**Written evidence submitted to the House of Commons Select Committee on Foreign Affairs: Inquiry on the Future of the UK Overseas Territories**

**Professor Nicola Barker, University of Liverpool**

Executive Summary

1. In reviewing the relationship between the UK and the Overseas Territories, an incremental approach to independence or further self-government short of independence should be considered. The current ‘all or nothing’ approach to further transfer of powers is neither necessary nor sufficient to achieve its aims of ensuring good governance and compliance with international obligations.
2. It is not sufficient because the UK has failed to act on a number of occasions where it arguably ought to have intervened in order to ensure democracy and/or protect minority groups. A recent example is in relation to the abolition of same-sex marriage in Bermuda, which was subsequently held unconstitutional by the Bermuda Supreme Court.
3. An ‘all or nothing’ approach is not necessary because it would be possible (and arguably more effective) to ensure good governance and compliance with the UK’s international obligations by putting in place appropriate alternative constitutional mechanisms. In doing so, the UK could avoid being put in a position where it potentially has to interfere with the internal affairs of a largely independent Territory, such as Bermuda.
4. A small steps approach, or progressive decolonisation, could also enable Bermudians who may be cautious about independence (and concerned about its impact on the international business on which their economy relies) to be more confident that the constitutional mechanisms in place are capable of ensuring the continuation of good governance in an independent Bermuda.
5. In any event, Bermuda’s current Constitution is in urgent need of reform for two key reasons. First, it lacks democratic legitimacy due to the process by which it was enacted in 1968. There was little public consultation and those comprising the Bermuda delegation to the Constitutional Conference were not representative of the population, having been elected under a system that gave an additional vote to landowners and had grossly unequal electoral constituencies. Second, its fundamental rights chapter falls short of international standards, omitting some key provisions from the European Convention on Human Rights, which has been extended to Bermuda.

Evidence

1. *Introduction*
   1. I am a Professor of Law at the University of Liverpool. Since 2013, I have been researching the Bermuda Constitution and LGBT rights in Bermuda[[1]](#endnote-1) including undertaking archival research to examine some of the documents relating to the creation of the Bermuda Constitution. I have also been collaborating with a Bermudian NGO, the Centre for Justice, on a project reviewing the Bermuda Constitution Order 1968 to mark its fiftieth anniversary this year. This included a conference that took place in June 2018, an executive summary of which can be found [here](http://www.royalgazette.com/assets/pdf/RG38871775.pdf).[[2]](#endnote-2) My evidence is based on my research in Bermuda and therefore primarily relates to the relationship between the UK and Bermuda but some of my conclusions could well be extended to other British Overseas Territories.
   2. The current Bermuda Constitution largely mirrors the Bahama Islands Constitution of 1963, and at the time of its creation was described by the then leader of Bermuda’s Progressive Labour Party, Mr Walter Robinson, as an “unsatisfactory copy of an unsatisfactory constitution”.[[3]](#endnote-3)
   3. This dissatisfaction with the Constitution undoubtedly stemmed at least partly from the lack of consultation with the people of Bermuda on its contents. The Bermuda Industrial Union had complained to the Governor in September 1966 that: “there has been little attempt to hold meetings and forums on the [constitutional reforms]”.[[4]](#endnote-4) Although in private correspondence his legal adviser agreed that, “while there had been a lot of talking in the two Houses, it was far from clear to what extent the main sections of the general public supported or otherwise the various constitutional proposals that were being bandied about”, the Governor declined to hold the requested televised forums.[[5]](#endnote-5)
   4. Not only was the level of public engagement significantly below what would be expected today, those delegates chosen to attend the Conference were not properly representative of Bermuda. They had been elected in 1963 under a system that allowed property owners an additional vote, and in which the electoral districts were grossly unequal.[[6]](#endnote-6) The demographics of the districts, combined with the extra vote for property owners, meant that the vote of a Bermudian living in a predominantly black and working class constituency was worth “something in the order of one-tenth of the value of the vote” of a Bermudian living in a white and middle class constituency.[[7]](#endnote-7)
   5. This meant that the Progressive Labour Party (PLP) who, in a racially divided political system, were (and are)[[8]](#endnote-8) considered to primarily represent black Bermudians, were only able to send three out of the total of 18 Bermudian delegates to the Constitutional Conference in London in 1966. The PLP objected to this and requested that the delegation be enlarged so that “representation from the people of Bermuda” could be made at the Conference.[[9]](#endnote-9) This request was declined.
   6. Due to the absence of public consultation and unrepresentative delegation, I would suggest that the current Constitution lacks democratic legitimacy.
   7. It is also long overdue for reform. While most of the other populated British Overseas Territories (BOTs) had major programmes of constitutional reform following the 1999 White Paper,[[10]](#endnote-10) Bermuda had only limited, though important, reforms that created single seat constituencies of roughly equal size and established the role of Ombudsman.[[11]](#endnote-11)
   8. The fundamental rights chapter is particularly out dated. It was little more than an afterthought for the drafters of the constitution, or good “window dressing” in the words of Bermuda’s Attorney General in 1964.[[12]](#endnote-12) As a result, the fundamental rights chapter is an incomplete and inadequate copy of the European Convention on Human Rights, which falls short of meeting the UK’s international obligations.
   9. It is, therefore, my view that the Bermuda Constitution is no longer fit for purpose in a modern democratic society and is in urgent need of a fundamental review, which should consider the entirety of the relationship between Bermuda and the UK. This should be led by a Bermudian and involve extensive public consultation in order to increase public confidence in, engagement with, and knowledge about the Constitution.
   10. In particular, consideration should be given to the ways in which a new Constitution could transfer as many of the Governor’s remaining powers as possible to Bermudian authorities. In section 2, I will argue that in contrast to the UK’s present ‘all or nothing’ approach to delegating further powers prior to independence, a small steps approach would be appropriate and more likely to enable Bermudians to support independence in the future. In section 3, I will briefly outline the shortfalls of the current fundamental rights chapter in comparison to the UK’s obligations under the European Convention on Human Rights.
2. *Good Governance and Self-Determination: Reconsidering the Relationship Between Bermuda and the UK*
   1. In Bermuda’s Constitution, the Governor retains a number of powers, some of which mirror those of the Queen in the UK’s constitutional monarchy, such as dissolving and proroguing Parliament, and he must generally “obtain and act in accordance with the advice of Cabinet.”[[13]](#endnote-13) However, the Governor also retains powers to act on his own discretion, particularly with respect to his special responsibilities for external affairs, defence, internal security, and the police.[[14]](#endnote-14) He also makes appointments to certain public offices including the Public Service Commission,[[15]](#endnote-15) the Commissioner and Deputy Commissioner of Police,[[16]](#endnote-16) the Auditor General[[17]](#endnote-17) and the Chief Justice.[[18]](#endnote-18) Some recent appointments have proven controversial, including the appointment of a non-Bermudian to the role of Police Commissioner.
   2. Since the 1970s the UK has “flatly rejected” the idea of gradually transferring power to local control in order to prepare for independence, unless it formed “part of a clear timetable leading to independence”.[[19]](#endnote-19) This ‘all or nothing’ position should, in my view, be reconsidered. While it appears to have the laudable goals of encouraging independence and protecting good governance and compliance with the UK’s international obligations until a Territory does become independent, I would respectfully suggest that with regard to Bermuda ‘all or nothing’ is neither necessary nor sufficient to achieve these goals for the following reasons.
   3. Retaining powers to be exercised directly by the UK has not proven sufficient at crucial moments in Bermuda’s history when the UK has failed to act on those powers to protect democracy and minorities within Bermuda. The first and most significant example, in terms of the continuing impact it has had on racial inequalities in Bermuda, is the UK’s failure to insist on equal constituency boundaries during the constitutional reform process in the 1960s.
   4. The debate in the UK Parliament in 1967 acknowledged that under the new constitution the vote of a Bermudian in predominantly black working class constituencies would be worth approximately one-third of the value of that of a voter in a predominantly white constituency.[[20]](#endnote-20) This is clearly an improvement on the one-tenth that existed prior to the Constitution, but remains far from equal. A number of MPs in Westminster spoke against the Constitution on the basis of this, which was described by one MP as “the crux of the inequalities that undoubtedly exist in Bermuda”.[[21]](#endnote-21) Nevertheless, the UK Parliament passed the Bermuda Constitution Act 1967 without requiring equal constituencies[[22]](#endnote-22) and it was not until 2003 that an election was finally contested in single-seat constituencies of roughly equal size. Unsurprisingly, for 30 years following the adoption of the Constitution and its perpetuation of unequal constituencies, Bermuda politics was dominated by the United Bermuda Party (UBP), the party in power at the time the Constitution was created.
   5. More recently, the UK failed to use its power to refuse assent to the Domestic Partnership Act 2018. This Act meant that Bermuda became the first country to abolish same-sex marriage after marriages had already taken place. This rolling back of rights is arguably incompatible with the ‘living tree’ doctrine and the principle of non-regression in international human rights law.[[23]](#endnote-23) Just a few days after the Act came into effect, the Bermuda Supreme Court found the abolition of same-sex marriage to be incompatible with the Bermuda Constitution on the basis that it violated the right to freedom of conscience (section 8) and the prohibition of discrimination on the grounds of creed (section 12).[[24]](#endnote-24) Both of these points would have provided a constitutional basis for the Governor to refuse assent.[[25]](#endnote-25)
   6. Undoubtedly refusing assent to this legislation would have caused a major political controversy in Bermuda and would have been seen as an unacceptable interference in domestic affairs. This underlines the problematic nature of relying on the Governor’s powers to uphold good governance and compliance with international obligations in largely self-governing Territories.
   7. I would also suggest that in the case of Bermuda it is not necessary to insist on an all or nothing approach and it might in fact be counterproductive to do so. Good governance and compliance with the UK’s international obligations can (and I would suggest should) be ensured through means that rely primarily on strong local constitutional mechanisms, which can be sustained post-independence. This approach would have a number of advantages for both the UK and Bermuda:
   8. Support in moving towards independence.
      1. Putting these mechanisms in place could give confidence to those Bermudians who are cautious about moving towards full independence (as well as to the international business on which their economy largely relies) that the rule of law would not be negatively impacted by independence. This would be a concrete way in which the UK could meet the commitment made in the 1999 White Paper, to “give every help and encouragement to territories wishing to proceed to independence”.[[26]](#endnote-26)
      2. Bermuda has historically been conservative with regard to major constitutional change,[[27]](#endnote-27) which may explain why there has not been widespread public support for independence, despite Bermuda’s economic strength and an assumption for the last fifty years that it would be the next Territory to seek independence. It may be that as Bermuda’s Joint Select Committee considered in the last round of constitutional reform, “moving forward cautiously, with small modifications to start with”[[28]](#endnote-28) is the way to secure wider public support for independence. Yet, the UK’s insistence on ‘all or nothing’ rather than a more incremental decolonization process precludes this.
   9. Increasing democracy
      1. If there remains no strong support for independence within Bermuda, increasing the level of self-governance and reducing the risk that the UK would need to intervene directly would be essential for increasing democracy. This would not only reduce the potential for conflict between the governments of the UK and Bermuda,[[29]](#endnote-29) but also increase democratic accountability and responsibility locally. The governor’s role could be maintained as a final constitutional ‘backstop’ that is only exercisable in the event that there has been a serious failure in due process or break down in the rule of law, in much the same way as is the case in relation to the Crown Dependencies.
      2. In some respects, Bermuda has more in common with the Crown Dependencies than it does with the other British Overseas Territories. Although Crown Dependencies were never colonies, Bermuda has always had a very strong sense of independence: as the former Governor Lord Martonmere noted in his opening speech at the 1966 Constitutional Conference, “For 300 years we have in the main ruled ourselves with very little interference from [the UK].” Indeed, Bermuda is unique amongst the remaining British Overseas Territories in that the Crown cannot legislate for Bermuda or amend its Constitution without an Act of Parliament. In contrast, Orders in Council have been used to legislate directly for other British Overseas Territories, most notably to abolish the death penalty,[[30]](#endnote-30) decriminalise sex between men,[[31]](#endnote-31) and suspend the constitution of the Turks and Caicos Islands.[[32]](#endnote-32)
      3. With regard to the Crown Dependencies, the House of Commons has accepted that Parliament’s power to legislate should only be used in “the most serious circumstances, such as a fundamental breakdown in public order or of the rule of law, endemic corruption in the government or the judiciary, or other extreme circumstance”.[[33]](#endnote-33) I would suggest that there is no reason to treat Bermuda differently in this respect. This would constitute a small step towards independence, a halfway measure perhaps, that would nevertheless allow for limited intervention by the UK to protect good governance or its international obligations.
   10. Further developing self-government
       1. It would also allow the UK to demonstrate a commitment to meeting their international obligations under the UN Charter:

“to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the *progressive development* of their free political institutions, *according to the particular circumstances* of each territory and its peoples and their varying stages of advancement.”[[34]](#endnote-34)

* + 1. Bermuda has very well established internal self-government but still does not have complete self-government due to the remaining powers of the Governor to act on his own discretion in some respects, and to make certain key appointments, including the Chief Justice and Police Commissioner, both of which have recently proven politically contentious in Bermuda.[[35]](#endnote-35) Reviewing these powers and transferring them to local bodies wherever possible would be consistent with a ‘progressive development’ of Bermuda’s political institutions.
  1. It is, therefore, my view that while it may have been convenient in the past to retain some direct control over the British Overseas Territories through the Governor, this is neither necessary nor justified in contemporary democratic society. Appropriate constitutional and legal measures can adequately ensure that the UK’s obligations are met without direct control and would better support Bermuda’s progression towards further self-government and/or independence.

1. *Fundamental Rights*
   1. The fundamental rights chapter of the Bermuda Constitution falls short of the protections guaranteed by the European Convention on Human Rights (ECHR). There is no right to a private and family life in the Constitution, and the prohibition of discrimination includes only race, religion, and associated grounds. Discrimination on the grounds of sexual orientation and disability, for example are not prohibited by the Constitution. Although the prohibition of discrimination on the grounds of sex is mentioned in section 1 of the Bermuda Constitution, the Judicial Committee of the Privy Council has previously held that this section has the status of a preamble rather than a substantive, justiciable, right.[[36]](#endnote-36) The right to marry and found a family is also not protected in the Bermuda Constitution.
   2. This means that there are significant gaps in protections for Bermuda residents compared to their Convention rights. For example, the age of consent for sex between men remains age 18, compared to that between men and women, which is age 16; and the right of trans people to change their legal documentation to reflect their gender identity is not currently recognised in Bermuda. Both of these situations are in clear violation of well-established case law in the European Court of Human Rights on the Article 8 right to private and family life.[[37]](#endnote-37)
   3. This leaves Bermuda out of line with the other Territories who have generally now fully incorporated the ECHR into their constitutions. Without similar reform to the Bermuda Constitution, it remains necessary in some circumstances for a victim or potential victim to seek a remedy against the UK in the European Court of Human Rights. This would potentially put the UK government in conflict with the Bermuda government and/or the Council of Europe. It certainly leaves the UK vulnerable to having to respond to a claim taken by a Bermudian in Strasbourg as a result of decisions taken within Bermuda and over which the UK may have little direct control in practice. Replicating the Convention rights in the Bermuda Constitution and enabling the local judiciary to adjudicate them would limit this possibility.
   4. Some of the missing Convention rights have been provided for elsewhere in Bermuda legislation, including the Human Rights Act 1981. This Act is protected from implied repeal and has supremacy over other legislation. However, its status is that of ordinary legislation and as such it is not protected from repeal (or partial repeal) by the legislature in the same way as constitutional rights would be. The Human Rights Act 1981 is also limited in scope in that it does not protect discrimination on some grounds that would be protected in Article 14, including gender identity.
   5. The resulting vulnerability of unpopular minorities was highlighted in 2017, when the Progressive Labour Party was elected by a landslide on a platform that included the abolition of same-sex marriage and curtailing the rights of a group of immigrants who hold permanent resident certificates, ‘PRC holders’, but do not possess Bermudian status. They did so by enacting legislation that carves out exceptions to the relevant provisions protecting these groups from discrimination in the Human Rights Act 1981.[[38]](#endnote-38)
   6. The Territories that have updated their fundamental rights chapters have generally chosen to exceed the minimum requirements of the ECHR in some respects, such as by including protection of the environment[[39]](#endnote-39) and protection of the rights of children,[[40]](#endnote-40) for example. Other modern constitutions in Africa, Europe and Latin America have also included social and economic rights.[[41]](#endnote-41) These rights provide a means to hold governments to account for rising social and economic inequality and provide a way to overcome historical legacies of discrimination. It is important that Bermudians have an opportunity to consider including these rights as part of a constitutional reform process, given the history of racial discrimination and continuing problems caused by its legacy, often referred to as ‘the two Bermudas’.[[42]](#endnote-42)
   7. If there is a review of the relationship between Bermuda and the UK, and with it the Bermuda Constitution, this would be a welcome opportunity to invite Bermudians to also consider whether the fundamental rights chapter could go further than it currently does in addressing systemic racial and economic inequalities. This would not be a panacea but it could be a first step towards recognising past injustices and healing the significant racial divisions that still exist in Bermuda.

1. See: Nicola Barker. ‘Rights, Democracy and Decolonization: An Argument for “Bermudianizing” the Constitution’ in V. Memari(ed.), *The Fiftieth Anniversary of the Bermuda Constitution: Reflections on its Past and Future* (Hamilton, Bermuda: Centre for Justice, 2018); Nicola Barker. ‘“I wouldn’t get unduly excited about it”: The Impact of the European Convention on Human Rights on the British Overseas Territories. A Case Study on LGBT Rights in Bermuda’ *Public Law* (2016) (October), 595-612; Nicola Barker. ‘Like Mixing Apples and Oranges? The Impact of the European Convention on Human Rights on LGBT Rights and Gender Equality in Bermuda’ in V. Memari (ed.) *Justice in Bermuda Today 2014: Human Rights Since Emancipation* (Hamilton, Bermuda: Centre for Justice, 2014). [↑](#endnote-ref-1)
2. http://www.royalgazette.com/assets/pdf/RG38871775.pdf [↑](#endnote-ref-2)
3. Editor. ‘The wrangling is over in London but will begin anew in Bermuda’ (25 November 1966) *The Bermuda Recorder* [accessed 11 May 2018]. [↑](#endnote-ref-3)
4. Letter from Barbara Ball, Secretary General, Bermuda Industrial Union to the Right Honourable Lord Martonmere. 10th September, 1966. Bermuda National Archives 2735/A. [↑](#endnote-ref-4)
5. Letter from Sir Ralph Hone, 1 Paper Buildings, to His Excellency the Rt. Hon. Lord Martonmere. 20 September 1966. Bermuda National Archives 2735/A; and Letter from His Excellency the Rt. Hon. Lord Martonmere to Barbara Ball, Secretary General, Bermuda Industrial Union. 27 September 1966. Bermuda National Archives 2735/A. [↑](#endnote-ref-5)
6. According to a government report cited in the PLP Minority Report of the Constitutional Conference, just over half the population (23,672 people) lived in the three biggest Parishes – Pembroke, Devonshire and Sandys – and they elected sixteen Members to the House of Assembly. In contrast, the six other Parishes that between them had 5000 fewer people, elected twenty-four Members: Report of the Bermuda Constitutional Conference 1966 (London: Her Majesty’s Stationery Office) Cmnd. 3174, at p.20-21. [↑](#endnote-ref-6)
7. This was recognised by several members of the UK Parliament during the debate on the Bermuda Constitution Act 1967. See for example: Mr Hugh Jenkins (Putney) HC Deb 19 June 1967 vol 748 cc1031-64, 1044; and Mr Gerard Fitt (Belfast, West) HC Deb 19 June 1967 vol 748 cc1031-64, 1033-34, who explained that in Pembroke there were 4977 voters, the vast majority (4381) of whom were black. They sent 2 Members to the House of Assembly. In Southampton West, there are only 331 electors and they also sent 2 Members to the House. In Southampton West about two-thirds of the voters were white. [↑](#endnote-ref-7)
8. See for example: Rolfe Commissiong. ‘Column: Hardened the Political and Racial Divide’ (9 March 2016) *Bernews* < http://bernews.com/2016/03/column-hardened-the-political-racial-divide/> [accessed 16 August 2018]; and Ayo Johnson. ‘Why won’t whites vote for the PLP?’ (4 January 2012) *The Royal Gazette* < http://www.royalgazette.com/article/20120104/NEWS01/701049924> [accessed 16 August 2018]. [↑](#endnote-ref-8)
9. Letter from Elvira Warner, Progressive Labour Party, to The Right Honourable Fred Lee, Secretary of State for the Colonies. 22 July 1966. Bermuda National Archives 2735/A. [↑](#endnote-ref-9)
10. Foreign and Commonwealth Office (1999) *Partnership for Progress and Prosperity: Britain and the Overseas Territories* (Cm 4264). [↑](#endnote-ref-10)
11. The Bermuda Constitution (Amendment) Order 2001; The Bermuda Constitution (Amendment) Order 2003. [↑](#endnote-ref-11)
12. Comprehensive Report of Meeting No. 7 of the Joint Select Committee to Consider Constitutional Changes. Held in the Committee Rooms of the House of Assembly. Thursday, May 21st, 1964 at 9:30am. Bermuda National Archives: Constitution of Bermuda Minutes of Meetings 2735/a/4. [↑](#endnote-ref-12)
13. Bermuda Constitution Order 1968, s21. [↑](#endnote-ref-13)
14. Bermuda Constitution Order 1968, s62. [↑](#endnote-ref-14)
15. Bermuda Constitution Order 1968, s81(2). [↑](#endnote-ref-15)
16. Bermuda Constitution Order 1968, s87. This appointment must be made after consultation with the Public Service Commission. [↑](#endnote-ref-16)
17. Bermuda Constitution Order 1968, s88. [↑](#endnote-ref-17)
18. Bermuda Constitution Order 1968, s73(3). This appointment must be made after consultation with the Premier, who shall first have consulted the Opposition Leader. Appointments of Puisne Judges and other judicial officers such as Registrars and Magistrates are made following consultation with the Chief Justice: s73(4) and s89(1). [↑](#endnote-ref-18)
19. Walton Brown Jr, *Bermuda and the Struggle for Reform: Race, Politics and Ideology: 1944-1998* (Bermuda Cahow Press, 2011), at p.164. [↑](#endnote-ref-19)
20. See also: Report of the Bermuda Constitutional Conference 1966 (London: Her Majesty’s Stationery Office) Cmnd. 3174, PLP Minority Report, at para 7. [↑](#endnote-ref-20)
21. Mr Tom Driberg (Barking) HC Deb 14 June 1967 vol 748 cc480-519, at 495. [↑](#endnote-ref-21)
22. There was a Motion signed by 59 members of the House of Commons, which said: ‘That this House will decline to enact any legislation enabling additional powers to be granted to the Legislature of the Colony of Bermuda until such time as that Legislature has provided by law that the House of Assembly of the Island shall be composed of members elected from constituencies of approximately equal population delimited without regard to colour or social status’: Mr Tom Driberg (Barking) HC Deb 14 June 1967 vol 748 cc480-519, at 497. [↑](#endnote-ref-22)
23. See further Susie Alegre and Leonardo Raznovich, ‘Fundamental Principles of International Human Rights Law and Same-Sex Marriage in Bermuda’ < https://www.islandrights.org/fundamental-principles-of-international-human-rights-law-and-same-sex-marriage-in-bermuda/> [accessed 29 August 2018]. [↑](#endnote-ref-23)
24. Ferguson v. Attorney General; OUTBermuda and Jackson v. Attorney General [2018] SC (Bda) 45 Civ (6 June 2018). This judgment is now pending appeal in the Bermuda Court of Appeal and may well reach the Judicial Committee of the Privy Council. [↑](#endnote-ref-24)
25. Bermuda Constitution Order 1968, s35(2)(a) and (c). [↑](#endnote-ref-25)
26. Secretary of State for Foreign and Commonwealth Affairs, *Partnership for Progress and Prosperity: Britain and the Overseas Territories.* Cm.4264 (March 1999), at para 2.1. [↑](#endnote-ref-26)
27. For example, in relation to the 1968 constitutional reforms, the Joint Select Committee took a considerable amount of time to decide whether they would seek a written constitution, or whether a “half-way measure” that moved towards responsible government incrementally would be preferable. The preference expressed by Sir Henry Tucker, the government leader at the time, was for an “experimental period”, going as far as possible to achieve a degree of responsible government as a preliminary measure towards possible adoption of a written constitution later: Meeting No. 8 of the Joint Select Committee to Consider Constitutional Changes. Held in the Committee Rooms of the House of Assembly. Saturday, June 27th, 1964 at 9:30am. Bermuda National Archives: Constitution of Bermuda Minutes of Meetings 2735/a/4. It was not until the twentieth meeting of the Joint Select Committee, over a year later, that Tucker had changed his mind and expressed support for a written constitution: Meeting No.20. Meeting of the Joint Select Committee to Consider Constitutional Changes. Held in the Conference Room at the Bank of Bermuda, on Wednesday, October 6th, 1965 at 2pm. Bermuda National Archives: Constitution of Bermuda Minutes of Meetings 2735/a/4. [↑](#endnote-ref-27)
28. Comprehensive Report of Meeting No. 7 of the Joint Select Committee to Consider Constitutional Changes. Held in the Committee Rooms of the House of Assembly. Thursday, May 21st, 1964 at 9:30am. Bermuda National Archives: Constitution of Bermuda Minutes of Meetings 2735/a/4, at p.9. [↑](#endnote-ref-28)
29. Such as has been the case recently with regard to the Sanctions and Anti-Money Laundering Act 2018. See: Jonathan Bell, ‘House: Burt Defiant on Company Ownership’ (5 May 2018) < http://www.royalgazette.com/politics/article/20180504/house-burt-defiant-on-company-ownership> [accessed 6 May 2018] [↑](#endnote-ref-29)
30. Caribbean Territories (Abolition of the Death Penalty for Murder) Order 1991. [↑](#endnote-ref-30)
31. Caribbean Territories (Criminal Law) Order 2000. [↑](#endnote-ref-31)
32. The Turks and Caicos Islands Constitution (Interim Amendment) Order 2009. [↑](#endnote-ref-32)
33. House of Commons Justice Committee, *Crown Dependencies: Eighth Report of Session 2009-10* (HC 56-I),at p.3 [↑](#endnote-ref-33)
34. Article 73(b), Chapter XI: Declaration Regarding Non-Self-Governing Territories. *Charter of the United Nations* (1945) (my emphasis). [↑](#endnote-ref-34)
35. Jonathan Bell, ‘Caines hits out at police leadership’ (2 June 2018) < http://www.royalgazette.com/politics/article/20180601/caines-hits-out-at-police-leadership> [accessed 3 June 2018]; and Jonathan Bell, ‘Governor defends appointment of Chief Justice’ (27 April 2018) < http://www.royalgazette.com/news/article/20180426/governor-defends-appointment-of-chief-justice> [accessed 28 April 2018]. [↑](#endnote-ref-35)
36. Grape Bay Limited v. Attorney-General Bermuda [1999] UKPC 43 (28th October, 1999). [↑](#endnote-ref-36)
37. See for example L v. Austria (2003) 36 E.H.R.R. 55; SL v. Austria (2003) 37 E.H.R.R. 39; B v. United Kingdom (2004) 39 E.H.R.R. 30; and Goodwin v. United Kingdom (2002) 35 E.H.R.R. 18. [↑](#endnote-ref-37)
38. Domestic Partnership Act 2017, s48(2): “Section 15(c) of the Matrimonial Causes Act 1974 (which provides that a marriage is void unless the parties are male and female) has effect notwithstanding anything to the contrary in the Human Rights Act 1981”; and Bermuda Immigration and Protection Amendment (No. 2) Act 2017, section 2 inserts new subsection 1A(a) and (b) of section 8, Bermuda Immigration and Protection Act 1956, to read: “(a) for the purposes of section 29 of the Human Rights Act 1981, it is declared that the provisions of this Act operate, notwithstanding the Human Rights Act 1981; and (b) for the purposes of section 30B of the Human Rights Act 1981, any provision of this Act that purports to require or authorize conduct that is a contravention of anything in Part II of the Human Rights Act 1981 has effect, notwithstanding the Human Rights Act 1981.” [↑](#endnote-ref-38)
39. For example, the Cayman Islands Constitution, s18, requires the Government to ‘have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development….’ See also: British Virgin Islands Constitution, s29; Pitcairn Constitution, s19; and Turks and Caicos Islands Constitution, s18. [↑](#endnote-ref-39)
40. See for example British Virgin Islands Constitution, s30; Pitcairn Constitution, s16; and Cayman Islands Constitution, s17. [↑](#endnote-ref-40)
41. These so-called ‘second generation rights’ are included in a number of international treaties, including the Universal Declaration of Human Rights 1948, Article 25.1: *‘Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’*; and the International Covenant on Economic, Social and Cultural Rights (1966), Article 11.1: *‘The [parties] recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.’* Regional texts also include some of these rights, for example: the European Convention (right to education); and the African Charter on Human and People’s Rights (right to work, right to health, right to education). See International IDEA, *Social and Economic Rights* (August 2014), p.4. [↑](#endnote-ref-41)
42. See for example: David Burt, *Race, Ethnicity and Two Bermudas.* Speech at Hamilton Rotary Club, 16 May 2017 <http://bernews.com/2017/05/david-burt-race-ethnicity-two-bermudas/> [accessed 11 May 2018]. [↑](#endnote-ref-42)