

*Leave of Absence**Wednesday, March 23, 1994***SENATE***Wednesday, March 23, 1994*

The Senate met at 1.30 p.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. President: Hon. Senators, I have granted leave to Sen. Carol Mahadeo to be absent from today's sitting of the Senate as she is unwell.

LATE ARRIVAL

Mr. President: Sen. John Spence has indicated that he will be about two hours late for today's sitting of the Senate.

**PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE
(VACANCIES)**

Mr. President: Hon. Senators, I have been advised that there are two vacancies on the Public Accounts (Enterprises) Committee occasioned by the resignation of Sen. Michael Mansoor and the death of Sen. Harry Kuarsingh.

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President; I beg to move the following motion:

Whereas there exist two vacancies on the Public Accounts (Enterprises) Committee occasioned by the resignation of Sen. Michael Mansoor and the death of Sen. Harry Kuarsingh;

Be it resolved that this Senate appoint Senators Everard Dean and Jaigobin Nanga to serve as members of the Public Accounts (Enterprises) Committee in place of Sen. Michael Mansoor and the late Sen. Harry Kuarsingh.

Question proposed.

Question put and agreed to.

ORDER OF BUSINESS

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I request the approval of the Senate to defer Motions on the Order Paper at this stage and to proceed with the continuation of the debate on the Bill to amend the Constitution of Trinidad and Tobago.

Assent indicated.

CONSTITUTION (AMDT.) BILL

[THIRD DAY]

Order read for resuming adjourned debate on question [March 8, 1994]:

That the Bill be now read a second time.

Question again proposed.

The Minister in the Office of the Prime Minister responsible for Public Administration and Public Information (Sen. The Hon. Gordon Draper): Mr. President, over the last few days as we have debated this Bill, a number of issues have come up, and much confusion seems to be in the minds of some of my colleagues opposite about some of these issues. I have identified, perhaps, nine issues which seem to have concerned Senators, both on the Independent and Opposition Benches.

One was the issue of management and the role of a service commission in particular the Police Service Commission, with regard to management. It seems clear that anything which impacts on the human resource function in an organization, impacts on the management of that organization. I will return to that and say more about it later.

The second is the issue of consultation. It seems to some of my Friends opposite that consultation only means holding national meetings, perhaps, At Queen's Hall, or in other places, without recognizing that the issue of constitutional change and the issue of service commissions themselves, have, in fact, occupied the national mind for many years. I dare say, not only the national mind, but also the regional mind.

There is also the concern which emerged from the other side relating to the resource needs of the police service, an argument which recognized that a service commission by itself will not treat with the issues in the police service and that one needs to deal, as well, with providing resources—a view that we share. We recognize, also, as indeed Sen. Wade Mark alluded to it, that we do, in fact, need to treat with a total package. But we need to understand that this Bill and the changes in the Police Service Commission must be seen as one element of that package.

We need to understand that while we can put resources into a service, the efficiency and effectiveness of that resource will be a function of how well it is managed. Therefore, the individuals who are put in positions to manage become extremely important in determining whether those resources bear fruit or not.

There was also the concern raised as to whether constitutional change is appropriate or necessary. I shall seek to treat with this as well. I shall seek also to treat with all the elements of that total package of which this measure is but a part. There was a concern raised, particularly by my Friend, Sen. Daly, about the importance of regulations and the importance of discipline. Let me say that we on this side accept the importance of changing the regulations and, in fact, that acceptance is manifest in the draft regulations that we have already laid in this Senate, recognizing that the Commission, in fact, will have to treat with them.

I think we need to be careful, because all too often when we talk about human resource management, we focus only on discipline. While Sen. Daly recognized that he was dealing only with one issue, I think, generally, we need to understand that it is more than discipline that we are concerned with as we treat with the police service.

There is an issue, too, about the relationship between this measure and the war on crime. Sen. Hosein, I think, incorrectly noted that we on this side brought this measure as our contribution to dealing with the issue of crime. We have said repeatedly that this is but one piece, again, of a total package in treating with the crime issue.

There was an issue raised by many on the other side about the proposed composition of the Police Service Commission and whether we need to locate skills within the commission or within the staff of the commission. It is our view that one needs skills located in both places. There is also the view that the amendments which we seek are merely an attempt to get rid of persons who now serve on the Police Service Commission.

1.40 p.m.

We have clearly stated that our concern is with reviewing the role, function and relationship between that commission and the police service. We cannot, at this time, and in this place, determine who will be members; indeed, the Bill itself treats with appointments to the commission.

Mr. President, what I would seek to do this afternoon is to treat with most of those issues, hoping to allay some of the fears that have been raised by my Friends on the Independent Bench and some of the concerns raised by Opposition Senators.

At the start, let me say that I will treat with some of the submissions and recommendations which came out of the *O'Dowd Report*. Of course, Sen. Wade

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Mark also made the comment that we have had many reports; the Bruce Report, the O'Dowd Report and others, and he asked what has happened to them. Indeed, this measure we are debating today is, in a sense, one of the outcomes of those reports.

I would deal with some of the recommendations and issues raised in reports such as the O'Dowd and Bruce Reports to make the point relating to the Police Service Commission, management and, in particular, the human resource management function in the police service.

Let me begin by drawing attention to one of the findings in the O'Dowd Report. In a section 4.2.4, having looked at the police service, it says as follows:

"It would appear that in the past, seniority has represented a major contributory factor in promotion decisions. As illustrated at Appendix 4(f) the present personnel profile in the TTPS depicts an ageing workforce (average ages—corporal 43 years, sergeants 45, inspectors 48, superintending ranks 53 and the executive 56). The review team consider that the current situation, with the potential for high numbers of retirements amongst the senior ranks within the next few years, must give grave cause for concern as to the future efficiency and effectiveness of the service."

In looking at and treating this issue, in section 4.2.7 it goes on to state that there is need for:

"A career development system including lateral development should allow all officers to achieve their full potential. Some brave decisions will be needed...to redress..."

this situation.

"Some officers with relatively little experience and service will need to be given opportunities in a way that will carry an element of risk."

It also says:

"Not only the commissioner but also the Police Service Commission will have a key role to play if this strategy is to be effective. Such a system will involve the identification of early potential so that the more able officers by five years service will have experienced a variety of duties and will have been given command experience at the earliest opportunity."

Mr. President, what is this saying to us? It is saying that here we have a commission in place with the power to appoint, promote, transfer, and it is absolutely clear, therefore, that in the execution of this, they needed to focus, not just on the very bland and mundane approaches to recruitment, promotion and transfers, but also as well to locate that within the context of human resource planning and strategic planning.

In other words, we need a certain sensitivity on the part of the commission to understand how decisions which it may take in a vacuum could impact on the efficiency and effectiveness of the police service. Therefore, when the Attorney General, in introducing this Bill, spoke about the importance of providing focus and a sense of a mandate to the Commission, it was this kind of issue he was relating to: that unless we provide commissions with a focus, understanding and a clarity of how their decisions, which seem to be made almost without reference one to the other, could ultimately impact on the ability of a service to function. We need to help that commission with that focus.

It may well be that, perhaps, with the frailty of some of the language, in the way some of the words were used, we may not have captured that; but, I feel certain that with legal and management luminaries like Senators Daly and Mansoor, we can treat with that issue. But, the direction is one which must clearly delineate for this commission, a recognition that appointment, promotion and transfer must be seen within the context of efficiency and effectiveness of that service. It cannot be done in a bland way. It cannot be done in a vacuum.

Listen, again, to what the O'Dowd Report has to say:

"Concern was expressed to us at various levels both within and outside TTPS that there was a lack of suitable officers to fill the most senior posts in the service now and a more general problem to fill senior posts in the future. There is now an urgent need for an accelerated promotion system for those who have a sound academic background and clear leadership potential."

What are they saying to us? The O'Dowd Report that Sen. Wade Mark wants us to implement is clearly signalling to us that the procedures which we have used up to now to treat with issues relating to recruitment, promotion and so forth, have brought us to this sorry pass. We are saying that as we meet to address the issues of the police service, we need to focus on how we can help a commission which has these powers to understand the relationship between its power to appoint and implication for management of the service, and the implication for efficiency and effectiveness. That is what we are about.

Let me continue by looking at some of the other concerns raised by both O'Dowd and, in fact, Senators here. Once we begin saying these things, it says that those commissioners must bring to their task an understanding of a discipline; must bring to their task an understanding of the kind of methodology that can be used to assist in treating with these situations. When I heard my Friend, Sen. Mansoor, ask questions, for instance: Why do we want a psychologist?—I know Sen. Mansoor well enough to know that he is not falling prey to the sin of treating the behavioural sciences with contempt; it comes very often from those who reside in the harder sciences, those who understand that two and two equal four, and those who do not understand that there may be some little things inside that sometimes do not equal four.

The Human Resource Management Association of Trinidad and Tobago held a symposium some two or three years ago and, in fact, the theme related to placing human resource professionals in the boardrooms of this country. My Friend, Sen. Mansoor, may say that the prime task of a board is to appoint a CEO, and while that may be so, the board, having done that, receives reports from auditors and the very CEO. In other words, the boards themselves make sure that they keep on top of how those businesses are being run. What that requires is an appreciation on the part of those who sit on these agencies, of the task involved in running enterprises, and of the kinds of signals that would point them to difficulties ahead.

1.50 p.m.

We require a certain kind of mind-set and skill to be able to understand the implication of these decisions which the commission is going to be asked to make. What have we said? We said that we are putting on the commission persons with legal training; a psychologist. If one goes back to the Bruce Report, it signals the importance of utilizing psychiatrists in the recruitment process.

If you really look closely at what the O'Dowd Report is saying to us, the O'Dowd Report is saying that in dealing with promotions, we need to move away from seniority; we need to start utilizing some other mechanisms. We may need, for instance, to utilize assessment centres, which are now a human resource methodology to treat with identifying managers with potential. But clearly to be able to understand the importance of that, we need people with a certain kind of discipline and a certain kind of background. Hence, our view that we require on the commission a mix of skills. It is really in applying that mix onto the problem at hand that we would be able to identify the most appropriate solutions.

Sen. W. Mark: Mr. President, on a point of clarification. Could the hon. Minister indicate to this Senate what is the difference between having commissioners with those skills as opposed to having the commission employ those skills? Why is the Government insisting that the members of the commission possess those skills as opposed to the commission procuring those skills to do the very task that the Minister is trying to advance?

Sen. The Hon. G. Draper: For some part of my own life I worked as a management consultant doing just what Sen. Wade Mark would like the staff to do. One of the occupational hazards of being a management consultant is that when you attempt to provide advise to those whose minds are somewhere else, you find that you do not get the appropriate responses in that place. Therefore, we are saying that we require the skills in the commission. When you look at the Bill before us at 122C it very clearly articulates our view:

"The Police Service Commission may appoint on such terms and conditions of service...such members of staff as may be necessary for the proper performance of its functions."

That staff will include human resource people; it may even include a psychiatrist. But unless those people are able to talk to others of like mind they will be spinning top in mud. Which is why we argue that we require the skills in the commission as well as among the staff of the commission. It cannot be one or the other.

Mr. President, let me continue treating with some elements of the O'Dowd Report:

"Without doubt the efficiency and effectiveness of the Trinidad and Tobago Police Service depends to a large extent on the quality of its police officers"

Linked very clearly and unequivocally to the function of recruitment, of appointing, of promotion—the very report that Sen. Wade Mark wanted us to lift and implement. We are doing it. We need, therefore, to see that nexus between the kind of commission we put and the levels of efficiency that we will get within the police service. Clearly the agency which has ultimate responsibility for determining who gets put where, must understand how those decisions relate to efficiency. More than all of that, O'Dowd speaks to us about some other things

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which also point to the need for certain kinds of skills and certain kinds of talents. I am linking the point to something else. O'Dowd tells us:

"that it is absolutely essential that the very best skills and knowledge are available to support co-activities including the commission."

While we argue, as I have been doing, that one requires a certain skill and a certain understanding in terms of human resource management at the level of the commission, we also take the point that a human resource management function is essentially a line responsibility. What this means? It means that ultimately the people who are carrying out that task of managing the human resource will be the sergeants, superintendents and assistant superintendents. We accept that. But they would require advice from professionals. They are skilled by and large in operational police work but would require, therefore, advice from persons with specialist training and skills.

One of the things that are recommended in the O'Dowd Report is the need for us to put into the police service a certain number of specialized managers, including an information systems manager, a finance manager, a fleet manager and a human resource manager.

The Government has moved to fill all these posts in the police service. The fleet manager and the human resource manager are currently in place in the police service. This is part of a total package.

We are recognizing the need to strengthen the police service itself; we are recognizing the need to provide the quality of advice which line managers would require to carry out their functions, some of which will be delegated by the commission. Those people are in place.

Even as we put civilian managers in there it is important, as I have been saying, that these civilian managers have a point of reference back into the commission speaking the same language, understanding the methodology and the approach. Otherwise, we would find ourselves in a situation where they may be attempting to institute some policies within the service which are alien to some persons sitting on the commission. The O'Dowd Report also spoke about the critical importance of linking strategic planning to the human resource function and to management generally in the police service. It says at 4.7.1.

"Ultimately the re-organized Trinidad and Tobago Police Service should have a strategic corporate plan that draws together major development strategies,..."

including upfront:

- “(i) personnel planning
- (ii) personnel issues
- (iii) quality of service issues
- (iv) force infrastructure
- (v) a building programme
- (vi) information technology
- (vii) vehicle plant and equipment
- (viii) value for money initiatives.”

This recognizes that the breadth of issues that we need to treat with, which will cover all the management issues, will go beyond human resource issues. On their own admission the human resource issues are critical in determining efficiency and effectiveness. Therefore, it is also important, as the police service itself has now done, to develop a strategic plan which treats with all these issues, but that arm which treats with recruitment and promotion must understand how those human resource issues fit into the wider umbrella.

Again, therefore, it articulates the need for a certain kind of mindset sitting on that commission.

It articulates the need for us to have residing in the commission a range of skills. That is what we are about, following, as I say, recommendations and findings of the O'Dowd Committee.

2.00 p.m.

Let us also recognize—because there have been concerns raised about the Minister and section 85 of the Constitution providing direction and control—what are some of the other linkages. As part of our social package, Cabinet has accepted a proposal to place within the Ministry of National Security an inspector of police services; a recognition that there is need if you will, for an independent, objective auditor of the police service who can provide through a permanent secretary, information and audit reports to the Minister and who could also find those reports going to a police service commission. It is part of that package.

It is an appreciation of the range of things which are required to manage the service. It is the notion which accepts that we will need periodically,

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notwithstanding these other managers whom we have put in; notwithstanding a police service commission which we are now proposing to be amended, we would need to audit periodically thus affording the Minister access to audit reports on all aspects of police activity. We need to see that as part of the package.

We need to understand that it is not simply our saying here that we are seeking to change elements relating to the Police Service Commission. We are saying here that we need to do that, but we need to do it alongside other activity, strengthening the management capability in the police service by taking other kinds of action, the civilian managers and the inspector of police services all being part and parcel of our move to provide more modern and appropriate management for our police service.

There are those who would say to us that all we really need is to provide more resources. Sen. Wade Mark also wanted to hear from the Bruce Report, page 170 of which states:

"The Committee does not agree that any increase in efficiency of the Police Service will necessarily result from a mere increase in manpower. Earlier in this report it was pointed out that the performance of duties by both senior and junior police officers left much to be desired. Rules and regulations were not being observed. Regular inspections were not made and discipline was lax."

I am sure Sen. Daly would welcome that comment—

"In these circumstances, the addition of large numbers of men and women within a short time span coupled with the limitations of both human resource management and management of limited physical resource in terms of building, equipment and furniture would probably exacerbate an already bad situation."

Bruce went on to lay down some of the work that needed to be done before we jumped on a bandwagon of putting more resources into the police service, work which is currently going on on some aspects. We are saying that issue of providing more resources has to be done in an objective and clinical way. Some of those resources are going to be human resources.

We also link that issue of shortage of human resources with the question of the shift system and the payment of overtime which Sen. Mansoor made much of during the budget debate. We have also been doing that work. I hold a preliminary

report on the analysis which we have undertaken over the last few months in the police service of the shift system and overtime. This is beginning to point us to the fact that if we manage the shift system differently, by allocating and manning shifts differently, we would significantly reduce the overtime costs.

This says that before one jumps into making decisions about putting resources on, one needs to pause to understand the problem, to apply some clinical analysis to arrive at an appropriate solution. That cannot be done unless we have within those decision-making corridors, persons with the appropriate skills. Yet another argument for ensuring that not only do we put the skills within the service, which could do this analysis—and incidentally it was done outside the service, by other public servants—but that we must also put within the commission, skills which will understand this report when it is laid before them. They would understand what action needs to be taken.

That is why skills are required in the commission, because decisions which could be made in a willy-nilly way, based on some notion that we need to put 3,000 more police officers somewhere without the clinical analysis, would lead us into serious difficulty. We cannot afford that. As we seek to deal with a total package, this is the kind of work we are doing.

I may also say further that utilizing some of our technology in the Central Statistical Office, we have also now moved to look at the places in which police stations are located, recognizing again that decisions to locate those stations were made at a time when population spread was significantly different from what it is now. These are the kinds of inputs that we need to arrive at objective decisions, our human resource levels.

Again, thinking of consultation and using reports, much of what we are now saying in terms of the skill mix of the commission is not new. When I said in my opening comment that we need to understand what consultation really is, it is a recognition that over the years we have used task forces and committees, whether it be constitutional task forces or administrative reform task forces, a range of them, to provide us with some input in terms of where we ought to be going in managing the police service and the public service.

In 1974 the Government of Trinidad and Tobago was a recipient of assistance from the United Nations Development Programme in what was then called an Administrative Improvement Programme. Consultants came; they worked with the local public service; set up task forces and committees and reported on a range of matters such as training in the public service; financial management and also on recommendations for the improvement of the personnel management function.

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On page 32 of that Report, listen to what it says:

"The Members of the Public Service Commission should represent not only the various ethnic groupings within the population of the nation, but at the same time represent those forces which have a direct bearing on the civil service. The Public Service Commission should represent dynamic and changing currents of major ideas to be transmitted throughout the public side of the economy reflecting the changing moods, politics; new concepts of administration and socio-economic problems of national interest. Government can and should in many instances be the "ideal employer" and the leader in a dynamic and aggressive modern approach to management and industrial relations."

What are their recommendations?

"There be appointed to the Public Service Commission members representing but not necessarily limited to the following:

- (1) The academic world as exemplified by a young P.L.D from the university specializing in the field of public administration, personnel management, government or business administration.
- (2) A representative of business and/or industry who has a reputation of not only being an aggressive competent and accepted business leader but at the same time be a public spirited citizen interested not only in the well being of the nation, but the improvement of the public service.
- (3) A representative of the public at large...
- (4) An individual with an industrial relations background with sufficient knowledge of labour problems whose contribution would lead to a more balanced approach to the policies and decisions to be taken"

In other words, the discussions have been going on for 20 years. What we are now witnessing is a paralysis, an unwillingness to act having gone through all the 'ole talk'! We have gone through the ole talk! We come to this Senate with a plan to act, and we hear, let us go back and talk some more. Let us get back to consultation!

2.10 p.m.

Let me recognize something else because the issues that we face here in Trinidad and Tobago are not unique. The issues relating to the way former

colonial countries have dealt with service commissions are not unique to Trinidad and Tobago.

In 1990/1991 the Caribbean Centre for Development Administration, which is a Caricom sub-grouping based in Barbados, commissioned a study of service commissions in the region and I would admit that I was a consultant used on that study. Arising out of that, a report was tabled, written by Sir Carlisle Burton, a former chairman of the Public Service Commission in Barbados, which was reviewed and discussed at a round table on public service management in Jamaica, in 1992. This was a round table at which were present Ministers with responsibility for the public service, as well as senior public servants. They looked at that report and they talked about a number of things relating to service commissions generally. Here are some of the findings, things they noted and recommended, coming out of that report. I quote from page 21:

"Very few Public Service Commissions produce annual reports or any reports at all. Indeed, the majority of constitutions and Public Service Commission Acts are silent on this matter. It seems desirable if not obligatory that such reports should be made. A common format that could be used by all countries and possibly a time limit for submission and publication would be advantageous."

That was the report. The eventual findings and recommendations which came out of that Caricom round table—I will not go through all of them, but some of them, relating to service commissions:

- "— there should be a proper mix of skills among the membership and terms of office should be staggered.
- performance appraisal systems should be developed on the basis of clear objectives and standards—and so too should a system of special rewards for innovative or exceptionally meritorious work.
- commissions should be required by law to give an annual account of activities.
- countries should consider the establishment of a Parliamentary Review Committee dealing with ... public service issues in the same way as the Public Accounts Committee deals with the Auditor General's Report."

Mr. President, you recognize, as we look at the measure before us that what we are doing is seeking to put Trinidad and Tobago alongside contemporary

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public administration development in the world. And we come here and talk about more consultation! Let us understand that we developed constitutional approaches at particular times in our history. Let us understand that our environment has changed. Let us not be so rooted in the past that we are unwilling or unable to recognize a new environment and to take the necessary step forward. That is what we are about.

As I say, it is not just we in Trinidad and Tobago who are doing it. The Caribbean is focussing on this very vexed issue and these are some of the recommendations which came out of a grouping of, as I said, senior public service managers and politicians meeting in Barbados. *[Interruption]* Be prepared occasionally to take the lead, Sen. Wade Mark. I know that concept is difficult for you, so rooted are you in the past.

I also alluded to the fact that as we looked at this total package, Cabinet understood and recognized the need to change the structure of and the management within the police service. That has included changes in the top structure; it has included the addition of some senior managers in the police service; it has also included the addition of some 132 posts of sergeant.

What is the intent of all of this? It is to strengthen the management capability in the police service, but that will come to nought if the vision of the public service or the Police Service Commission is not locked in that same way. So that things need to work in lock-step: it cannot be one without the other.

There have been other resources that we have put into the police service—in 1990, some \$2.4 million in motor vehicles; in 1991, \$3.1 million and, later, a further \$4.2 million; in 1993, motor vehicles; in 1994, more vehicles and jeeps; a total over the last three years or so of some \$14.5 million in physical resources. It is not just a question of our pouring resources in; the fleet manager has been put in to make sure that these resources run efficiently and effectively.

As we seek to put more people in, and as we seek to deal with the question of management structures, we need to ensure that the commission understands that as well.

Sen. Hosein: Since the hon. Minister is talking about the fleet manager, it might be appropriate for him to give us a little report on how much work the manager has done so far.

Sen. The Hon. G. Draper: Be assured that the fleet manager has begun his work. When we have passed this measure, the annual report of the fleet manager will form part of a report that will come to Parliament.

I understand some of the difficulties that my Friends opposite seem to be having because we are dealing with a momentous matter and I know that that occasions people to pause and reflect very deeply.

Sen. Barrack: Since the Minister is going to deal with the difficulties that we are having—I do not know if he will answer this difficulty. When he knew that this matter was going down, all this planning was going into the reformation of the police service, why was it necessary to drag the police service, the police commissioner and the Police Service Commission into public scorn? I believe it is not for the Opposition to deal with, but the Minister should definitely deal with this matter. I should like to hear him on that.

Sen. The Hon. G. Draper: Mr. President, we have all, including the Opposition Bench, come here and said all kinds of things about different people. I am not going to be drawn into that particular issue at this time.

What I will say, however, is that notwithstanding some of the comments that I heard from the Independent Bench and some of the concerns, I am confident that they, too, will come to understand. I am confident because I know that Sen. Mansoor is committed to reform of the police service; that he is committed to reform of the Police Service Commission. You may ask me how I know that. It is because he has said so in the debate on the Appropriation Bill last year. This is what he said:

"There is another very serious and fundamental problem in the question of the provision of services in the country. Again, we have an abundance of Reports on it, and it is the whole question of service commissions. At page 162 of the report on the Constitution and the pages that follow, are enumerated all the difficulties that arise because of the way the service commissions function. The question arises: What are we doing about it?"

He went on:

"This is the body that we have decided, for very noble constitutional reasons, to use so as not to interfere with public servants. This is the body we have decided that we will use to protect our public servants, but it is not working. We have been told that it is not working. We know that it is affecting the quality of the services provided. But nothing is being done that I know about."

We meet here today to do something about it.

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Sen. Mansoor may have some difficulty—I admit—with some elements of the wording. As I said, the frailty of language at times creates difficulties in translating visions to the written word. But, clearly, his mind is at one with ours. A commitment to do something about it! A commitment to ensure that this Commission which we retain enshrined in our Constitution can, in fact, truly deal with the quality of service in the public service.

When my Friend, Sen. Dean, said:

"From this you will see that perhaps what is needed is to provide the Police Service Commission, as I said, with the tools that they need to do the job and not necessarily interfering with the Constitution."

What we are doing is providing tools. We are providing physical tools, we are providing organizational tools and we are providing human resource. We are providing physical tools, we are providing organizational tools in the police service and we are tools seeking also to provide human resource tools in the Police Service Commission, so that working together, they can get the job done. That is what we are about.

Mr. President: The speaking time on the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Hon. R. Huggins*]

Question put and agreed to.

Sen. The Hon. G. Draper: Thank you, Mr. President.

I was saying my Friend, Sen. Dean, I think recognizes that something needs to be done. I guess he is seeking to get some assurance about why we are doing some of these things, which I hope I am giving him. He concluded, and I am quoting from his contribution to this debate:

"However, I am also of the view that something must be done to correct a seemingly bad situation; a situation which I believe is retrievable; a situation which has caused some people to lose faith in the service commissions."

And what we are seeking to do through this whole package is to provide the wherewithal to ensure that there is faith in the service of the commissions, which is Sen. Dean's plea.

Sen. Daly, as I noted, spent most of his time on his concern with discipline, and therefore, with regulations and the need to treat with strengthening the regulations, and the management of discipline. That is a view with which we agree. As I said when I began, this is why we have laid here our own vision of what these amended regulations ought to be. We accept that one of the issues that we need to treat with, as we deal with improving efficiency and effectiveness in the police service, is the issue of discipline.

The critical element in dealing with that will be the regulations. We have accepted that and we have come to this Senate and we have said that. We have provided an example of the level of acceptance of that. But, it may well be—and I do not know whether it is a penchant, given perhaps where Sen. Daly does much of his practice—but very often when we think about human resource management we think about discipline, we think about industrial relations. But managing the human resource is more than that. We cannot be tunnelled in our vision about how we put systems in place to manage the human resource. While systems to manage discipline are absolutely critical, and we need to strengthen them, at the same time we need to put systems in place which will provide an environment in which people can achieve their peak performance.

It is for that reason that we need, not only to focus on issues relating to discipline, but also on other issues which impact on the other human resource functions. Let us not therefore, Mr. President, as we treat with this measure before us, lose sight of the wider elements of human resource management. Let us not lose sight of the work that has to translate that sentence which says; "That a body has power to recruit and appoint and promote and transfer." Let us not lose sight of the totality of that. Let us not focus only on discipline. Let us, therefore, understand that we need to put in place a statement of vision and purpose which allows a commission to understand the relationship between its actions, human resource management and efficiency as we put in place skills within the service to help it deal with that problem.

I alluded as well to the fact that the Bill before us would also allow the Commissions to appoint their own staff—very important. What it will do is that it will allow the commissions to ensure that they have their own staff to provide them with advice. It would, in essence, delink the Police Service Commission from the existing Public Service Commission which now provides staffing for the Police Service Commission. It would provide a focussed body of professionals whose only mandate is to treat with the police service.

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In the same way that we have done it now in the Bill with regard to the Appeals Tribunal, providing a focussed Appeals Tribunal only for the police service, we are doing it for the staffing of the commissions, which therefore would allow the Police Service Commission to have its own staff within its purview and control. We see this as an important step to providing us with a better quality service in the police service.

Mr. President, as I look at some of the other comments—I am just reviewing some of Sen. Wade Mark's comments; I think I have treated with all of them; I am not sure whether I have gotten through. *[Interruption]* We cannot operate with a level of myopia and a level of fear which keep us trapped and paralyzed in a system which has outlived its usefulness. We cannot do that! If we are to move this country forward, we have to be prepared, as leaders in this country, to look at the institutions which we have, to evaluate their appropriateness and to make the necessary adjustments as we see fit. This is what this measure is seeking to do.

As I have said repeatedly, it is not seeking to do it in isolation, but as part of a wider programme of reform for the public service and more specifically for the police service. In short, it is seeking to treat with what both Sen. Wade Mark and Sen. Michael Mansoor referred to as a total package—one piece of the package. Let us not attempt, therefore, to take half-baked approaches, to pour resources into environments which are not conducive to their performance.

Let us not do that! Let us not be myopic and believe that certain skills ought not to reside at certain levels in the society. But let us understand the need to bring to bear mindsets which come out of a range of disciplines and a range of experiences on a particular problem. Let us not see it in terms of personalities, in terms of who is there now and who may not be there. Let us rise above that, Mr. President. Let us rise above that to treat with our country, the needs of Trinidad and Tobago, which now cry out for a new approach, a new vision for managing people in our services—a new vision which has to come, not only by changing managers within, but also, Mr. President, by changing the focus and vision of a commission which impacts on the human resource within that service.

2.30 p.m.

Sen. Rooks: Mr. President, I agree with everything the hon. Minister is saying, but I am yet to be convinced that this necessitates a change in the Constitution. If he can cut it a little finer for me, maybe I would understand.

Sen. The Hon. G. Draper: Mr. President, if my good Friend, Sen. Rooks, accepts all that I am saying, clearly the only way we can deal with changing the composition of the service commission; the only way we can deal with providing staff for that commission; the only way we can provide the new focus for the commission is by changing the Constitution. That is where we have to enshrine this new focus; that is where we have to return to deal with the skill-mix of the commission; that is where we have to return to deal with staff for the commission; that is where we have to return to clearly and unequivocally identify the function of the Commissioner of Police, *vis-a-vis* the function of the Police Service Commission. There is no other place to do it.

We will change the regulations—and we have agreed to do that—but the regulations deal with only one aspect of the work about which we are now concerned. Therefore, to treat with this matter in the holistic way that we have been outlining requires us to return to the Constitution.

I submit, therefore, Mr. President, that on that basis we need to support this Bill.

I thank you.

Sen. Rooks: Mr. President, may I ask the Senator if he can tell which section of the Constitution offends or stops him doing what he wants to do now? I do not see it.

Sen. The Hon. G. Draper: Mr. President, I will just identify a few things. One is clause 122 (B) (1)—recognizing that I know my Friend Sen. Mansoor has some concern about the language—but it is there we are seeking to put some focus in the Commission which will allow it—under the nexus between its work and the human resource function—Perhaps, we can look at the existing section for comparison, which simply says:

"122 (1) There shall be a Police Service Commission for Trinidad and Tobago which shall consist of a Chairman and four other Members.

(2) The Members of the Commission shall be appointed by the President..."

It does not provide a sense at all of how their work impacts on the human resource function. And as I quoted—I started with the O'Dowd Report to point to the fact that their decisions have now led us to the point where we have a police

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service, staffed at the upper levels largely on the basis of seniority and not performance, with an age profile which creates serious doubts about the future. That is one of the things we are changing.

The existing Constitution really does not provide the strength which we propose to provide the Police Service Commission with to appoint its own staff. The amendments also deal with putting in place a Police Service Appeals Board, which is unique, dedicated to the police service. It also very clearly articulates the powers which we are giving, in terms of discipline and promotion, to the Commissioner of Police, ambiguous in other places. It also includes a reporting function to Parliament, which again, as I quoted from our Caribbean report is something that has been called for. It provides this Parliament with an opportunity to review the impact and implications of the work of that commission on the efficiency of the police service. All these things we have included in the amendments which can be done only through a constitutional amendment.

Thank you, Mr. President.

Sen. Surendranath Capildeo: Mr. President, we are informed by the Explanatory Note to the Constitution (Amdt.) Bill, 1994 that the Bill seeks *inter alia* to amend the Constitution for the purpose of the reformation of the Police Service Commission.

Let me assure hon. Senators that we are embarked upon a spurious, ersatz debate. I have to question the honesty of purpose, the real motive, the urgent, dire necessity of this peculiar bit of slipshod, slapdash, sloppy legislation.

So we have been treated by the hon. Minister of Public Administration and Information to an overdose of verbiage on clinical, objective, resource management theories, loaded with technical jargon that belies the reality of the situation. Words will not give the police cars; words will not give the police wireless sets; words will not give the police guns; words will not give them decent police stations; words will not give them uniforms; words will not give them all the little things that are necessary to make the service work. Like the economists of the People's National Movement, Sir, the management theorists of the People's National Movement have destroyed not only the economy of the country, but also the management, the morale, the men and the women of the public service. The PNM have been there for 36 years; they have destroyed everything.

We are supposed to be considering a Bill to amend the Constitution of the Republic of Trinidad and Tobago. No other form of legislation could be of greater importance, of greater consequence or more momentous. We are, after all,

amending our Constitution. No other document is more sacred in the life of an independent, democratic nation state of the 20th century than its constitution. We ought to approach it with all the deference, all the thought, genuflection and seriousness it deserves.

But this debate has been characterized more by what has not been said than by what has been contributed by the champions of legislative hysteria. Because this is what it is all about, hysteria. An attempt is being made to induce the population into a state of hysteria over crime. For what purpose, only a few opposite know. It seems that nothing is sacred in our land any more, not even the Constitution.

In 1990 this very Parliament was defiled by the blood of its elected Members. Twenty years earlier the church was desecrated and invaded; and only recently our Judiciary has lost its inherited, maybe its vicarious, nobility, and it stands condemned for all time in Commonwealth judicial history. Parliament, Church, Judiciary, the Trinity of Trinidad all in a mess. All!

Have we become so free spirited and such free thinkers that we are now a nation of iconoclasts with the spirit of carnival bacchanalia as our national philosophy? Have we lost the ability to be serious about our affairs? Let me repeat, Sir, lest hon. Senators forget, we are about amending our Constitution. This is not a bill to change the weather vane on the Red House from a dragon to a dove; this is a Bill to amend the Constitution of the Republic of Trinidad and Tobago. You do not approach it lightly.

Mr. President, permit me to quote from the first inaugural address of President Abraham Lincoln in 1861:

"This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government, they can exercise their constitutional right of amending it or their revolutionary right to dismember or overthrow it."

These people are begging for that to happen in this country

2.40 p.m.

Lincoln goes on, Sir:

"I cannot be ignorant of the fact that many worthy and patriotic citizens are desirous of having the national Constitution amended. While I make no recommendation of amendments, I fully recognize the rightful authority of the

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people over the whole subject, to be exercised in either of the modes prescribed in the instrument itself, and I should, under existing circumstances, favour rather than oppose a fair opportunity being afforded the people to act upon it.

I will venture to add that to me the Convention mode seems preferable, in that it allows amendment to originate with the people themselves, instead of only permitting them to take or reject propositions originated by others not especially chosen for the purpose and which might not be precisely such as they would wish to either accept or refuse."

Abraham Lincoln continues:

"All the vital rights of minorities and of individuals are so plainly assured to them by affirmations and negations, guarantees and prohibitions, in the Constitution, that controversies never arise concerning them. But no organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate, nor any document of reasonable length contain, express provisions for all possible questions ... From questions of this class spring all our constitutional controversies."

Abraham Lincoln in 1861, dead on what is taking place in Trinidad and Tobago in 1994.

Mr. President, according to Hood Phillips and Jackson in their textbook *Constitution and Administrative Law*, seventh edition:

"Organic laws are a special class of laws for the passing of which a constitution prescribes some special procedure but which do not amount to constitutional amendments."

That, Sir, really is the crux of this vexed problem of the administration of the police service. We need to look at the existing provisions, improve on them, but there really is no need to amend the Constitution.

That is why I began by questioning the motive for this so-called amendment of the Constitution, and I ask the question: Is this the precursor, the forerunner of an impatient minority cabal to get constitutional sanction for political control of all facets of public service commissions?

More than 130 years ago, Abraham Lincoln recognized that amendment of the Constitution ought to originate with the people themselves.

Mr. President, what are the facts in this matter? Let us look at the honesty of purpose and see what has taken place. On March 2, 1993 the Leader of the Opposition met with the Prime Minister at the Prime Minister's invitation to discuss the rising crime rate and the deteriorating situation in the police service.

On All Fools Day, April 1, 1993 the hon. Minister of National Security wrote the Leader of the Opposition a letter outlining Government's proposals for a review of the management of the police service.

Immediately upon receipt of this letter, the Leader of the Opposition began a series of consultations with relevant organizations and individuals seeking their opinion and advice on the proposals of the Government.

On June 30, 1993 the Leader of the Opposition submitted to the Prime Minister a detailed response to the Government's proposals. Here you begin to question the honesty and motive for this amendment—it is important to note that to date there has been no response in writing to this document either by the hon. Prime Minister or the hon. Minister of National Security. However, after six months of silence—and not even the decency of a response—on Friday, January 21, 1994 at about 4.00 p.m., the Leader of the Opposition received from the Prime Minister, at a sitting of the House of Representatives, copies of the Government's proposals for the establishment of a police board of management. Again, consultations were held by the Leader of the Opposition with all the relevant organizations and individuals. On February 7, 1994, the Leader of the Opposition wrote the Prime Minister a detailed response to the Government's proposals for a review of the management arrangement for the police service.

Once more it is important to understand that, again, there has been no response in writing to this document either by the hon. Prime Minister or the Minister of National Security.

Hon. Senator: That is not true!

Sen. S. Capildeo: Instead, Sir, this Bill to amend the Constitution has been thrust upon us and the population, whose views have not been solicited by the Government.

Mr. Sobion: Mr. President, on a point of correction. I note that Sen. Capildeo was precise enough to say that no reply was received from either the Prime Minister or the Minister of National Security. However, he deliberately, omitted that a response was sent from my office in response to the reply from the Leader of the Opposition.

Sen. S. Capildeo: It was a mere acknowledgement. There was no response. Let us be serious about it! It was an acknowledgement! There was no response! This is all part of the game—two detailed responses and one acknowledgement.

It is preposterous that this Bill should come in this form, notwithstanding the statement from the hon. Minister of Public Administration and Information. The Government has been in possession—and we had proof of it today—of the O'Dowd Report entitled *The Review of the Trinidad and Tobago Police Service* (May, 1991). That report considered:

- (i) the Lee Committee Report of 1959;
- (ii) the Darby Commission of 1964;
- (iii) the Carr Committee Report of 1972;
- (iv) the Bruce Committee Report of 1984; and
- (v) the Police Executive Committee Research Forum Report 1990.

The Government also has in its possession the notorious Scott Drug Report and the entire Scotland Yard Report.

Hon. Senator: Which you have!

Sen. S. Capildeo: We do not. The Government has access to the Draft Independence Constitution of 1962 and the Queen's Hall Conference Report. It has the Wooding Constitution Commission Report of 1974 and the Hyatali Constitution Commission Report of 1987.

Also, the Government has had the benefit of the judgment of the Privy Council in the 1981 case of *Thomas v. the Attorney General*, in particular the judgment of Lord Diplock.

Mr. President, throughout all these reports, and these commissions, and in the judgement, the one constant principle enunciated has been the safeguard of the independence of the service commissions. The Government could not possibly be blind to this fact as stated in the words of Lord Diplock as follows:

"The whole purpose of Chapter VIII of the Constitution which bears the rubric. "The Public Service" is to insulate members of the Civil Service, the Teaching Service and the Police Service in Trinidad and Tobago from political influence exercised directly upon them by the Government of the day. The means adopted for doing this was to vest in autonomous commissions to the exclusion of any other person or authority, power to make appointments to the

relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service. In respect of each of these autonomous commissions the Constitution contains provisions to secure its independence from both the executive and the legislature."

2.50 p.m.

I repeat Lord Diplock—

"—was to insulate members of the Civil Service, the Teaching Service and the Police Service in Trinidad and Tobago from political influence exercised directly upon them by the Government of the day."

Then, Sir, I ask you to look at the Bill, look at clause 122A(3):

"The President shall appoint as Chairman of the Police Service Commission, one of the persons appointed under subsection (2)."

the President there is the Cabinet—

"—one of the persons appointed under subsection (2)."

The persons under subsection (2):

"—shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition."

They gave the persons:

"There shall be a Police Service Commission for Trinidad and Tobago which shall consist of the Permanent Secretary, the Commissioner of police and seven other members appointed as follows:"

What is there to prevent the Permanent Secretary from being the chairman? What is to prevent that? Then we have a whole set of diatribe about human resource personnel, when there is the political influence being capable of directly taking place by the appointment of the chairman.

The philosophy behind these provisions in our Constitution is quite clear. In fact, the Hyatali Commission went one step further and provided an elaborate booklet entitled *Thinking Things Over*. In its introduction the Hyatali Commission said:

"From a cursory examination of the Constitution it appears obvious that there are many areas in which revision can usefully be made but before recommending any, the views and opinions of the people must be fully heard and carefully considered."

As if to emphasize this fact, Sir, the commission devoted a chapter to the service commissions and posed several questions which must be considered. These questions are all relevant and bear repeating, if only for the record, for these are the questions which should have been the basis of a public debate on this matter before this Bill should have seen the light of day in this Parliament. They have had knowledge of this document. I am going to read the questions into the record so that the public of Trinidad and Tobago would be aware of the fraud that is being perpetrated on them by virtue of this so-called amendment.

In 1987 the Hyatali Commission asked the following questions:

1. Should membership of the various commissions be increased?
2. Should the reasons for disqualification for membership be expanded to involve age or number of terms?
3. Should the powers of the commission be expanded to facilitate greater efficiency in dealing with matters of discipline on the part of public servants?
4. Should disciplinary procedures be so reformed as to enable commissions to give their decisions in writing in every case so that a person aggrieved by such decisions could take legal proceedings in reference thereto?
5. Should members of the commissions be full-time paid officers to facilitate efficiency and promptness of action?
6. Should there be prescribed qualifications for the chairmanship of the commission?

Under this amendment there could be a political appointment.

7. Should the membership of the Public Service Appeal Board be expanded to enable it to sit in more than one division for the disposal of appeals?

8. Should the Chairman of the Public Service Commission be appointed on the advice of the Prime Minister and the Deputy Chairman on the advice of the Leader of the Opposition?

Then, Sir, most interesting:

Should the other members be appointed from among persons representing other specified interest and/or professional organization after consultation with the Prime Minister and the Leader of the Opposition?...Should this policy be applied to other commissions? Or should membership in the various Service Commissions be at the sole discretion of the President?

9. Should members of the service commission be removable at the discretion of the President?

We pass this Bill, and all of them would lose their work.

10. Should the court be precluded from enquiring into the validity of any performance of the function vested in a service commission?
11. Should all appointees to service commissions vacate office with every outgoing President but be eligible for re-appointment?
12. Should any public officer be entitled to receive more than one pension from the state?

The twelve questions are all relevant. Why did this Government not have the courage to go to the people of Trinidad and Tobago, pose the questions to them and get the answers? The Government has access to all these reports. Would it not have been more desirable to have the public respond to these questions and then come to Parliament with proposed amendments, if any, at all?

But we come to Parliament and we hear the hon. Attorney General tell us about a case which originated in Tuvalu. Before we look at the Law Report which I have here, let us find out about Tuvalu and compare that country to our beloved Republic of Trinidad and Tobago.

Sen. W. Mark: Where is Tuvalu, boy?

Sen. S. Capildeo: I shall tell you where Tuvalu is. Believe it or not—this is like an "Odd Spot" in the *Guardian*.

Tuvalu is an independent nation composed of nine small islands south of the equator in the Central Pacific Ocean. If one looks at a map, it is northeast of

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Australia and the dots are so small, that even with bifocals like mine one would not see them at all. They can barely be discerned. They are not even specks, in the words of a former Prime Minister, George Chambers. Tuvalu has a land area of less than 10 square miles.

Sen. W. Mark: Oh God! Tuvalu, boy!

Sen. S. Capildeo: Do you know how it came into being? As a result of racial tension between the Gilbertese and Ellice Islanders who demanded secession and later proclaimed themselves a constitutional monarchy with a unicameral legislature. There are no political parties.

Sen. W. Mark: What? In Tuvalu?

Sen. S. Capildeo: They do not have an official language. They do not have an official religion. The population is 9,300.

Sen. W. Mark: My God! Tuvalu!

Sen. S. Capildeo: The 1990 budget was \$3.5 million Australian. There is no railroad—they are like us. There are about 8 kilometres of paved roads.

Hon. Senator: Like us!

Sen. S. Capildeo: They have no newspapers. They have no television—fortunate for them. Like the police, they have 160 telephones. They have 2,000 radios in the nation state and the last time they checked, one scheduled flight arrived there in a year, I think.

Sen. Daly: What about the Chief Justice?

Sen. S. Capildeo: I am coming to the Chief Justice. Relax! That is the sweet part.

The case referred to by the hon. Attorney General of *Toafa and others v. Attorney General of Tuvalu* merely restates the well-known common law position that public servants can be dismissed by the Crown—do you hear that, Sen. Mark?—unless restricted by statute and that the public service commission is an independent body, free from outside control and direction.

But when one looks at the nation state of Tuvalu and one looks at the nation state of the Republic of Trinidad and Tobago, this case is totally and completely irrelevant and immaterial to this debate and to Trinidad and Tobago. I wonder if the research staff had time to look at the Constitution of Tuvalu and compare it

with ours. You see, we are fortunate to have one of the best constitutions in the world. Tuvalu is not so fortunate.

3.00 p.m.

Now let us get to the real meat of this debate. Our hon. Attorney General, my good friend, in his own relaxed style, raised several serious, fundamental questions with respect to our Constitution. I submit to you, Sir, that these really are the issues before this honourable Senate, not the verbosity of the hon. Minister about human resource personnel and that sort of thing.

It is what our learned Attorney General raised, not police administrative reform and the control of crime, for I do not, and the public does not, believe that this Government is going to do anything about crime, or can do anything about it. And the outburst by the Commissioner of Police at Queen's Hall against that little Fascist group tells us everything about the state of this nation. When a police commissioner could tell the head of the Chamber of Commerce that "your members are involved in drugs", there is very little else that can be said about this country.

I want to try to bring this debate back on course as to what the real issues are. They were raised by the Attorney General in a very sleight-of-hand manner. He raised several issues. The first was that the concept of shielding public servants from the political directorate is a concept that is born of the colonial experience.

The second issue he raised—important and serious topics: The dependence on external agencies on the affairs of our independent country—and he began to touch on the continued retention of the Privy Council, but he held back.

He went on, the third one: The concept of self-confidence and trust in the executive.

The fourth one: The reform of the service commissions while still maintaining their independence.

The fifth, one of the most crucial: The re-examination of the doctrine of the separation of powers and its relevance to constitutional law and life in Trinidad and Tobago.

I have kept for last, the sixth sleight-of-hand suggestion: Amendments to the Constitution. His words were:

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"..the Constitution is not written in stone...and one should not develop mental blocks in relation to legislation which proposes to amend the Constitution."

These are far-reaching, fundamental and tremendously important questions for this honourable Senate to ponder. They give you a clue as to the thinking of the hon. Attorney General and, by extension, his Government. What really is required is a full-scale debate on constitutional reform and the relevance of our Constitution to life in 21st century, Trinidad and Tobago. That is what is required. A life that goes beyond the Hobbesian description of solitary, poor, nasty and brutish, to the PNM description; homeless, unemployed, waterless, violent and uncertain.

A constitution may not be written in stone, but in a free democratic society its words are carved in gold in the heart, mind and soul of a nation. You do not tamper with a constitution for essentially trivial reasons. I say it is trivia that we are debating here.

As Bolingbroke said of the unwritten English Constitution in 1733:

"By Constitution, we mean, whenever we speak with propriety and exactness, that assemblage of laws, institutions and customs derived from certain fixed principles of reason...that composed the general system, according to which the community hath agreed to be governed."

As the text on Constitution and Administration Law of *Wade and Bradley* says:

"Applied to the system of law and Government by which the affairs of a modern state are administered, the word Constitution has two meanings: In the narrower meaning of the word, a Constitution means a document having a special legal sanctity which sets out the framework and the principal functions of the organs of government within the State and declares the principles by which those organs must operate...or in more modern words a Constitution in its wider sense refers to the 'whole system of Government of a Country, the collection of rules which establish and regulate or govern the government'."

But it is well known that no written document alone can ensure the smooth working of a system of government. A written document has no greater force than that which persons in authority are willing to attribute to it. Around a written Constitution will evolve a wide variety of customary rules and practices which attune the operation of the Constitution to changing conditions. These customary rules and practices will usually be more easily changed than the Constitution itself

and their constant evolution will reduce the need for formal amendment of the written Constitution. A written Constitution cannot contain all the detailed rules upon which a government depends.

I have barely touched on this aspect to demonstrate the fallacy of the argument that we must reject concepts born of our colonial heritage. It is precisely because we have been unable to develop a wide variety of customary rules and practices which attune the operation of the Constitution to changing conditions that we have found ourselves in this ridiculous situation of buck-passing, from the Minister to the police commissioner and the Police Service Commission, and back. Now we are seeking to change but in constitutional theory and practice it is quite wrong to burden the Constitution with encyclopedic details on how to manage our affairs with respect to the police.

We just have not been able, despite our bravado about rejecting our colonial past and all the posturing of self-confidence, to build up a body of conventions and plain, simple good manners which will have the moral force of written law. We have not done it in this country. We do not have conventions which we recognize as law. We break every single convention, and so you want to have a constitution to take care of everything. Impossible!

That is why you have judge suing judge. That is why we have made judicial history. In Commonwealth judicial history, this country will go down with a stained character on its Judiciary. That is why, perhaps, section 122 (g) is being introduced.

But if we continue to legislate for every detail, every misgiving, every suspicion, every doubt, our Constitution will exceed the *Encyclopedia Britannica* and the *Encyclopedia Americana* in content. We cannot do it.

The hon. Attorney General has been speaking about having the courage to develop, but he must also tell us where is the moral suasion coming from. This Government has not got the moral authority to speak to its people. It just does not have it. Therefore, it will not get any support and it has to come to Parliament with endless rules and regulations and put them into a constitution. A constitution is not designed for that.

3.10 p.m.

Look at the American experience and see how many thousands of amendments have been proposed and see just how many got through. I think I have made the point that this debate really is more about what has been left unsaid

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about a constitution than what has been said. It has nothing to do with police reform. It is only a kite being flown to see how we are going to respond. Where is my Friend, the hon. Attorney General? Sen. Daly, I am now going to get back to the judge.

I should end with the true value of Tuvalu. The name of the judge who delivered the judgment is Donne. That really is the only relevance of this case because it reminds me of the immortal words of John Donne, the poet and his immortal lines; "No man is an island, entire of itself", and the classic which is so appropriate having regard to what went on in the last week: "Any man's death diminishes me, because I am involved in Mankind; And therefore never send to ask for whom the bell tolls; it tolls for thee." Maybe the hon. Attorney General and his Cabinet friends are hearing bells tolling in the distance.

Thank you, Sir.

Sen. Diana Mahabir-Wyatt: Mr. President, there seems to be something rather puzzling going on in this Senate, not just today, but during the entire course of the debate on this Bill. I am hoping that some of my more astute political Friends can, perhaps, explain it to me.

The Attorney General in introducing the Bill was very careful to point out that the Constitution was not to be amended lightly, and I think there have been various voices, subsequently, that have supported this particular point of view. If, at all, it is to be changed, he said, it should be done via a mechanism which is going to serve the best interests of the country. With that in mind, we began to debate this Bill before us.

I have listened very intently to the debate so far—sometimes there was a debate but very often it seemed that people just brought prepared speeches to read, not bothering to listen to anything that came before. It is a pity, because there have been some extremely interesting points made in the course of this debate.

One point made over and over was—and Sen. Capildeo just referred to it—had to do with the purpose of having service commissions in the first place. This seems to have been right from the beginning—and I think Sen. Daly referred to it as well—that the purpose of having service commissions in the first place is to protect public officers and public servants from victimization or political control. I think words like "buffer" and "shield" have been used, but apparently the argument is that the existence of these service commissions must be guarded very carefully because they protect public servants from victimization.

I tried very hard to examine the premise on which this was built because it seems that we are not really looking at the bases on which these arguments are developed. We have service commissions now—the Police Service Commission, the Public Service Commission—and people have been victimized in spite of the existence of these commissions.

Can we really doubt that people like Doddridge Alleyne, Eugenio Moore and Patricia Robinson were not subject to victimization? We do not even have to go that far. We can look at the police service, the Scotland Yard Report that we are referring to. We have a Police Service Commission and I respect the worries that fellow Senators on the Independent Bench had about disturbing the structure of existing commissions. However, in terms of victimization, if one looks at paragraph 8.5.2 of the Scotland Yard Report, one sees the point is made about the Honoré team which was investigating problems that existed at the time in the police service. It says that the surveillance/arrest team led by Corporal Honoré had been made ineffective; they had been transferred to normal duty—that transfer had been published—they have lost their detective status, their firearms, and they had generally been castigated. Where were the service commissions then? Where were the service commissions when Doddridge Alleyne and Eugenio Moore were being victimized?

We are also told that these service commissions act as a buffer, but they certainly were not acting as a buffer in relation to the issues of the police led by Corporal Honoré. Victimization is wrong wherever it occurs. It is wrong whether it is for political reasons or any other reasons, but it does seem that the service commissions and the Police Service Commission have not been able to do anything about it.

Perhaps they protect the public service from political control. Certainly, Minister Robinson-Regis did make that point in her contribution. In fact, she said "the Constitution clearly states how the permanent secretary is appointed; there is no political interference in the appointment of permanent secretaries. I would like to make that quite clear". But we all know that section 120 of the Constitution states that the offices of Permanent Secretary, Chief Technical Officer, Director of Personnel Administration, a head of a department of government, a chief professional adviser in a Ministry are subject to the approval of the Prime Minister. Now, this may not be regarded as political control, but it does indicate a certain amount of influence one way or the other. There may not be anything

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wrong with this, but when the Prime Minister has a right to veto any of these appointments, if that is not political control, it is something very close to it.

I should like to quote from the Dolly Report on the public service, where the point was made that:

"A number of administrative officers are very hesitant to use their initiative in getting the machinery of Government moving for fear of finding themselves in disfavour or even under investigation. This fear exists not only in relationship between civil servant and civil servant but also between civil servant and Minister.

I do not know whether that is political control, but it certainly sounds like it to me.

"The fear and distrust within the public service is also manifested by the fact that in 1984, seventy-seven percent (77%) of public servants felt that there was victimisation in the public service."

This was under a system in which we did have a Public Service Commission, a Police Service Commission, a Teaching Service Commission and all the other commissions. If they were intended to serve the purpose of saving people from political victimization and control, they have not, in fact, been very effective in this regard.

3.20 p.m.

There are other sorts of victimization as well. Sen. Capildeo referred to the Crane matter which is a different service commission. Then there is the strange case of Mrs. Rambisoon in the teaching service, who having gotten her Ph.D. was confined to primary school teaching in spite of year after year of application to use the knowledge that she had gained, and even paid for herself. When they are talking about the purpose of service commissions to save persons from victimization of one sort or another, I am not quite sure what they are talking about. What they do, perhaps, is to save people from being disciplined when they should be disciplined; and save people from being disciplined despite deficiencies in performance and behaviour. I do not think that there is any one reason for the poor performance in the public service, but I think that this is certainly one of the reasons that contribute to it.

I think, Lord Diplock or no Lord Diplock, it is about time, after 30 years of existence, that we asked ourselves whether the service commissions are, in fact, still relevant in the form in which they are, without getting a word for word repetition of all these rather paranoid theories that were expressed in 1956 about the need for protection. I am sorry that Sen. Draper has left because I have a great deal of respect for what he is trying to do to increase efficiency in the public service, but it is only going to work if direct control over promotions and discipline is in the hands of the people that manage staff, not in the hands of some remote commission which does not know, has never seen, never worked with or has no knowledge of the efficiency or the ability of the people that they are ultimately responsible for disciplining and controlling.

I have had 30 years experience professionally in dealing with human resource management and industrial relations, and there are certain basic principles in the public service, the private sector, state enterprises, large and small, that have been manifested over those 30 years. One of them is that you are bound to have poor performance in any organization where you remove the authority to discipline, promote and transfer from the people who manage the particular organization. If you manage people you have got to have that kind of authority over them, otherwise they lose respect for you and you lose your authority. It is not a theory; this is just a fact that has shown itself over and over again.

I am not quite sure how this particular amendment is going to serve the purpose that both the Attorney General and Sen. Draper have enunciated. The Attorney General's contention was that the service commissions lacked focus in the existing Constitution, and I was grateful to Sen. Draper for his elucidation of that point when Sen. Rooks asked him about it, but focus is a peculiar choice of word to say the least when regulations under section 129 of the Constitution take up 49 pages and a further five pages of an amendment in 1990. It is not lack of focus. If you read, there is a great deal of focus there.

While I agree that there is the need for strategic planning and a new approach in the police service—and this has been obvious for so many years that it is pathetic to even mention it. I am still puzzled as to how this particular Bill we are looking at is going to accomplish it. What it does is to change the composition of the service commission. Giving more focus, which it does, in delineating the skills that go into the service commission is not going to help if there are people sitting on the commission who are more concerned with procedures than performance. This is what we have seen so far. We have someone who is an

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expert in behavioural sciences, specifically industrial relations, on the Police Service Commission. Perhaps, Sen. Draper is aware of this, but I am not addressing simply the Police Service Commission at the moment, but the service commissions generally.

And the qualifications of people are no guarantee. The fact that you are putting someone who has experience in management does not guarantee that that person has the faintest notion about strategic planning, or that by having experience in business they have any right there either.

Appointment under this Bill is in consultation with the President, as was the last commission, so presumably the same people could be appointed. I am concerned about people being on service commissions, for example, the Police Service Commission who are so tied to procedure and not performance that they refuse to examine the provisions of the Scotland Yard Report because it has not been properly referred or referred in accordance with approved procedures, while performance goes downhill.

I think when people are psychologically hamstrung, tied hand and foot with regulations, it makes it impossible, psychologically and procedurally, to operate. To refuse to act or not to act is as much an abuse of responsibility and power as using power negatively and destructively. I am not convinced that this amendment is going to guarantee the sorts of changes that we need to see.

Sen. Draper talked about the need for discipline, the need for improved discipline. He did try to convince us most eloquently that this amendment was going to lead to that, but it does not logically follow. He did it very eloquently, mind you, and it was very impressive, but when you actually take a look at it, what you are talking about is amending the Constitution in relation to the Police Service Commission, not the regulations themselves. Presumably the regulations are the ones that are going to have to deal with discipline. I do not want to tamper unnecessarily with the Constitution either, or with any law that works, but I should like to quote Judge Deyalsingh on the Caribcare, 1993 Regional Human Rights Conference, referring to a judgment of his when he said:

"Times have changed and so too must there be a change in the law. We must not make the mistake of deifying the Constitution. We would then be serving a false god and imperiling society."

The Constitution was made by men and presumably it should be able to be changed by men, and I certainly do not want to be accused of worshipping a false

god, particularly when it comes to the Constitution. I personally think the Constitution does need changing. I also think that the police service discipline regulations also need changing, but as far as I am concerned these are two entirely separate things.

Sen. Draper made a contribution—which Sen. Capildeo seems to think was rather academic in tone—about human resource management, but there was a point he was making which was essential; that is that discipline is a line function. I agree 110 per cent that the power to discipline, transfer, promote, should be in the hands of the Commissioner of Police entirely. When you have a para-military body you need para-military type discipline, but with the guarantee that the principles of natural justice will be satisfied by having a police appeal board by whatever name you may wish to call it. These powers should also rest in the hands of the permanent secretaries in each ministry with some sort of an appropriate mechanism for public servants to be able to apply for positions in other ministries for career development purposes. I do not think this will be too difficult and you do not need service commissions for this.

3.30 p.m.

Quite frankly, there is no question in my mind that in their existing form and structure the service commissions are actually harming the administration of the public service and police service in this country. I think it is intellectual cowardice to pretend otherwise. However, to make it worse, it is not just the service commissions. If I can return to the O'Dowd Report. There is a reference from the UN team that is helping in the restructuring of the public service to which Sen. Draper referred earlier.

It said that “there is at the present time”—it should have said “there are at the present time...” The grammar does suffer even in official reports—“three functional areas of personnel operation, DPA, CPO and Statutory Authorities Service Commission.” In relation to the police we still have the CPO and DPA. We have the CPO taking care of vacation leave and such things; the police commissioner taking care of something and the Police Service Commission taking care of other things. There is no co-ordination.

The reference made here was that each one operates autonomously with very little of the co-ordination that is required for successful completion of the job. The concept of a new job being established in an operating ministry, or police service in this case, classified by one of the other agencies recruited for, along with the minimum qualifications established by another autonomous agency under

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separate management control, leaves the problem of co-ordination and co-operation at the mercy of the winds.

We have a situation that is not that different at the present time in the Police Service Commission—and I can understand that it is necessary to change it, but what is being proposed at the present time does not do that. If it takes a constitutional amendment to achieve the co-operation and co-ordination and putting the control of people in the police service and all the other public service departments under the direct control of the people who are responsible for managing them, I say amend the Constitution.

It is just that I have a few problems with this Bill. I should like to address some of the problems in the drafting of this Bill. I am a little concerned that these points have not been brought up by the legal luminaries in our midst because a number of them have spoken already, but these points are worrying me. I am convinced having read this Bill that it is not really the intention of the Government or the Attorney General to have a constitutional amendment based on this Bill at this time.

I am quite sure. The only reason I can think about for introducing the Bill in this form is that there must be some sort of political strategy behind it that I just do not understand and I am hoping that some of my Friends would be able to explain it to me, because I am just not sure what the political strategy is.

If you are going to create a new constitution which will have the power to discipline the Police Commissioner then to make him a member of that commission—to put the Police Commissioner on a commission which has the power to discipline him is managerially and psychologically wrong. It implies a conflict of interest which can be very dangerous. He is not there *ex officio*; he is there as a member. It puts the commissioners in a conflicting position of having to act against one of their own members, which does not happen very often in any sort of board of directors. This, I presume, to be a kind of board of directors, but I will come back to that. The permanent secretary has been put on the commission in direct conflict with section 126 of the Constitution which has not been repealed. As we all know, this section of the Constitution says that a person who holds or is acting in any public office (which the permanent secretary is), is not qualified to hold the office of a member of a service commission. We have a provision in this Bill which is contrary to the Constitution. I cannot believe that the Attorney General would actually be asking us to build this kind of self-contradiction into our Constitution.

With the exception of these two, none of the other commissioners that are named in clause 122A have any knowledge of or are familiar with police procedures. Again, I think this is a little strange. I suppose they can learn, but in her contribution, Minister Robinson-Regis was quite adamant that this body was to have the authority to manage. She said that the Bill sought to give the proposed service commission the ability to have overall management responsibility for the police service.

These are people who have no knowledge of police procedures by the list we have before us. It is a board that would probably meet once or twice a month and it is being given authority to manage the police service. This is more than passing strange and it is extremely worrying.

Just *en passant* again, in reference to the drafting of this particular Bill, clause 122A(4) states:

"At any meeting of the Police Service Commission, four shall constitute a quorum."

This is contrary to the present provision in the Constitution section (2)129. There is nothing in this Bill that says section 129(2) is going to be withdrawn. Again, we have a provision which is contrary to an existing provision in the Constitution and it has not even been noticed.

If we go on to 122 B. which outlines the management functions that Sen. The Hon. Camille Robinson-Regis spoke of—I think that Sen. The Hon. Gordon Draper was a little clearer in terms of his emphasis. He was saying that the responsibility in this regard was not going to be overall responsibility. He said that any organization which impacts on the human resources of an organization impacts on the management of that organization. I thought it was a nice equivocation.

Clause 122 B states:

"(1) The functions of the Police Service Commission are—

- (a) to ensure that the Police Service is supplied with the human resources necessary for the efficient operation thereof; and
- (b) to ensure that officers demonstrate competence and effectiveness in the performance of their duties."

That last is performance appraisal. Again, it is putting the responsibility of performance appraisal not in the hands of the people who directly control the

people who are carrying out their duties, but in the hands of the commission that does not know them and has never seen them work.

I am not going to go into the whole question of section 85 of the Constitution because I think that Sen. The Hon. Gordon Draper has dealt with that. I am concerned with the extent of the power (whether it is amended power) that is being given to this particular service commission.

When Sen. The Hon. Camille Robinson-Regis made her contribution the other day, she referred—rather unfortunately. I thought—to the example of the tragedy that occurred at St. Ann's. She spoke about the role of the service commission. She said that we have seen a situation that exists within the health service. It is unfortunate that this had to be raised. When the tragedy occurred at St. Ann's, the people were saying that the Minister was responsible for what happened. This was in the context of Minister Huggins being responsible for the police service.

An examination showed that even though the Minister of Health could exercise general direction and control over what was happening, he could not prevent that particular incident from taking place. Indeed the responsibility did not necessarily lie with him since he does not have that day- to- day running of all the institutions over which he has control. The Public Service Commission has more control over these institutions.

The service commission under this Bill would have that kind of control over the Police Service Commission and it seems that some of the other service commissions do. This is exactly the point. These commissions are not accountable to anyone at the present time. This Bill intends to make this commission responsible to a committee of Parliament. I will get back to that. If the service commissions throughout the county have allowed such levels of incompetence to develop, which apparently they have, to the point of killing a number of innocent and helpless people, then they should have all been fired.

3.40 p.m.

This is the system that we are trying to defend? Protecting people from victimization and political control to the point of developing incompetence? Quite frankly, I think that some of Sen. Draper's public service reforms are doomed to failure unless all of the theory that he has so carefully put in train is allowed to operate, by removing the service commissions in their existing form and structure. Doing otherwise, one is tinkering with structure and not dealing with the problem.

As I said earlier, I am not afraid of amending the Constitution, but I am confused by this Bill in front of us. Clause 122(B)(5), which has been much commented on, says:

"The Police Service Commission should be accountable to a committee of Parliament in relation to the performance of its functions."

Now, Mr. President, the Attorney General—and I wrote down the words as he was speaking—referred to a joint committee. The Bill does not refer to a joint committee, it refers to a committee of Parliament. So we do not know whether it is a joint committee or a select committee, or what kind of committee it is going to be. And while I do not think all constitutions are sacred or deified to the extent which perhaps the legal people here do, may I just point out that the only other committees which are in our Constitution are the Public Accounts Committee and Public Accounts (Enterprises) Committee? The sections dealing with them run to over 500 words in 17 sections and subsections to describe, in detail, those committees and their functions.

This particular committee takes exactly four words. It just says: "a committee of Parliament." This is not inadvertence. We are changing the Constitution, which is a serious thing, to deal with what is regarded as a very serious problem in our society, but in doing so we are putting in four words. They are adult people with appropriate qualifications who drafted this Bill—and they have placed it before us and I am wondering why. I am just hoping someone will explain it to me because it could not be because they wanted it to be passed in this form.

The difference between the Public Accounts Committee and this committee, which would be the police supervisory committee, or whatever it is, if we are really serious, we cannot dismiss in just four words. I think that we have to get something which is more focussed, to use the Attorney General's own words. I want to amend the Constitution. I am not afraid of that. I want to replace the service commissions with a system that places power where it should be—in the hands of permanent secretaries and the police commissioner. I want to do exactly the things that Sen. Draper has said, but if we are going to have a service commission at all, I agree that it should be responsible to Parliament in some way. But let us be serious. This gives us nothing to go on.

There are other things which I could comment about, again in the drafting. Clause 4, 122(G) this Bill just repeats section 129(3) of the existing Constitution, and that has not been repealed. There are all kinds of little things like this which

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just seem to have been ignored or passed over, or perhaps the people who were drafting it really did not want us to go ahead with it.

In closing, I wonder if the Attorney General could just explain why in the proposed 122F the power of consultation was removed. In the existing Act the commission has a power of consultation, which has been removed in the draft and I could not understand the logic of or reason for that.

Also, under 122G, I just wanted to point out that 122G(c) is already there; it is a repetition of 129(3), so we have a repetition of provisions in the Constitution. I think the Constitution is important enough to most people in this country, particularly people who are in the legal area generally, who would want it to have a certain elegance area but this amendment is certainly not giving that to us.

Mr. Sobion: I wonder whether the hon. Senator could clarify the question raised with respect to clause 122F.

Sen. D. Mahabir-Wyatt: I wonder if the hon. Attorney General would let me find it and send it to him in writing. It is a section which was taken out.

To round off, unlike some of my brethren on the Independent bench, I am not afraid of a constitutional amendment. I think that constitutions are made by men and they are intended to be looked at periodically; that they are not intended, as Judge Deyalsingh said, to be deified. We do not intend to be worshipping false gods and I am anxious to amend the Constitution if only to remove from it the existence of public service commissions which I am convinced, after 30-odd years, are no longer relevant in the form that they were conceived. One of the reasons for which they were put into the Constitution—to protect people from victimization—certainly has not worked. Over and over again we have examples of people who have been victimized and nothing very much has been done about it until the Government has changed and then people are put back into positions quietly.

Insofar as the control is concerned, there are various management measures which can be put into human resource management to protect people within organizations. The existing operations and systems of the public service commissions have not been successful and I am quite happy to amend the Constitution at any time if I am convinced that it is going to serve that purpose, but this particular amendment, Mr. President, I do not think will serve that purpose.

I think this amendment is far too sketchy. I think it is contradictory. I do not think that providing that people must have special knowledge and experience in certain aspects of professional expertise will ensure that they know anything about strategic planning and the sort of management of a quasi-military organization. None of them, except the permanent secretary and the police commissioner, who are not allowed to be there anyway, have any experience or knowledge of the police service. I have grave doubts about the wisdom of that kind of board in that situation with which we are faced.

I thank you.

Sen. Hydar Ali: Mr. President, before I start my contribution on the Bill, as this is the first time I am speaking since your return, I should like to welcome you back to the Senate and to wish you continued good health.

In piloting this Bill the Attorney General has assumed that the only objection to it arises from the fact that Senators are not readily inclined to amend the Constitution. In disagreeing with this view, he emphasized that the Constitution is not written in stone, implying that amending the Constitution should be a routine matter. While others have described his presentation in uncomplimentary terms, I would merely say that it was almost casual and even condescending at times. One certainly did not get the impression that this Bill needed a majority of not less than two-thirds of all members of the Senate for its successful passage. The experience in similar circumstances should have suggested to him an alternative approach.

It is well known and it has been pointed out in the debate that whenever changes in the Constitution are envisaged there ought to be wider discussion to enable as many individuals and groups as possible to have an input. After all, some of our best minds have deliberated for a long time before coming up with what we now have.

3.50 p.m.

Mr. President, from both the Attorney General's presentation and Sen. Draper's eloquent contribution, one gets the impression that what is before us is the creation of a Police Service Commission. No cognizance is taken of the fact that there is an existing Police Service Commission and if other means were employed, it could have worked better.

A case has been made for the establishment of a police service commission to do the work that perhaps the present Police Service Commission could have done.

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There was really no reference at all to the working of the present Police Service Commission. My position therefore, is that the Constitution should not be tampered with unless there are compelling reasons for so doing. It is not because there is any fear, but I think there ought to be good reasons for changing the Constitution.

The Explanatory Note to the Bill is silent as to the reasons for such an amendment and one would have expected the Attorney General to correct this deficiency. But this was not done, at least satisfactorily or convincingly. He merely stated that the amendment was part of the reform and review of the Police Service Commission. My question then is, why? I suspect that because of the failure of the hon. Attorney General to offer a plausible explanation, one Senator was prompted to give his own reason for the introduction of this Bill.

The Attorney General rationalized that there was one positive aspect to service commissions—that they were independent. I got the distinct impression that he considered this an anachronism in these modern times. The serious flaw in service commissions, which he termed a negative aspect, is that they are not accountable to anyone. I imagine this is to justify the creation of this committee of Parliament to which the proposed police service commission would be nominally accountable.

Another measure for accountability in the Bill is the laying in Parliament of a report on the Police Service Commission. On this matter, in response to a question from Sen. Rooks, Sen. Draper stated that the work of the fleet manager will be included in the report that is going to be put before Parliament. I wonder where in the Bill it is stated that the work of the fleet manager—and any other managers—is going to be included in the report of the Police Service Commission.

However, again going back to the mathematics of the positive and negative, I do not agree that the positive aspects of service commissions cancel the negative aspects; they are just not comparable. I am not even sure that the decomposition of service commissions into these two positive and negative aspects is either accurate or unique.

The best precedent the Attorney General could cite in support of this type of legislation emanates from a country whose name we were finding difficulty to pronounce until today. Now we know much more about it, not only pronouncing the name but also the size of its population, thanks to Sen. Capildeo.

This has been a long debate and many of the points have been mentioned before. I will basically go to some of the provisions that have been mentioned in the Bill. Again, one of them that has had lengthy discussion is clause 122A. The first thing I would like to look at is the composition of the committee. In a committee made up of nine persons, two of whom are *ex officio* and five who are high-powered and have these skills—I will just repeat the skills—special knowledge and experience in: law, human resource management, psychology, finance or business and management.

Then, as if as an anticlimax, there are two other people in the back here: Two persons representative of the interest of the community. When you have two people as *ex officios* on this committee, five other persons with these special skills and experience and then you append these two names. Who are these two people going to be? I suspect that it would be very difficult—unless people like the mere honour of serving on these commissions—to fill these two positions. They do not have any skills; they just represent the interest of the community. This is my reading of this and I am sure the Attorney General will correct me, if he can, when he replies.

Also, in justifying this, Sen. Draper mentioned that the O'Dowd Report stated that there should be a higher category of people in the police service. I wonder if the O'Dowd Report mentions that there should be a higher category of people in the Police Service Commission. I think, very conveniently, Sen. Draper was saying things about the Police Service Commission that applied to the police service and vice versa, very forcefully, but I do not think convincingly in terms of the Bill.

I do not want to go into areas of management on which other more qualified persons have spoken, but the implication here is that the efficiency of the police service depends on the Police Service Commission and hence the reason for changing the Police Service Commission.

If we look at 122B(1)(a) it says:

"The functions of the Police Service Commission are—

(a) to ensure that the Police Service is supplied with the human resources necessary for the efficient operation thereof;"

I wonder if this means recruitment. In another debate the Minister of National Security mentioned that there was going to be a route and the only route by which

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people could enter the police service, was through the Police Academy. Is that going to replace this, or is this going to replace that? I am giving you scope for a response. *[Interruption]*

These alternative routes have been developed now—the Minister of Education has been saying that to become a teacher you must pass through on-the-job training, a second session of which is in progress.

Others have asked and I would like to repeat, since it has been said over two weeks ago—Again clause 122B(1) it says:

(b) to ensure that officers demonstrate competence and effectiveness in the performance of their duties."

One wonders whether it is because of their special skills and their numbers that they would be able to do this and the present Police Service Commission is unable to do it.

Further, 122C says:

"The Police Service Commission may appoint on such terms and conditions of service as the President shall approve, such members of staff as may be necessary for the proper performance of its functions."

One did not have to amend the Constitution to do that. Again, Sen. Draper mentioned that in the interest of efficiency, the proposed Police Service Commission is now going to do that. What is being implied there is that the present Police Service Commission could not get staff. It may not have been able to appoint the staff, but surely, it could have made requests for staff. And I do not see how this is an improvement on what could have taken place before.

4.00 p.m.

Clause 122D(3) says:

"The Police Service Commission may at any time take over and determine any disciplinary proceedings before the Commissioner of Police."

I do not know whether that is legal language, but it gives the impression of some sort of authoritarian movement. A layman reading this would say that the Police Service Commission can at any time take over and determine any proceedings if necessary, or as the need arises. It implies that the Police Commissioner could get a phone call one day just like that, even if he is in the middle of an investigation.

Mr. President, these are some of the points I had to mention. When you come in at this time in the batting order, everything has been exhausted. I thank you very much for allowing me to make this contribution.

Sen. Carol Merritt: Mr. President, I too want to welcome you back. It is the first time I am speaking since your return to the Chamber.

I rise to make a few brief remarks on this Constitution (Amdt.) Bill before us. Let me say at the outset that this Bill was carelessly drafted. I am not a legal person, but all I had to do was to examine the Constitution and the proposed amendments to the Constitution that are before us, to come to that conclusion; and if any Senator wants to stand here and deny what I am saying, that Senator would be a blatant hypocrite, because this Constitution (Amdt.) Bill was not properly drafted, and I am stating that here today.

I know that there is much hypocrisy in this society today, but I am not prepared to stay here and be part of this kind of fallacy. I do not agree that we as Senators sitting here should take what is happening in our society today. Having to sit in this honourable Senate and being asked to pass carelessly drafted legislation is taking it a little too far.

Take for instance subclause (4) of the new clause 122 of the Bill. This refers to the Police Complaints Authority Bill that was assented to by both Houses of Parliament in July, 1993, but the Act has not been proclaimed. Therefore it cannot be established fully as yet, yet it is referred to in this amendment to the Constitution Bill.

Much has been said about the inclusion of the permanent secretary and the police commissioner on the Police Service Commission, and this is a point that has to be repeated; it cannot be repeated too often, it is the most critical aspect of the proposed amendment. The permanent secretary is a public officer—and I have to digress a little here, because Sen. Diana Mahabir-Wyatt did mention a similar point. It would seem as if we sat down and compared notes. I was a bit alarmed, too, that there are legal people who sit in this Chamber and did not recognize that there is a great flaw in this amendment to the Constitution. The permanent secretary is a public officer. *[Interruption]* I have to repeat it; although Sen. Mahabir-Wyatt stated it before, I have to bring it to the fore again—the permanent secretary is a public officer as declared by section 85(1) of the Constitution.

Now, if we examine section 121(3) and (4), we will see where there will be interference by the executive if the permanent secretary is appointed to the Police Service Commission. Not only that; if we examine the general provisions of the Police Service Commission in the Constitution, section 126(1) and (2), we will

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see that what the Government is proposing is illegal, and I state that it is illegal. You cannot appoint a public officer to any of the commissions established. *[Interruption]* It is stated here in the Constitution. Does the Senator want to dispute that? So the Government is trying to include innocent people in fraud. I am saying this. Allow me to quote the relevant section before the Government tries to let the population feel that, again, the Opposition is trying to hamper it in its progress for reform. I will quote from section 126(1) and (2) of the Constitution:

"126 (1) A person who—

- (a) is a member of the House of Representatives or the Senate; or
- (b) holds or is acting in any public office or has held any public office within the period of three years preceding his proposed appointment,

is not qualified to hold the office of member of a Service Commission.

- (2) A person who has held office or acted as a member of a Service Commission shall not, within a period of three years commencing with the date on which he last held or acted in such an office, be eligible for appointment to any public office."

So, Mr. President, this is my point, and if the Attorney General wants to deny it or dispute it, I think he will have a hell of a hard time doing so.

The Chairman of the Police Service Commission is also the Chairman of the Public Service Commission. How can a man whom you appoint sit on the same commission or the same board as you? Think about it. The impression I am getting is that the Government, in its haste to drop the hatchet on some people's heads, did not take time out to really examine the full implications of the proposed amendment.

I examined the composition of the Police Service Commission as proposed by clause 122A(1)(a) to (f), and I observed that not one of the other seven persons proposed was someone of a military background. For instance, the ideal situation would have been a military person with special knowledge and experience and training in human resource management. One has to be aware that the day-to-day functions, the day-to-day problems that might exist in the police service, or any section of the police service have military implications. Therefore, you cannot just pick up someone, because he is skilled in human resource management and put him on the Police Service Commission without his having a full appreciation of military proceedings in disciplining officers. This would only create more problems.

How can the police commissioner sit on the same commission that has the authority to appoint him and to discipline him? I think that is a bit contradictory. This definitely will not make the Police Service Commission more effective. I recommend that instead of trying to—

Sen. Draper: Mr. President, I wonder whether I could get some clarification from Sen. Merritt. Is she saying that she is agreeing that there should be skills on the commission?

Sen. C. Merritt: Yes, most certainly there should be skills on the commission.

Sen. Draper: Thank you.

4.10 p.m.

Sen. C. Merritt: But you have to examine and determine how you are putting these skills together. You have to be careful how you are appointing people.

The Police Service Commission is a very sensitive commission, so you have to be careful of the people whom you appoint. We do not want any party hacks on the Police Service Commission. Give the present Police Service Commission the resources to enable it to function effectively. Allocate a budget to it so that all the necessary equipment, goods and services that are needed by the police service could be provided expeditiously without the chronic delay that is caused by the red tape that exists presently.

I recommend that the Police Service Commission set the terms and conditions of the police officers, and not the Chief Personnel Officer. The Police Service Commission should meet at least twice per week and members' stipend should be increased so as to encourage them to work a bit harder to make the commission effective.

Clause 122B(5) boldly states that the Police Service Commission shall be accountable to a committee of Parliament in relation to the performance of its functions. There is no information as to what kind of parliamentary committee this will be. Will it be a sessional committee? Will it be a committee of both Houses of Parliament? What powers will the committee have to compel the attendance of witnesses or the production of data or other information? Clearly, the Standing Orders would have to be amended. If, as a result of what the committee hears, it forms the view that the police service is not performing its functions, what powers would it have to compel the performance of these functions, since in the proposed sections 122 and 123 there is no power to remove the commissioners? Will this committee be just another toothless or gumless bulldog?

Constitution (Amdt.) Bill
[SEN. MERRITT]

Wednesday, March 23, 1994

Mr. President, I am alarmed that this Government feels that it is necessary to tinker with our Constitution to enable the protective services to effectively institute measures to combat the crime curse, measures which will alleviate the fear, suffering and traumatization of our population. I want to know if the Attorney General and the Minister of National Security feel that tinkering with the Constitution will prevent or curb the upsurge in brutal crime. Will it prevent senior police officers from accepting money from the drug barons for specific services rendered? Does he think that would happen? No, Mr. President!

The fact of the matter is, these criminals have already established strongholds in customs, the defence force, the police service, and now I am also hearing that the spotless chamber of commerce is involved. If Mr. Bernard has the information that he says he has, instead of standing in that sort of forum and voicing those allegations, revealing this information publicly, why did he not set up a special surveillance on these people to catch them in the act? I wonder what is the purpose behind this. He should have planned some sort of strategy to nab these high-class criminals.

Hon. Senator: White collar crime!

Sen. C. Merritt: I am disappointed in him. All he did was to warn whoever are involved: "Hey, we are watching you, so clean up your act." That is what he did. He has lost some points as far as I am concerned.

Tinkering with our Constitution would not prevent those corrupt police officers from tipping-off drug criminals when there is a planned raid. I say "drug criminals" because that is what they are. I have no fancy word for them because they wear jacket and tie and sit in high offices. They are criminals—nothing else—and they are causing this country to be destabilized daily, and many young people are being killed all over the place. I feel very passionately about this thing.

Mr. President, can the Minister of National Security inform this Senate whether he has in his possession an appendix to the Scotland Yard Report that lists several police officers who are corrupt? If that report lists these officers, clearly, there is some sort of evidence implicating them. What is preventing him from releasing the information to the Director of Public Prosecutions and to the police commissioner to enable them to act on it expeditiously?

Sen. Huggins: No appendix.

Sen. C. Merritt: If the DPP and the police commissioner fail in their functions, there are measures to deal with them without tinkering with our

Constitution. Do we really need to bring back the Flying Squad? I understand that there is some decision to form a new Flying Squad. I wonder if there is still that calibre of men in the police service; the type of men who made up the last Flying Squad headed by Mr. Randolph Burroughs.

Hon. Senator: The Fox!

Sen. C. Merritt: If one remembers, the Flying Squad comprised men skilled in analyzing the operations of organized crime, in undercover works, surveillance techniques, arms control and survival techniques in the forests and hills of Trinidad and Tobago. One only has to reflect on the 1970s to see what I am talking about—the type of men whom the police commissioner would need around him to carry out the investigation that is necessary to capture the criminals that he spoke about at Queen's Hall on Monday.

Citizens are asking if our police officers are getting soft. That is a question being bandied about. “Like our police officers are getting soft?” That question is asked taking into consideration the length of time it takes to recapture escaped prisoners.

Hon. Senator: What has that got to do with the Bill?

Sen. C. Merritt: These prisoners remain at large for such a long time. There is one who has been outside for two years, and I understand that he has had two children since. Ah! the frequency with which they escape from the police stations. One only has to recall that recently, some officers of Special Branch were held up and robbed of their personal belongings. Mr. President, they have to protect you, the President, the Ministers, the Prime Minister, and they are being robbed. I thought these men were trained and skilled in personal defence tactics. They were robbed at a Recreation Club in Morvant. I am a bit confused! I find this a bit strange! Are these men supposed to be specially trained in tactics of defence of the person? I question this! Maybe, something in their training is softening up. Maybe, there is need to re-examine the training of police officers, especially the special ones.

I fear that if these amendments are passed there will be a level of political interference in the operation of the Police Service Commission. I do not want to see, in the near future, politicians influencing the selection of police officers.

Constitution (Amdt.) Bill
[SEN. MERRITT]

Wednesday, March 23, 1994

They hold responsibility in sensitive areas of law enforcement. I am a bit concerned about that.

4.20 p.m.

I do not feel that the Constitution needs to be amended to make the police service effective. The police service has to set as a priority objective the role of confronting and controlling organized crime, regardless of all the fancy words that my good Friend, the hon. Minister in the Office of the Prime Minister with responsibility for the Public Service and Public Administration, would stand there and put over. The main role is to make the police service effective in controlling crime.

Another priority of the Police Service Commission is to get rid of the rotten potatoes in the police service. If the Minister does not act on the information that he might have in his possession, the country will continue to exist in a state of siege and instability, regardless of what the Attorney General might say. He stated that our country was not under a state of siege by crime. I think he is the only person—

Mr. Sobion: I said so?

Sen. C. Merritt: At some forum; I watch television.

In talking about the Attorney General, I am appalled at the manner in which he presented this Bill here. It left much to be desired. This is our Constitution we are speaking about. The Attorney General stood here without a prepared text and he was just fishing for things to say. I am really appalled at the way in which he treated the Constitution. He treated it like a piece of rag and I am really upset about that. That shows no respect for our Constitution. That is really worrisome.

If we have to reform our Constitution, let us do it totally. Let us reform the whole thing and not do it piecemeal. We need to take the bull by the horns and deal with the major problems in the police service without changing the Constitution.

Thank you, Mr. President.

Mr. President: Just for the information of the Senate. Did I understand the Senator to say that the Attorney General treated the Bill with disregard because he did not have a prepared text?

Sen. C. Merritt: Yes, Sir.

Mr. President: He was complying with the Standing Order which says that speeches should not be read.

Sen. Prof. John Spence: I will not be very long, Mr. President, just five minutes or so.

Sir, I think a lot has already been said and it really is not necessary for me to repeat what has been said before. My main difficulty is that we have a tendency in Trinidad and Tobago if some institution is not working, instead of examining it and trying to make it work, we tend to reject it and try to set up a new institution. Very often, as I think the case is in this Bill, the institution we set up could have the same problems as the one we are replacing.

Some of the difficulties suggested to occur with the existing Police Service Commission seem to me could also quite readily occur with the new commission. It has been suggested that those persons who may not be embracing this too enthusiastically have some concept that the Constitution should never be changed. I certainly would not be in that position, but I would certainly say that when one is trying to make changes to the Constitution, it is extremely important to look at what else might be affected. Even in a very mundane way it is being demonstrated that there are provisions in this Bill which contradict directly some other sections of the Constitution. Clearly those would have to be amended.

But one is not talking about a direct contradiction in that way, but a more subtle change in—if one likes—the balance between various elements and safeguards that we have put into the Constitution. This is why I do not think that it can be done in this way. I certainly think that the minimum one should want to do is to have it discussed in more depth by a select committee.

My impression from discussions that I have been able to have before this debate, leads me to the conclusion that much of what is intended to be achieved here can in fact be achieved with the existing commission, and I have come to the conclusion that in some measure, a difficulty arises because of the human failing in communication.

I am almost tempted to offer my services to mediate between the Chairman of the Police Service Commission, the Commissioner of Police and the Minister of National Security, because it seems to me that if these gentlemen could sit down together over lunch one day, they could, in fact, arrive at a method of operation which would allow this to move forward. The hon. Minister shakes his head, and, funnily enough, my impression is that he, in fact, would be the one who would be most difficult to merge in that way to arrive at a common conclusion.

In addition to the difficulties with the existing Bill, I cannot see that this allows us to do anything which is not possible by a redrafting of the regulations under the existing constitutional arrangements for the Police Service Commission, and by a detailed discussion between the parties involved as to how one could proceed to make the system work. There can be delegation of authority from the Police Service Commission to the Commissioner of Police and, therefore, it is not necessary to give him a delegated power in the Constitution and then have a provision which allows them to take it back. It seems to me that really this is nonsense. I cannot see myself, certainly without a much more detailed discussion by way of a select committee, favouring the change, which I am convinced is not necessary.

Mr. President, it is even sadder, when one thinks of the effort that goes into this sort of discussion, to know that it could have been done differently and before now, and that while we are spending this time in talking, there are other things that need to be done and which should be done.

I regret that I was unable to hear Minister Draper's contribution. I will certainly read it in *Hansard*. Was he was able to convince this Senate that it is possible to have a committee to manage, and that a committee would ensure that resources are given to the police service, when in fact that committee does not have control over the finances which will go into providing those resources. That in itself is clearly nonsense.

I cannot see my way to supporting the Bill as it currently stands and certainly the amendments could not be done, in my opinion, just by going into committee of the Senate. One will need to have a select committee. I really feel that we must start looking at the environment that is leading to the situation of crime, in addition to what we have to do in order to make for better apprehension of criminals, which is what we are doing by improving the functioning of the police service.

It seems to me that if we indeed got the police service to function effectively and the Magistrates' Courts and the High Courts as well, we would run into another problem which I heard nobody discuss today or in the debate, and that is, we would have to build more prisons. Because clearly if we are apprehending more people, we would not have the space for them in the prisons. It seems to me that we would much more usefully spend our time in debates such as that, discussing what is the real background to our problems in Trinidad and Tobago leading to the increased crime. Clearly the drug trade is one, but there are other issues.

I just spent a few days in Tobago the week before last and my impression is—I think it is correct to say that crime is not as great in Tobago as it is in Trinidad. It may go in that direction in the future but currently it is not so. What is there in Tobago that makes it different? I think we ought to examine that and decide what measures we should try to put into place, and talk about those things which in the long run will allow us to function more effectively in reducing crime.

Mr. President, I am not convinced that we need this change and certainly I would not like to see any change which does not have a very thorough investigation which would come from a select committee, which committee could then interview a number of different persons with regard to how the change might affect not only this particular aspect of the Constitution, but also the balance between safeguards of one kind or another in the Constitution.

Thank you, Mr. President.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion):

Mr. President, I want first to thank Senators for their contributions to this debate. We have had, I believe, at least 12 contributions coming from the Independent and Opposition benches. Because of the range of issues raised, it would be well-nigh impossible for me to deal in any great detail with some of the serious issues which entered this debate. I, however, feel satisfied that those who were unconvinced before would certainly have, to some extent, been convinced by the presentation made by Sen. Draper earlier today when he clearly outlined, with authority, the need for management changes in the institutional structure if one is to achieve some of the desired objectives.

We have been at pains in introducing this Bill to indicate that this constitutional amendment was not to be viewed as, or seen as, the means whereby this society would have all its problems of crime removed. We were at pains to point out that what we were doing was dealing with the structure which is to administer the police service, and that other measures, legislative and otherwise, were being done simultaneously in order to correct the wider problem. So it is important for us in our deliberations on this matter to continue to view this measure as dealing with one specific aspect of the problem.

Constitution (Amdt.) Bill
[HON. K. SOBION]

Wednesday, March 23, 1994

By way of general remarks, I did indicate that there had been wide and varied responses during the course of this debate. There was one item of some significance, and that was the view in relation to the nature of the controls which should be put over service commissions. There was, I recall, a view expressed that the executive should have greater control over the service commissions. I am paraphrasing; I hope I am not misrepresenting anyone. But there was a suggestion coming through in the course of the debate that there should be greater executive control.

On the other hand, you had the view being expressed that there would be an excess of executive control if the permanent secretary were placed on the commission. Then there was yet another view that we should leave things as they are and leave the existing service commissions in a state which I described as being independent but responsible to no one.

Because there have been so many divergent views on this matter, I propose to deal briefly with some of the more salient matters and then propose to this Senate a certain course of action which would lead, in my view, to a more concentrated and detailed analysis of the provisions of this Bill. By way also of general comment, I think, perhaps, although Sen. Draper did deal with it, this question of consultation in relation to constitutional amendments, is a matter to which I should make reference.

It had been suggested that in piloting this Bill I had adopted an almost casual approach to the matter by the comment I made that constitutions are not written in stone. But I think those who made those comments fail to recall that I also said that in amending a constitution one should have a mature and deliberate approach, because the Constitution is, in fact, the supreme law of the land. I did read the actual constitutional provision which declares the Constitution so to be. So for the record, I want to make it quite clear that as pilots of the Bill, we on this side do not take a casual approach to amending the Constitution.

There was the suggestion as well that perhaps there should have been a commission of some sort to afford more widespread debate on the proposed amendment. Whilst I agree that if one is doing a general review of the Constitution, ideally it would be best to approach it by way of a commission of that nature, certainly, if one is looking at a specific problem within the Constitution, it would seem to me that once the amendment proposed arises out of some kind of consultation—not necessarily a formal constitution commission—

once there has been that kind of activity, and once it is based on some sort of reasoned position arising out of that kind of activity, then I do not think that a formal constitution commission is necessary.

Sen. Draper was at pains to point out, and I think other Senators also, the number of committees which had looked at the operations of the police service. They date back to the Lee Committee of 1958 to the O'Dowd Committee of 1991.

If one looks at the degree of consultation that took place in relation to the O'Dowd Report from which this concept evolved, there were consultations with, among others, the Police Service Commission, the Personnel Department, the Director of Public Prosecutions, the Judiciary and the legal profession, the University of the West Indies, the Organization and Management Department, the National Crime Commission, the Tobago House of Assembly, the Defence Force, Customs, Coast Guard, the Comptroller of Accounts, the National Computer Agency, the Joint Services College, the media, the prison service, and the list goes on and on.

This idea evolved out of the report of the O'Dowd Committee, which itself was a report based on wide consultation on a specific area of the Constitution; indeed, a very specific area of the Constitution. And the agencies which I have outlined are agencies which are best able to guide the way in any reform process in relation to the police service.

5.10 p.m.

We have adopted a mature and reasoned approach to this Constitution (Amdt.) Bill. It is a Bill which seeks, as I said, to set the institutional framework for dealing with the problems of the police service. Again, in respect of those who hold the view—which I do not—that the pouring of resources into the police service is going to help, I want to assure them that from figures I have seen in terms of money and in relation to equipment placed in the police service over the years, I am afraid that that will achieve nought unless the overall institutional strengthening of the police service takes place; and it must take place from the top. I had said that in relation to the management function of the police service.

In the course of making the point, I did say that although the Police Service Commission is not stated in the Constitution to have a management function, it is a function which is implied; and I cited the judicial authority from the independent country of Tuvalu which dealt with that point only. I cited a Tuvalu decision to say that the court there, in analyzing the role and functions of police service commissions and commissions of that nature said that—

Sen. Prof. Spence: Mr. President, could the hon. Attorney General tell us the size of this country?

Hon. K. Sobion: Mr. President, I am coming to that. In fact, if the Senator was present in the Chamber earlier, he would have been informed of the whole geography of Tuvalu, including its location.

I am deliberately repeating this position. The independent court of Tuvalu had this to say in relation to commissions:

"Although in legislation creating it and defining its function, it is not expressed specifically that the main function of the public service commission is the control and management of the public service, clearly, that is its implied purpose."

Instead, Sen. Capildeo sought to devalue the Tuvalu judgment without dealing—

Sen. Capildeo: Mr. President, on a point of order. I did not seek to devalue Tuvalu or make any value of Tuvalu. What I said is that it was irrelevant and immaterial to the debate as it affects Trinidad and Tobago. That is what I said.

Hon. K. Sobion: Mr. President, I will maintain, and the record is there, that he did attempt to devalue Tuvalu without dealing with the true value of the judgment. What he found was that it was sited somewhere northeast of Australia; it comprises nine tiny islands; it has eight kilometres of paved road; it has a population of 9,000—

Sen. Capildeo: Three hundred.

Hon. K. Sobion: Nine thousand, three hundred. What he did not deal with, however, is the statement in the judgment which says that commissions of this nature have an implied management function even though it is not so stated in the constitution.

I think one must be receptive to the learning which comes from even small countries, and not necessarily rely on Lord Diplock as being the fount of all knowledge.

Sen. Capildeo: Mr. President, on a point of order. Our judges in Trinidad and Tobago are equal, if not superior, to the Privy Council judges. I merely used that Privy Council judgment because its language affects what is taking place here! That is why I quoted it; it is very relevant.

Sen. Dr. Saith: All right, Lord Capildeo.

Sen. Capildeo: I object, Sir. As I said before, I am a Brahman, I am not a lord anything.

Hon. K. Sobion: Mr. President, I am very grateful to Sen. Capildeo for re-affirming his confidence in the judiciary of Trinidad and Tobago. I am glad to know that that is on record.

There were a number of matters raised, some of which I would deal with. I think the first significant matter that was raised was the question of a perceived deficiency in the Bill, because there was only a passing reference to a joint committee of Parliament. Sen. Mahabir-Wyatt, who made a valuable contribution on the legal aspects of the Bill as well, was the one, I believe, who made that comment.

By way of explanation, if I may indicate that this committee of Parliament which, by its mere statement, is a committee of both Houses, because Parliament is comprised of—

Sen. Merritt: Mr. President, on a point of order. I posed that question to the Attorney General in my contribution, that it was not stated whether that type of committee was a sessional committee or one of both Houses of Parliament.

Hon. K. Sobion: Mr. President, that was not the point I was on, but I will take note of Sen. Merritt's contribution in that regard, and, perhaps, try to encompass it in the comment I was making in relation to the contribution of Sen. Mahabir-Wyatt. It is envisaged as being a joint committee of both Houses. The Public Accounts Committee and the Public Accounts (Enterprises) Committee are two specialized committees which have found themselves in the Constitution and their composition and so forth are spelt out quite clearly.

What we had proposed is a committee which would have been established under the Standing Orders of the Parliament and which would be governed by rules and regulations to be made by the Parliament and incorporated in its Standing Orders. For instance, at Standing Order No. 64, and continuing, there are procedures in select committees and those Standing Orders which follow set out the operations of those committees. I wanted to refer to one particular matter—

Sen. Mahabir-Wyatt: Mr. President, could the Attorney General guide me, please? Are these standing and select committees under section 64 of the Standing Orders also mentioned in the Constitution of the country?

Hon. K. Sobion: Mr. President, I would respond to that particular aspect. If it is, I think it is only to the extent that the Constitution says that the Parliament can set up standing committees, but the procedure, which I have been looking at—and to answer those who had questions as to what they can do—this is a matter for the Parliament to decide: what form this particular standing committee should take. If Senators look at Standing Order 72(3):

"Unless the Senate otherwise directs the Standing Orders Committee and the House Committee shall not have, but every other Select Committee shall have, power to send for persons, papers and records."

What is envisaged is a standing joint select committee as set up under the provisions of the Standing Orders with guidelines and procedures to be determined by the Members of Parliament.

The comparison, therefore, between the manner in which the Public Accounts Committee and the Public Accounts (Enterprises) Committee are set up—it is not really intended to be a constitutional committee as those two committees had been set up.

5.20 p.m.

If I may turn to some of the problems raised by Sen. Mahabir-Wyatt and others, because some of them overlap. The suggestion was made that it is perhaps wrong to have the Commissioner of Police on the Police Service Commission as proposed. I am not certain that there is anything fundamentally wrong with that. The objection that was taken was that here is a person who is subject to being disciplined by this very body, and, therefore, there will be some conflict of interest. The simple solution to that, is that if there is a matter involving the Commissioner, then the Commissioner should not participate in the proceedings.

If one looks at the composition of the Judicial and Legal Service Commission one will find that among its members there can be a sitting judge who is also subject to the jurisdiction of the Judicial and Legal Service Commission. I do not think that the objection based on the ground of a possible conflict is really a fundamental objection.

As I indicated, we propose to take a certain course in relation to this Bill, and certainly matters of that nature can be discussed and a position arrived at based on a more detailed and more mature analysis of the particular service commission that we are dealing with. We have proposed it. It is nothing strange to our Constitution as it now stands. In fact, with the concept we are advancing of a greater management capability in that commission, it would seem to me that the person who is responsible for the day-to-day management of the police service would be an ideal person to sit on that overall governing body.

The other matters I thought I should refer to are matters which can be dealt with during the committee stage of this Bill, because they relate to omissions of one sort or the other.

The question of whether the permanent secretary should be appointed in the face of section 126 of the Constitution is a matter which we had looked at. In fact, I thought that amendments to this Bill had been circulated prior to now. The amendments that we proposed relate to that section. It is not too difficult an amendment. All one needs to do is use the words "save that" following the words "service commissions". Section 126 of the Constitution illustrates the point.

Sen. Prof. Spence: Mr. President, I wonder if the Attorney General could explain to us how, in a relatively small and simple Bill, an error like that could have crept in, if it had the thorough examination he said it had?

Hon. K. Sobion: Mr. President, I appreciate Sen. Spence's view that perhaps there should be no human error in any Bill whether it be a short or a long Bill. The fact is that this Bill had evolved in a certain way and there had been certain exchanges during which time certain changes were made. In the course of those exchanges and bringing the Bill to the Senate that was an omission which should have come with the original Bill.

I apologize to Senators for what appears to be one of two clear oversights. The second has to do with the question of a quorum. Section 129(2) says:

"At any meeting of a Service Commission three members shall constitute a quorum."

We have proposed four in relation to the Police Service Commission. All that is required is an amendment by adding the words "at the meeting of a Service Commission other than the Police Service Commission the quorum shall be three."

Those matters are contained in certain amendments which should have been circulated prior to now. One would take them up at the appropriate time.

Sen. Mahabir-Wyatt also raised the question of another possible conflict or duplication in relation to clause 122G and section 129(3). In this instance there is no such omission, oversight or duplication. The fact is that section 129(3) relates to the service commission regulating its own procedure, whereas 122G deals with the making of regulations by the service commission for the exercise of the power of the police commissioner, which is different from what is envisaged by section 129(1). In clause 122G we are dealing with regulations relating to the exercise of the original functions of discipline which are vested in the police commissioner.

In relation to the permanent secretary's position on the commission, I believe enough has been said on that. The criticism that the permanent secretary has been some sort of extension of the arm of the executive is really one that is without merit, constitutional or otherwise.

Sen. Merritt: Mr. President, on a point of order. The Constitution (Amdt.) Bill says that a permanent secretary is appointed by the Public Service Commission in consultation with the Prime Minister. Section 120 of the Constitution states:

- (3) "Before the Public Service Commission makes any appointment to an office to which this subsection applies, it shall consult the Prime Minister.
- (4) A person shall not be appointed to an office to which subsection (3) applies if the Prime Minister signifies to the Public Service Commission his objection to the appointment of that person to that office."

I am saying, under this the Prime Minister has to agree to the person who will fill the position of permanent secretary. I am seeing a clear indication of political interference.

Hon. K. Sobion: Mr. President, merely to state the point, demonstrates that it has no merit. The Prime Minister, under the Constitution can veto a person proposed by the service commission. He cannot, however, do the reverse, put someone he wants to fill one of those positions.

The public servants as we all have stated at some time or the other, are subject to independent service commissions which are not affected by the executive and

who in their rise to promotions are dealt with by an independent body appointed by the President.

Much of the debate has dealt with the question of whether one should amend the Constitution or not and around the question of what form the commission should take and also what is its real role and function from a management point of view. Those are issues which have been more than adequately dealt with by Sen. Draper in his contribution.

5.30 p.m.

As I indicated, we wish to propose a certain course of action in relation to this Bill, at which time I think most of the other legal issues which had been raised can be dealt with in a more focussed fashion. I would therefore move that this Bill be now read a second time.

Question put.

The House divided: Ayes 15, Noes 13

AYES

Saith, Dr. The Hon. L.

Huggins, Hon. R.

Barnes, Hon. B.

Yuille-Williams, Hon. J.

Draper, Hon. G.

Robinson-Regis, Hon. C.

Callender, S.

Mark, A.

Ojah-Maharaj, D.

Elder, Miss. J.

Rahael, J.

Gosine, Pundit R.

Hassim, A.

Constitution (Amdt.) Bill

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Maloney, A.

Nanga, J.

NOES

Mark, W.

Capildeo, S.

Baksh, Miss S.

Merritt, Miss C.

Hosein, M.

Barrack, J.

Mansoor, M.

Spence, Prof. J.

Rooks, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

Dean, E.

Question agreed to.

Bill accordingly read a second time.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, in accordance with the provisions of Standing Order 51(1), I beg to move that this Bill be referred to select committee of the Senate for consideration with particular reference to the composition, appointment and powers of the proposed Police Service Commission including its regulatory power.

Question put and agreed to.

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I beg to move the following motions:

Be it resolved,

That this Senate appoint the following Members to serve on a Select Committee appointed to consider and report on the Constitution (Amdt.) Bill,

1994 with particular reference to the composition, appointment and powers of the proposed Police Service Commission including its regulatory power.

Draper, Hon. G.	Chairman
Huggins, Hon. R.	Member
Yuille-Williams, Hon J.	“
Robinson-Regis, Hon. C.	“
Mark, A	“
Daly, M	“
Mahabir-Wyatt, Mrs. D.	“
Spence Prof. J.	“
Mark, W.	“
Capildeo, S.	“

Be it further resolved,

That the quorum be six.

Sen. Prof. Spence: Mr. President, may I say something at this stage?

Mr. President: Yes.

Sen. Prof. Spence: I am concerned about the limited scope of this select committee. If I am being asked to serve on it, I think I would like to make a comment on that score. I do not think that the scope of the committee should be limited in that way. I think the select committee should go further and look at the whole question of the need to have a change in the Constitution.

Mr. President: It is a Bill that is before the Senate. It has received second reading and in accordance with the Standing Order it is referred to a select committee. There are Standing Orders which provide for what a committee can do and cannot do with a Bill that is before it.

Sen. Prof. Spence: Mr. President, then I suppose that we just refer the Bill to the committee without particularizing, which appears to limit.

Mr. President: Sen. Spence, a resolution was proposed by the Attorney General. I can re-read it for you:

Be it resolved, That in accordance with Standing Order 51(1) a Bill to amend the Constitution be referred to a select committee of the Senate for consideration with particular reference to the composition, appointment and

Constitution (Amdt.) Bill
[MR. PRESIDENT]

Wednesday, March 23, 1994

powers of the proposed Police Service Commission including its regulatory power.

That question was put and received the unanimous support of the Senate. What is being done is a consequential motion to seek approval for the appointment of the Senators to do what has already been agreed to. I agree with you that there are many things included in the resolution that are obviously superfluous. It is all contained in the Standing Order, what the committee can do.

Question put and agreed to.

ADJOURNMENT

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I beg to move, that the Senate do now adjourn to Tuesday, March 29, 1994 at 1.30 p.m.

I wish to advise Senators that we intend to start debate on the Regional Health Authorities Bill at that meeting.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.40 p.m.