



The Challenge of Constitutional Reform

*An Examination of Trinidad and
Tobago's Constitution by
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Foundations of the Constitution

- ✧ 1. In an address to a public meeting about 14 months before he became Chief Minister, in Port-of-Spain, Trinidad on 19th July, 1955, Eric Williams said, "The Colonial Office does not need to examine its second hand colonial constitutions. It has a constitution at hand which it can apply immediately to Trinidad and Tobago. That is the British Constitution." (Eric Williams, Constitution Reform in Trinidad and Tobago. Public Affairs Pamphlet No. 2, Teachers' Educational and Cultural Association, Trinidad, 1955, p.30.)
- ✧ 2. At the same meeting he also said: "Ladies and Gentlemen, I suggest to you that the time has come when the British Constitution, suitably modified, can be applied to Trinidad and Tobago. After all, if the British Constitution is good enough for Great Britain, it should be good enough for Trinidad and Tobago." ." (Eric Williams, Constitution Reform in Trinidad and Tobago. Public Affairs Pamphlet No. 2, Teachers' Educational and Cultural Association, Trinidad, 1955, p.30.)

The Introduction of a Parliamentary System at Independence

- ✧ **1. It is clear that the desire of Eric Williams was for the creation of a suitably modified Westminster model for Trinidad and Tobago. The Westminster model has been described as:**
 - ✧ **"...a constitutional system in which the head of state is not the effective head of government; in which the effective head of government is a Prime Minister presiding over a Cabinet composed of Ministers over whose appointment and removal he has at least a substantial measure of control; in which the effective executive branch of government is parliamentary in as much as Ministers must be members of the legislature; and in which Ministers are collectively and individually responsible to a freely elected and representative legislature." (S. A. de Smith, *The New Commonwealth and its Constitutions*. London, Stevens and Sons, 1964, pp. 77 - 78.)**
- ✧ **2. This definition, as de Smith rightly confesses, is a narrow one, because it emphasises the executive and legislative branches of government to the exclusion of the role, powers, duties and functions of the judiciary, which at the time of writing in 1964 were far different from what was enacted in the Constitutional Reform Act (2005, c.4) in the United Kingdom. That Act provided for a greater separation of powers by significantly altering the office of Lord Chancellor and the establishment of a Supreme Court for the United Kingdom that assumed office on 1st October, 2009.**

The Judiciary at Independence

- ✧ 1. In establishing the Judiciary for Trinidad and Tobago in the independence constitution, the Constitutional Adviser to the Cabinet, Mr. (later Sir) Ellis Clarke, expressed the following views in an explanatory memorandum to the Colonial Office which has since been declassified :
- ✧ “Provision is made in section 8 of the draft Order in Council for the Supreme Court as constituted at present to continue under the name of the High Court. The Judges of the Supreme Court become the Judges of the High Court and suffer no loss of status, emoluments, allowances or else. It will be noted that no provision is made for the holder of the post of Chief Justice of the Supreme Court. The reason for this is that there will be no exactly comparable post on independence. The new post of Chief Justice in the draft Constitution is a joint post of Chief Justice and President of the Court of Appeal. In his capacity as Chief Justice the holder of that post is responsible for the administration of all the courts in the territory from the lowest to the highest. As President of the Court of Appeal he presides over the final court in Trinidad and Tobago.” (United Kingdom National Archives, CO 1031 / 3226, Explanatory Memorandum by the Constitutional Adviser to the Cabinet on the Draft Independence Constitution for Trinidad and Tobago, 16th April, 1962, p. 9).

The Judiciary at Independence continued

- ✧ **1. In providing the insight into the creation of the post of Chief Justice at independence, Ellis Clarke outlined the intent of the draftsman as follows :**
- ✧ **“It will be observed that in fact the position of the Chief Justice and President of the Court of Appeal is more analogous to that of the Lord Chancellor in England than to that of the Lord Chief Justice. The Lord Chancellor presides over the House of Lords, the highest court in England, the ultimate court of appeal. He is also responsible for all judicial appointments, for the conferment of silk, etc. The Chief Justice and President of the Court of Appeal will preside over the final Court of Appeal in Trinidad and Tobago and as Chairman of the Judicial and Legal Service Commission will be largely responsible for judicial and other legal appointments. (United Kingdom National Archives, CO 1031 / 3226, Explanatory Memorandum by the Constitutional Adviser to the Cabinet on the Draft Independence Constitution for Trinidad and Tobago, 16th April, 1962, pp. 9 - 10).**



The Challenge of the Presidency

- ✧ 1. The creation of a quasi-ceremonial presidency in the 1976 republican constitution on the basis of the office having some powers that were no longer to be exercised on the advice of Ministers, as was the case with the Governor General, and now to be exercised without responsibility.
- ✧ 2. The President is protected from judicial review of his actions in section 38(1) and section 80(2).
- ✧ 3. Section 38(1) makes the President not answerable to any court and section 80(2) ousts the jurisdiction of the court where he acts on advice or after consultation.
- ✧ 4. Section 80(1) provides for exceptions where the President can act in his own deliberate judgment or after consultation.
- ✧ 5. The President does not bear any political responsibility for his powers and is also protected constitutionally.
- ✧ 6. Controversies over (a) Service Commission appointments; (b) appointment of a Prime Minister; (c) refusal of prime ministerial advice; (d) determination of inability to perform functions of office; (e) inability to appoint Integrity Commission and no political responsibility; (f) perception of neutrality challenged.

The Challenge of the Judiciary

- ✧ The matter of the need for reform in the Judiciary was perhaps best made by Professor Selwyn Ryan writing in his weekly column in the Sunday Express on Sunday 13th February, 2005 under the headline "Regime Change Needed in Judiciary". He dealt with matters beyond the system itself. According to him :
- ✧ "It is in fact now becoming clearer that what we seem to have done when we achieved independence in 1962 was to interweave the woolen wig of the colonizer with the ethnic hair of the tribesman. We did it so 'skilllessly' that the links between the one and the other are there for all who have eyes to see." (Sunday Express, 13th February, 2005, p. 11).
- ✧ Ryan argues that the problems in the Judiciary may not be systemic, but instead ought to be viewed as personal. He goes further to say :
- ✧ "It is also clear that there continues to be a great deal of cronyism and jockeying for position within the judiciary and that the brethren are as divided along ethnic and personal lines as they have been in the past." (Sunday Express, 13th February, 2005, p. 11).
- ✧ Such a scathing attack on the personnel of the Judiciary who dispense justice to the nation cannot be ignored simply on the grounds of maintaining independence of the judiciary. If this is what the framers of the independence constitution had intended, then what are we protecting ? Is the Judiciary as racially divided as Ryan makes it out to be ?

The Challenge of the Parliament

- ✧ 1. The election of M.P.s and the nomination of Senators who have an expectation of being appointed Ministers because of the existence of the parliamentary system.
- ✧ 2. Should M.P.s be elected just to serve as legislators and constituency representatives ?
- ✧ 3. Should Senators be nominated to serve as legislators only ?
- ✧ 4. Should defeated candidates be appointed as Senators or as Presiding Officers of Parliament ?
- ✧ 4. Should Parliament be made separate from the Executive or should its membership be used as a basis for recruitment of Ministers ?
- ✧ 5. Does the scrutiny role of Parliament get compromised by too many Ministers serving in committees ?
- ✧ 6. Can parliamentary oversight of the Executive be improved by greater separation of the Executive from the Legislature ?

Constitutional Reform Issues

- ✧ 1. Should there be a reform of the Presidency that addresses the challenge of the gap created by the absence of political responsibility for the President and the existence of political responsibility for the Prime Minister and the Cabinet ?
- ✧ 2. Should Parliament be a rubber stamp for the will of the Executive ?
- ✧ 3. Should the Judicial system be reformed to separate political and administrative responsibility from judicial opinion ?
- ✧ 4. Is the fundamental alteration of the Westminster model as of 1st October, 2009 a matter for our consideration ?