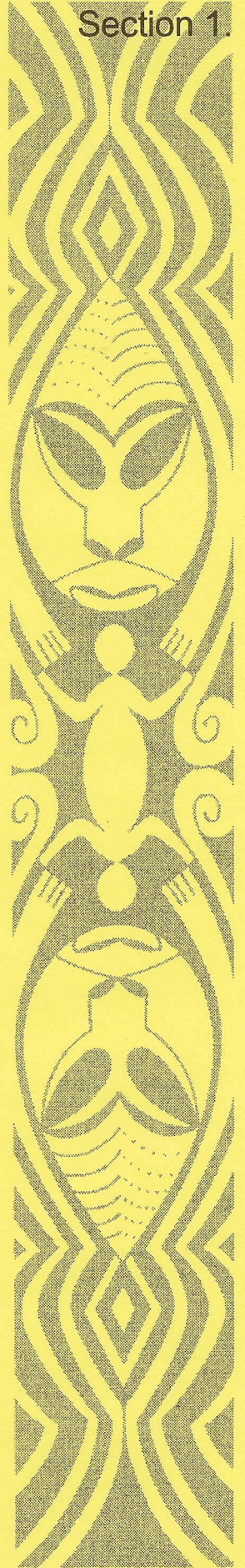


A Brief History of the Vanuatu Parliament

Section 1



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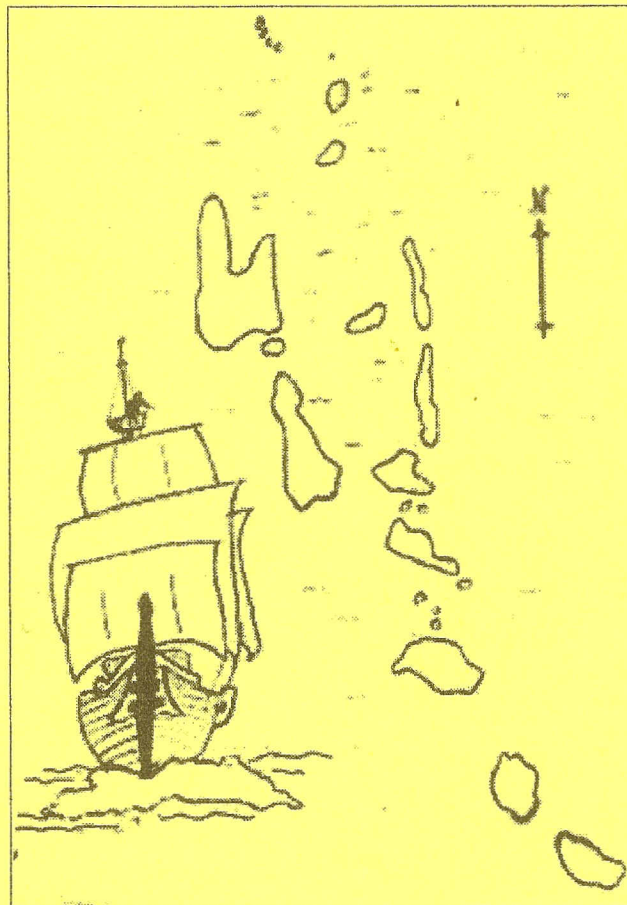
Section 1.

First settlement

People first came to the islands we now call Vanuatu from the north and west, about 3500 years ago. We know little about those brave explorers and their descendants, the first ni-Vanuatu, but we may guess that they had little of what we now call "government". They probably were organised in groups no bigger than a village, with a bigman or chief, and perhaps a sorcerer (magician), to keep the affairs of the people in order. The smaller islands or groups may have had one "chief of chiefs" (highest grade chief) or island councils. Men love to talk of power, and to make themselves important, everywhere in the world. But just as the languages of Vanuatu grew into many different languages, different islands may have developed different forms of government, a chief here, a council there, maybe even assemblies of the whole community, or powerful women. So "devolution" - limited self-government for different parts of the country - may not be such a foreign idea. And over more than 2400 years, customs certainly changed.

First Contact

The first Europeans to come to Vanuatu were Spanish, the crews of the *Capitana*, *Almiranta* and *Los Tres Reyes* under Pedro Fernandez de Quiros, who called the islands "Tierra Australia del Espiritu Santo" - Southern Land of the Holy Spirit - in May, 1606. (The name has shortened and its use has narrowed to the one island.) It was Captain James Cook in 1774 who renamed the islands "the New Hebrides", after some cold and windswept (but much loved) islands off the north-west of Scotland.

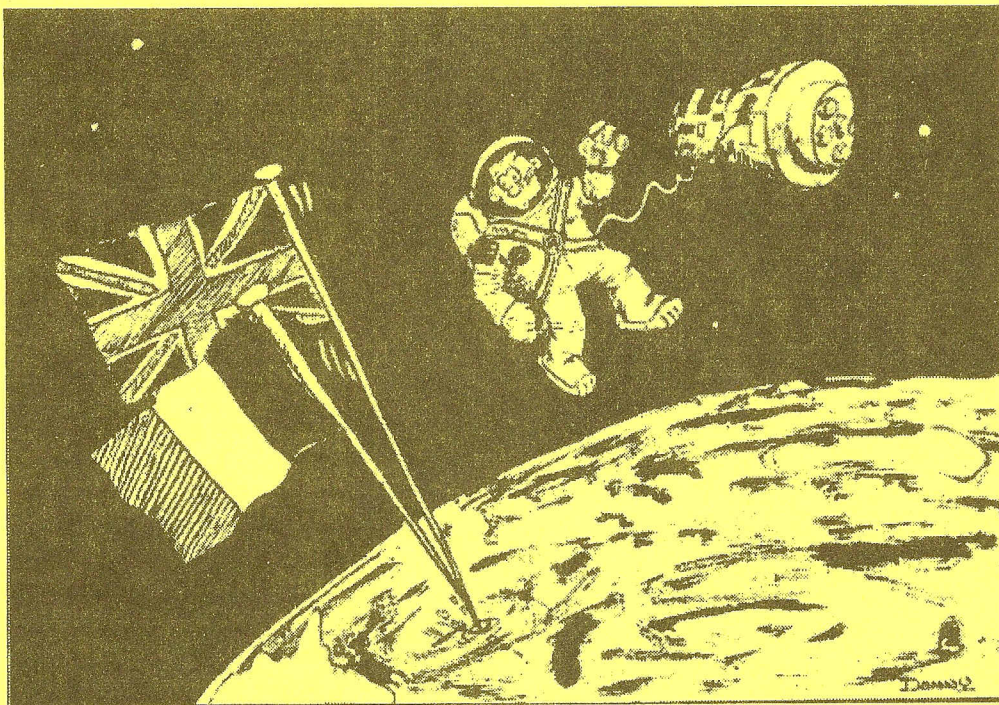


Condominium

As recently as 1815, England and France were at war. Relations between the two countries remained uneasy long after that, and this has cast a long shadow over the government of what is now Vanuatu.

In 1887, a joint English-French Naval Commission was set up to take control over the English and French people in the islands, the traders, planters and missionaries. A "Condominium" (shared government) was agreed to in 1906, a protocol (plan) was written in 1914, and it finally came into force in 1922. British and French people (including the "Tonkinese" brought from what is now Vietnam) came under the governments of their own countries, and other foreigners could choose which government to have. Ni-Vanuatu did not come under either umbrella, so there were really three sets of people in Vanuatu.

The Condominium was jokingly called a "Pandemonium" (terrible noise) because of the clashes between the governments. A symbol of this was the fact that neither government could bear to have its flag lower than the other's, so they both put up higher and higher flagpoles - until they finally agreed they were being silly and decided on a single height.



As well as French and British law, there was New Hebridean customary law. This had power over ni-Vanuatu unless the case was covered by the Joint Regulations made "for the good government of the group" in the 1922 Anglo-French Protocol.

The Joint Regulations were made by a Joint Commission, controlled by French and British officials. These regulations were the starting point of a national law for Vanuatu after Independence.

Ni-Vanuatu had no say in government until 1957, when an Advisory Council was set up. This still gave little power to the indigenous people, and did not satisfy the growing interest in self-government. Demands for independence



increased through the 1970s as countries around went independent, and in 1975, the first step towards indigenous government was taken, when elections were held for municipal councils in Port Vila and Luganville. Soon after, elections were held for a Representative Assembly, but there was also conflict between European authorities and local political parties.

Constitution

As a result, discussions began between French and British officials and ni-Vanuatu over the political future of the New Hebrides. A Constitution Committee was set up, and after much discussion, it reached agreement on a Constitution for an independent nation.

It was agreed on September 19, 1979, by the representatives present at the Constitutional Conference held in Port Vila, and put into effect by "an exchange of notes" (actually very formal documents) between France and the United Kingdom. Independence was declared officially on July 30, 1980.

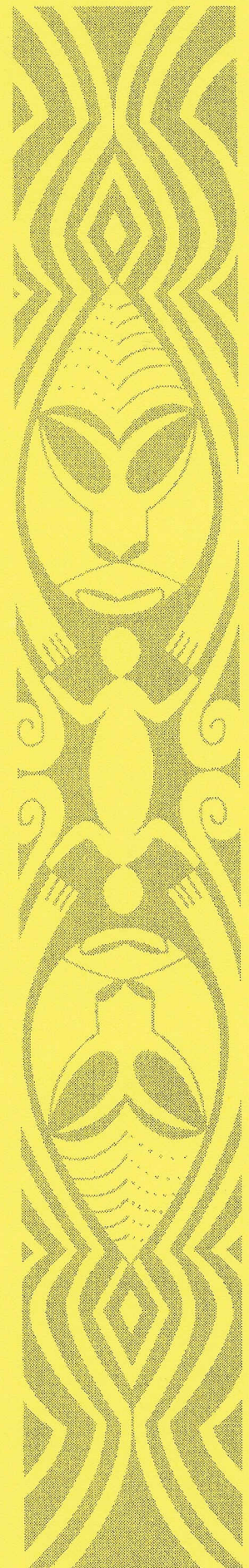
Republic

Under the 1980 Constitution, Vanuatu has a unitary state (unlike, say, Australia, which has federal government and separate state parliaments). The Vanuatu Parliament was founded on the Rule of Law, the Separation of Powers (see Section Three), and what is often called a "Westminster" style of government (an elected Parliament divided into a Government and a loyal Opposition).

Democracy

The first Article of the Constitution recognises democracy as the foundation of the Republic. Democracy means government by the people, but in practice it is almost always done through their elected representatives. (Switzerland is a country where the people do some of the governing directly, through public votes - referendums.) The Constitution provides for this with

- 📖 emphasis on the Rule of Law
- 📖 basic human rights and duties
- 📖 a free and universal franchise (all adults - with a few exceptions - may vote) and election processes
- 📖 the Separation of Powers. The Constitution has separate chapters for the Legislature, the Executive and the Judiciary.



The Westminster Model

Vanuatu uses what is called "the Westminster model" of government. Like most Commonwealth countries, this is actually different in some important ways from the British system whose Parliament is at Westminster. That one has

- 📖 Parliamentary sovereignty
- 📖 a head of state with few powers
- 📖 a bipartisan (two-sided) and bicameral structure (with an Upper and a Lower House of Parliament)
- 📖 executive control through a strong one-party Government
- 📖 a suffrage-based electoral system (people, not only land-owners, vote) and
- 📖 no entrenched (hard-to-change) Constitution

In most Commonwealth countries, those have changed. Parties may still be strong, but there are usually more than two of them, and the Government may be formed from more than one (a coalition government), though the executive may still be controlled by a one-party Cabinet. Many countries now have a written Constitution which is entrenched - built in to the structure of the government - and can only be changed with extra difficulty.

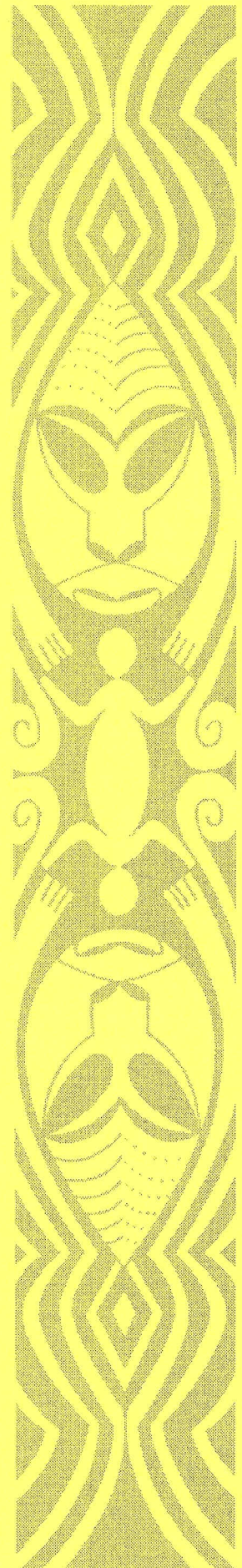
The Vanuatu form of government is quite similar to those of other Commonwealth countries. What makes it different is the French influence. That is probably why the Head of State is called the "President" and not, say, the "Governor". Unlike other Pacific states, the colonial Government never installed a local government, whether French or British, so what has come out is designed especially for the needs of Vanuatu. An example of that is the National Council of Chiefs (Malvatumauri), which is elected, and has advisory powers under Articles 27 and 28 of the Constitution.

The President

The role of President seems to conflict with the supremacy of Parliament, which is part of the Westminster model. But the President can not over-rule Parliament unless the Supreme Court has ruled that Parliament has broken the Constitution. And the President is not elected directly by the people, so that title could be misleading. The Constitution grants the President only a restricted role. The President is something of a figure-head (respected but with no power), like the Monarch of Britain or the Governor-General of a country like New Zealand, but in New Zealand it is the Attorney General who checks legislation for breaches of human rights (NZ Bill of Rights Act 1990, s7). But he (President) has power to pardon convicted criminals and to appoint the Ombudsman (and exercises both during any time)

Structure

The Westminster model is one thing in theory, another in practice. In countries like New Zealand, the very existence of Cabinet (the Council of Ministers) is only a matter of convention. One of its basic rules, that once Cabinet has decided anything, every Minister must support it (collective responsibility), is another convention.



Vanuatu has important features like the Council of Ministers written into its Constitution. The Constitution is "entrenched": it can only be changed by a two-thirds majority of three-quarters of the Members of Parliament, and for some issues, only after a national referendum (public vote, under Articles 83 and 84).

The Constitution gives complete jurisdiction (power to decide) about Constitutional matters to the Supreme Court. This means the Judiciary can stop the Executive from using its power wrongly, following the principle of the Separation of Powers (see Section Three, and especially the diagram on page 3-2.) Usually, the real centre of the system is a powerful Cabinet, accountable to Parliament, but rarely controlled by any other body. In giving final say to the Supreme Court, the Vanuatu Constitution is different from the Westminster (English) model. It still keeps to the Commonwealth model because Parliament usually has the final say, and the powers of the Supreme Court are not often used, usually only when parties affected by the decision ask for it.

And French?

So how much influence did the French government system have? The name "Westminster" implies that the British model was the main one. French is a national language, and French law a source of Vanuatu law, but French law has no Constitutional role.

Both French and British laws that applied before Independence continue unless they are inconsistent with independent status (Article 93 (2)). This could create conflict between French and British law.

There is a trend towards the use of common law rather than other possible systems. That is because it fits in with Vanuatu having a government and constitutional system that is related to the Commonwealth version of the Westminster system. Vanuatu has a rich mixture of systems borrowed from various forms of government, but the main influence is British law, in both Parliament and the Judiciary.

