Towards a Democratic Franchise

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Chapter 7
Post-Independence Suffrage

Thus far, the recurring theme of this book has been the gradual extension of the franchise, and, until the attainment of universal adult suffrage, the general trend was that the electorate grew. This held true despite various efforts of the Bay Street oligarchy to counterbalance the effects of democratic reforms forced upon them with arguably undemocratic measures hidden in the minutiae of electoral law. This chapter will see a somewhat different development – one in which the composition of the electorate not only changed, but where these changes even led to the disenfranchisement of some persons. However, the principle of universal adult suffrage was not being abandoned here; rather, the citizenry and therefore the electorate were being redefined. At the beginning of the period under examination, being a British subject was one main criterion for being eligible to vote. Soon after independence, the franchise would be limited to Bahamian citizens – a category that only came into existence on July 10th, 1973, the day the Bahamas ceased to be a British colony and attained national sovereignty.

The process of shaping the Bahamian citizenry and thus the future electorate began with the Immigration Act of 1963 and was finalised by the Representation of the People (Amendment) Act of 1975. The constitutional reforms and revisions of immigration and election acts during this period, and in particular their impact on the composition of the electorate, are the focus of this chapter. Apart from determining national citizenship, there were other aspects affecting the franchise, which will be discussed, too, such as the voting age and certain nomenclature used in the democratic framework of the Bahamian incarnation of the Westminster system.

7.1 Belongers

As a first and intermediary step during this process of creating a Bahamian citizenry, a category of persons who would come to be known as Belongers – or persons “deemed to belong to the Bahama Islands” – was introduced as
part of the Immigration Act of 1963. This category then became a part of the Constitution that came into effect in 1964, when the Bahamas first moved towards internal self-government. As the term *Belonger* may suggest, this was initially thought of as a category for the purpose of regulating immigration, and with it residency and work permits. However, as such it also formed the nucleus of how Bahamians would come to envisage the citizenship of their future nation. Most notably, this new category excluded British subjects with no birth ties to the colony, even if they were permanent residents. It was in fact conceived by the UBP, who argued that it was “essential for economic reasons that the Government should be in a position by legislation and executive action adequately to protect people who belong to the Bahamas against ‘outsiders’. ”

The Colonial Office discussed this proposal in less neutral terms as an effort “to prevent lawyers (and to some extent others) from acquiring the right to engage in business in competition with established interests.” When British officials began to fathom the consequences this might have, they nonetheless accepted the underlying motive as a legitimate one:

there is no doubt in our minds that it would be unfair to require the Bahamas Government to de-restrict for employment purposes individuals who have been accepted as permanent residents in the past on a specific condition fully understood by them that they would not (repeat not) be allowed to take up employment or engage in business.

Some of the affected individuals voiced concerns and argued passionately that this constitutional construct, which had reinforced the immigration category of *Belonger* status, was problematic, even if at times it became quite apparent that their main bone of contention were the labour and business restrictions which they had known of all along and which they had originally agreed to as described above. One example cited where this could pose a problem was that, regardless of this new status, such non-belonger British subjects continued to be eligible to serve in the Legislature, yet not having

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2 *Constitution 1963* (Bahamas), s 11(4).
3 Stafford Sands to Governor Stapledon, 22 October 1963, The National Archives, Kew, United Kingdom (TNA): CO 1031/4468.
5 Governor Stapledon to Colonial Office, 12 October 1963, TNA: CO 1031/4385.
Belonger status could make them vulnerable to deportation should they attract the ire of the government of the day through “the free expression of my views” in such a capacity and thus be deemed “undesirable.”\(^6\) The historical record demonstrates that in the past such British subjects and Bahamian residents who would not automatically qualify as Belongers were rarely tempted to seek election to the House or an appointment to the Executive or Legislative Councils or later the Senate. Nonetheless there have been prominent exceptions to this rule, most notably Harry Oakes, whose 1938 campaign had been the final straw that convinced the Colonial Office of the necessity to bring the secret ballot to the Bahamas.\(^7\) Furthermore, non-belongers had always exercised their right to express political opinions, both in private and in public. Therefore, the concern that an uncertain immigration status could handicap legislators in the execution of their role was more than a mere academic consideration. In consequence then, even though the Belonger category was conceived in an immigration context, it had the potential to at least indirectly influence political discourse in general and future elections in particular – both in terms of which candidates might offer to stand for election as well as in terms of voter behaviour.

The files of the Colonial Office indicate that the British delegates at the Constitutional Conference had not foreseen all the implications that these provisions would have. They attempted to excuse this oversight by claiming that “it would not be unfair to say that the decisions were reached under a certain amount of time pressure.”\(^8\) At the same time, even though the Colonial Office was sympathetic to arguments calling for a redefinition of Belongers, it realised that such an undertaking had “very little chance of being accepted.”\(^9\) Indeed, no solution amounting to a constitutional entitlement was found. Like the Immigration Act of 1963, which had already created a process for obtaining Belonger status via application, the Constitution merely stated that Belonger status could also be granted to persons “deemed to belong to the Bahama Islands under the provisions of any law for the time being in force in the Bahama Islands.”\(^10\)

\(^{6}\) Constitution 1963 (Bahamas), ss 30, 31, 36, 37; Ralph Seligman to Colonial Office, 6 June 1963, TNA: CO 1031/4385.

\(^{7}\) See pages 52–56 above.

\(^{8}\) Internal Note, Colonial Office, 14 August 1963, TNA: CO 1031/4385.

\(^{9}\) Internal Note, Colonial Office, 14 August 1963, TNA: CO 1031/4385.

\(^{10}\) Constitution 1963 (Bahamas), s 11(4)(c).
Under the Immigration Act, persons could apply for Belonger – later Bahamian – status after five years of residence in the Bahamas. This application process was open not only to British subjects, but to foreigners, too.\(^\text{11}\) Because Belonger status was at first but an immigration category, the fact that non-British persons were eligible to apply for it was owed to the presence of a considerable number of predominantly US citizens, who had made the Bahamas their home but had no desire to give up citizenship of the United States of America.\(^\text{12}\)

The Immigration Act spelled out the criteria that persons had to meet in order to be eligible to apply; these were limited to age and residency requirements, a declaration that the applicant intends to make “the Bahama Islands his permanent home” and the applicant being “of good character.”\(^\text{13}\) It also prescribed the manner in which the application was to be made, but it explicitly did not state any criteria upon which such applications would be decided. Rather, this was left to the “absolute discretion” of the Board of Immigration.\(^\text{14}\) To this day, however, the Immigration Board in the Bahamas is not a politically independent body but merely Cabinet by another name, for since its inception in 1963 the Board “consist[s] of the persons for the time being holding office as Ministers.”\(^\text{15}\) This constellation put applicants at the mercy of Bahamian politicians, and while it might have provided some solution to their otherwise unchangeable immigration status, it did not, in the case of British applicants, address the paradox of being eligible to vote and stand for election, despite not enjoying a guaranteed immigration status. To an extent, this paradox continued even for those British subjects whose applications for Belonger status were approved, for unlike Belongers by constitutional entitlement, Belongers by application could have their status revoked.\(^\text{16}\)

The absence of any discussion regarding this point in the files of the Colonial Office speaks volumes about London’s waning interest in their Bahamian colony now that internal self-government had been achieved. In

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\(^{11}\) *Immigration Act 1963* (Bahamas), s 14; *Immigration Act 1967* (Bahamas), s 12.

\(^{12}\) Internal Note, Home Office, 13 October 1967, TNA: HO 213/2294.

\(^{13}\) *Immigration Act 1963* (Bahamas), s 14(1).

\(^{14}\) *Immigration Act 1963* (Bahamas), s 12(1).

\(^{15}\) *Immigration Act 1963* (Bahamas), s 11(1).

\(^{16}\) *Immigration Act 1963* (Bahamas), s 15(2); *Immigration Act 1967* (Bahamas), s 13(2).
a colony with an ever-present fear of political victimisation, political activity, the freedom of which was guaranteed under the section on the “Protection of Fundamental Rights and Freedoms of the Individual,” was therefore at least subject to potential self-censorship for the individuals in question. As one affected Bahamian resident put it, this amounted to “H.M.Government [...] voluntarily bring[ing] a Constitution into effect which forever relegates the British settlers in the Bahamas into second-class citizens.”

With the Constitution of 1969, the phrase “belong to the Bahama Islands” was discontinued and replaced by a so-called Bahamian status, though in everyday language Bahamians continued to use the term Belongers. The criteria for a person to have Bahamian status remained the same as they had been for a person to be deemed to belong to the colony. However, as the Bahamas progressed towards independence, this category would now have a direct impact on election law, too, as having Bahamian status became a constitutional requirement for standing as a candidate in an election. Furthermore, it also became a requirement for being eligible to vote with the enactment of the Representation of the People Act later in the same year. Because non-British persons could be Belongers or have Bahamian status, this new requirement was in addition to, and not instead of, the already existing requirement of being a British subject to vote or stand for election.

7.2 Demographic Aspects

While the above was an instance where the electorate shrank, the legislature also lowered the voting age in this Act. The age required for persons to register as voters was reduced from twenty-one to eighteen years. In this sense, the electorate continued to expand. The 1970 census shows that the latter category of newly enfranchised eighteen to twenty-year-olds with Bahamian status was well upward of 7,000 individuals. Detailed data regarding

17 Constitution 1963 (Bahamas), Part I, especially ss 9, 10, 12.
19 Ralph Seligman to Colonial Office, 6 August 1963, TNA: CO 1031/4385.
20 Constitution 1969 (Bahamas), s 37(b).
21 Representation of the People Act 1969 (Bahamas), s 8(1)(b).
22 Commonwealth of the Bahama Islands (1972) 113.
persons who were British subjects but did not have Bahamian status, and therefore lost the franchise, is, unfortunately, lacking from the census report. The report merely contains a category for what it terms “recent immigrants,” where “recent” spans a period of twenty years.\textsuperscript{23} These are listed by nationality. According to this table, the number of immigrants from the United Kingdom was 4,074, the number of immigrants from the Turks and Caicos Islands, a small British colony that had been a part of the colony of the Bahama Islands until 1848 and forms the south-eastern part of the archipelago, was 1,277, and the total number of immigrants from other British colonies was 247.\textsuperscript{24} These figures, however, include minors, too. While there is a table showing the immigrant population by age cohorts, this table in turn is not broken down by nationality, but by previous country of residence and is conflated with persons who do possess Bahamian status who returned from living abroad at any point during the previous twenty years. Nonetheless, it shows that the percentage of minors amongst the immigrant population in 1970 was considerably lower than that of the population with Bahamian status.\textsuperscript{25} The 1953 census, which included all the immigrants that the 1970 census considered non-recent, also does not provide a detailed breakdown. It lists a total of 3,440 immigrants who might likely be British subjects as either originating from the United Kingdom, the West Indies, or other parts of the Empire.\textsuperscript{26} The West Indies category, of course, also includes non-British parts of the Caribbean, and both the West Indies and other parts of the Empire in 1953 include jurisdictions that by 1970 would have become independent nations. Finally, all three groups include persons who, by 1970, were either no longer alive or no longer living in the Bahamas, or who, because the time between the two censuses was only 17 years, are counted twice, or who under the provisions of either the 1963 or 1967

\textsuperscript{23} Commonwealth of the Bahama Islands (1972) IV.

\textsuperscript{24} Commonwealth of the Bahama Islands (1972) 251–255.

\textsuperscript{25} N.B.: Amongst the population with Bahamian status, 58.2\% were under the age of twenty years; amongst the immigrant population, only 20.6\% were under the age of twenty years; amongst those whose previous country of residence was the United Kingdom, only 19.6\% were under the age of twenty years. See: Commonwealth of the Bahama Islands (1972) 113, 257.

Immigration Acts had in the meantime obtained Bahamian status. Thus, without being able to determine how many British subjects without Bahamian status were disenfranchised by the Representation of the People Act of 1969, it is safe to say that their number was considerably smaller than the total number of 9,038 individuals described by the various census categories in this paragraph.

Neither the lowering of the voting age nor restricting the suffrage to persons with Bahamian status are surprising developments given the general trends of the era. Furthermore, in the Bahamian context both of these developments would serve to bolster the newly elected government, whose voter base were not only Black Bahamians in general, but the Black Bahamian youth in particular – and not the expatriate demographic. Hence it is no surprise that unlike earlier measures of electoral reform expanding the suffrage, a lowered voting age did not have to be wrought from the hands of an unwilling parliamentary majority. In fact, this time around it was the government that initiated the process and not a grassroots movement that had to be mobilised and organised first, and that too often depended on gaining the attention and then subsequently the support of Whitehall.

It is interesting to note, however, that the lowered voting age in the new Representation of the People Act did not mean that eighteen was the age of majority in the Bahamas then. In its 1974 campaign to have the age of majority reduced from twenty-one to eighteen, the National Youth Congress cited the fact that persons were “considered capable of electing a responsible government” as of the age of eighteen as one of their arguments for lowering the age of majority accordingly.27 The PLP government proved less progressive in this matter; the first resolution to this effect was moved in the House of Assembly by an independent opposition MP, Michael Lightbourn.28 Two years later, in 1976, the age of majority was then lowered to eighteen, too.29

Another new feature included in the new election act aimed in a similar direction. As the opportunities for tertiary education in the Bahamas were limited at best, the new government expanded these by providing scholarships for young Bahamians to pursue tertiary degrees abroad.30

27 “NYC Joins Call on Age of Majority,” The Tribune, 12 January 1974, 1.
28 “M.P. Wants Age of Majority Reduced to 18,” The Tribune, 16 April 1974, 1.
29 Minors Act 1976 (Bahamas), s 2(1).
suing programmes of study abroad, these students remained enfranchised – a privilege that had not been extended to Bahamian servicemen during World Wars I and II or to those temporarily working as agricultural labourers in the United States under the so-called Contract between 1943 and 1963.\textsuperscript{31} However, to this date, exercising the right to vote remains a challenge for many overseas students, as no postal or electronic ballots are available, and even the possibility of casting one’s ballot at some of the – very limited number of – non-honourary diplomatic missions was only introduced in 2011.\textsuperscript{32}

7.3 Bahamian Status

The passing of the Representation of the People Act 1969 was a remarkably uncontroversial affair during all its stages. Domestically, the new government had just received what people accepted as an overwhelming mandate, when they defeated the UBP in a snap election, and secured twenty-nine out of thirty-eight seats, polling 62.8% of the popular vote. The UBP would never recover from this defeat. Roland Symonette resigned from the party leadership, ostensibly for health reasons, and another prominent figure, Stafford Sands, even chose exile from the Bahamas. The new party leader was Geoffrey Johnstone, who thus far had kept a low political profile. The Deputy Governor gained the distinct impression that the UBP’s “members neither relish the role of Opposition, nor have any appetite for office as ‘professional politicians’, and Mr Johnstone has not concealed his desire to get out of politics.”\textsuperscript{33} The remnants of the party would eventually merge

\textsuperscript{31} Representation of the People Act 1969 (Bahamas), s 8(2)(c).
\textsuperscript{32} Parliamentary Elections (Amendment) Act 2011 (Bahamas), s 49B. N.B.: At the time of the most recent general election in 2017, overseas polling was only available in five US locations, and in Bridgetown (Barbados), Beijing (China), Havana (Cuba), Port-au-Prince (Haiti), Kingston (Jamaica), Port-of-Spain (Trinidad and Tobago), and London (UK). A Bahamian student anywhere in Europe wishing to cast an overseas ballot would have had to do so at the High Commission in London, a Bahamian student in Australia would have had to do so at the Embassy in Beijing, China. From personal experience working on past election campaigns, I know that the major parties are willing to spend substantial amounts of money to provide air transportation to move individuals whom they believe to vote for them and who are registered in presumably closely contested constituencies, from their overseas place of study to a polling station. Those registered in constituencies that are not deemed closely contested, however, are less likely to benefit from this kind of assistance.
\textsuperscript{33} Note by Deputy Governor W. H. Sweeting, ca. July 1970, TNA: FCO 44/363.
with other opposition groups that split from the PLP to form the so-called Free National Movement (FNM). The FNM first contested the 1972 general election, and after some setbacks eventually asserted itself as the second player in a developing two-party system, but it would have to wait until 1992 to beat the PLP at the polls.

Not only was there not much opposition to the new Act within the colony, but – unlike it had done with previous election laws – the Foreign and Commonwealth Office took a hands-off approach, too. The case of Derek Bishop may serve as an example. Bishop, a British expatriate living in Freeport, complained to his former MP in the United Kingdom that “there is a bill at present being passed through the Bahamas government in Nassau designed to take away from the British residents in the island, the right to vote in local elections. Another measure instigated to curtail the democratic rights of those living here.”\(^{34}\) The Foreign and Commonwealth Office did not entertain any discussion regarding expatriate voting rights. It concluded that “[t]he purpose of the provision in the Bill is […] straightforward. It is to prevent the votes of those who belong to the Bahamas being swamped by the votes of (recent) incomers.”\(^{35}\)

The provisions of the Constitution of 1969 foreshadowed this development. While the expatriate above seems to have felt discriminated against, his concerns were not captured by the Constitution’s provisions providing for protection against discrimination. These may have been defined as prohibiting “different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed.”\(^{36}\) However, the Constitution also contained a reservation or exception applicable to election law, which specified that the non-discrimination clause

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\text{shall not apply to any law so far as that law makes provision […] whereby persons […] may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.}\(^{37}\)
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34 Derek Bishop to John Boyd-Carpenter, Member of Parliament for Kingston-upon-Thames, 7 August 1969, TNA: FCO 44/179.
36 Constitution 1969 (Bahamas), s 12(3).
37 Constitution 1969 (Bahamas), s 12(4)(d).
The right to vote in the Bahamas had always been restricted to British subjects, a category already attributable mainly to their respective description by place of origin, and already excluding some residents, even permanent ones, of the Bahamas. It is thus tenable that a further narrowing down of this category, again mainly based on place of origin, in a jurisdiction that is still a colony but that has evidently embarked upon a path towards national independence can be reasonably justified in a democratic society, given that all democratic societies define the electorate partly by the exclusion of some of the inhabitants of their jurisdictions and tend to do so mainly because of their respective place of origin. For these reasons, the Foreign and Commonwealth Office recommended an answer to the enquiring British MP culminating in the affirmation that “these matters are the responsibility of the Bahamas Government not of Her Majesty’s Government.”

Of course, the affair could have become a matter for Her Majesty’s Government if London had not been so keen on moving the Bahamas towards independence. While discussing how to respond to the concerns raised in Bishop’s letter, the Foreign and Commonwealth Office, seemingly unaware of the conditions placed on persons applying for Bahamian status under the Immigration Act of 1967, noted:

> It was understood that Bahamian status could be acquired by five years residence but this is now in doubt. A telegram has therefore been despatched to ascertain what the provisions of Bahamian law are governing Bahamian status other than those in the Constitution […]. If in fact the Bill does more than extend the present residence requirement from twelve months to five years, […] we might […] have to consider a protest.

The Immigration Act, however, not only contained the residency requirement of five years mentioned by the Foreign and Commonwealth Office, it also contained a number of caveats that the government cited when it chose to deny Bahamian status to a considerable number of applicants without a constitutional claim to it.

The Bahamian government felt confident that London would not impose any consequences of a more serious nature. When the PLP were in opposi-

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38 Governor Cumming-Bruce to Foreign and Commonwealth Office, 17 October 1969, TNA: FCO 44/179.
40 Immigration Act 1967 (Bahamas), s 12.
tion, some of their actions were in fact designed to shatter London’s confidence in Nassau’s capability at responsible government and force a suspension of the Constitution. Perhaps emboldened by their own failure as an opposition to convince London to turn back the clock, the PLP as a government felt that there was little they could do that might cause London to intervene. Despite – or maybe because of – its palpable dissatisfaction with the PLP’s “mis-government”\(^{41}\) in Nassau, London was not minded to re-assume responsibility:

> The Secretary of State could summon Pindling to London and read the Riot Act; we could threaten to take back security and police; or publicly expose graft; or to appoint a commission of enquiry, and so forth. Such an intermediate course might, however, sacrifice the opportunities to bring Bahamas to independence, […] which it was probably desirable that they should achieve rather sooner than the Bahamas Government at present planned.\(^{42}\)

As relations between London and Nassau deteriorated further over the next couple of months, the West India Department at Whitehall took a most unusual step: “On instructions from Lord Shepherd, W.I.D. has prepared a draft OPD [Overseas Policy Committee] paper proposing that in certain circumstances Britain should be willing to contemplate taking unilateral steps to bring Bahamas to independence.”\(^{43}\) Indeed, London was not about to reassume responsibility, but it is doubtful that the politicians in Nassau considered the possibility of this other extreme – Whitehall’s plan for a unilateral declaration of independence. In its dealings with the Bahamas,

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\(^{41}\) Governor Cumming-Bruce to Foreign and Commonwealth Office, 24 September 1969, TNA: FCO 44/179.

\(^{42}\) Minutes of Meeting between Deputy Under-Secretary of State for Foreign and Commonwealth Affairs Monson and Governor Cumming-Bruce, 27 November 1969, TNA: FCO 44/362.


N.B.: The main areas of conflict between the PLP government on the one side and Government House and the Foreign and Commonwealth Office on the other side were the PLP’s efforts to politicise the police force, using the Board of Immigration as a tool to victimise political opponents, immigration matters, particularly those pertaining to Freeport and other attempts to unilaterally alter the Hawksbill Creek Agreement of 1955, in which the Bahamian government had not only granted land on the island of Grand Bahama to a private investor to develop a free-trade zone, but also granted them considerable tax concessions as well as the right to exercise many functions in that area which are usually the reserve of the state. See: CRATON/SAUNDERS (1998) 324–326.
the former Colonial Office now saw it as its mission to rid itself of its responsibility as a colonial power, and while no plan for London to unilaterally declare the Bahamas an independent country ever came to fruition, London nudged a reluctant PLP government towards independence.

The governments in both Nassau and London were uncertain about Bahamians’ stance on the issue of independence, but between them it was agreed that the 1972 general election would be a quasi-referendum on the matter. London had convinced Pindling, and Pindling had convinced his party to move for independence. The PLP, which in 1967 had campaigned against independence and had accused the UBP of moving the Bahamas in that direction, now made independence one plank of its platform going into the election. The result, an overwhelming victory by the PLP with 57.9% of the popular vote, was thus accepted as a mandate for independence, even if some suspected that the matter of independence had not been first and foremost on voters’ minds. Governor John Warburton Paul, for instance, offered this analysis:

The over-riding reason for the PLP victory was, I believe, quite simply that throughout the history of the Bahamas from the mid 17th century until 1967 a white minority (the ‘Bay Street Boys’ as they came to be called) operating under the authority of the British Government and representing something between 10 to 15% of the population, had been in full control of all political and economic power, forming at the same time an exclusive and impenetrable social enclave secured in its hegemony by a very restrictive and unbalanced franchise including a number of pocket boroughs (in the 1962 election the UBP won 23 seats with some 26,000 votes and the PLP only 8 with nearly 33,000 votes), by the absence of any middle class or anything approximating to a proper civil service, by the lack of communication between the Out Islands and the monopoly of property and wealth and the great scope which this gave to bribery and corruption. [...] Against this background [...] it is hardly surprising that [...] a majority declined to vote for the FNM, a party compounded, in part, of their earlier oppressors.

44 Hughes (1981) 118.
7.4 Citizenship in the Independence Constitution

Regardless of voters’ motives, and given the tensions between the Bahamian cabinet and the Foreign and Commonwealth Office, the wheels for independence had in reality been set in motion long ago. The relief that the outcome of the September 1972 election could be interpreted as a vote for independence was unmistakable. To facilitate the process, another constitutional conference was scheduled posthaste. It was convened in December 1972. The Constitution, based on the conference report, was then written by legal clerks in the Foreign and Commonwealth Office, much as had been the case in most previous instances of British colonies becoming independent nations. It was also the experience the Foreign and Commonwealth Office had gained during these processes that made London insist on several features in the Bahamian Constitution against the wishes of the Bahamas government, e.g., the provisions in the chapter on Fundamental Rights and Freedoms of the Individual or the entrenchment clauses that were meant to protect the Constitution.47 The PLP proposed that a 75% majority in both Houses of Parliament should suffice to alter the Constitution, whereas the opposition, supported by Whitehall, insisted on mandatory referenda as a safety measure. Since the Senate was an appointed body, the government of the day would always command a 75% majority in this chamber. Furthermore, given the compounding effects of first-past-the-post elections especially in small jurisdictions, such parliamentary majorities for a single political party are not exceptionally rare. The 1972 election had just given the PLP 76.3% of the seats in the House of Assembly. In this situation, had the PLP proposal prevailed, constitutional change would have required no bipartisan dialogue.48

Another area of some dispute between London and Nassau were the rules regarding citizenship. For the most part, the conference agreed that the citizenship provisions of the independence Constitution would follow con-

48 N.B.: Five out of the last ten general elections yielded a House of Assembly where the governing party controlled 75% or more of the seats. On one occasion, the party with such a supermajority had won only 48.6% of the popular vote but 76.3% of the seats (in 2012).
temporary British practice, especially where they concerned children yet to be born. In other words, where they regulated the acquisition of Bahamian citizenship from independence day going forward. For those who would constitute the Bahamian citizenry upon independence, the government in London hoped to rely on precedent from previous instances of colonies being granted their independence by Britain. Would all or just some of the persons with Bahamian status automatically become citizens upon independence? If there were groups who did not qualify for automatic citizenship, what avenues acquiring citizenship via registration would be made available to them? Would the United Kingdom be prepared to continue to accept as its citizens individuals who would not become Bahamian citizens?

British citizenship law at the time, and therefore the new citizenship provisions of the Bahamian Constitution, too, were part *jus sanguinis* and part *jus soli*. For the transition from Belonger to person with Bahamian status to Bahamian citizen this meant that most of those who had a constitutional entitlement to Bahamian status under the 1969 Constitution automatically became Bahamian citizens upon independence. Most notably, the overseas born children of married Bahamian mothers and foreign fathers, as well as all those who had gained Bahamian status through an application process under either the Immigration Act of 1963 or the Immigration Act of 1967 rather than through a Constitutional entitlement were left without an immediate constitutional entitlement to citizenship but were “entitled, upon making application before 19th July 1974, to be registered as a citizen of The Bahamas.”[^49] For all those who possessed Bahamian status but had to seek citizenship via registration there were a few more caveats, such as residency requirements, but no person with Bahamian status who had to undergo this application process would have been stateless upon independence. Nonetheless, the Constitution could and still can cause the statelessness of some persons born after independence through its incomplete application and combination of both *jus soli* and *jus sanguinis* – both of persons of

[^49]: *Constitution 1973* (Bahamas), art 5(2). N.B.: To this day, children born outside of the Bahamas to married Bahamian mothers and foreign fathers after independence only have a constitutional entitlement to be registered as citizens upon making application after their eighteenth but before their twenty-first birthdays. See: *Constitution 1973* (Bahamas), art 9(1).
Bahamian heritage born overseas and persons of foreign parents born in the Bahamas.

Where Belongers of a given colony and others naturalised or registered as citizens of the United Kingdom and Colonies (CUKC) in such a colony were concerned, there was precedent to be found in the independence processes of other former colonies. Given that the United Kingdom’s immigration policy had become more restrictive, London wanted these persons to become citizens of these newly independent nations:

We ourselves have expressed in other settlements that naturalised persons would become citizens of the new country. The Bahamas have made it easy for these people to demonstrate their affinity with the new country. Their citizenship of the UK and Colonies will have been obtained solely by virtue of a connection with the colonial territory of the Bahamas; and, finally, Ministers wish to reduce the number of citizens of the UK and Colonies as much as possible.50

This practice, however, proved contentious with the Bahamian government.51 Naturalisations may have been conducted in the Bahamas, but they were conducted by the London-appointed Governor rather than by locally elected officials. Accordingly, they were perceived as a colonial act, and naturalised CUKCs were often eyed with suspicion. The Bahamian government, however, was not planning to build a nation of citizens of the Empire – far from it: the Bahamian Deputy Prime Minister Hanna was quoted as declaring that “we are building a black nation.”52

London on the other hand was also acutely aware of international obligations it had requiring it to prevent the creation of stateless individuals, such as the United Nations’ 1961 Convention on the Reduction of Statelessness. In the case of the Bahamas, the number of potentially affected individuals was small. The Home Office conceded:

We believe there may have been only 171 naturalisations between 1949 and 1972 […] and the remainder of the 750 mentioned would presumably be wives who have been registered. We accept that a naturalised person who objects to acquiring Bahamian citizenship must be allowed to retain citizenship of the United Kingdom and Colonies if he has no other citizenship. We do not think, however, that where he has retained the citizenship he possessed before naturalisation […] he has in

51 Minutes of the Defence and Oversea Policy Committee of Cabinet, 23 November 1972, TNA: CAB 148/121.
52 Note by Deputy Governor Sweeting, ca. July 1970, TNA: FCO 44/363.
In the end, the Bahamas accepted as its citizens those individuals registered as CUKCs in the colony who had been so registered prior to and who were resident in the Bahamas on December 31st, 1972 – provided that they did not also possess the nationality of another country.\(^\text{54}\) Persons registered as CUKCs in 1973 would remain CUKCs. Persons naturalised as CUKCs in the Bahamas would automatically become Bahamian citizens one year after independence provided that they did not actively opt against Bahamian citizenship, and provided that they did not possess the nationality of another country.\(^\text{55}\) In the latter case, they would lose their status as CUKCs and remain citizens of the respective third country. Like most countries, both the Bahamas and the United Kingdom viewed dual citizenship with scepticism and worked to avoid it.\(^\text{56}\) Despite this, the British Nationality Acts of both 1948 and 1981 do not outright ban the practice.\(^\text{57}\) The Bahamian Constitution, too, whilst requiring some persons to renounce their previous citizenship upon naturalisation or registration as a citizen of the Bahamas, and whilst containing a provision that Bahamian citizens may have their nationality revoked should they become naturalised elsewhere, does not contain a general prohibition of dual citizenship.\(^\text{58}\)

Because of the Bahamian government’s insistence on this point, London ultimately agreed to allow those who actively opted against Bahamian citizenship and who had no other nationality to remain “United Kingdom passport holders with a right to come here at some point in the future.”\(^\text{59}\) When Minister of State for Foreign and Commonwealth Affairs Robert Lindsay, then styled Lord Balniel, communicated this in the House of Com-

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54 Constitution 1973 (Bahamas), art 3(3).
55 Constitution 1973 (Bahamas), art 4.
57 Dummet/Nicol (1990) 87.
58 Constitution 1973 (Bahamas), arts 7(1), 9(1), 11.
mons, he stressed that “[t]hey are numerically insignificant.” Their number was so small that not only Whitehall considered it to be negligible. In the Bahamas, with its much smaller population, even seemingly small numbers can quickly become consequential. However, the Bahamian government at no point indicated that it was concerned about the impact these potential citizens would have on the composition of the citizenry, or that it thought about the electorate more specifically.

In 1975, the Bahamas government passed amendments to the Immigration and the Representation of the People Acts, which affected the remaining Belongers who had not become citizens. These Acts were the logical consequence of independence. The independence Constitution of 1973 had introduced the category of Bahamian citizen, but election law did not immediately reflect this change. British subjects with Bahamian status as defined by the previous Constitution or the Immigration Act continued to constitute the electorate – theoretically, as there were no elections during that period – until the Representation of the People (Amendment) Act made the necessary adjustments in 1975. Henceforth, only Bahamian citizens were eligible to register to vote. The British High Commission in Nassau noted that these British subjects would henceforth be disenfranchised only matter-of-factly in a routine dispatch to London.

Like the Constitution, these amendments to the Immigration Act also included a path for persons with Bahamian status to apply for Bahamian citizenship. However, the Bahamian government did at times abuse its power as a means of political victimisation when processing applications for registration as Bahamian citizens from those with Bahamian status without automatic citizenship.

### 7.5 The Case of Thomas D’Arcy Ryan

The most infamous case of such victimisation, which will serve as an example here, is that of Thomas D’Arcy Ryan. Ryan, a Canadian citizen, had been living in the Bahamas since 1947. He was married to a Bahamian woman, and the couple had seven children. After applying under the Immigration

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60 HC Deb 15 May 1973 vol. 856, 1395.
61 Representation of the People (Amendment) Act 1975 (Bahamas), s 2.
62 British High Commission Nassau to Foreign and Commonwealth Office, 8 October 1975, TNA: FCO 63/1389.
Act of 1963, he had received a Belonger certificate in 1966. In 1974, he applied for registration as a citizen under article 5(2) of the Constitution. However, despite the constitutional language suggesting that applicants under this article possess an entitlement to citizenship, there is also the following proviso: “Any application for registration under paragraph (2) of this Article shall be subject to such exceptions or qualifications as may be prescribed in the interest of national security or public policy.”63 These prescribed exceptions or qualifications can be found in the Bahamas Nationality Act, sections 7(a) through (e). However, after this list of prescribed exceptions section 7 continues and ostensibly allows the Minister, in his discretion, to refuse the application “if for any other sufficient reason of public policy, he is satisfied that it is not conducive to the public good that the applicant should become a citizen of The Bahamas.”64 Furthermore, the Act includes an ouster clause, which states:

The Minister shall not be required to assign any reason for the grant or refusal of any application or the making of any order under this Act the decision upon which is at his discretion; and the decision of the Minister on any such application or order shall not be subject to appeal or review in any court.65

The Bahamian Ministry of Home Affairs, whose responsibility such applications were at the time, construed this as an absolute discretionary right by the Minister to refuse Ryan’s application. As Lester McKellar Turnquest, First Assistant Secretary in the Ministry of Home Affairs, swore in an affidavit, Minister Darrell Rolle “personally considered the whole of the file and application […] and on the 28th day of May 1975 refused the application of the Plaintiff.”66 However, Clement Maynard, who as Minister of Tourism was not only a cabinet member at the time, but who later served as Minister of Home Affairs himself, further explains that this was not Rolle’s decision alone. All such decisions were made at Cabinet level:

Although the Bahamas Nationality Act 1973 specifies that the responsibility for citizenship is the province of the Minister designated to administer the Act, appl-
ocations were dealt with by the Cabinet. The Minister having the benefit of the wisdom of his Cabinet colleagues, proceeds accordingly, with no derogation of responsibility.\textsuperscript{67}

Relying on the ouster clause, Rolle stated no reasons for doing so. Within the Bahamas, it is generally understood that the reason for the Minister’s decision was Ryan’s campaigning for the opposition FNM during the 1972 general election.\textsuperscript{68} Ryan challenged this decision initially in the Supreme Court of the Bahamas, whence the case went through the appeals process to be decided by the Judicial Committee of the Privy Council (JCPC), which the Bahamas had retained as its highest court of appeal upon independence.\textsuperscript{69}

The JCPC delivered its judgment in 1979. While the JCPC did not grant Ryan a declaration of an entitlement to citizenship outright, the judgment, in its own words, nonetheless “has in substance been a victory for” Ryan.\textsuperscript{70}

The JCPC declared that the final part of section 7 of the Bahamas Nationality Act was \textit{ultra vires} the Constitution, found that the Minister had acted against natural law in his decision-making process, and declared that his rejection of Ryan’s application was therefore a nullity. The JCPC therefore concluded that Ryan was “entitled to have his application for registration as a citizen of The Bahamas […] reconsidered by the Minister \textit{according to law}.”\textsuperscript{71}

In the aftermath of the JCPC judgment, the government went as far as drafting a bill to retroactively change the Constitution. This bill would have altered the constitutional provisions based on which the JCPC had ruled that the last three lines of section 7 of the Bahamas Nationality Act were – and remain to this day – unconstitutional. This was an obvious attempt to not only deny Ryan citizenship, but to allow the government to decide all future cases for registration as a citizen based on its discretion, which could mean political preference or sympathy, rather than on specific criteria prescribed by law. In the end, the government shied away from going forward

\textsuperscript{67} Maynard (2007) 435.
\textsuperscript{69} Constitution 1973 (Bahamas), art 105.
\textsuperscript{70} Attorney-General Appellant v Thomas D’Arcy Ryan Respondent (Bahamas), BAILII: [1979] UKPC 33, Judgement, 10.
\textsuperscript{71} Attorney-General Appellant v Thomas D’Arcy Ryan Respondent (Bahamas), BAILII: [1979] UKPC 33, Judgement, 10. Emphasis added.
with this plan for fear of being defeated at a constitutional referendum, without which such changes could not be made.\textsuperscript{72}

Only after the PLP lost the 1992 general election, did the new government reconsider Ryan’s application, and it approved it the following year. As part of a series of articles that accompanied the work of the Constitutional Review Commission in 2012, one of the commissioners, Alfred Sears, who had served as Attorney General in a later PLP Cabinet, concluded that Ryan’s “case illustrates the need for citizens in a democratic society to be vigilant to ensure that the guarantees enshrined in the Constitution are in fact observed by the state.”\textsuperscript{73} Also citing the same case as an example in its final report, the Commission, whose chairperson was Sean McWeeney, who served as Attorney General between 1989 and 1992 and was thus part of a Cabinet that continued to deny Ryan’s registration as a citizen, conceded that there were indeed issues in Bahamian citizenship law that “can be misused by the executive for political or other reasons to deny registration to persons who are entitled to be registered as citizens.”\textsuperscript{74}

Much like the larger discussion about Bahamian Belonger status and later formal citizenship or nationality, the Ryan case, too, was not primarily about voting rights. Neither Bahamian politicians, nor the Bahamian public or the Foreign and Commonwealth Office in the process of Bahamian independence, nor the judiciary concerned with the Ryan case afterwards interpreted citizenship in such an encompassing manner with its “deep, more-than-rhetorical fuzziness.”\textsuperscript{75} Rather, most Bahamians never even considered the possibility that the Bahamas they were creating would be anything but a nation state, and as such they continue to use the terms “nationality” and “citizenship” interchangeably to denote a “national citizenship” meaning the “membership of a nation-state.”\textsuperscript{76} This is also reflected in Bahamian legislation. The 1973 Bahamas Nationality Act’s full title is, “An Act to pro-
vide for the acquisition, certification, renunciation and deprivation of citizenship of The Bahamas and for purposes incidental thereto or connected therewith.” 78 In the Act itself, the word “nationality” appears only twice outside of its title – both times in the interpretation section: once in a reference to the British Nationality Act of 1948 and once in a reference to the Bahamian “Minister responsible for Nationality and Citizenship.” 79 Throughout the rest of the Act, the term “citizenship” is used.

Nonetheless, in the various judgments of the Ryan case before reaching the JCPC, the justices of the Supreme Court and the Court of Appeal had considered how becoming disenfranchised by being denied formal citizenship – and by the expiration of the late colonial construct of Bahamian status – would affect Ryan’s situation. 80 In this context, Justice Graham-Perkins of the Bahamian Supreme Court entered into a discussion of British subject as a quasi-transnational concept rooted in the particular history of British colonialism on the one hand and citizen of a particular Commonwealth country on the other hand, which he concluded as follows:

[U]nless a self-governing country ordains otherwise in the exercise of its sovereign powers, both its Citizens and the Citizens of the United Kingdom and Colonies remain British subjects. […] Now the status of British subject, embracing as it does persons born in so many different countries of the Commonwealth enabled the holders thereof from time to time, and at various places, to meet one of the basic fundamental [sic!] usually required of persons who wish to vote at elections. […] The right to vote is usually attached to citizenship but the unique history of the Commonwealth producing a dual concept in the status British subject enabled the Plaintiff, who is a Canadian citizen, to enjoy the right to vote here previous to 1973. Henceforth, unless he becomes a citizen of The Bahamas, he will have no right to vote. 81

7.6 Parliamentary Nomenclature

As the electorate was transformed in the process of decolonisation, we have witnessed this being accompanied by a change of the terminology the Con-

78 Bahamas Nationality Act 1973 (Bahamas).
79 Bahamas Nationality Act 1973 (Bahamas), s 2.
stitution and statute law applied to various categories of Bahamian residents. During the same period, other terms in the law that defined the political system in general and the electoral process in particular changed, too. A brief examination of these changes, however, suggests that they would prove far less consequential than the changes that defined citizenship, because it appears that they were not primarily the result of conscious and purposeful deliberation. Had they been, they would have had the potential to alter the relationship between voters and their democratic institutions. Instead, these changes were short-lived.

The Bahamas has a long parliamentary history. Apart from an elected General Assembly there initially was a single Council fulfilling both an executive and a legislative role – or advising the Governor as he fulfilled these roles. Their legislative role was akin to that of an upper chamber in a bicameral parliament. Then in 1841, these functions were split, and henceforth there were an Executive and a Legislative Council. The latter took on the role of the upper chamber. Its members were wholly nominated at the Governor's discretion, and unlike the Executive Council it had no ex officio members. With the Constitution of 1963, the Legislative Council ceased to exist, and an appointed Senate replaced it. The mode of appointment changed over time. From the beginning, the Premier could influence the composition of the Senate. However, at first, he could only influence a minority of appointments, whereas today, the Prime Minister effectively controls the majority of the Senate. Thus, the majority party in the upper chamber today is, by design, the same as the majority party in the lower chamber.

Historically, this lower chamber had been called the General Assembly. With the Constitution of 1963, however, it became the House of Assembly. This is its name today, too, and the name change was to mark the transition from representative to responsible government as a first step towards independence. However, as a curious sidenote, the members of this lower chamber have seen changes in their titles, too. The elected chamber of the Bahamian legislature has always perceived itself to be modelled upon the Westminster example. Therefore, the term “Member” for any member of this
chamber seemed natural. Nonetheless, there was a brief interim period during which this nomenclature was abandoned.\textsuperscript{83} Perhaps this was the result of a misunderstanding, as is illustrated by the following introduction to a proposal made by the PLP government ahead of the 1968 constitutional conference: “Whereas the Constitution gives a name to members of the Senate, no such consideration was given to members of the House of Assembly.”\textsuperscript{84} The noun “member,” lacking definition in the Constitution’s interpretation section, was understood as being descriptive of the function. Persons so described ostensibly had no title. Arguably “Member” could have been understood as a proper noun, and, following British custom, could have served as the very title that was allegedly lacking. The proposed remedy then, was to rephrase the relevant article in the Constitution as follows:

\begin{quote}
The House of Assembly shall consist of thirty-eight members (in this Constitution referred to as ‘Representatives’) who […] have been elected in the manner provided by or under any law for the time being in force in the Bahama Islands.\textsuperscript{85}
\end{quote}

Four years later, in the independence Constitution, the title “Representative” was abolished again, and once more this was not the subject of any noteworthy discussion. The Bahamas reverted back to British custom, this time with the title “Member of Parliament,” in which the now capitalised word “Member” was used as a proper noun, and as a title was constitutionally entrenched.\textsuperscript{86} All of this suggests that the name change was not necessarily the result of discussions or debates adopting what could be seen as aspirational language. As is often the case in the Bahamas, even if the political system is modelled upon the Westminster system of the metropole, much of the thinking is subconsciously shaped by the United States, who, through sheer proximity, have historically had very strong influence on the islands, and whose lower chamber of its own bicameral parliament is named the House of Representatives.

Despite calling the elected parliamentarians Representatives, the Constitution of 1969 retained the name House of Assembly for the lower chamber

\textsuperscript{83} See page 214 above.
\textsuperscript{84} Proposal of Bahamas Government for Constitutional Reform, 23 August 1968, TNA: FCO 44/3.
\textsuperscript{85} Constitution 1969 (Bahamas), s 36.
\textsuperscript{86} Constitution 1973 (Bahamas), art 46(2).
of the Bahamas’ parliament. When that name had been introduced by the Constitution of 1963, the Legislature decided to amend the colony’s election law accordingly. The legislation for the election of a General Assembly existed, and while its language knew no House of Assembly, the Constitution Order in Council had made the necessary provisions that existing laws shall continue in force after the commencement of this Order as if they had been made in pursuance thereof and notwithstanding the revocation of the existing Letters Patent but the existing laws shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.\textsuperscript{87}

Nonetheless, in March 1965 the House of Assembly passed the House of Assembly Elections Act, which was backdated to January 7th, 1964 – the day the Constitution had come into effect.\textsuperscript{88} While the name might suggest an entirely new substantive act, it amounted to an amendment act renaming the General Assembly Elections Act 1959 the House of Assembly Elections Act 1959 and changing its terminology, where necessary, to reflect the new constitutional framework and nomenclature of the colony. Again, no such change would have been necessary with the commencement of the new Constitution in 1969, but the House of Assembly nonetheless passed an entirely new substantive act the same year. In a similar vein, this new election law broke with the longstanding tradition whereby Bahamian election laws were called General Assembly or House of Assembly Elections Acts. This language customarily gave these laws titles describing their mechanical function. Instead, the new law was now called the Representation of the People Act. While such a title could be interpreted as somehow aligning the name of the Act with the title of the persons whose election it governs, or even as symbolic or aspirational, the most likely explanation is that the Bahamas legislature simply followed the United Kingdom’s example.

In 1992, however, the Representation of the People Act was repealed and replaced by the still existing, though many times amended, Parliamentary Elections Act. The new Act’s name may not be symbolic, but one detail of its enactment was heavy with symbolism. It received assent on January 10th, 1992 – the twenty-fifth anniversary of the election that brought the PLP to

\textsuperscript{87} \textit{The Bahama Islands (Constitution) Order in Council 1963} (United Kingdom), s 4(1).
\textsuperscript{88} \textit{House of Assembly Elections Act 1965} (Bahamas), s 1(2).
power. On January 10th, 1992, the PLP was still the governing party, and Pindling was still Prime Minister. The assenting Governor-General was Clifford Darling, a PLP veteran, who had been leader of the Bahamas Taxi Cab Union during the general strike of 1958 and served as PLP member of the House of Assembly, Representative and Member of Parliament respectively from 1967 – as well as as Minister for various portfolios, Deputy Speaker and Speaker of the House – until his appointment as Governor-General only eight days prior. This was no coincidence. While January 10th only became an official public holiday in the Bahamas in 2014, the PLP and many other Bahamians, too, nonetheless have always commemorated the day as Majority Rule Day. 89 Any general election Pindling called while Prime Minister was always either on the tenth day of a month – or on the nineteenth, for one and nine add up to ten. Based on a professed divine prophecy and a Bible verse from the book of Exodus, the PLP’s supporters had used the date to construct “a Moses-type mythology around Pindling.” 90

7.7 A Step Backwards

There were a number of minor changes in the new Act making minor adjustments to routine processes, but, apart from that, there were some important new features, too, some of which affected political parties’ – and especially opposition parties’ – ability to reach voters via print and broadcast media. The most notable new features of the 1992 Act were: (1) the introduction of a politically controlled Electoral Broadcasting Council at a time when all radio and TV in the country was state-owned and politically controlled; (2) a mandatory declaration of assets, income and liabilities by all candidates; (3) the prohibition of using foreign radio and/or TV for campaign purposes, which has traditionally had greater reach in the more populated northern Bahamas than the state-owned network; and (4) the requirement for all printed campaign items to not only have the name and address of the person editorially responsible but of the actual printer on it.

89 See page 208 above.
too. While all of these points would deserve individual attention and academic analysis, these aspects do not affect the composition of the electorate and are therefore not the immediate subject of this book. Nonetheless, in conclusion one cannot help but note the irony that an election law assented to on the twenty-fifth anniversary of so-called Majority Rule marked the only election law during this book’s period of investigation that was not only not progressive but actually contained a number of regressive provisions in direct comparison to the superseded Act.

Nonetheless, the Parliamentary Elections Act of 1992 neither expanded nor shrank the electorate, and the changes made to the registration process were hardly noticeable from a potential voter’s perspective. Therefore, as far as Bahamian voters experience their elections, the amendments of 1975 marked the end of a process that transformed an electoral system in which only propertied British males residing in the colony had the right to publicly vote, perhaps multiple times, to one of universal adult franchise amongst the citizens of an independent Bahamas now exercised by secret ballot.

Unlike many of the reforms that had to be wrested from the hands of the Bay Street regime up to and including women’s suffrage, these later developments originated with the respective majority parties in Nassau. This is true for the introduction of the so-called Belonger status under the UBP, and it is true for the lowering of the voting age under the PLP. The final change of 1975, which limited the franchise to Bahamian citizens by disenfranchising those remaining persons with Bahamian status who had opted against or who been denied citizenship, was hardly a surprise in a newly independent nation. In any case, Bahamian status was being phased out, with the closest approximation for those remaining persons being permanent residency. However, while London took only very limited interest in Bahamian election law once internal self-government had been achieved in 1964, Whitehall continued to ensure that safeguards guaranteeing fundamental rights in a democratic society were entrenched in the Constitutions of 1963, 1969 and 1973 – even if Bahamian politicians generally appeared less aware of their necessity, or at times even proved opposed to them.

91 Parliamentary Elections Act 1992 (Bahamas), ss 29, 30, 31, 37(1)(a), 98(2), 100(3).