sup> but the shaping of local policy was essentially oligarchical. During the stormy Governorship of Sir John Pope-Hennessy, a dynamic Irish Catholic home ruler whose unorthodox concept of "Mauritius for the Mauritians" embraced a solicitude for the rights of Creoles and even Indo-Mauritians,<sup>11</sup> the Constitution of 1885 was adopted.<sup>12</sup> There was created a new Council of Government, consisting of the Governor, eight *ex-officio* members, nine nominated members (of whom at least three were to be non-officials), and ten other members elected on a narrow franchise. The Governor retained wide executive powers exercisable in his personal discretion. Nevertheless, the constitution was a liberal one for a Crown colony.

For more than sixty years Mauritius was governed under the 1885 Constitution; the only significant amendment was made in 1933, when the proportion of nominated non-officials was increased from one-third to two-thirds. But immediately after the Second World War came a major reform. Under the Constitution of 1947 the unofficial majority in the Legislature became an elected majority; and the franchise was broadened so that the electorate increased sixfold.<sup>13</sup> The consequences were dramatic. For the first time the Indo-Mauritians emerged as a real political force; eleven out of the nineteen elected seats were won by Hindus, seven by Creoles and one by a Franco-Mauritian. The results produced alarm and despondency not only among Franco-Mauritians but also among many Creoles who, having been effectively excluded for so long from the political influence to which their numbers had entitled them, now found themselves outnumbered by Hindu voters. The radical Mauritius Labour Party had been founded by Creoles; now it had become a predominantly Hindu party, and there began that alienation of Creoles from Hindus which has been the most regrettable feature of modern Mauritian politics.

But it was still a far cry from representative government to responsible government. Of the elected members of the Legislative Council, none was directly appointed to the Executive Council, though four of them were indirectly elected to membership of the Executive Council by proportional representation. Of the eleven nominated non-official members of the Legislative Council—there were also three *ex-officio* members as well as the Governor—seven were white and none was a Hindu.<sup>14</sup> At this time the Labour Party held a clear majority of the nineteen elective seats and had been

<sup>10</sup> See Jay Narain Roy, *Mauritius in Transition* (1960), Chap. 8.

<sup>11</sup> James Pope-Hennessy, *Verandah* (1964), pp. 231–302.

<sup>12</sup> D. Napal, *Les Constitutions de l'Ile Maurice* (1962), p. 93. It is understood that a more detailed factual account of some of the constitutional developments set out in this section will appear in Chapter 3 of the *Annual Report for 1967*.

<sup>13</sup> See S.R. & O. and S.I. Revised 1948, xiii, pp. 271, 277. For the *travaux préparatoires*, see Cmd. 7228 (1947).

<sup>14</sup> Roy, *op.cit.*, pp. 365–366.

allocated none of the nominated seats.<sup>15</sup> Possibly the Governor was alive to the "Hindu menace." However, "Liaison Officers," without executive responsibilities, were appointed in 1951, and there were elected members among them.

Clearly such a situation could not endure. There followed the first round of those excruciatingly protracted but highly sophisticated controversies over constitutional reform in which Mauritius has excelled. (The local predilection for devious manoeuvre, political defamation and general disputation has earned the stern censure of some<sup>16</sup> and provided innocent entertainment for others.) In December 1953 the Legislative Council, by a small majority, passed a resolution calling for a greater measure of self-government. The Secretary of State for the Colonies temporised, asking the Governor to hold local consultations. An array of multifarious schemes soon proliferated. The Labour Party called for universal suffrage, a reduction in the number of nominated members and the introduction of a ministerial system. Others put forward proposals including communal representation with separate electoral rolls, multi-member constituencies with a limited vote, and an increase in the number of nominated members. Eventually the Secretary of State accepted the principles of universal suffrage and an unofficial majority in the Executive Council with a ministerial system, but proposed that the elected members of the Legislative Council and the non-official members of the Executive Council should all be elected by the single transferable vote system of proportional representation.<sup>17</sup>

The Mauritius Labour Party would have nothing to do with the proportional representation scheme, and a further series of meetings was convened in London. The outcome was the London Agreement of 1957.<sup>18</sup> Under this Agreement, a ministerial system of government was introduced. An independent Boundary Commission would be appointed to see whether Mauritius could be divided into forty single-member constituencies, which would give "each main section of the population . . . adequate opportunity to secure representation corresponding to its own number in the community as a whole." Failing this, elections would be held according to the party list system of proportional representation. In addition, the Governor

<sup>15</sup> H. V. Wiseman, *The Cabinet and the Commonwealth* (1958), pp. 63-64, 131-132.

<sup>16</sup> Cf. Sir Robert Scott, a former Governor: "... the most daunting obstacle in the way of healthy political development in Mauritius is the manner in which the political and social structure is pervaded through and through by fear and suspicions, jealousies and dislikes. Combined with this is that flavour of final purposeless, inner irresponsibility which Lord Keynes attributed to a distinguished statesman now dead" (Despatch No. 11 of January 7, 1955, para. 11 (Mauritius Legislative Council, Sess.Pap. No. 3 of 1956)). This judgment may have been too severe.

<sup>17</sup> Despatches of February 10, 1956, and March 10, 1956 (published in Sess.Pap. No. 3 of 1956).

<sup>18</sup> H.C.Debs., Vol. 566, cols. 115-117 (Written Answers); Mauritius Legislative Council, Sess.Pap. No. 1 of 1958, Appendix C.

would be enabled to nominate, in his personal discretion after consultation with members of the Legislative Council, up to twelve other members. Nomination was not to be used to frustrate the results of the elections—the 1948 precedent was not to be followed—but would be used “to ensure representation of special interests or those who had no chance of obtaining representation through election.” The proposal for the election of members of the Executive Council by proportional representation was dropped; instead, the Governor was to invite nine members of all elements in the Legislative Council, to be represented as nearly as possible in relation to party strengths.

The Trustram Eve Boundary Commission succeeded in devising forty single-member constituencies<sup>19</sup> by what may be described as “honest gerrymandering”<sup>20</sup>; its proposals were accepted<sup>21</sup> and implemented. At the General Election of 1959, held under a new constitution<sup>22</sup> and on the basis of universal suffrage, the Labour Party won a large majority of seats, campaigning in harness with its new ally, the overtly communal Muslim Committee of Action; the Independent Forward Bloc, then a Hindu party of the *sans-culottes*, made headway; the Parti Mauricien, a conservative party representing Franco-Mauritians and middle-class Creoles, fared poorly. Under-represented minorities were allocated nominated seats. The new Government, formed in accordance with the principles laid down in the London Agreement, was a coalition, and not a majority party Government.<sup>23</sup>

A somewhat uneasy equilibrium was thus established, and the way ahead was obscure. The United Kingdom Government was anxious not to exacerbate communal tensions or to imperil a vulnerable economy by forcing the pace towards full internal self-government. At a Constitutional Review Conference held in 1961 the only significant change proposed was the creation of the office of Chief Minister; further changes, still falling short of internal self-government, would be deferred till after the next General Election; after that, Mauritius might move forward to full internal self-government, “if all goes well and it seems generally desirable.” A visit by the Constitutional Commissioner might be arranged in due course.<sup>24</sup>

At the General Election of 1963 the Mauritius Labour Party lost

<sup>19</sup> Sess.Pap. No. 1 of 1958.

<sup>20</sup> Cf. W. J. M. Mackenzie, *Free Elections* (1958), pp. 110-112; T. E. Smith, *Elections in Developing Countries* (1960), pp. 13-14, 143.

<sup>21</sup> Sess.Pap. No. 5 of 1958.

<sup>22</sup> S.I. 1958, p. 2914. The constitutions of Mauritius up to independence were made by prerogative instruments. See further, on the 1958 Constitution, S.I. 1959, pp. 3501, 3505, 3506, 3510.

<sup>23</sup> Two Independents were appointed. The Independent Forward Bloc refused the Governor's invitation to join the Government.

<sup>24</sup> Sess.Pap. No. 5 of 1961; reproduced in the Report of the Mauritius Constitutional Conference 1965 (Cmd. 2797 (1965), at pp. 12-15). See also S.I. 1961, pp. 4631, 4632; S.I. 1962, p. 4083.

its absolute majority, winning nineteen out of the forty elected seats; the Parti Mauricien, having attracted a larger body of Creole support in the urban belt, improved to eight seats; the Independent Forward Bloc won seven, the Muslim Committee of Action four, and Independents two. The nomination of the twelve additional members proved burdensome both to the Governor and to some of the party leaders; the outcome left the balance of political forces much as it had been, but gave the General Population a slightly stronger representation than before. A complicating factor in the process of nomination had been the assurance previously given to the leaders of the Muslim Committee of Action that prior consideration would be given to Muslim "best losers"—candidates who had been narrowly defeated at the General Election. Apart from the embarrassing problems created between and within the parties over the selection of candidates for nomination, there were differences in interpretation over the meaning of a Muslim "best loser."<sup>25</sup> But the idea that best losers had special claims to membership—an idea that would be unacceptable in most countries—was to take root in Mauritius.

I visited Mauritius in July and August 1964. By this time the modest "second stage" of the 1961 conference decisions had been introduced<sup>26</sup> and an all-party coalition had been formed; there were no fewer than fourteen non-official Ministers, and the Chief Minister, Dr. (now Sir Seewoosagur) Ramgoolam had been elevated to the rank of Premier, but the Governor still presided in the Executive Council.

My main purpose was to explore the foundations of a constitutional scheme appropriate for full internal self-government, and in particular to reconsider the system of electoral representation and to examine new safeguards for minorities. It was clear that the existing rules and practices relating to the nomination of members would have to be discontinued. There was no consensus on what should replace it. My own suggestions stimulated discussion but offered no final answer. I reviewed a number of other possible constitutional safeguards for group and individual interests—a constitutional Bill of Rights had already been introduced—and came down in favour of an Ombudsman with wide terms of reference.<sup>27</sup>

The decisive Constitutional Conference on Mauritius took place in London in September 1965. Although the island had yet to achieve full internal self-government, the central issues facing the conference were the determination of ultimate status and the constitutional framework to be adopted for self-government and the next

<sup>25</sup> See Sess.Pap. No. 2 of 1965, paras. 14, 15.

<sup>26</sup> Mauritius (Constitution) Order 1964 (S.I. 1964, p. 1163). For the new Royal Instructions see S.I. 1964, p. 1206.

<sup>27</sup> Report of the Constitutional Commissioner, November 1964 (Sess.Pap. No. 2 of 1965).

and final step forward. The Mauritius Labour Party and the Independent Forward Bloc advocated independence. The Muslim Committee of Action was not opposed in principle to independence but strongly urged the introduction of better constitutional safeguards for Muslim interests. The Parti Mauricien Social Démocrate—the party had acquired a less conservative image as a result of the efforts of Gaëtan Duval, a young coloured lawyer who was the most stirring public speaker in Mauritius—opposed independence and supported the principle of free association with the United Kingdom<sup>28</sup>; it demanded a referendum on the question of independence or association. In the event, Mr. Anthony Greenwood, the Secretary of State, announced on the last day of the conference his view that it was right that Mauritius should be independent. If a referendum on independence were to be held, this would prolong uncertainty and “harden and deepen communal divisions and rivalries.” Instead, a General Election would be held under a new electoral system which would be introduced after an independent Electoral Commission had reported. If the newly elected Legislative Assembly then so resolved, Her Majesty’s Government would, in consultation with the Government of Mauritius, fix a date for independence after six months of internal self-government.<sup>29</sup> By the time the Secretary of State’s announcement was made, the members of the Parti Mauricien delegation had walked out of the conference. After the announcement they were joined by the two Independents.

At the conference a constitutional framework for self-government and independence had been devised.<sup>30</sup> One important element was missing—the system for elections and legislative representation. In view of the disagreements about ultimate status and the manner of self-determination, it was felt to be particularly important to reach agreement between the parties on this crucial matter, especially as the Parti Mauricien was known to be heavily supported by the General Population and was thought to be making headway among other communities. But although many ingenious compromise solutions were canvassed, none was generally acceptable. The Secretary of State therefore decided that, instead of imposing a solution, he should appoint a Commission to make recommendations on an electoral system, constituency boundaries and the best method of allocating seats in the Legislature. There were to be no more nominated members, and provision should be made for the representation of Rodrigues. For the rest, the electoral system was to be based primarily on multi-member constituencies—the small size of the existing constituencies had led to parochial pressures being exerted on members—and there were to be no communal electoral

<sup>28</sup> The party was (and is) markedly Francophile and has tendencies towards Anglophobia. Its enemies claimed that its true preference was for union with France. The neighbouring island of Réunion is an overseas department of France.

<sup>29</sup> Cmnd. 2797 (1967) p. 7.

<sup>30</sup> *Ibid.* at pp. 22–30. See further, pp. 614–621, *post.*



rolls; the system "should give the main sections of the population an opportunity of securing *fair* representation of their interests, if necessary by the reservation of seats,"<sup>31</sup> but no encouragement should be given to the multiplication of small parties.

Shortly after the conference the Chagos Archipelago was detached from Mauritius, and together with some islands in the Seychelles group was constituted as a new colony, the British Indian Ocean Territory.<sup>32</sup> It was contemplated that this territory might be used for strategic purposes. The Government of Mauritius received £3 million by way of compensation. The Ministers belonging to the Parti Mauricien then went into opposition, ostensibly on the ground that the compensation was inadequate.

The Banwell Commission, which reported early in 1966,<sup>33</sup> showed that the resources of human ingenuity had not yet been exhausted. The basic structure of the Commission's proposals was simple enough: twenty constituencies in Mauritius formed by amalgamating the existing constituencies in pairs, each returning three members, with block voting under the first-past-the-post system; and two members with full voting rights for Rodrigues. There were to be no communally reserved seats. In order to safeguard under-represented minorities, two "correctives" were proposed. In the first place, if a party obtained more than 25 per cent. of the votes cast but less than 25 per cent. of the seats, additional seats should be allocated to that party's "best losers" to bring its representation just above the 25 per cent. level; this device was conceived mainly for the purpose of giving the Opposition a "blocking quarter" in the process of constitutional amendment under a new constitution. In the second place, there would in any case be five extra seats to be allocated to "best losers" from under-represented parties and communities by means of a complex formula introducing an element of proportional representation; no party would be entitled to such a seat unless it had obtained at least 10 per cent. of the total vote and at least one directly elected member and unless it had a defeated candidate belonging to the community entitled to the seat to be allocated.

The United Kingdom Government, having accepted these proposals, executed an abrupt side-step when the parties represented in the Government of Mauritius flatly rejected the principles underlying the correctives. The Banwell recommendations would have left the Muslim Committee of Action with a choice between the fate of the dodo and the embraces of the Mauritius Labour Party. To its

<sup>31</sup> Cmnd. 2797 (1967), p. 5 (*italics provided*). These words were carefully chosen, and were intended to indicate that the Commission was not obliged to attempt to ensure that all sections of the population should be afforded representation in proportion to their numbers. To this extent the London Agreement of 1957 was superseded.

<sup>32</sup> S.I. 1965 No. 1920. See also S.I. 1965, p. 6440; H.C. Deb. Vol. 720, col. 2 (Written Answers) (November 10, 1965).

<sup>33</sup> Colonial No. 362 (1966).

leaders neither alternative seemed attractive. The Labour Party was also in a difficult position. As the major partner in the Government coalition, it felt itself to be losing popular support as a result of the deteriorating financial and employment situation. Partly because of the conflicts between India and Pakistan, many Muslims had gravitated to the Parti Mauricien. The Labour Party needed all the Muslim support it could retain. At the same time, it was threatened by the emergence of a new political body, the narrowly sectarian Hindu Congress, which was a by-product of the anti-Hindu campaign waged by some elements in the Opposition. And it had a deep suspicion of the divisive potential inherent in any scheme of proportional representation. In short, it could see itself falling at the last hurdle before independence.

Mr. John Stonehouse, the Parliamentary Under-Secretary for the Colonies, was dispatched to Mauritius, and within a few days brought off the remarkable feat of securing the agreement of all parties on a modified version of the Banwell scheme. Briefly, the Banwell "correctives" were dropped; instead, there were to be eight seats allocated to best losers from under-represented *communities*, but the allocation was to be made in such a way as to retain the numerical balance between the party or party alliance having the largest number of victories in the sixty-two constituency seats on the one hand, and the minority party or party alliance on the other; the requirement that a party had to obtain 10 per cent. of the total vote and one directly elected member to qualify for a best loser seat was also eliminated.<sup>34</sup> Thus was Mauritius to move forward into the society of nations.

All that remained was to draw up new electoral registers, dissolve the Legislative Assembly and conduct the fateful General Election. The pace of events, however, was far from lively.<sup>35</sup> Ultimately the elections were held on August 7, 1967.<sup>36</sup> About 90 per cent. of the registered electors voted. The Mauritius Labour Party, the Muslim Committee of Action and the Independent Forward Bloc, which had formed an *ad hoc* Independence Party, obtained 54.5 per cent. of the votes and won thirty-nine seats, nearly all in mainly rural constituencies. The Parti Mauricien Social Démocrate, under Duval's skilful leadership, obtained 43.5 per cent. of the votes and won twenty-three seats, all in urban constituencies or Rodrigues where

<sup>34</sup> See H.C.Deb. Vol. 731, cols. 92-94 (Written Answers) (July 7, 1966); and Schedule 1 to the Constitution of 1966 (S.I. 1966, p. 5190), now reproduced in Schedule 1 to the Independence Constitution (S.I. 1968, p. 1871).

<sup>35</sup> This was attributable partly to the cumbersome procedure for registration and partly to a disinclination on the part of the Mauritian Ministers to rush to the hustings amid gathering storms. Under the then existing constitution the Governor could have dissolved the Legislative Assembly without ministerial advice, but to do so would have been highly injudicious.

<sup>36</sup> Both the process of registration and the elections were scrutinised by a team of Commonwealth observers. They made criticisms on points of detail but agreed that the procedures were free and fair (Commonwealth Nos. 2 and 3 (1967)).

Hindus are in a minority. The Hindu Congress proved to be a damp squib; the intervention of its candidates had no effect on the result in any constituency. Other parties and independent candidates received negligible support.

Of the Independence Party's successful candidates, thirty-one were Hindus, five were Muslims and three were members of the General Population. Of the P.M.S.D.'s successful candidates, three were Hindus, five were Muslims, thirteen were members of the General Population and two were Sino-Mauritians; it is generally thought that the party received at least 70 per cent. of the Muslim vote, at least 80 per cent. of the General Population vote and the bulk of the Chinese vote, but little support among Hindus other than Tamils.

The eight best loser seats were then allocated, four to each party; six went to candidates belonging to the under-represented General Population, one to a Muslim and one to a Hindu. The Muslim was Mr. A. R. Mohamed, the leader of the Muslim Committee of Action. For many years Mr. Mohamed, perhaps the most colourful figure in Mauritian politics, had been the arch-priest of best-loserdom. The self-government constitution was brought into force,<sup>37</sup> and the new Legislative Assembly passed a resolution requesting the United Kingdom Government to implement the decisions taken in London in 1965. On October 24, 1967, it was announced that Mauritius would become independent on March 12, 1968.

### III. MAURITIUS AT THE UNITED NATIONS

A brief note on the treatment of the problems of Mauritius by the political organs of the United Nations may be interpolated at this point.

Mauritius was first discussed at the United Nations in 1964, and then only in a perfunctory way. The creation of the British Indian Ocean Territory in 1965 was naturally condemned<sup>38</sup>: it involved the dismemberment of existing colonial territories and the establishment of a new colony with a view to its use for "foreign bases." Indeed, the Committee of Twenty-Four has refused to recognise the existence of the new colony as a legitimate entity.

1967 was a bad year for Britain at the United Nations. Britain was denounced for refusing to use force to quell the Rhodesian rebellion; the grant of associated statehood to five small islands in the Caribbean was not accepted as a bona fide act of decolonisation; and the General Assembly ended by demanding in effect that

<sup>37</sup> For the text, see Mauritius Constitution Order 1966 (S.I. 1966, p. 5190); for the Royal Instructions, see S.I. 1967, p. 2135. Three minor amendments were made to the Constitution Order in 1967 (see S.I. 1967, pp. 2133, 3807, 5455; the third designated the Premier as Prime Minister). See also the Mauritius (Former Legislative Council) Validation Order 1966 (S.I. 1966, p. 5254); for the background to this Order, see *Annual Report for 1966*, pp. 5-6.

<sup>38</sup> General Assembly Resolution 2066 (xx) (1965).

Gibraltar be handed over to Spain against the will of the overwhelming majority of the colony's inhabitants. Against this background one would hardly have expected the Committee of Twenty-Four or the Fourth Committee of the General Assembly to congratulate Britain on the progress that was being made towards the decolonisation of Mauritius, particularly in view of the fact that from September 1965 till August 1967 progress was not immediately perceptible. Even so, some of the proceedings before those bodies may cause the most hardened cynic to blench. Statements of fact were treated as falsehoods and fantasies were accepted as facts.<sup>39</sup> But once independence had been achieved (presumably to the surprise of the majority of the Committee of Twenty-Four), all was forgotten, if not forgiven.

#### IV. INDEPENDENCE

The road from internal self-government to independence was short but stony. In the first place, separatist agitation developed in Rodrigues, which has an almost exclusively Creole population and had voted overwhelmingly for the P.M.S.D. and against Mauritian independence at the 1967 elections. Separatist movements in former

- <sup>39</sup> (i) On June 15, 1967, a Mr. Sibsurrin, who claimed to have 50,000 supporters in Mauritius, launched into a vitriolic attack on the Government of Mauritius when giving evidence by special invitation as a petitioner before the Committee of Twenty-Four. He was treated with deference by the Chairman and some of the other delegates. (See A/AC. 109/S.R. 535.) At the General Election held a few weeks later, Mr. Sibsurrin obtained 63 votes in his constituency, receiving the support of 0.6 per cent. of the voters.
- (ii) On June 16, 1967, the Indian representative on the Committee observed that the "United Kingdom Government's policy with regard to Mauritius was to delay independence as much as possible . . . the United Kingdom Government had found one pretext after another to postpone the inevitable, giving the impression that it had found parting with that rich colony extremely difficult." (See A/6700/Add. 8, at pp. 38-39.) For many years the Indian Government had had a resident Commissioner in Mauritius.
- (iii) The Tanzanian representative remarked in April 1967: "The electoral system under which each voter would be obliged to cast three votes was one which had been tried in Tanganyika prior to its independence and had since been discarded. Such a system actually amounted to a denial of the right to vote . . ." (A/6700/Add. 8, Annex, p. 24). The representative may conceivably have had his mind on Fiji, not Mauritius. If he was indeed addressing his mind to the right country his incomprehension was total.
- (iv) On November 24, 1967, the representative of the Democratic Republic of the Congo noted with regret (in the course of a debate on a report on the activities of foreign monopolies which were allegedly impeding the granting of independence in colonial territories) that the situation in Southern Africa was being repeated in Mauritius (see A/C.4/S.R. 1724 at p. 9). In fact there are no foreign (or British) monopolies operating in Mauritius; and the date for the independence of Mauritius had been announced four weeks earlier. This anthology could easily be enlarged.

One should add that the Committee of Twenty-Four had at its disposal a substantial body of factual information, prepared by the Secretariat, about Mauritius; and that the British representative made supplementary factual statements and replied to the questions and assertions of other representatives.

island dependencies of larger islands or island groups which have just achieved full self-government are becoming a common phenomenon—the Anguillan rebellion against the authority of St. Kitts and the desire of Barbuda to sever its links with Antigua are two manifestations of this trend—and they are apt to present very great difficulties. The antipathy in Rodrigues towards Mauritius was accentuated by ethnic differences. However, the United Kingdom Government refused to accede to the Rodriguan request for secession.<sup>40</sup>

Secondly, the rioting between Muslims and Creoles in Port Louis, the capital of Mauritius, late in January 1968 quickly led to the proclamation of a state of emergency<sup>41</sup> and the calling in of British troops from Singapore. The most serious disorders were soon quelled, but not before many casualties and heavy damage to property had occurred. The connection between the rioting and political rivalry was tenuous; the immediate causes appear to have been the growth of prostitution and protection rackets operated by communal gangs; but once violence had begun it spread beyond the organised hooligans and assumed an uglier dimension. Hindus were unaffected. For the P.M.S.D. the outcome was an evaporation of the party's support among the Muslim section of the population.

The United Kingdom Parliament passed the Mauritius Independence Act 1968; and the Mauritius Independence Order 1968,<sup>42</sup> embodying the Constitution, was made. Meanwhile a compensation scheme for expatriate public officers who chose to retire had been adopted.<sup>43</sup>

Princess Alexandra was to represent Her Majesty at the independence celebrations. On the advice of the United Kingdom Government—advice which was resented and criticised in Mauritius—she did not attend them. Despite the continuance of the state of emergency, the celebrations passed off with dignity and without untoward incidents; the only casualty directly attributable to the celebrations was a member of the Mauritius Police Force, injured during the course of an over-ambitious motor-cycle display. The official Opposition had instructed its supporters to boycott the celebrations; two members of the P.M.S.D. nevertheless attended the State Opening of Parliament, and one of them, loudly applauded from the Government benches, seconded the Prime Minister's address in reply to the Speech from the Throne.<sup>44</sup> In Rodrigues prudence prevailed,

<sup>40</sup> *The Times*, January 13, 1968. Union with Réunion seems to have been the preferred option of the Rodriguans. About this time Rodrigues was struck by two cyclones, and shortly afterwards there was rioting on the island over the distribution of food supplies.

<sup>41</sup> The Governor was still responsible for internal security, but he acted in consultation and with the concurrence of the Prime Minister.

<sup>42</sup> S.I. 1968, p. 1871.

<sup>43</sup> S.I. 1967, p. 3782. See further Cmnd. 3606 (1968) (Public Officers Agreement).

<sup>44</sup> Another unexpected incident was a small but vigorous Maoist demonstration at Plaisance Airport to greet the official guests from Peking.

and the official flag-raising ceremony took place unceremoniously under the cover of darkness.

#### V. THE CONSTITUTION

At first glance the Independence Constitution may seem to be a not very remarkable product of the Westminster export model factory. Closer scrutiny reveals a number of unusual features calling for explanation.

##### *The Legislature*

Mauritius has a unicameral legislature of seventy members. The peculiarities of the best loser system under which eight of the seats are allocated after the filling of the sixty-two constituency seats have already been outlined.<sup>45</sup> The most regrettable aspect of the electoral system is that candidates must declare, at the time of their nomination, to what community they belong; but this was the price paid in order to obtain agreement between the parties in 1966.

Constituency delimitations are to be conducted at intervals of not more than ten years by an Electoral Boundaries Commission, composed of a chairman and two to four other members appointed on the advice of the Prime Minister after consultation with the Leader of the Opposition; the members will hold office for five years, subject to removal in the same manner as superior judges.<sup>46</sup> Supervision of the registration of voters and the conduct of elections is entrusted to an Electoral Supervisory Commission, the Chairman of which is to be appointed by the Judicial and Legal Service Commission, a conspicuously non-political body; the other members of the Supervisory Commission are appointed in the same manner as those of the Boundaries Commission; all enjoy the same judicial-type tenure. Bills and other legal instruments relating to registration and elections must be submitted in draft to the Supervisory Commission for comment; any report made by the Commission must be laid before the Assembly. An Electoral Commissioner, a barrister appointed by the Judicial and Legal Service Commission and enjoying judicial security of tenure, works under the exclusive authority of the Supervisory Commission.<sup>47</sup>

##### *Executive and Legislature*

Provision is made for the normal Cabinet system of parliamentary government. But there can be as many as fifteen Ministers and five

<sup>45</sup> At p. 610 *ante*. See Constitution, s. 31 (2) and Sched. 1. Resident Commonwealth citizens, as well as citizens of Mauritius, may vote and be elected to the Legislative Assembly (Constitution, ss. 33, 42). The Speaker of the Assembly is removable only on the resolution of two-thirds of the membership of the Assembly (s. 32 (3) (d)).

<sup>46</sup> ss. 38 (1), 39, 92 (2)-(5).

<sup>47</sup> ss. 38 (2), 40, 41, 92 (2)-(5).

parliamentary secretaries.<sup>48</sup> Undoubtedly Mauritius could be governed by fewer office-holders; the liberal upper limit is a manifestation of the politics of accommodation,<sup>49</sup> of which Sir Seewoosagur Ramgoolam is an accomplished exponent. In this plural society, governed by a potentially fissiparous coalition, it has been thought necessary to accommodate as many political and communal interests as possible within the framework of the Constitution. There are other plural societies (*e.g.*, the Lebanon) in which more elaborate and devious expedients are employed for a similar purpose.<sup>50</sup>

A Parliament lasts for five years unless sooner dissolved. Normally the Governor-General may dissolve Parliament only on the Prime Minister's advice. However, he may dissolve without advice if (i) the office of Prime Minister is vacant and he considers that there is no prospect of being able to find a successor with majority support in the Assembly; or (ii) the Assembly has passed a vote of no confidence in the Government and the Prime Minister has neither resigned within three days nor advised a dissolution within seven days or such longer period as the Governor-General considers reasonable.<sup>51</sup> If the latter situation arises and the Governor-General decides not to dissolve, he must instead remove the Prime Minister. If after a General Election the Governor-General is of the opinion that the Prime Minister has lost his majority, he *may* remove the Prime Minister, but not until ten days have elapsed, unless he is satisfied that the Opposition has won a majority of seats<sup>52</sup>; the requirement of ten days' grace is presumably designed to cover the type of situation that arose in Sierra Leone early in 1967, precipitating a *coup d'état*. The office of Prime Minister does not automatically become vacant on a dissolution of Parliament.

#### *The Governor-Generalship*

This recital shows that the Governor-General is invested with several personal discretionary powers which may have to be exercised in times of political crisis. In addition, he has a limited discretion in choosing a Prime Minister and has a free discretion to appoint an acting Prime Minister when the Prime Minister is incapable of tendering advice on this matter, and his concurrence is needed before any appointment to his own personal staff is made.<sup>53</sup>

<sup>48</sup> ss. 59-62, 66. Ministers other than the Attorney-General must be chosen from among members of the Assembly. Special provision is made (ss. 59 (3), 60 (3), 69) for an Attorney-General who is not a member of the Assembly; the first two Attorneys-General have, however, been existing members of the Assembly.

<sup>49</sup> Cf. Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (1968).

<sup>50</sup> Leonard Binder (ed.), *Politics in Lebanon* (1966). And cf. the Dodo in Alice in Wonderland (Chap. 3): "... all must have prizes."

<sup>51</sup> Constitution, s. 57.

<sup>52</sup> s. 60.

<sup>53</sup> ss. 59 (3), 63, 89 (8).

This list of personal discretions differs in content from that found in other Westminster model constitutions, but it is not extraordinary in its general range; indeed, the Governor-General of Mauritius lacks the general discretionary power found in some of the recent Commonwealth constitutions to refuse a Prime Minister's request for dissolution whenever he thinks that a dissolution would be contrary to the national interest and that an alternative government can be found without a dissolution.

What is extraordinary and unique in Mauritius is the range of other personal discretions vested in the Governor-General. This feature of the Constitution is traceable to the decision taken in 1965 to remove from the hands of the political branch of the Executive the power to exercise certain highly sensitive functions which might give rise to serious political contention.

Thus, the Governor-General personally appoints and removes not only the Leader of the Opposition (s. 73) and the members of the Commission on the Prerogative of Mercy (s. 75); what is far more important is that personal responsibility for the appointment of the Chief Justice, the Ombudsman, and members of the Public Service and Police Service Commissions, is vested in the Governor-General.<sup>54</sup> In 1965 it was thought inexpedient to follow the normal course of leaving responsibility for these appointments in the hands of the Prime Minister, having regard to the political and communal tensions obtaining in Mauritius.

The importance of the Service Commissions in the governmental and social structure of Mauritius can hardly be overestimated. For many years Creoles had been strongly entrenched in the civil service, the police and the judiciary; their morale and even loyalty might be undermined if they felt that they were being made the victims of communal or political discrimination or personal nepotism, and allegations of impropriety (usually ill-founded) against persons wielding political authority have abounded in Mauritius. Well-paid jobs outside the public service are very scarce; jockeying for position is commonplace. Once the Service Commissions had been given executive and not merely advisory powers, and internal self-government had been introduced, new assurances were vitally necessary. It is significant that the Constitution lays down that the Public Service and Police Service Commissions shall be composed of a Chairman (who at the present time is British) and four other members; it was expected of the Governor-General that he should play his part in the politics of accommodation by appointing one member from each of the four main sections of the population.

<sup>54</sup> ss. 77 (1), 86 (1), 90 (1). The Chief Justice is to be appointed after consultation with the Prime Minister, the members of the Public Service and Police Service Commissions after consultation with the Prime Minister and the Leader of the Opposition, and the Ombudsman after consultation with the Prime Minister, the Leader of the Opposition and the Leaders of other parties represented in the Assembly. The Governor-General may also prescribe which offices are to be created on the Ombudsman's staff (s. 96 (4)).



Personal responsibility for initiating the procedure for removal of the Chief Justice, the members of Commissions and the Ombudsman, also lies with the Governor-General. The officers concerned are removable only for inability or misbehaviour on the report of a judicial tribunal of inquiry appointed by the Governor-General in his discretion. The initiative in setting in motion the machinery for removing the Commissioner of Police, the Director of Public Prosecutions, the Director of Audit and the Electoral Commissioner, who also have judicial security of tenure, rests with the appropriate Service Commission, but the members of the judicial tribunal of inquiry are still appointed by the Governor-General in his discretion.<sup>55</sup> For superior judges, apart from the Chief Justice himself, the responsibility for setting the machinery in motion rests with the Chief Justice; before removal can be ordered a reference must be made to the Judicial Committee of the Privy Council.<sup>56</sup>

If, of course, the Governor-General were to be an obedient instrument of an authoritarian Prime Minister, these safeguards would be valueless. It was therefore agreed at the 1965 Conference that established conventions relating to the appointment and removal of a Governor-General of an independent Commonwealth country would be varied in the case of Mauritius. First, in recommending the appointment, "the Prime Minister would take all reasonable steps to ensure that the person appointed would be generally acceptable in Mauritius as a person who would not be swayed by personal or communal considerations." Secondly, the first Governor-General would be a non-Mauritian and his name would be agreed between the British Government and the Mauritian Prime Minister before it was submitted to Her Majesty; in fact the first Governor-General of Mauritius was Sir John Rennie, the last Governor of Mauritius, and he was succeeded six months later by Sir Leonard Williams, formerly General Secretary of the Labour Party. Thirdly, once appointed the Governor-General would not be removed "unless a recommendation was made to Her Majesty for the termination of his appointment on medical grounds established by an impartial tribunal appointed by the Chief Justice."<sup>57</sup>

### *Internal Security*

Mauritius has a regular police force and a small but efficient special mobile force; they were not able to cope with the communal rioting early in 1968 without the assistance of British contingents.

The police force is under the command of a Commissioner of Police; at present he is an expatriate. He is appointed by the Police Service Commission after consultation with the Chief Minister,

<sup>55</sup> ss. 78 (4)-(6), 92.

<sup>56</sup> s. 78 (3).

<sup>57</sup> Cmnd. 2797 (1965), p. 8. These provisions do not appear in the Constitution; it was considered inappropriate to limit Her Majesty's prerogative powers in these matters by means of the formal terms of a constitutional instrument.

and has judicial security of tenure; as has been noted, only the Commission can initiate the procedure for his removal. In the operational control of the police the Commissioner is subject to *general* directions of policy with respect to the maintenance of public safety and order given by the responsible Minister<sup>58</sup>; the Minister exercising these functions is in fact the Prime Minister.

In accordance with an inter-governmental Agreement,<sup>59</sup> provision has been made for assistance and advice on the staffing, administration and training of the police forces to be supplied by volunteer members of the British armed forces stationed in Mauritius. If a threat to the internal security of Mauritius arises, the British and Mauritian Governments will consult together.<sup>60</sup>

#### *Courts and Judiciary*

Reference has already been made to the Judicial and Legal Service Commission, which appoints and removes judicial officers.<sup>61</sup> There is a Supreme Court, consisting of the Chief Justice (appointed by the Governor-General in his discretion after consultation with the Prime Minister), the Senior Puisne Judge (appointed on the advice of the Chief Justice) and other puisne judges appointed on the advice of the Judicial and Legal Service Commission (ss. 77, 78, 80). The jurisdiction of the Supreme Court is set out in the Constitution; it has original jurisdiction in cases where contravention of the guarantees of fundamental rights is alleged and in other constitutional questions, and questions of constitutional interpretation arising before other courts are referable to the Supreme Court.<sup>62</sup> Provision is made for the circumstances in which appeals will lie to the Privy Council.<sup>63</sup>

#### *Fundamental Rights*

The constitutional Bill of Rights (Chapter II) has seventeen sections; its terms are similar to those adopted in other Commonwealth constitutions, but there are some special features.

- (i) The declaratory section (s. 3) lists "freedom to establish schools" among the fundamental freedoms; and there is a separate section (s. 14) guaranteeing the right to send children to non-government schools and the right (subject to qualifications) of religious denominations and religious, social, ethnic and cultural organisations to establish and

<sup>58</sup> Constitution, ss. 72, 90, 91, 93.

<sup>59</sup> Cmnd. 3635 (1968).

<sup>60</sup> Mutual Defence and Assistance Agreement (Cmnd. 3629 (1968), art. 4).

<sup>61</sup> See also ss. 85, 86; Sched. 2; and p. 614, *ante*. The Commission is composed of the Chief Justice as chairman, the Senior Puisne Judge, another judicial member appointed on the advice of the Chief Justice, and the Chairman of the Public Service Commission.

<sup>62</sup> ss. 17, 83, 84.

<sup>63</sup> s. 81; see also S.I. 1968 No. 294.

maintain schools at their own expense. In fact Government aid is provided to denominational schools.

- (ii) The guarantee of freedom from discrimination expressly mentions differential treatment attributable to caste (s. 16 (3)).
- (iii) Derogation from basic freedoms (*e.g.*, privacy, conscience, expression, assembly, association, movement) is permissible for prescribed purposes unless the restriction in question is shown "not to be reasonably justifiable in a democratic society." The onus of proving unreasonableness is thus cast upon the person complaining of unconstitutional restraint; the formulation of the permissible grounds for derogation departs from the convoluted wording of recent constitutions and reverts to the original Nigerian model.
- (iv) Three of the provisions under which liberty of the person may be restricted are of interest: arrest under an order of the Commissioner of Police upon reasonable suspicion of engaging in activities likely to cause a serious threat to public safety or order (s. 5 (1) (k)); an order restricting a person's movement or residence or his right to leave Mauritius (s. 15 (3) (a), (b)); and a preventive detention order made during a state of emergency (s. 18). In each of these situations the person affected is entitled to have his case reviewed before an independent tribunal, with a legal chairman, appointed by the Judicial and Legal Service Commission; procedural safeguards are provided; in the first two of these situations the decision or recommendation of the tribunal is binding but in the last the recommendation is advisory only.
- (v) A proclamation of a state of emergency (under which a number of the guarantees may be partly suspended) lapses unless it is approved within a short period by a two-thirds' majority of the full membership of the Assembly (ss. 18 (1) (2)).

#### *The Ombudsman*

The constitutional provisions for the office of Ombudsman<sup>64</sup> are based on the writer's own recommendations of 1964,<sup>65</sup> with modifications made in the light of subsequent discussions and the rules adopted for the Ombudsman in Guyana<sup>66</sup> and the Parliamentary Commissioner for Administration in Britain.<sup>67</sup>

The main differences between the Mauritian Ombudsman and the British Parliamentary Commissioner are the following:

<sup>64</sup> Constitution, ss. 92, 96-100.

<sup>65</sup> Mauritius Legislative Assembly, Sess.Pap. No. 2 of 1965, paras. 37-48.

<sup>66</sup> S.I. 1966 No. 575, Sched. 2, arts. 52-56 and 3rd Sched.

<sup>67</sup> Parliamentary Commissioner Act 1967.

- (i) The Mauritian Ombudsman is appointed not on the advice of the Prime Minister but by the Governor-General in his personal discretion.
- (ii) He is removable not by parliamentary action but in pursuance of an adverse report by a judicial tribunal of inquiry.
- (iii) He has power to entertain complaints of injustice sustained by maladministration perpetrated by central government departments and officials when they are put to him directly by members of the public, and can conduct investigations purely on his own initiative.
- (iv) He can investigate complaints against the police and persons or boards inviting tenders for government contracts.
- (v) He is entitled to report adversely if he concludes that the action in respect of which the complaint was made was, *inter alia*, "based wholly or partly on a mistake of law or fact" or "otherwise unjust or manifestly unreasonable" (s. 100 (1)), and the types of recommendations that he is empowered to make (see s. 100 (2)) include reform of the law.
- (vi) He is not precluded from investigating a complaint merely because the subject-matter falls within the constitutional guarantees of fundamental rights (s. 97 (6)).
- (vii) He must not, however, conduct an investigation if he is given notice by the Prime Minister that the action complained of was taken by a Minister or Parliamentary Secretary in the exercise of his deliberate judgment (s. 97 (7)) or that the investigation of the matter would not be in the interests of the security of Mauritius (s. 97 (9)); nor can the Ombudsman call for any document or information if the Attorney-General notifies him that its disclosure, or the disclosure of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or public security (s. 99 (5)).

Although the exclusions from the Ombudsman's area of competence are generally narrower than in Britain, the first of the three mentioned above is obviously open to criticism; it indicates that there were problems in securing agreement on the establishment of the office.

An Ombudsman for Mauritius will not be a panacea for all ills; he can nevertheless be expected to fulfil functions more important than in Britain, for in Mauritius allegations of official malpractices are far from being uncommon. Because of inter-communal suspicions, it was generally felt desirable that the first Ombudsman ought to be appointed from outside Mauritius. It is a sad comment on the problems of small and far-away countries that seven months after independence the institution still existed only on paper.

*Constitutional Amendment*

The Constitution of Mauritius is rigid. Bills for ordinary constitutional amendments require the support of two-thirds, and for the amendment of specially entrenched sections (comprising nearly a half of the Constitution) the support of three-quarters, of the total membership of the Assembly at the final vote.<sup>68</sup> At the present time this means that it will be impossible to alter any specially entrenched section, and difficult to alter other sections of the Constitution, in the absence of the acquiescence of the official Opposition.

*Miscellaneous*

The Constitution also includes provisions relating to citizenship (Chap. III)<sup>69</sup> and the independent offices of Director of Public Prosecutions (s. 72) and Director of Audit (s. 110). Salaries of the holders of major non-political offices are charged on the Consolidated Fund and are not reducible during the tenure of the occupant (s. 109).

Although the general regulation of the public service is placed within the exclusive jurisdiction of the Public Service Commission, the principal representatives of Mauritius abroad are appointed on the Prime Minister's advice; he must consult the Commission before any such appointment is made from within the public service (s. 87). Appointments of departmental heads within Mauritius and to the office of Secretary to the Cabinet are made by the Public Service Commission, but only with the Prime Minister's concurrence (s. 89 (4)).

Regulations or orders having the effect of depriving persons of personal liberty or restricting freedom of movement or creating new criminal offences or imposing new penalties must be laid before the Assembly subject to the negative resolution procedure; the requirement of laying may, however, be dispensed with by Parliament during a state of public emergency (s. 122).

## VI. RETROSPECT AND PROSPECT

The constitutional structure of Mauritius is directly attributable to communal and political divisions in the period immediately preceding independence. The structure is relatively rigid; if the picture in the kaleidoscope changes shape, it is to be hoped that the structure will not prove so rigid as to be unalterable by the prescribed procedures.

For all its peculiarities, Mauritius is a genuine liberal democracy. Some see it as an exemplar of government by discussion; some would wish for more government and less discussion. But the burdens of historical tradition, underlying communal tensions, claustrophobic remoteness and humid climatic conditions all tend to slow down the

<sup>68</sup> Constitution, s. 47.

<sup>69</sup> See also Mauritius Independence Act 1968, ss. 2, 3.

tempo of decision-making, urgent though the immediate problems may be. A higher value is placed on the achievement of a consensus than on dynamic leadership. The various constitutional provisions requiring the Prime Minister to consult the Leader of the Opposition are not mere formalities; indeed, Sir Seewoosagur Ramgoolam, fully aware of the damage that can be wrought by political acrimony aggravated by communal hostility, has maintained close personal relations with Mr. Duval, and the practice of consultation has extended far beyond the minimum constitutional standards. Perhaps a more satisfactory political system would be one bringing the present Opposition back into an all-party coalition government—Mauritius can ill afford a division between “ins” and frustrated “outs”—but such a team would be an unruly one, and at the moment personal resentment of the Opposition’s recent tactics is too strong within the Government’s ranks for such a prospect to be realised.

Meanwhile the Opposition’s strength has been debilitated by defections. Because its support has rested primarily on a communal basis, it will have difficulty in achieving power by constitutional means in the foreseeable future. The main threat to the Government’s position may come from the growing ranks of the under-employed, unemployed and unemployable; opposition attracting the support of those forces could, in time, be formidable.

The position of Rodrigues may also give rise to serious problems. Whether the establishment of an elected council on the island will mollify local feelings is doubtful. The alienation of Rodrigues, too long neglected by Britain and Mauritius, is a fact of life. Mauritius proclaims itself to be “the key to the Indian Ocean”; it maintains close political, economic and strategic links with Britain<sup>70</sup>; but if Rodrigues were to purport to cut itself adrift, the key could well change hands, for there is no reason to suppose that Mauritius unaided would be capable of exercising effective coercion.

On the Mauritian style of politics, an unending source of fascination, perhaps it is wisest to leave the last word to the voice of authority. “Why,” said the Dodo, “the best way to explain it is to do it.”<sup>71</sup>

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<sup>70</sup> Mutual Defence and Assistance Agreement (Cmnd. 3629 (1968)). The United Kingdom is empowered to station forces on the island, to operate a telecommunications system and to exercise landing rights at Plaisance Airport, but it cannot intervene in the internal affairs of Mauritius without the request and consent of the Government of Mauritius and is under no obligation to act on such a request.

<sup>71</sup> Lewis Carroll, *Alice in Wonderland*, Chap. 3 (on the Caucus race).

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