

*Leave of Absence**Tuesday, November 26, 2002***SENATE***Tuesday, November 26, 2002*

The Senate met at 1.30 p.m.

**PRAYERS**[MADAM PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Madam President:** Hon. Senators, I have granted leave of absence from sittings of the Senate to Sen. The Hon. Knowlson Gift for the period November 23—29, 2002; Sen. Ambassador Christopher R. Thomas for the period November 26—December 4, 2002; Sen. Carolyn Seepersad-Bachan for the period November 24—28, 2002.

**SENATORS' APPOINTMENT**

**Madam President:** Hon. Senators, I have received the following correspondence from his Excellency, the President of the Republic of Trinidad and Tobago:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N.R. ROBINSON, T.C.,  
O.C.C, S.C., President and Commander-in-Chief  
of the Republic of Trinidad and Tobago.

/s/ Arthur N.R. Robinson  
President.

TO: MR. DEREK IRVIN OUTRIDGE

WHEREAS Senator Christopher R. Thomas is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N.R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DEREK IRVIN OUTRIDGE, to be temporarily a member of the Senate, with effect from 26th November, 2002 and continuing during the absence from Trinidad and Tobago of the said Senator Christopher R. Thomas.

Given under my Hand and the Seal of the President  
of the Republic of Trinidad and Tobago at the  
Office of the President, St. Ann's, this 25th day  
of November, 2002.”

*Senators' Appointment*  
[MADAM PRESIDENT]

*Tuesday, November 26, 2002*

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N.R. ROBINSON, T.C.,  
O.C.C, S.C., President and Commander-in-Chief  
of the Republic of Trinidad and Tobago.

/s/ Arthur N.R. Robinson  
President.

TO: MR. GARVIN NICHOLAS

WHEREAS Senator Carolyn Seepersad-Bachan is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N.R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, GARVIN NICHOLAS, to be temporarily a member of the Senate, with effect from 26th November, 2002 and continuing during the absence from Trinidad and Tobago of the said Senator Carolyn Seepersad-Bachan.

Given under my Hand and the Seal of the President  
of the Republic of Trinidad and Tobago at the  
Office of the President, St. Ann's, this 25th day  
of November, 2002.”

**OATH OF ALLEGIANCE**

*Senators Derek Irvin Outridge and Garvin Nicholas took and subscribed the Oath of Allegiance as required by law.*

**REGISTRAR GENERAL (AMDT.) BILL**

Bill to amend the Registrar General Act, Chap. 19:03 [*The Minister of Legal Affairs*]; read the first time.

**PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the University Students Guarantee Fund for the year ended December 31, 1997. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the University Students Guarantee Fund for the year ended December 31, 1998. [*Sen. The Hon. C. Enill*]

3. Annual audited financial statements of National Quarries Company Limited for the financial year ended September 30, 2001. [*Sen. The Hon. C. Enill*]
4. Annual Report inclusive of audited financial statements of the National Insurance Board for the financial year ended June 30, 2002. [*Sen. The Hon. C. Enill*]

#### CONSTITUTION REFORM

**Sen. Prof. Kenneth Ramchand:** Madam President, I beg to move the following Motion standing in my name:

*Whereas* the Report of the Constitution Commission the ('Hyatali Commission') appointed in 1987, under the Commissions of Enquiry Act Chap. 19:01, made recommendations which have never been debated in Parliament or presented officially to the public for consideration and comment; and

*Whereas* there have been no adjustments to the Republican Constitution (1976) at any time in the last 25 years in response to changing social and cultural circumstances; and

*Whereas* there has been in the last ten years an increase in the electorate's "dissatisfaction with the existing political establishment, and confusion and uncertainty about what options for meaningful change are open" (Wooding Commission Report); and

*Whereas* the historic electoral tie in the General Election of 2001 has had the following effects among others: (a) focusing the public's attention on the nature of the Republican Constitution; (b) causing for the first time in the history of the country a significant number of individuals, institutions and citizen groups acting independently to examine the Constitution and conclude unanimously that there is a crying need for reform; and (c) impelling the political parties to declare during the 2002 general election campaign their urgent intention if elected to undertake Constitution reform; and

*Whereas* the now governing People's National Movement in its Election Manifesto 2002 commits the party to the "widest possible discussion and participation in the process leading up to the Reform of the Constitution for a modern Trinidad and Tobago" and to developing a Constitution "capable of ensuring the involvement of all its citizens in the running of the country" and permitting "equity in the distribution of the resources";

*Be it resolved* that the Government of Trinidad and Tobago articulate its position on the question of Constitution Reform indicating:

- (a) what areas of the Constitution it considers to be in urgent need of review;
- (b) whether it proposes piecemeal reform or a comprehensive review;
- (c) how it intends to involve the population in the process; and
- (d) what steps it will take to ensure that this crucial exercise is completed no later than 18 months after the first sitting on October 17, 2002 of the first session of the Eighth Parliament of the Republic of Trinidad and Tobago.

Madam President, it would be more correct to begin with the glorious and suicidal struggles of our Amerindian ancestors. For convenience, let us say that the earliest calls for constitution reform were the immediate, spontaneous, deceptive and various acts of resistance and sabotage conducted by African peoples, against the system of enslavement that restricted their freedom and deprived them of every fundamental human right, including the right to be represented and the right to represent themselves.

That is how the Constitution Reform Movement began in our islands.

In this light we need to record that the first landmark of Constitution reform in the Caribbean was the San Domingo Revolution by which Toussaint L'Ouverture established a revolutionary politics and devised a revolutionary constitution. The work of declaring that first free black republic with the native name Haiti was completed in 1804 by Dessalines, after the humane and conciliating Toussaint, this Black Jacobin who believed passionately in liberty, equality and—unfortunately for him—fraternity was lured by his French brothers to a miserable death in an alien place.

I want to spend some time on Toussaint L'Ouverture and San Domingo Revolution for the following reasons: It helps us to see very clearly the connection between Constitution reform, the creation of a new society and the empowerment of people; it offers a bold illustration of the necessity for people participation in the liberation process; it is an instructive demonstration of how one leader of a Caribbean society fared, when he came up against the challenge that every Caribbean leader since then has had to face, that problem being the problem of how to settle the claims of class and ethnicity in a multi-ethnic society; it shows us a maximum leader with a good heart making the tragic mistake of taking for granted, and drifting away from, his popular base.

Toussaint believed that all he had to do was to show his face and the masses would come around. He failed to communicate with them about the values he held. He did not explain the complicated manoeuvres he was trying to execute in his desire to found a society in which every creed and race, including the whites, would have an equal place. This evolved creature must have been the only person in San Domingo who was ready for national unity. The masses were not given the chance to bring him back to the implacable realities of the sugar island.

Toussaint's constitution reform was not the abstract brainchild of a political theorist, nor was it a sleight of hand concession by an imperial power to appease angry protestors without losing grip. It was not conducted in a limited way to serve the special interests of a particular group like the local whites, coloureds or the free blacks, though, even these agitations of a partisan nature have their place in the history of our evolution towards freedom and opportunity for all. Toussaint could not call for judicial review or take the matter to the courts. This was an armed struggle for the liberation of all the people of San Domingo and the making of a free, just and equal society. Toussaint was a mighty man and as the people's laureate says, to make matters worse, he was Black.

It took 12 years to achieve victory. For all that, Toussaint knew that one military coup leads to another. He needed to secure his position, of course, but he needed to give the country stability and order. He needed production and purpose. This person who had been a slave until the age of 45 years, out of his resources, wrote a constitution. Here is CLR James' summary:

“The constitution is Toussaint L'Ouverture from the first line to the last, and in it he enshrined his principles of government. Slavery was forever abolished. Every man, whatever his colour was admissible to all employments, and there was to exist no other distinction than that of virtues and talents, and no other superiority than that which the law gives in the exercise of a public function”

Toussaint tried to invent out of nothing except a vision of the future and his memories of the past, a constitution that would speak to the needs of his country and its people.

Listen to the Wooding Commission talking about the Independence Constitution of 1962.

“Although the present Constitution was discussed at Queen's Hall for three days, there was never any examination of the basic issue as to whether or not it was suited to our needs.”

Toussaint knew that the French Constitution was not suited to his needs. The framers of our Constitution of 1962 never raised the question of whether the Westminster model was suited to our needs. If you want to be hard, you could say none of the framers of any of our Constitutions took the time to think about what kind of society we are and what kind of society we have it in us to be and what kind of Constitution we should create for ourselves. This is one of the issues our debate must engage.

Let us get back to citizen Toussaint. When we are with Toussaint, we are really with ourselves. Toussaint preached that agriculture was the ultimate guarantee of freedom. He divided the country into six departments and made sure that central government and local government worked together for the common good. General Toussaint did not read that in any book and he did not go about the country with independent senators meeting with people to find out what they thought. Two hundred years after Toussaint, something is stopping us from devising in the interest of the country, a system of government that would allow for equal and appropriate development for each region in accordance with a national plan worked out jointly between local and central government.

The Wooding Commission did their best to hide their sense of shock. This is what they said, "It is to be noted that the present constitution (the Independence constitution) makes no reference to local government." The same is true of the Republican Constitution. The Wooding Commission broke from its drill of commenting on the Constitution chapter by chapter, and between pages 102 and 109 of the report, they offered a history of local government; described the perverted courses of the relation between local and central government; gave the arguments for and against local government; speculated on the future of local government and made a set of proposals based upon a more logical division of the country into local government areas. They made proposals for the establishment of a formula to allocate revenue to the local areas and to grant them autonomy over funds thus allocated. It should not come as a surprise that the section on local government in the Wooding Report is followed by a section on Tobago.

I am proposing that the whole question of the relationship between local government and central government should be a major part of our deliberations in this Chamber and at the same time, we should pay careful attention to issues of governance relating to Tobago.

I have tried to show through the story of Toussaint that constitution reform is not an abstract matter and it is fundamentally about human development and the making of society. In our part of the world, that includes coming to terms with

waste; eradicating the sources of persistent poverty; ensuring representation and representativeness; cultivating and using native resources; defending sovereignty and realizing that there are not too many pleasant alternatives to constitution reform.

When I reached here a minister told me he heard that I was on the radio talking blood. I think this is what he was referring to. Toussaint had no choice but we have. Our option is constitution reform.

The present Motion takes the form of a private motion and it is a motion by an individual. It is not a motion on behalf of independent Senators. It has been informed in part by the “Meet The People” exercise of Independent Senators, but it is not derived from that exercise and does not represent the findings of that exercise. Independent Senators may choose to present material prepared as a result of that exercise, but there is no collusion or any grand plan. Since the Motion is a motion that proceeds by asking questions and making suggestions, there cannot be too much in it for disagreement and rebuttal. It would be contrary to what happens when minds attempt to meet, for there not to be different emphases and the introduction of additional questions and suggestions.

The purpose of this Motion is not to give the Government my views on constitution reform, even less is it to present a draft of a new constitution. Its purpose is to invite the Government to tell Parliament and the country how it intends to fulfill its campaign promises about constitution reform; when it would begin to do so formally and what kind of time frame it has for this important national project. Let me repeat the resolution.

*Be it resolved* that the Government of Trinidad and Tobago articulate its position on the question of Constitution Reform indicating:

- (a) what areas of the Constitution it considers to be in urgent need of review;
- (b) whether it proposes piecemeal reform or a comprehensive review;
- (c) how it intends to involve the population in the process; and
- (d) what steps it would take to ensure that this crucial exercise is completed no later than 18 months after the first sitting...

I am giving the Government a chance to talk. My function is to try to create a frame within which the debate or consultation may be conducted. I have chosen for this first round to attempt a kind of overview to fill in some background,

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historical and otherwise, and to focus on one or two interesting issues if I have the time. I hope it would not be considered an impertinence if I admit that I hope to propose some of the topics that later speakers would want to explore in more depth than I can in this presentation. It is also my hope that the Leaders of Government and Opposition business will remove the bridle and allow Senators to say what they think, regardless of the party's position. If they like, they could use the whip afterwards to make their members vote as the party requires, if there is a vote. I am willing to give way for a moment if the respective Leaders of Business wish to reply favourably to this suggestion.

Can we have a rational discussion in which we listen respectfully to one another and lend our minds to one another, as we seek to accumulate notes towards the inventing of a constitution in keeping with who we are and what we want to be? Let me make this request in another way. In his recent discussion about constitution reform and a constituent assembly, Lloyd Best describes the kind of debate that I would like us to have in this honourable Chamber. He says, in effect, I am talking about a constituent assembly. What is a constituent assembly? It is an assembly constituted by people with different points of view to talk with one another and then you would find out. The process of constituent assembly is very simple. It is about going all about the country and persuading people to come together to talk about constitution reform, as everybody is talking about now. Everybody is talking about a different scope of things, so there needs to be some assembly of persons, a consistent and repeated assembly to talk. Let us find out who stands for what; who are the people who want real change and who are the people indulging only in rhetoric. We have to find that out. It is not given by God. We do not know. We cannot dismiss anybody. We cannot begin by embracing anybody. We want an open assembly. We want to talk about how the country is constituted and how the country is put together.

If you are disappointed, Madam President, that I did not take the opportunity to introduce this Motion two weeks ago at short notice, before it was properly due, let me explain as I explained to the hon. Leader of Government Business. It was not out of an unwillingness to cooperate. Presenting a motion like this is not only a major responsibility, but also an opportunity for self-education. It would have been impossible to rearrange the several interviews I had scheduled. Even if it were the case that I did not have a life, I do not see how I could have read and assimilated the material I had collected in time, just to protect Sen. Dr. Saith from the strictures of Senator Mark. I shall try in this round not to indulge myself by too obvious a demonstration of my stance or offer my answers to the questions



raised. In my closing speech, I will try faithfully to describe the drift of the debate, as I registered it. I hope that I would be excused however if my particular preferences do intrude from time to time as they are bound to do.

The Preamble to the Constitution is a sacred text that declares the fundamental beliefs and principles that inform our behaviour as individuals and as a nation. In the final clause, it prays that the Constitution should do what it attempts to do in Chap.11:01 which is to enshrine those principles and beliefs we hold dear and make provision for ensuring and protecting our fundamental human rights and freedoms in Trinidad and Tobago.

Man was not made for the Constitution. The Constitution was made for man. All the provisions of the Constitution may be changed, some by simple majority; some, those described as entrenched, by three-fifths of the votes and some, which are called deeply entrenched, by two-thirds of the votes. In talking constitutional reform, we are not talking impieties. The Constitution wants to protect our fundamental human rights, but it recognizes that time can change priorities and time can propose new necessities. The Constitution further recognizes that there are occasions when we might agree to surrender certain rights temporarily and there are instances when we sacrifice or pawn an aspect of a particular right in the interest of the common good, our long-term good. The Constitution recognizes all of this and allows for it. Quite rightly, its default position is to make it hard to violate certain provisions by requiring near unanimity by legislators, and by allowing the court to set aside a piece of legislation that can be shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

The Constitution is not a static painting that fixes us. It is or ought to be a reflection which changes as we change. There does not have to be a particular provocation. The provocation is time. With the passing of time, even the most entrenched provisions of the Constitution may need to be looked at in a general review. As circumstances change our judgments as to what is a fundamental right might change.

Should we enshrine in the Constitution, the right of a parent or guardian to provide a school of his choice for the education of his child or ward? How many violations of that right occur every time primary school children are placed in secondary schools? Might there not come a time when the Ministry of Education might feel that all our schools are of a sufficiently high standard as to remove the main objections to zoning? In this transparent and flimsy electronic age, are there not certain privacies and sanctities that call for protection? Are there not certain

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obscenities and invasions that may need to be proscribed? Might we not have to consider working these into the Constitution?

None of the adjustments made to the Republican Constitution in the last 25 years have been made in response to changing social and cultural circumstances. In the last 10 years, as a matter of fact, there has been a sharp increase in the dissatisfaction with existing political establishments. There has been confusion and there has been uncertainty about the options for meaningful change. We have come to know that in the last 10 years. The Wooding Commission said it as long ago as 1971.

Wherever there is a written constitution, there must be on a regular basis, carefully considered piecemeal changes as circumstances warrant. But an accumulation of such changes over a long period without a comprehensive review can eventually create lurking contradictions, inconsistencies and anomalies. Even worse would be a policy of making a number of separate changes spread over a period of years—changes made not because the changes together are part of a vision of the society, but because each one is seen by those making the changes to be favourable at the particular time to their purposes as a political party intent on dominance or survival. Changes in the Constitution cannot be made piecemeal to support political parties. There are positive and irresistible arguments for a comprehensive review of our Constitution at the present time.

Shortly after the report of the Hyatali Commission was tabled in Parliament, there was an invasion of Parliament by a set of ignorant people, and a hostage crisis. The perpetrators were ignorant that constitution reform was about to be discussed. Earlier still, Dr. Eric Williams lambasted the *Wooding Report* for hours in Parliament, accusing the commissioners of having an illogical obsession to reduce the power of Parliament, create confusion, and break up the centralization of Parliament, Cabinet and the party. He turned over the draft Constitution to the Director of Public Administration to make a report. The *Mc Kell Report* and the draft were then passed on to a select committee of Parliament under Minister Prevatt. This committee dumped the major structural recommendations of the Wooding Commission, but accepted many of the smaller points and submitted a document which became the 1976 Republican Constitution. One review aborted, and the other scuttled. If we are interested in constitution reform it is mandatory that we pick up the pieces; make a careful study of the reports of the Wooding and Hyatali Commissions and carry out reviews of the work of Constitution commissions that began the work, but never got a chance to continue the work.

You will remember that the Wooding Commission raised the question of whether the Westminster model that we like to say that we are following was

indigenous to our needs and purposes. The Wooding Commission answered their question by proposing the abolition of the two-Chamber system. They proposed doing away with the Senate and advocated the creation of a single Chamber, a national assembly of 72 members.

When this Motion and the resolution thereto asked the Government to say whether the intention is to do a comprehensive review or a piecemeal review, the question is partly asking, whether we would think about constructing a new structure for our government, or are we going to modify the existing structure? I think this is an important question. I look forward to hearing Members' thoughts on it.

Section 73(1) of the Constitution enjoins:

“The election of members of the House of Representatives shall be by secret ballot and in accordance with the first-past-the-post system.”

In addition to its proposals for structural change, the Wooding Commission made proposals to change the electoral system. Thirty-six seats would be constituency seats contested by individuals who belong to the constituency and who would relate directly to the constituency. These seats would be decided by the first-past-the-post system. Another 36 seats would be allocated according to the total number of votes received overall by any party or group. The candidates would be selected from a list submitted by each party or group with the names listed in order of priority. The Wooding Commission invites us to consider the possibilities of proportional representation as a system and the option of some combination of proportional representation and the first-past-the-post system. The basic problem is the problem of representativeness. How can we make sure that every numerically significant element is particularly represented? On the other hand, how can we avoid encouraging a proliferation of groups defining themselves by arbitrary criteria and standards?

The pros and cons were gone into by the Hyatali Commission. It is interesting to report that that Commission recommended retention of the first-past-the-post system. The Wooding Commission wants to combine proportional representation with first-past-the-post; Hyatali came later and wanted to retain the first-past-the-post. We have a debate, and the time is right for this Chamber to initiate a thorough discussion of the two systems in the clear light of an unbiased analysis of the needs and nature of our society.

Another principle in my resolution suggests that the people of Trinidad and Tobago need to be sounded out in a way that would be meaningful. It seems to me that the only meaningful way is to go out there and meet them in their communities and familiar haunts. Do not tell them that you are meeting in Arima

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Town Hall and expect everybody around there to come. Do not tell them that you are meeting in the Rio Claro library and expect them to come. Too many public consultations are centralized usually in the urban centres. When the attempt is made to go in the country, resources do not seem to stretch to holding less grand meetings in three or four different villages, rather than at one venue. A serious attempt has to be made to meet the people in their communities and ascertain their views.

There is another problem. The evidence of the months following the 18/18 tie suggests that the Constitution and constitution matters are of great concern to the people. That is good. One of the dailies performed the service of publishing the entire Constitution at no additional cost to the newspaper reader. The Government Printery has found that sales of the 109-page booklet had shot up above the normal 200 copies per year—even though the consolidated and updated edition which incidentally has not been proof-read and is quite execrable in many places—costs \$50 compared with the previous price of \$20.

In the call-in programmes and panel discussions, everywhere that two or three were gathered, they gathered in the name of the Constitution. Lawyers, politicians, social scientists, journalists and other experts joined the national chorus. Selected government or elected government? It was section 76(1)(a) and (b) versus section 80(1)(a). President and prime minister? Moral and spiritual values in the Preamble, or the illusion of the two-in-one at Crowne Plaza? And later, goes-in, goes-out. Speaker or no speaker? Parliament or no Parliament?

These were the immediate talking points. I am sorry to say that many of the positions taken in the popular debate showed that there is still a need for better understanding of the Constitution and how the country is governed. We cannot begin to talk constitution reform without simultaneously addressing this general ignorance and inability to understand the Constitution.

The Wooding Commission found it necessary to publish a booklet called, *Thinking Things Through*. The Hyatali Commission said they would do a booklet too, *Thinking Things Over*. In the contentious period following the President's delay over the appointment of government senators in 1998, another booklet, *The Constitution And You* was produced by the then Ministry of the Attorney General. Everybody knows that every time there are issues, we rush to the Constitution. We need some kind of education about the Constitution.

I suggest that these three books should be poached upon for whatever in them is effective and another text be produced as part of a thrust to make citizens more

intimate with the Constitution. There should be crash courses on the Constitution; visits to schools, adult education centres and the different faculties in the university, and radio programmes designed to involve the vast numbers who seem to have nothing better to do than to talk to the DJs morning, noon and night. Give them something good to talk about. Have a programme where they can call in about the Constitution. We need this educational thrust in the schools and wider community so that people can understand governance and the Constitution and then bring their ideas about what kinds of changes they want.

If the Government can answer the questions posed in the resolution early in this debate, for in this kind of motion, let me tell them, they do not have to play cat and mouse. Talk your talk. Say what you have to say. If the Government can be forthright with us about its plans, then, the Independent Senators, Opposition Senators and the public would clarify their thinking on the subject and would be put in a position to contribute to an exercise that ought to be a work of national collaboration. The Constitution is the supreme law of the land and has bearings on the personal, social, economic, cultural, political, moral and spiritual life of every person in Trinidad and Tobago. If the Constitution is to be changed in any way, every one of us has to know, witness and take part.

I want to look at a few provisions of the Constitution and ask some questions to suggest that if certain structural relationships are not adjusted by constitution reform, we would find ourselves plunged into crisis after crisis or litigation upon litigation. The Constitution intends that there be a clear distinction between the head of government, the Prime Minister and the Head of State, the President. It devotes the whole of Chapter 3 to the President. In Chapter 5, it says that the executive authority of Trinidad and Tobago shall be vested in the President. It spells out the occasions when the President should act in his discretion or in his discretion after consulting the Prime Minister. The effect of this is to highlight the fact that most of the time the President must act on the advice of the Prime Minister speaking for Cabinet.

Do the well-known public exchanges since December 1999 between the last Prime Minister and the President suggest ambiguity in the Constitution over the relative roles of Prime Minister and President? Are they signals by a proactive President that the Constitution grants too much unfettered power to the Executive? Is it not confusing to the ordinary citizen for the Constitution to say that the executive authority of Trinidad and Tobago shall be vested in the President and then wrap up the fact that the authority lies elsewhere? No wonder every time you want to know what something means you have to ask an attorney.

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Do not tell me executive authority of Trinidad and Tobago shall be vested in the President and then have other clauses which mean that they are not really vested in the President.

The section which indicates where power lies is 75(1) which states:

“There shall be a Cabinet for Trinidad and Tobago which shall have the general direction and control of the government of Trinidad and Tobago and shall be collectively responsible therefor to Parliament.”

The other is section 76(3) which says that Cabinet Ministers are appointed by the President on the advice of the Prime Minister who can also advise the President to dismiss them. All we hear about is collectively responsible. Is there any discussion anywhere of the meaning of “responsible therefor to Parliament”? How is that responsibility shown? Has Cabinet not violated the Constitution, usurped the power of Parliament and turned the legislature into a rubber stamp? I would like to hear what hon. Senators think.

**2.30 p.m.**

Madam President, it has become obvious over the years that what has been said about the British practice is also true about ours. The model we have used ought to be described as prime ministerial rule.

Madam President, do you have an idea of how many minutes I have left? Ten? Thank you.

One of the issues arising out of the 18/18 crisis is: What changes to the Constitution, and what mechanism can we devise to strengthen the control and oversight role of Parliament? I underline this issue as one that Senators might want to address in the debate.

The Constitution describes and defines the composition, the workings, the power, and the privileges in terms of the Legislature (the Parliament), the Executive (the President and the Cabinet), the Judicature (the Courts and the officials who administer the laws and guard the Constitution against breaches by anyone even the Executive or the Legislature). These are the three distinct pillars of our constitutional structure, each independent of the other, and inviolable—“ha, ha” that is what Mr. Hyatali said—working together and serving, ideally, to check and balance one another. And the words of Blackstone are quoted by Hyatali:

“Like three distinct powers in mechanics, they jointly impel the machine of government in a direction different from what either acting by itself would have done but at the same time in a direction partaking of each and formed out of all; a direction which constitutes the true line of liberty and happiness of the community.”

Madam President, is this how it works in Trinidad and Tobago? The Constitution regulates the relationships of these three spheres by holding a separation of powers. It is particularly anxious that the Executive should keep its hands to itself. For our further protection, therefore, the Constitution has evolved to the point of establishing service commissions that are protected from control by, and dependence upon any of the powers. So what is the significance of any of the frequent claims by the Executive that the commissions are a law unto themselves? What are they trying to imply? What do they want to do?

When Prime Minister Williams accused the Wooding commissioners of trying to break up the centralization of Parliament, Cabinet and the party—the party which does not even exist, according to the Constitution—is there not a strong indication there that already, in the early 1970s the purpose and provision of the separation of powers were under threat? I think this is another major issue which the current debate might profitably engage. Do we have a separation of powers? Do we have a separation of institutions exercising powers? Does the fact that most of the Executive come from the Legislature not tell us, in no uncertain terms, that we have wilfully violated the intentions of our Constitution?

I suggest, Madam President, that the meaning, the purpose, and the mechanics of the separation of powers should be a central issue in our debate. At this point I find it necessary to make a little historical excursion and I realize I will have to be brief. I will very likely go into this matter in some detail in my closing address.

The Legislative Council was established in 1831. There was a brief liberal moment in 1895 when it looked as if the elective principle might have been brought in, but what dictator Burnham scornfully described as the vagaries of the democratic process, put paid to Lord Rosebery’s plan. So it was not until the Royal Order in Council of April 16, 1924 reconstituting the Legislative Council that the elective principle was established. Seven out of the 26 members were to be appointed after the election through a very limited franchise.

In 1950, several Order in Council papers later, and after the introduction of adult suffrage which came in 1945, the elected element in the Council rose to 18 out of 26, but by this time the Executive Council had been reshaped and re-strengthened. It was the Executive Council which ruled. So while they were

granting increases in the elected element in the Legislative Council, the Executive Council was consolidating itself to strengthen colonial rule. Just as our Prime Ministers rule the Cabinet, so the Governor ruled the Executive Council.

Madam President, I can demonstrate this in detail. Dr. Eric Williams' party won 13 of the 24 elected seats in a 29-Member Chamber in 1956. He forced the Colonial office to give him power of appointment over nominated Members so that he could have an absolute majority. He was appointed Premier by the Council, voting by secret ballot, and the Council had the power to replace him, voting by secret ballot also. He did not like that. Madam President, this was William the Conqueror. In three years he got the Colonial office to provide for a Prime Minister and a Cabinet in a 1959 Constitution, a Cabinet with essentially the same executive powers as what frighten us now. We celebrated it in 1959, because this was the battle against colonial rule and our champion needed unfettered power. In the same way, Madam President, the San Domingo masses allowed Toussaint to be dictator and sole monarch. In three years the indefatigable doctor had turned colonial rule on its head and had gathered unto himself all the powers and prerogatives of a governor in the Crown Colony system. In these swaddling cerements we are still bound. One of the most urgent tasks in this debate is to look again at the power of the Executive, especially the Prime Minister and the Cabinet. The Government must have the power to rule effectively, but can we find a way to limit that power?

I have tried, through Toussaint, to show that constitution reforms began with the people who were fighting for freedom, fundamental human rights, representation, self-government, and the creation of a just society with opportunity for all. I have suggested that while the 19th Century efforts at constitution reform must not be ignored, they were generally the agitations of individuals and alliances seeking their own group interests.

The truth is that emancipation gave to the majority of the population neither vote, land, money in compensation, nor even cash to make a new start, as might be given to prisoners released after years of unremunerated activity. There was not even an apology, and when the rudimentary labour movement asked for a better wage, the plantation bad-mindedly sought cheaper labour from other sources. So what could the masses do? All that the masses could do was to express themselves and show forth their possibilities, and display threat and revolutionary power in festivals, in carnival, in canboulay, in hosay riot, as dragon, diable diable, moko jumbie, pierrot, in tambour bambour, stick fight and in the freedom of the jamette underworld where female liberation was a socially



liberating everyday fact. The establishment felt the political threat of these displays and understood them to be the most eloquent and comprehensive calls, the most human arguments for constitution reform. They raved about them in the newspapers; they banned them; they turned on them; the police were equipped in those days as if they were the military.

Madam President, we have a right to make a constitution after our own fashion to suit the facts of our history and our own projections about our future. When we do so, I propose that certain provisions in the new constitution should relate to the work of the artists, the craftsmen and the cultural practitioners in our country who often represent us at our best and propose the most fearless courses for our emergence.

Madam President, it is time for me to go. I shall declare my stand on certain key issues in my reply but I must mention them as topics necessary to the debate. The problem of race and ethnicity in the electoral politics and in the consciousness of our people; the merits of an establishment of two main political parties, each with an ethnic base, neither capable of winning by a large majority in a system that nevertheless allows the winner to take all; the operations of political parties with respect to financing but, more importantly, the phenomenon of the political party being given more allegiance and loyalty than the nation; and finally, the ways in which we might set about creating a system of government by all and for all.

Madam President, this Motion has been brought for the benefit of the Government. On the question of constitution reform, I am afraid I cannot be like the calypsonian, I want to know if I am getting; I want to know when I am getting; and I want to know what I am getting.

With that, Madam President, I beg to move.

*Seconded by Sen. Robin Montano.*

*Question proposed.*

**Sen. Robin Montano:** Thank you, Madam President. May I begin my contribution by informing Sen. Prof. Ramchand that the whip of this side of the Senate has, in fact, been removed; that our party believes firmly that constitutional reform is too vital an issue to be bogged down in partisan politics. May I also inform him that all of the Senators on this side, without the whip, are in approval of his Motion and when the time comes to vote we intend to give it our support. We think that it is a good Motion for reasons that I will go into in a

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few moments. We believe it is a vital issue and of vital concern to the people of Trinidad and Tobago.

May I also say that at an appropriate time I will move an amendment to Sen. Prof. Ramchand's Motion by adding a new clause (e), which will read:

That this Senate appoint a Joint Select Committee of Parliament to formulate a new Constitution for the Republic of Trinidad and Tobago and to receive comments from the public on Constitutional Reform and to submit same to this Parliament no later than December 31, 2003.

My reason for asking that this amendment be tagged on to the learned Senator's Motion is, indeed, because what is happening right now, as you are no doubt well aware, Madam President, there is a Joint Select Committee which would be meeting shortly to review various bills, for example, the Police Service Commission Bill, which, in fact, it is going to be necessary to amend the Constitution. Therefore, rather than come with just what Sen. Prof. Ramchand was talking about—a piecemeal approach—what I will respectfully ask the learned Professor to do is to accept this amendment in order to prevent the very piecemeal approach of which he was so rightly critical. He should know, however, as I said, with or without the amendment, we intend to support his Motion. We do beg, however, and I beg that he seriously consider this amendment because I believe it is a good one. Perhaps I could pass it to the Clerk so that it could be typed and circulated, so that learned Senators could see exactly what is being proposed.

Madam President, let me start by saying I agree with all that the learned Professor has said and more. A serious question to be asked is: Is our present Constitution serving the country? Are there any problems with it? Is it serving us, the people of Trinidad and Tobago, adequately? Is it the best that we can devise, we as an independent people? If you took a magic eraser and somehow erased the entire Constitution tomorrow morning, would we put back the exact system? If the answers to these questions are no, then you have to start asking yourself, why? What would we do? You would also ask yourself the question: Is the present system inclusive? Or, does the present system of necessity—because of the way of its adversarial nature—exclude one portion of the population or another? Today it is my party in power; tomorrow it is your party in power and when my party is in power you feel excluded and vice versa. Is this in the best interest of our country? Or, is there another system that we can devise whereby more of our people do not feel excluded?

Understand this right now, Madam President, the country is terribly divided, at least half of the population of Trinidad and Tobago feels excluded. Fact! The question, therefore: Is this in our interest? If we decide to tear up the Constitution and start again, should we have a bicameral legislature; that is to say one with two houses? Should we have the unicameral legislature as has been proposed? Should we have the first-past-the-post system as was proposed by the Hyatali Commission? Should we have a system of proportional representation only, or should we have a mixture of the two, as was proposed by the Wooding Commission? Serious questions, all of which we believe need answering by the people themselves.

At this time let us just look at some of the systems that are available to us. First of all, the present system we have is the Westminster-type system, which puts extreme power in the hands of the incumbent Prime Minister. For five years the Prime Minister of this country is just like a God. He rules! Many people in this country would be surprised to know that a Westminster prime minister, or put another way, a Trinidadian prime minister has more power in his country than an American president.

The Prime Minister of Trinidad and Tobago can control what happens inside here much more than an American-type president can control what goes on there. An American president is only powerful because his country is the biggest and strongest in the world; it is the new Rome. But inside his country an American president cannot do what a Trinidadian prime minister can do. Understand that!

Winston Churchill once said that the Westminster system was a dictatorship punctuated by democracy of three weeks once every five years. In other words, we only really get a democracy when we have an election. Election time coming, well the roads begin to be paved; all of a sudden the Members of Parliament start going out in the constituencies but, after that, how many times have we heard the sounds criticizing—both sides—“Boy we do not see him/her at all from one year to the next, the only time we see him/her, as the case may be, is when election comes.” The criticism is made, Madam President, if the truth be known, on both sides and that is a fact! There might be one or two people who might want to pretend otherwise but that is the truth.

The question, therefore, is what should we do? Should we have a non-executive president as we have now, who is effectively appointed by the Prime Minister of the day? Understand this, the President is elected by the Electoral College that consists of both Houses of the Parliament but the Government has a built-in majority in both Houses so that even if the nine Independent Senators

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were to combine with the six Opposition Senators, the fact of the matter is that the Government's majority downstairs, even if it is a majority of one, would ensure that the nominee for President—who is the Prime Minister's choice—would be elected. The truth of the matter is that our so-called Electoral College is a farce. The question is: Who does the Prime Minister of the day want for President—whoever he or she might happen to be—Oh, he wants John Quaco; very well, John Quaco is going to be the President. End of story! That is it, unless there was a revolution on the Government Benches.

Do we really want a President who is appointed in circumstances such as these who is basically a creature of the Prime Minister and who can only step out of line, as it were, in circumstances when there is an 18/18 tie? Is that what we want? With the greatest of respect, speaking for myself, I do not think so. Well then, what do we want? Should we have an executive president and then have a sort of French system whereby you have an executive president, and then you have a prime minister running the lower house, a system whereby both the president and the prime minister could effectively come from two different parties? A little more reasonable, it would seem to me.

Do we want, again, the issue of a unicameral or a bicameral legislature? Speaking for myself again, I like the idea of a bicameral legislature. As you know, Madam President, a bicameral legislature is where there are two Houses of Parliament and the reason for that is because one House can—and if a constitution is properly set up—and will act as the check on the other.

Indeed, once upon a time when dinosaurs roamed the earth, I was in this Senate. I was then in Opposition and there were several occasions when the Senate was able to make the then government think again, because the Independent Senators combined with the Opposition Senators to defeat certain bills that it was felt were really not in the best interest of Trinidad and Tobago. The Government wanted to do this, that or the other, whatever it might happen to be, and there was serious opposition to it. Because of the then huge majority that the Government enjoyed it was able to get its way downstairs but the real fight came up here. That is why I said, speaking for myself, I like the idea of a two-Chamber system because it does provide certain checks and balances.

After all, at the end of the day, why are we here? We are here for the people of Trinidad and Tobago. We are here to represent their interests. Sometimes—and I have experienced it before and since I came back into the Senate—there are those who tend to forget, regrettably, that we are here on the people's business.

We are here representing the people. We are their servants. We are not their masters. So I like the idea of the check and balance of the two-chamber system.

Now, what should we do? I agree with Prof. Ramchand—Sen. Prof. Ramchand, I am sorry. Madam President, when I refer to him as Professor, it is not meant as any disrespect, so please forgive me if sometimes I leave out the title of Senator. I agree with the learned Senator and I agree that the people need to be consulted. My party has embarked on a series of consultations with the people of Trinidad and Tobago. We have begun a series of town meetings with the help of a certain radio station, and in this regard, we have already begun to go out to the people on our own to ask: What do you, the people of Trinidad and Tobago, want? And it is in this regard that I have proposed my small amendment to the Professor's Motion.

If I might continue, Madam President, on what we want, and let me give you an example of what I mean. Party "A", whoever that happens to be, wins the elections today. For the next five years party "A" is in power and the truth of the matter is party "A" can pretty well afford for, at least, two or three years, to ignore the needs and wants of those who have supported party "B". It is only when the time comes close to an election that party "A" could stand and say: Oh, well, let us now start turning our attention to the problems that party "B" is suffering. They can go back and forth. But if you had a system whereby party "A" was called to account definitively and periodically within a given period of time, for example, one of my personal proposals would be, when the time comes—both to my party, the country and to the Parliament—that this thing about the Prime Minister having the power to fix a date, in other words a floating date, I would like to do away with that. Let us have a fixed date.

I note in the latest issue of the *Parliamentarian* that a province in Canada has done just that, so my idea is not as new or as radical as it might sound. I must tell you, Madam President, and I am speaking now for myself, that I am very attracted for this country to have the American-style system. What do the Americans do? The Americans have a lower house that is elected once every two years, an upper house that is elected once every six years, but one-third of the senate faces re-election once every two years; then an executive president that is elected once every four years and a cabinet that is appointed by the president but, "Ta da, ta da" here it comes! The cabinet ministers must go before a senate committee and be quizzed to make sure that they are appropriate persons. If, for example, a proposed cabinet minister had some questionable dealings with a bank, the senate has the ability to say, no, we do not want this particular person. I like that very

much. It also means that the executive president pretty well has to work with the senators and congressmen.

I ask the question, Madam President, why do we need local government? We are a country of 1.6 million people. The Mayor of Miami presides over a city of 4 million and here we are with, heaven knows how many, village councils, city councils, houses of assembly—why do we need a Tobago House of Assembly? Oh, I know the answer is going to be because Tobago has its own people. I merely put this forward as an example knowing full well that I will probably be misquoted terribly, but that is all right. But what if you took the 36 constituencies and you divided them in two, so you now have 72 districts and you now elect a congressman for each district; Tobago would have four congressmen.

The congressmen would take over the functions of local government as well as having the ability to come into the congress—a house of representatives—to deal with legislation that is coming before the House. Obviously the congressman would have to be fulltime, this is not a part-time job, but you now have a congressman looking after the business of the people, but he is only elected for two years. I have heard from some people who I have put this to say that two years is too short a period. That is the point! If he is put up only for two years, it means he pretty well has to perform. Do you know what else it does, Madam President? It breaks the hold that parties—in small cliques, in both parties—have over the leadership. What it means is that you are putting power back in the hands of the people. So the small cliques, the quiet men and women who sit behind; the faceless ones—on both sides, and let us face it we have them on both sides, and you do not have to scratch very far.

For example, you want an example of the quiet men behind the PNM? You only have to look at the budget and look at what they did with the foreign-used cars; look at who is benefiting and then you say: “Hello!” Lights go on and you see who gets the benefit of it. But that is not the point. The point of the matter is this, now you have somebody there—he is a representative of the UNC or the PNM; it does not really matter—but he is not performing; let us say John Thomas or whoever he is, is not performing, do you know what people would do when election comes in two years? They will say, well I am a PNM/UNC or whatever but I do not like this John Thomas at all, so I am going to vote him out because I am now going to bring in the guy from the other party. Let me see if he can do something better for me because my district is in a mess; power to the people. That has always been the cry!

Now, the senators sit for six years and, why, because the argument that the two years is too short is a valid argument, so you have in the upper house a certain amount of continuity. But let us say, Madam President, that you and I are senators and I am standing for re-election this year, and you are facing re-election in two years time. I am supporting a rather stupid law; let us say there is a law to make all men wear green pants. You are right there beside me, Madam President, you are saying, yes, yes, yes, all men must wear green pants. Well it is put before the electorate and surprise, surprise, I lose because people do not want the green pants law. Do you know what you are going to do immediately after my loss? You are going to say, "Well I have to rethink my position on this green pants law. I never really supported it you know." You are going to glide right out of it. The point being that the people win; they get rid of somebody who was trying to put forward a law that was not in their best interest. And two, they now force the change of somebody—your good self, Madam—who is facing re-election in two short years—because if you continue with the green pants nonsense, you are going to lose your seat as well and people do not like to lose their senate seats. Very few people would pursue a course of action that would cause them to lose like that, so that the people win, and that is the point! That is what I believe Sen. Prof. Ramchand was talking about.

I like the American system. An American-type president has less power and less control. Elections should be on a fixed day, for example, I say the second Monday in May and if you say why May, then June, September; pick the date, I really do not care, it is not important, the principle is the election is on a fixed day. The principle is that the elected representatives ought to be more responsive to the people because right now the system is such that no matter which way you turn, the elected representatives do not have to be responsive to the people. You can do whatever you want right now if you are in government. You won an election yesterday—this is not personal to the PNM, Madam President, so please understand this. This is personal to anybody who wins an election under this system. You win an election today you can pretty well afford to turn your back on the people. And you hear too often, as I have said, the complaints: "Oh we do not see him." When could the people see their representatives? Around election time only? The system is not responsive. The system allows the parties to be hijacked and controlled by cliques.

Inside your party, Madam President, I have heard the complaints and inside my party I have heard the complaints. I know the complaints and I am speaking from experience having been on both sides. The complaints do exist. Those on

that side of the Senate might want to pretend otherwise, and I do hope that there are none so foolish as to stand up and say: “Oh no, we do not have that problem in the PNM” because the fact of the matter is the country simply would not believe them. Everybody knows what I am saying is true. As I said, the criticisms that I make are general, not personal and either we are going to take Sen. Prof. Ramchand’s plea to heart or we are not. Either we are going to turn his into a,” he said, she said”, slinging match; oh you rotten UNC, you rotten PNM, you terrible people and so on, or we are going to sit and have the kind of debate that the learned Senator clearly wants and that the country so dearly deserves. A very serious debate; a debate devoid of partisan shots, a debate devoid of one climbing up El Tucuche and hurling boulders at the other saying, “You see, we did this and you all did that and so on.” No, the country is not interested in that. I did not hear Sen. Prof. Ramchand trying to hurl shots. What I heard was a heartfelt plea; a *cri de coeur* of let us get the show on the road. What do we want?

Madam President, what the learned Professor said is very true—using my words—that a constitution is not static and there are requirements in the present Constitution of near unanimity so that certain entrenched provisions cannot be easily overridden. There is nothing to stop any new constitution that we come up with from having these entrenched provisions. I agree with the Professor what is needed is not a piecemeal approach; what is needed is an intelligent approach, an approach that goes outside the box.

I was taught that if I ever wanted to understand a problem I had to go back to the beginning, and the beginning is as I started: Does this Constitution work? It produced an 18/18 deadlock and the country was run by executive fiat for nine months. Was that right? In a thousand years it could not be right. I do not care which way you turn it; I do not care whose fault it was or was not; running the country by executive fiat without Parliament for nine months is clearly wrong. But you could do it because this Constitution says that basically Parliament has to meet once every six months and that the constitutional requirement is met merely by convening Parliament and then telling everybody go home; once a year you must have a budget, so Parliament has to meet then.

Clearly, that has to be wrong, no matter which way you turn it, no matter which way you jump and, therefore, we need to prevent that from happening again. This is the sort of thing that we need to discuss. It is the sort of thing that, unfortunately, as the learned Professor said, seems to have gotten somehow onto the back-burner. Yet it remains a serious problem. It is like your house catches on fire, you manage to get it out before too much damage is done, because a



neighbour happens to be passing by with a fire extinguisher and puts it out. But you see you did not have a fire extinguisher in your house so the danger remains.

The other danger with the Constitution is, as I said, people feel excluded. Regardless of who wins, they feel left out; they feel unrepresented. We had the circumstances of terrible flooding in this country the other day and there on television was the UNC Member of Parliament for St. Augustine standing hopelessly and helplessly on one side unable to do anything other than be there. Quite clearly, he was not being listened to or spoken to by the Government, and if they had turned and said: “Well, that is what you did to us yesterday when you were in power,” that is precisely my point! I want to get away from that. I want the representative to be a true representative, not having to sit for five years and be powerless, which is what, effectively, an opposition MP is.

He can prevent certain things. He can prevent an entrenched provision from being overridden and he can speak and appeal to the public so that the people know. But basically the people who supported him or his party do not feel this way. Unless it be said that what I am saying is new and I am only saying it because I am in Opposition; sour grapes; or whatever they want to say, let it be noted—I was trying to find the article that I wrote on this issue some 20 years ago, which was published in the *Trinidad Guardian* when the PNM was in power and when I was a supporter of the PNM, I said the same thing then. What I am saying here this afternoon is not new. It is something that I am keenly aware of. I have said it many times and I would take the liberty of saying it again. At the end of the day I am a democrat with a small “d”. I am a liberal with a small “l” at heart. I am a patriot. I believe in my country and I want to see my country go forward. I look at problems and I recognize that the system of government that we now have, is not an inclusive system. It is the winner-take-all system. At the end of the day, Madam President, that cannot be right.

In these circumstances, Madam President, I lend my personal and earnest support to Sen. Prof. Ramchand and I do respectfully ask that this honourable Senate do accept my amendment, which I have read. I also ask that this honourable Senate do support the learned Senator’s Motion.

Thank you, Madam President.

**Madam President:** I think we have to second the amendment. [*Interruption*] We are waiting on it.

**Sen. R. Montano:** Thank you, Madam President. I did pass it to the Clerk and no doubt it would be circulated. She is indicating that it will be circulated very quickly. I know she is very efficient.

**The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith):** Thank you, Madam President. Let me begin by saying that we welcome this Motion. We believe that it starts the debate on what is going to be a very important facet of our development as a country. We gave a commitment in our 2002 manifesto to put constitution reform as one of the items that we will deal with. I think the Motion eloquently summarizes the position of the Government. We want to develop a constitution capable of ensuring the involvement of all the citizens in the running of the country and, equally important, permitting equity in the distribution of the resources of the country. That would be the guiding principle of the PNM's approach to constitutional reform.

Madam President, the debate has only started and you can already see that there are going to be a wide range of options for the country. We have had the mover of the Motion articulating some of the issues that he feels need to be discussed. We had Sen. Robin Montano giving his—I think he was quite clear in saying—personal view of what kind of constitution we could have. It was a pleasure listening to him for the second time on this matter. The other morning while getting dressed for work, it was my morning to listen to Radio Shakti and I heard the presenter, who, when he was with the State-owned enterprise, also had Sen. Montano discussing his views on constitution reform.

I want to congratulate him. He has articulated quite clearly what he believes in and I take his word that we want to see a better Trinidad and Tobago. We have the view that what we really need is a whole new approach to how we govern ourselves. As he said, wipe the slate clean and see where we want to go, that is one view, and his own view is that if we do that we should go with an American style approach to the Constitution. We have the other view which is that we have something that we should stick with; there are problems associated with it and we should try and work out how we could improve the Constitution that we have, and there is no need for this wholesale change in the way we govern ourselves. I am sure there is going to be within that range various options which people will put forward.

We have constitutions that are a combination of the American style and the so-called Westminster, I think France is partially that way—we have the German Constitution which is part proportional representation and part first-past-the-post; we have Constitutions of Latin America which are often subject to change. And therefore I think the debate as it progresses would throw up a lot of these options. It will be for us, as citizens of this country, ultimately, to come to some

conclusion as to what is the best way to proceed; and to proceed in a way that causes the least turbulence in the society.

We welcome the Motion, Madam President. The 18-month period is perhaps as good a way to go as any, although I would prefer to see the Motion suggesting that we should proceed with the matter as one of urgency without setting an 18-month deadline. Even dictators sometimes find it difficult to change a constitution in 18 months. But I think the intent of the mover of the Motion is that he wants to see us proceed with this exercise with some urgency.

Madam President, I think no matter how we proceed there are certain principles we need to keep in mind and which will, in fact, fashion the debate. The first one, as we move this process forward, is there must be the widest possible consultations. We said so in our manifesto; there must be the widest possible discussion and participation in the process leading up to the reform of the Constitution. This should be done for two reasons. One is you want to get the widest possible views on this issue from as many people as you can but, more than that, if you do so then you stand a better chance of having the population buy into whatever you ultimately come up with as the way forward.

Therefore in this exercise we must fashion a process that enables the citizenry of the country to participate meaningfully in the exercise and find a way that we do not restrict those who have the ability to get up and speak, and who love to do so, but also those who are a little more reticent and quiet to also find a mechanism to participate.

I take Sen. Prof. Ramchand's point that some of these town meetings tend to be dominated by a few people. I think they found that out when they went around the country. There are some of us who are not prone to want to talk very often. We want to be able to find a way to bring them into the process. As we do this, I think the second principle is that we must continue to protect and strengthen our institutions of governance even as we do this.

We are proceeding along the route of nationhood and I think it is incumbent upon us as Senators, Members of the Government and Members of the Opposition, to do nothing that will bring our institutions of governance into disrepute. We must protect them as we strengthen them and I think part of the exercise of constitutional reform must have that as one of the guiding principles that as we move forward we protect and strengthen our institutions.

Madam President, given the fact that we have to move to where we want to go within the constraints of the present Constitution, we cannot do otherwise. There

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must be recognition by all; there must be bipartisan support for whatever we want to do. The country must recognize that to move forward, this is not the Government alone; it is the Government, the Opposition, the Independent Senators; all those who have to function within the present Constitution, finding a way to work together on this exercise. Consequently, we need co-operation not obstruction; we need dialogue, not diatribes. We have to find a way, if we are serious about this issue, that politics is removed from the exercise

I was very pleased to hear Sen. Montano make that point. I hope, in fact, he is speaking for his entire party. We have to remove from this debate and this dialogue, confrontation and talk of bloodshed and civil disobedience and all that kind of language must go from this particular debate. This has to be a debate that transcends that type of language. If we do not, then we could listen to everybody and come up with the best solutions but when we come to the Parliament to have it made law it will not take place.

The mindset, I think, of how we see ourselves in this Chamber and elsewhere about Government and Opposition; what is the role of Government and that the role of the Opposition is not to make the Government look good; all that must change if this is to take place. I have just put this out as the kind of condition which will lead us to the successful completion of this exercise. If we do not do it then it just would not happen until some party gets 26 or 27 seats. Therefore, I am appealing that if we are to get serious about this exercise, we change the mindset in respect of how we deal with these issues.

Madam President, at the appropriate time in this debate we will have one of our speakers give comprehensive answers to the questions. I used the word, debate, Madam President, but perhaps it is not the word that I should have used. At the appropriate time in our discussion on this issue we will make a comprehensive statement on all the questions raised in the Motion, which will set out clearly the Government's position.

We have no preconceived ideas. We are approaching this exercise with a very open mind. Therefore it would not be possible at this stage, if we take that view, to come with definitive statements about how we see this exercise. I want to assure you that we are committed. We are proceeding with a very open mind and we welcome this opportunity to begin to hear from Senators on the other side, some of their views; some of their ideas; some of what they think we should be doing; where they think we should be placing priorities, so that it will inform us as we move forward with this exercise.

I think the opportunity lies in this Motion for us to get some very constructive ideas, if we seize the moment. We on this side look forward to that kind of debate. We will listen intently and we will take on board what is said.

**3.30 p.m.**

**Sen. Prof. Ramchand:** The Minister has virtually said to us that he would be removing the whip, but I think it would be quite a revolutionary thing if he were to say it in so many words—that the whip will be removed to facilitate this process of free discussion.

**Sen. The Hon. Dr. L. Saith:** I did not realize that was what I said, Madam President. I merely indicated that we would make a comprehensive statement answering the questions. The Members on this side have various institutions within the Government and the party to make their views known. I am saying that we will listen.

Before I take my seat—because I do not believe this is a time for long speeches—let me just touch on one issue raised by Sen. Prof. Ramchand, and that is the relationship with local government. We recognize that even within the present Constitution and our need to work within it, there is need for a more defined and focused role for local government as a means of dealing with the equity of distribution of resources. The Prime Minister has allocated to the Ministry of Public Administration and Information the responsibility for coming up with proposals for decentralization to local government and my Ministry is working on this issue. We believe that even while we wait for constitutional reform, however long or short it may be, there is need, given the issues raised about how the country sees itself, where local government now represents what the Parliament may not represent—power and the locale in terms of the various political parties—that we have to find a way of decentralizing some of the powers of implementation at least to local government to take it closer to the people.

We are working on that and I assure Sen. Prof. Ramchand that we will not wait for constitution reform to begin to do some of that. Of course, constitution reform may in fact enshrine it in law or otherwise, but the Government is very conscious of its responsibility to bring all citizens into governance and to remove, if it does exist, the sense of alienation which may exist in any part of the population.

Madam President, I thank you.

**Madam President:** Hon. Senators, an amendment to the Motion brought by Sen. Prof. Kenneth Ramchand was proposed by Sen. Robin Montano and it reads:

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“To add a second resolution which will then read:

*And be it resolved* that this Senate appoint a Joint Select Committee of Parliament to formulate a new Constitution for the Republic of Trinidad and Tobago and to receive comments from the public on Constitutional Reform and to submit same to this Parliament no later that December 31, 2003.”

May I have a seconder?

**Sen. Wade Mark:** I beg to second the amendment and also to reserve my right to speak on it and the substantive Motion.

*Question proposed.*

**Madam President:** Hon. Senators taking part in the debate hereafter will be able to speak on the original Motion and on the proposed amendment.

**Sen. Dana Seetahal:** I join to support the Motion brought by Sen. Prof. Ramchand and join with the previous Senators, Sen. The Hon. Dr. Lenny Saith and Sen. Robin Montano, in so supporting that Motion.

I, too, was worried that in the last two months there might be a tendency to complacency in terms of constitutional reform because we are no longer in a crisis. It seems to me that for the last several months—if not the last few years—we have been governing by crisis—one crisis after another in terms of the interpretation of the Constitution.

The Constitution has been abused, it has been cursed, it has been stretched to the limit within the last so many years. Now, 26 years after the Republican Constitution was passed, it is time for us seriously to consider either revising or repealing that Constitution and substituting it with another. In that regard, flowing from what Sen. Dr. Saith has said, I wish to point out certain areas of the Constitution—not only those areas dealing with the system of government—I think would need amending or changing.

I will first consider a “Crossing of the Floor” amendment. When I say the Constitution has been abused in the last few years, I would start there. In 1997, history records some two Members of Parliament purporting to cross the floor from the People’s National Movement and giving support to the United National Congress. While this situation was to be guided by section 49A of the Constitution, which states that they were to have vacated their seats, it appears that no standing orders were passed by the House to facilitate that process and, accordingly, they kept their seats. The Members kept their seats even while the

principal legislation suggested that they should have vacated them, simply because subordinate legislation had not been passed. That created lots of conflict in the country at the time. Many people spoke about it and, on the face of it, it was clearly an unfair and, what some may term, an unethical position on the part of the two Members.

I thus start by referring to this section, which is a codification of Act No. 15 of 1978, the Crossing of the Floor Act, which is now part of the Constitution, to consider whether that is a section we should give effect to fully or whether we should remove it because, as it stands now, it is of no use. That is one area, I would say, which is in need of urgent reform.

Shortly after that situation in 1997, we had the December to January, 2001 situation, where there was a proposal by the then Prime Minister, which eventually came to fruition, to appoint what were termed “losers” to the Senate. Some of us—the people of the country—did not appreciate the term “losers”. Some felt that these were people who contested the elections and, therefore, had a right, as any, to be appointed to the Senate. Unfortunately, the Constitution had no specific provision for that. The Constitution did not prohibit it, as in other Constitutions in the Commonwealth Caribbean where there are provisions dealing with that. Even whilst the President of the Republic felt that if we were to follow the spirit of the Constitution, people who had contested elections for the House of Representatives should not be appointed to the Senate, he eventually felt constrained to appoint some seven persons as Senators. That is one issue we need to consider.

Another issue flowing from that is whether an unlimited number of Senators should be appointed as Ministers. In the 1962 Constitution, out of a possible 13 government Senators, only four could be appointed Ministers. That was removed in the 1976 Constitution and there is no limit. Since then, governments have chosen to have numerous Ministers come from the Senate and again this has created conflict. We are talking about resolving conflict. Let us confront that situation and decide whether or not we want to set a limit; whether we want to say no more than half or no more than one-third of the Ministers should be from the Senate. If we do and we all want it and we think it is good for the country, then we should do so. At the end of the day, we should seek what is for the common good. The determinant should be what is good for all, not what is good for one government in its time and another government later on; and when it suits a government, it changes its mind because it is in government at that time and it wants things that will assist it.

The last few years have also revealed problems in the Constitution with respect to citizenship as it pertains to the election of Members of Parliament. It might be a very distant memory to some of us, but not too long ago, before the courts of Trinidad and Tobago, there was a matter where a Member of Parliament had dual citizenship and the issue arose as to whether or not he was qualified to be an elected Member of Parliament under the Constitution. When things are current, we all think it is a big deal; we say it is a crisis and we are going to court and if the people are knocked out, we will form the government as was said by the current Government when it was in Opposition.

The Constitution says that no person shall be qualified to be elected as a Member of the House, who is a citizen of a country other than Trinidad and Tobago, having become such a citizen voluntarily. If someone is a citizen by birth let us say in Britain, as has happened with a candidate in the last election—she was a citizen by birth; she was also a citizen of Trinidad and Tobago—she could contest the election. Yet, if someone born in Trinidad and Tobago with Trinidad and Tobago citizenship, subsequently acquires citizenship in another country, even though the law in 1998 as amended in 2000 provides for that, that person is, under our current law, as interpreted by the courts, banned from contesting. Is this right? This is another matter to consider. Do we want citizens to benefit fully from dual citizenship?

It is not only the political system that we need to consider. The Constitution does not only provide for the establishment of government, it provides for many other things. So, when we talk about constitution reform, are we also looking at the fundamental human rights? Are we looking at redress? There are some cases of recent vintage, which suggest that people cannot come by constitutional motion to protect their rights unless they have exhausted other means of redress. This is a recent decision. Do we want that? What are the powers of the Director of Public Prosecutions? Do we want to clarify it that is a truly independent institution? Is it clear enough? It may not be so to some.

Getting to the real issue I want to talk about, which is not part of the political system, is the Privy Council. This has been on the drawing board for years and we know that we have a building, Winsure Building, that is supposed to be the Caribbean Court of Appeal. It was supposed to come into effect in 2002 and I have heard now in 2003, but there are no real moves to bring it into the fore. People are talking about it. Members of the Judiciary are complaining that the Privy Council will arbitrarily, it seems, overrule a decision of the Court of Appeal when it is a capital matter. Senators know the thinking of the court in



England: “We do not have the death penalty here, therefore we hate having to decide on these death penalty matters. Until such time as you have your own court, we will just knock down all these convictions that relate to capital matters.”

In fact, one judge said, “Why do you keep sending these matters to us when we do not have the death penalty and we do not like to uphold a decision which says that a person should be executed.” That, to me, is an almost direct insult to our sovereignty, yet we have people who are still saying. “Who we go put in our Caribbean Court of Appeal?” We do not have people “bright” enough as these English judges.

That is a decision we have to make soon. It entails amending section 109 of the Constitution by a three-quarters majority in the House of Representatives, which means that it will clearly have to be bipartisan. When you have 20/16, three-quarters will be 27. It is something that is in crying need of reform. I think that we need to abolish the Privy Council and substitute the Caribbean Court of Appeal without delay. I know it is in the offing, but I have been hearing that for years.

One important issue referred to by Sen. Montano and Sen. Prof. Ramchand and touched upon by Sen. The Hon. Dr. Saith is the area dealing with the separation of the Executive and Legislature. In the current Constitution, there is really no separation of the Executive and the Legislature. In other words, the Executive comes from the Legislature. It is almost an incestuous relationship for want of another word. We have a Parliament, which comprises the President, the House of Representatives and the Senate. It is from the House of Representatives and the Senate that the government is drawn, unlike the United States where there are elected members who constitute the Parliament and debate the legislation. There are also executive people who are appointed through a system to which Sen. Montano has referred.

We have here a Parliament from which the Executive is chosen and Parliament is supposed to oversee the Executive. The Parliament cannot act as a check and balance on the power of the Executive. Any government, including the current Government, may like that, that there is no check on the power of the Executive. We cannot blame whoever is in power if they enjoy the fruit of what is there in the Constitution, but is it good for the country?

We saw in the last few months a stagnated Parliament. We had a government functioning. People say it was by executive decree, but the point is there was no choice in the current situation. It was not that the government said that was the way they wanted to do it. They had a situation and they worked with it and that situation was allowed to happen—if I may say that—by virtue of the

constitutional provisions. We need to look at all these things. These things are, I submit, matters of urgency. These are areas in urgent need of review and which have, over the last few years, caused crises in government. Do we want to continue governing by crisis?

It is less than two months that this Government has been functioning and you may think that with a majority, there is no problem here: We can continue. We have a small majority in the Senate, but one never knows what can happen.

The Government has, through the Leader of Government Business, stated its intention and position in respect of constitution reform—and we congratulate them and the Leader of Government Business for that—but I refer the larger Senate and the Parliament to these areas. Some of us want to forget because we want to put those bad times out of our minds—the Crossing of the Floor, the Government without a Parliament, no Speaker, but we have to remember them, because they will come again.

I thank you, Madam President.

**Sen. Derek Outridge:** Madam President, I am once again grateful for the opportunity to address this honourable Senate and even more grateful to be able to do so on the subject of constitutional reform. I, therefore, thank my colleague, Sen. Prof. Kenneth Ramchand for bringing this most important Motion for debate.

It was probably the initiative of the nine appointed Independent Senators and their perseverance in the face of adversity that spurred the proposal of this Motion. I know that there are a great number of citizens out there who would wish that our Constitution undergo major change.

Madam President, reform means to form again. This should have been a major goal of this Government and not the piecemeal changes, which appear to be the manner of reform as a result of the current legislative agenda. Sen. Prof. Ramchand's Motion is one which I compare to the UN declaration for Iraq to disclose. He wishes the Government of Trinidad and Tobago to disclose those portions he has mentioned in his Motion of the areas and how, when and what the time frame should be.

The Constitution is about fundamental human rights and the freedoms of our people and, therefore, it should be the people who should determine how and in what manner we must form our Constitution again. What is required is a referendum system whereby the people who are the stakeholders can participate in a comprehensive review of our Constitution through community participation and can be empowered to determine the way forward for the country. It would

therefore be interesting and probably challenging to the Government to determine from the people what manner of constitutional reform is required.

There have been several occasions in the past, which have brought to the people of this country the need for a major reform of the many areas of the existing Constitution. My colleague, Sen. Seetahal, has mentioned a few and I will mention a few more. For example, the role of the President, the appointment of a Prime Minister by the President as a result of the electoral tie and the appointment of commissions of enquiry by the President.

I can speak from personal experience of a situation when I was a member of the Joint Consultative Council for the construction industry, when we had concerns about what was happening with the construction of a new airport. We approached His Excellency the President and requested that a commission of enquiry be appointed to look into that. We were told he could not act on his own; he could only act on the advice of a prime minister. We went to the Prime Minister and requested a commission of enquiry. What we got was a committee of enquiry and we were given the assurance that when the report was laid in this Parliament, it would receive the sort of protection of Parliament that such a report would have.

We in the JCC then were greatly disappointed to find out that the report did not receive the protection of Parliament which it should have. What happened afterwards was that the report became a public document, which the courts held defamed a particular individual who was actually constructing parts of the airport. In the end, he was able to sue successfully and receive compensation. At the end of the day, what we were seeking to prevent to protect the public interest was totally eroded and the result is now a commission of enquiry into its 58<sup>th</sup> day to determine what happened. That could have been prevented if the President had certain pro-active powers.

We need to protect the public interest against absolute Executive/prime ministerial power. The role of the President in a reformed constitution should be proactive and interventionist.

We have a number of service commissions and commissions provided under the Constitution. It is my firm belief that we must have the accountability of these commissions. They must be accountable to someone and if they are appointed by the President, irrespective of the advice that he has received or consultation between the Prime Minister and Leader of the Opposition, I believe that these commissions should be accountable to His Excellency the President. So, if they

are not performing in the manner they should, then some sort of action should be taken to ensure they do, in the public interest.

I have the vexing problem of the accountability of Cabinet to the people. Cabinet must not be allowed to make decisions behind closed doors, which are inimical to the public interest. The enquiry on the construction of the airport is currently revealing a number of Cabinet decisions which have cost this country and its citizenry dearly. We still do not know what is the financial, economical, environmental or social cost of these decisions to the nation as a whole. We have to ensure that in a reformed constitution there must be some accountability of Cabinet to the people in matters of public interest.

Another area we should look at in any constitutional reform is the role of the Attorney General. We need to examine what happened with a previous government when the Attorney General was put aside because he could not and was not allowed to carry out his responsibility under the Constitution of taking legal proceedings for the State against his colleagues where he felt there was a breach of the public trust.

Because the Attorney General is appointed by the Prime Minister and because Attorneys General believe that they have to follow certain rules, norms, or conventions, they cannot carry out their functions efficiently when that position exists.

I have heard of the role that someone previously proposed as to what should happen with regional corporations and the Tobago House of Assembly. There must be representation of Tobago as well as the interest of the people within all regional corporations, in Parliament. The composition of Parliament needs to be examined in constitutional reform in this respect.

Another area we should look at is the responsibility of the Members of Parliament. Members of Parliament are elected by their constituents to serve their interests and we need to examine whether they should be allowed to cross the floor or not. My colleague, Sen. Seetahal, touched on the issue and I believe that if a Member of Parliament cannot serve in the government under which he was elected to serve his constituents, he must not be allowed to cross the floor.

We probably need to examine the position where a Member of Parliament is not serving his constituents and their interests. They must have some form of action to be able to petition and ensure that their interest is served in respect of removing the errant Member of Parliament.

One of the other areas that I believe we ought to look at in any constitutional reform is the creation of a position of Deputy Prime Minister. We need to examine the provision of the Constitution for the formation of such a position. We should not allow the situation to continue where we must accept a person to act as prime minister based on an ad hoc personal decision.

Another significant area we should look at is that of campaign finance. It is a vexing matter to the population. We must not be allowed or allow ourselves to be put in the position where the country can be hijacked by a few people because they have bought themselves a government. The people must know where the party, which they are about to elect into government, has received its campaign contributions. We probably need to reform the position whereby either the State provides campaign contributions for any party wishing to contest an election, or we create a position where we limit the number or amount of contributions which a private individual or organization can contribute in any campaign finance.

I want to review the composition and powers of the Senate. I believe constitutional reform, which must take place, must ensure the composition of this Upper House to determine in such a way, to ensure that political manipulation of the Parliament does not take place. It is something we need to look at in terms of whether or not a government should have a majority in the Senate and that the combination of the Opposition and the Independent Senators do not have a majority; or maybe they would have equal or some other mechanisms to ensure that the people's interests are looked after.

I look at the selection and accountability of people to State boards. Recent events have shown that there is need to protect the public rights and freedoms in the selection to State boards. It was recently held that a former chairman of a State board was not accountable for his actions because the Act which constituted the composition of the position of chairman did not make him accountable.

We need to ensure that legislation cannot and must not be passed in this Parliament to circumvent the protection of the rights and freedoms of the people. The Constitution must provide for accountability of all such persons to State boards. They must be accountable, even if it is to His Excellency the President. There are many more issues and areas that concern the people and only comprehensive reform of the Constitution of the Republic of Trinidad and Tobago will suffice.

All the areas mentioned in this contribution must be addressed in any such comprehensive reform. The issues are many and a piecemeal approach will not do

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the job properly. Only a comprehensive reform will provide an efficient and effective constitution to take us forward. Any reform of our Constitution must include the participation of the people, since they are the affected stakeholders. Piecemeal reform via legislative amendments will not do.

The Government, in its manifesto of 2002, their contract with the people, under the heading “constitutional reform”, seems to indicate to the people that they are to carry out a comprehensive reform and we expect that they will support, as they have said, this Motion, by actions and not words. I do not know whether 18 months is sufficient for this exercise. The time frame could be reasonable, however Government should ensure that it takes place immediately so as to ensure the widest participation of all in society.

Sen. Montano mentioned that such a move is underway using a single radio station. I would like to see that we have something like a “constitutionalathon”—like we have all sorts of “athons”, where the media participates by contributing freely time and effort. All radio and television stations should take part for a whole day or a whole week or such period of time, to ensure the widest possible participation, with views and proposals coming forward, either in writing or by virtue of taping. We see this in the current commission of enquiry which is put on public television to ensure that it is there for public record. We can have those records transcribed and Government can come back to the Parliament with the proposals for reform that Sen. Prof. Ramchand requires by this Motion.

Thank you.

**Sen. Garvin Nicholas:** Madam President, individuals usually come together in society in pursuit of social justice, whatever the social and economic relationship in a society may be. However, the goal of social justice will forever remain elusive if the constitutional arrangements enveloping political organization strike a note discordant to the needs and aspirations of the society as a whole.

A country in search of equality, particularly a developing country, lacking the stabilizer of centuries of tradition, is therefore sure to be a laboratory of constitutional experiment. Commonwealth Caribbean independent countries are classic examples of such developing nations. These nations striving after genuine social and economic upliftment could therefore hardly sit complacently with the original constitutional birth certificates that attest to accession to political nationhood.

Madam President and Members of this honourable Senate, with these amended words of my learned friend, Francis Alexis in the preface of this book,

*Changing Caribbean Constitutions*, published in 1987, I am indeed grateful for the opportunity given by my party to speak in support of the Motion introduced by the learned Sen. Prof. Ramchand on the issue of the need for Government to articulate its policy on constitutional reform, as amended.

I have noticed that the Government does not seem to share the same level of urgency that other speakers in this Senate have on this matter. Constitutions are used to regulate the affairs of the citizens and the State. Such regulation is as pertinent and necessary today as in the days of the Caribs and Arawaks prior to the 1498 landing of the Spanish explorer, Christopher Columbus, for the simple reason that it seeks to create some form of order, justice and equality of opportunity in the society.

However, the modes of regulation today would be in stark contrast to back then and so it must, because times have changed and the nation has evolved considerably. In fact, we need not even go back that far to find contrast. The nation State has evolved considerably in the past 40 years since independence, to the extent that situations that were not envisaged by the drafters have arisen in recent times, giving rise to the playing off of political vendettas at very high cost to the nation State and to the distress of most of the citizens.

In fact, the Motion states that no adjustments have been made to the Republican Constitution for the last 25 years, but Trinidad and Tobago has moved on with dramatic effects since the days of pre-independence. Unfortunately, we have also witnessed massive cracks developing in our social fabric that have repressed the advancement of our plural society. It may well be argued that these cracks have come about because of the way our constitutional institutions function rather than in spite of it.

When the Spanish explorers came, they had their own agenda and put systems in place to benefit and serve that agenda. Similarly, when the British assumed the rule of our twin-island colony, they set up the most advantageous structure for the achievement of their goals. It is now incumbent upon the present leadership to put in place a system that works for the benefit of all who would occupy space on this twin-island land mass called Trinidad and Tobago.

Trinidad and Tobago must be governed to the benefit of its citizens first and all else must be subordinate to this ideal. Any change in our Constitution, whether it be our electoral system, the way electoral boundaries are constituted, the way Members of Parliament function, the role of local government, the way houses are distributed by the National Housing Authority, or the powers of a police commissioner, must be made for national not party reasons.

Because of the many areas left untouched over the last 25 years, it is submitted that the constitutional reform should not be done in a piecemeal fashion. That could be allowed if the Constitution evolved over time, but because of this long sleep, there is need for radical overhaul today.

Surely it is my dearest wish, as a UNC politician, to see the PNM disappear from the political landscape and to create in the 21<sup>st</sup> Century a truly progressive nation. However, the case for constitutional reform cannot be advanced as a private arrangement that suits only the UNC. The case has to be made on grounds of the wider national interest and the solution must be one that lasts. As such, it is imperative that wide consultation be embarked upon with immediate effect in order to achieve this goal.

What is this thing called a constitution of which we speak so passionately? Many of our citizens do not fully appreciate the vastness of the constitutional remit. Constitutional debate found its prominence in the post-election 2001 talk shows, when for the first time the population felt directly affected by constitutional decisions en masse and there is a belief that only electoral issues are determined by the Constitution.

Constitution reform is often tied to electoral reform, but it should not be assumed that the Constitution only affects the way persons or political parties are elected to government to the serve the population. For the House of Representatives the most significant issue might well be the electoral system and for the population it is an issue of great significance because the way we elect our representatives will, to a great degree, inform the way we are governed.

Trinidad and Tobago, as with Britain, has traditionally relied on the first-past-the-post system and there are many continuing advocates of that system on the grounds that it has generally led to governments with a clear majority without the need to rely on complicated coalition arrangements, as is the case of many European countries. Others, both here and in the UK have argued the case for a move towards some sort of system of proportional representation. It is believed that first-past-the-post encourages discrimination especially in a society such as ours. Whatever system is ultimately agreed upon must take into account the requirements for broad proportionality the need for stable government and extension of voter choice and the maintenance of a link between MPs and geographical constituencies and, most importantly, must allow every member of Parliament the ability to properly represent his constituents. This does not pertain today.



The Constitution of Trinidad and Tobago regulates first and foremost our rights as citizens and this is a point I shall refer to later. It also regulates emergency powers, citizenship, the powers and election of a president, the Parliament, the Elections and Boundaries Commission, Executive powers, the Director of Public Prosecutions, the Ombudsman, the Judiciary, including the appointment of judges, the way government is financed, the Public Service Commission, the Police Service Commission, the Teaching Service Commission, the Public Service Appeal Board, pension rights, the Integrity Commission and the Salaries Review Commission; all of these areas might be found wanting and that is why there is need for wide consultation and in-depth overhaul.

The Constitution touches all of us and does so on a regular basis. As such, it must be a living instrument that grows as we grow or it will become obsolete as indeed many believe it has become. Even the British have grown somewhat wary of the way in which they are governed and the alteration of their constitution to reflect this requirement for change has taken root and, in some cases, has even borne fruit.

The British Parliament and its monarchy are constant areas of debate because even Britain, a nation steeped in centuries of tradition, is evolving. For the first time in 1999, the British people used proportional representation to elect their representatives to the European Parliament. We gained independence from the British, but unfortunately, the administration that existed prior to and directly following those early years in our nation's history found it either unwilling or incapable of changing the way in which this nation, that is Trinidad and Tobago, should be governed. It is this lack of vision that has brought us to this wholly unacceptable position we find ourselves in today and it is our duty to change it.

This Government went to the people and promised that they would do just that. The need for constitutional change is not a new concept. In fact, it has been bandied about for many years. Successive administrations have commissioned papers on the very subject at considerable expense to taxpayers, but these reports have been used to collect dust on various shelves.

Even now, three bills to reform the police service are before the House. If ever there was any doubt as to the need for change in the way political institutions function, the political events of the last couple years emphatically remove any such doubt. Political institutions must function for the good of the population it is meant to serve, not just to the benefit of part of the population. The entire population must have the confidence of equality of opportunity.

It could never be right in a civilized, developed society that half of the population is made to feel alienated from and abandoned by constitutional institutions, no matter whom they vote for. The Constitution should indeed be capable of ensuring the involvement of all its citizens in the running of the country. After all, taxes are not only collected from the supporters of the governing party.

Trinidad and Tobago is inhabited by a mere 1.3 million people, but unlike Japan with 127 million homogeneous citizenry, Trinidad and Tobago is made up of a multitude of ethnicities and religions with considerable overlap of views and aspirations. However, the one thing they have in common is the need to be treated fairly and to have equality of opportunity and equal access to services and the Government promised it in its manifesto. It must deliver on its promise and it must do so with some speed.

The evolution of Trinidad and Tobago has surely created great opportunity for us all. However, if our mode of self regulation ignores and fails to reflect this evolution, we may yet preclude the fulfillment of our hopes and dreams and the developed status we desire and that even the Government has haphazardly articulated with its so-called 2020 plan, will be yet another pipe dream.

Some will say we stand on the edge of a very exciting future as dollars from the petrochemical industry are set to flow and so there is no need to reform anything. However, the more discerning in our society may express the view that we stand at the edge of an abyss with crime running out of control, the nation's health system in shambles, there being no cogent plan to improve in any significant way, the way in which we conduct sport, the way in which we treat with our young people or the elderly; the fact that rural education is not given the same priority as urban learning and with the society becoming more polarized by the minute.

Madam President, you do not have to go far to notice the extent of the polarization and the hurt that people feel. On a daily basis one has only to tune into the local talk shows on the radio; the expressions of alienation, marginalization and distress that these shows thrive on betrays the happy-go-lucky behaviour exhibited in public by our citizens.

Our expectations are changing and in many cases have in fact changed. No one should be victimized because of their democratic choice of a leader and the Constitution should reflect this. As citizens, everyone deserves to have proper health care and protection from criminal elements and the Constitution should

reflect this. Everyone deserves to have his drains cleaned so as not to have their homes flooded out. Local government bodies deserve equity in the distribution of resources. Social programmes of the State must benefit all who need this assistance and the Constitution should reflect this.

These important constitutional issues to which we must address our minds are predicated on the view that we must strive as a nation to promote equal citizenship based on modern democratic values. It is an awesome responsibility, but one which we must choose to undertake. The Government promised the nation and they must be made to keep their promise.

It is vital that we develop a stronger understanding of what our collective citizenship means and how we can build that shared commitment into our social and political institutions. The somewhat archaic nature of our constitutional arrangements undermines the notion of equal citizenship and a collective understanding of the core civic and political values of a plural society.

In reaching consensus, we must also give consideration to the way in which certain religions dominate the landscape to the detriment and even scorning of others. Our Constitution must recognize the reality of the modern diverse society in which we live and must promote racial and religious equality in an atmosphere of mutual tolerance and respect for human rights and to promote a common and collective sense of what citizenship of Trinidad and Tobago entails.

**Madam President:** How much longer will you be?

**Sen. G. Nicholas:** Madam President, I think 10 to 15 minutes.

**Madam President:** Well, Senators, we will take the tea break at this time and when we return you will continue your contribution.

The sitting is now suspended for half an hour. We will return at 5.00 p.m.

**4.30 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Senate resumed.*

**Sen. G. Nicholas:** Madam President, in reaching consensus—

**Madam President:** All right, Senator, just wait one minute. [*Pause in proceedings*] Senator, you may continue.

**Sen. G. Nicholas:** In reaching consensus, Madam President, we must also give consideration to the way in which certain religions dominate the landscape,

to the detriment and even scorning of others. Our Constitution must recognize the reality of the modern diverse society in which we live and must promote racial and religious equality in an atmosphere of mutual tolerance and respect for human rights and to also promote a common and collective sense of what citizenship of Trinidad and Tobago entails.

The United Kingdom has a population of some 60 million people, 93 per cent of which is made up of white British. This is not to say that there is not polarization in the British society; there is, but the United Kingdom has found it necessary to devise ways of preventing the exclusion and alienation of the 7 per cent. This is reflected in legislation for teaching, policing, employment practices, social services, sport, health care and, Madam President, even housing. Our Constitution does little or nothing to address this issue of polarization, even as it affects approximately 50 per cent of our population. Surely, that cannot be deemed a tenable situation.

Our society is made up of persons of African, Indian, Syrian, Lebanese, Chinese and European descent with those of African and Indian descent making up the overwhelming majority. Our Constitution, therefore, should not only insist that both major groups are represented equitably but must also make accommodations for all the other ethnic groups in our society. In the same way, the interest of the major religious groups such as the Christians, Hindus and Muslims must be represented but not to the detriment of other smaller or larger religious organizations.

Madam President, the only way a people can or would commit themselves wholly to the development of Trinidad and Tobago is if they genuinely feel part of this nation. You simply cannot expect someone to give of their all to a cause with which they share no real connection. Mr. Manning speaks with such attachment to the concept of a developed nation by 2020 but that can never be achieved if we remain polarized. Of course, neither can it be achieved if dependency continues to be promoted as the way to get out of poverty; but, Madam President, that is another issue.

If the Prime Minister and the PNM are really serious about taking this nation forward to prosperity, they must put the complete overhaul of our now archaic Constitution as the top priority. This must be put on the agenda today, not just in talk but also with action. They must give a clear time frame. This Constitution must embrace the needs and wishes of the widest community and must not be like—it must transcend politics. The time has never been more right for

constitutional reform. Let us not miss the bus again. Trinidad and Tobago missed the bus to true development during the squandering years of the oil boom of the 1970s. Let us be more vigilant this time as the opportunity stares us in the face.

Can we stand in the Senate and say that in Trinidad and Tobago there have existed and continue to exist without discrimination by reason of race, origin, colour, religion or sex the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof, except by due process of law; or the right of the individual to equality before the law and protection of the law; or the right of the individual to respect for his private and family life; or the right of the individual to equality of treatment from any public authority in the exercise of its functions; or the right to join political parties and to express political views without fear of victimization; or the right of a parent or guardian to provide a school of his own choice for the education of his child or ward?

Madam President, our constitutional institutions do not recognize or protect these fundamental rights and freedoms. How then can we say that our Constitution is working? There is so much wrong that needs to be put right. There are problems with the way we as a nation deal with young offenders and the issue of bail. It comes under the banner of rights and freedoms and equality under the law. I am not promoting for a minute that dangerous criminals be set free to terrorize the citizens but, Madam President, too many of our young people are made into hardened criminals by the system. There are examples of persons spending several years in prison for being caught with a stick of “weed” merely because they could not afford the \$1,500 bail, and the backlog of cases prevents their case from being heard.

Then of course, there was the greatest fiasco in our nation’s history, the 2001 election and what followed—18/18. Madam President, who should become Prime Minister? If it happens again, who will be Prime Minister? The Constitution needs to be clear on the issue. Eighteen and 18 again is not far-fetched. A mere 600 votes separate 20/16 from 18/18. Is it then that we only care when we are the 16 or the 18? No, Madam President, the Constitution must never be such a short-sighted document.

The Constitution does not only affect the way we conduct our business domestically. History has shown that it also impacts on our international image. There is no need to go to Tucson as the learned Sen. Prof. Ramchand did. At least 50 per cent of our population today, right here at home, is discontented with this Constitution. Madam President, the Constitution of Trinidad and Tobago is not

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working to the benefit of the citizens at large. Why should the population tolerate such a Constitution? Why, Madam President, would a Prime Minister who claims to care so much for his people, and who professes a desire to give us a developed nation by 2020, not seize this opportunity where he finds fertile soil on the Opposition and Independent Benches of this honourable Senate?

Madam President, I support wholeheartedly the Motion of Independent Sen. Prof. Ramchand and I call upon the Government to set an agenda for real and complete constitutional reform. I thank you. [*Desk thumping*]

**Madam President:** Before I recognize Dr. Saith, let me take this opportunity to congratulate Sen. Garvin Nicholas on his maiden speech. [*Desk thumping*]

#### ADJOURNMENT

**The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith):** Thank you, Madam President; and I also congratulate the Senator on his maiden speech in this Senate. He has made speeches before in the regional council, as a PNM Councillor. [*Desk thumping*] [*Laughter*]

Madam President, I beg to move that the Senate do now adjourn to Tuesday, December 03, 2002 at 1.30 p.m.

May I indicate, Madam President, that we propose at that sitting to deal with the following bills in this order: the Lease of State Lands (Validation) Bill, State Lands (Amdt.) Bill, the Old Age Pension (Amdt.) Bill and, in the hope that we finish all of that before 6.30 p.m., we will then go on to the Public Assistance (Amdt. and Validation) Bill.

**Madam President:** Hon. Senators, there is a matter to be raised on the adjournment of the Senate. I call upon Sen. Dr. Kernahan.

#### **Public Health Threats (Need to Address)**

**Sen. Dr. Jennifer Kernahan:** Thank you, Madam President. Madam President, I believe that the consensus of opinion of the people of Trinidad and Tobago is that health is fundamental to the social and economic development of our country and to the general well-being of our people. I am confident, therefore, that there is a consensus of opinion among all right-thinking people that actual or potential threats to public health must be addressed with the utmost dispatch and diligence, a sense of purpose, clear objectives and strategies to achieve these objectives based on the input of all the technical support and expertise that is available to us in Trinidad and Tobago.

Madam President, the Director of Carec, in a bulletin of the organization on the importance of policies in health, posed the issue of health this way and I quote:

Health is at the heart of sustainable development; in this sense, prime ministers and presidents, also ministers of health, as the decisions they make have definite consequences for the health of our population.

Madam President, it is in this context that we on this side strongly protest, on behalf of the peoples who have been exposed to flood waters, the total lack of commitment and positive decisions on the part of the hon. Minister of Health, a deficiency which has severely compromised the health and well-being of the people—

**Sen. D. Montano:** Madam President, on a point of order. Is the Senator reading a speech or is she speaking?

**Madam President:** I think you should try to speak from your notes, Senator.

**Sen. Dr. J. Kernahan:** Thank you, Madam President—of the health and well-being of the people whom he has sworn to serve, especially the groups most at risk in this situation, children and the elderly.

Madam President, I say this today in the light of the positively scandalous laissez-faire, lackadaisical attitude to the business of ensuring the implementation of all the post-disaster strategies that are standard for all developed and developing countries after a situation such as we have experienced in Trinidad and Tobago over the last few weeks. The total absence of a decisive and focused approach to the flooding situation in this country has had dire consequences for the health of our people. It has been traumatic and, even as we speak, there are people who are suffering in the hospitals of Trinidad and Tobago from this debilitating disease of leptospirosis.

Leptospirosis is a bacterial disease that affects humans. It is a zoonosis. It affects humans who have been exposed to waters contaminated by the urine of rats or animals that are affected by leptospirosis. Human beings become contaminated if they are exposed to this bacteria either by swallowing contaminated food or water or if they, because of broken skin—this particular bacteria is very motile and can penetrate any broken area of the skin or it can penetrate the mucosal areas of the body, especially the eyes and nose. So that exposure to flood waters, Madam President, is one of the ways that this particular bacteria is transmitted to human beings.

Symptoms of this disease may develop any time from two days to four weeks after exposure and may begin abruptly with chills, fever, headache, vomiting or a rash. One can also experience jaundice or red eyes. Sometimes this disease is not accompanied by obvious symptoms in the first instance but, if left untreated, people can develop such serious illnesses as meningitis, liver failure, kidney failure and respiratory distress. So this is a very serious problem, Madam President, and it is well documented all over the world that, after flooding disasters and so on, there is a rise in the incidence of leptospirosis in these areas. In fact, recently in Peru and Ecuador a rise in the incidence of this was reported after heavy rainfall and flooding in the spring of 1995, according to the Department of Public Health of North Carolina in a bulletin of September 1999.

Madam President, allow me to bring to the attention of this honourable Senate the fact that the incidence of leptospirosis in this country has skyrocketed over the last year, between 2001—2002. According to the figures from the Caribbean Epidemiology Centre, reported cases of leptospirosis, reporting for periods of one to 34 weeks; for 2001/2002, the first eight months actually of the year, we see that in the year 2001 at the end of the first month, January, there were 12 cases as opposed to 22 cases in 2002. In the month of February 2001 there were 10 cases. This skyrocketed to 16 cases in February 2002. In March it went from five to 12 cases. April was the worst—from one case to 11 cases. This represents over a thousand per cent increase, Madam President. In May the figure went from five to 10 cases—100 per cent increase in the number of cases. In June, there was a slight decrease from nine to eight cases. In July—five to 11 cases; and in August there was a rise from four to eight cases.

These are the figures. They are very worrying for our people and these constitute just the first eight months of 2002. So we have increases ranging between 60 to 120 per cent and up to a thousand per cent in the number of reported cases of leptospirosis in this country which signifies to me an epidemic or a possible epidemic if it is not dealt with in a very timely manner. Madam President, these alarming figures, which would have been brought to the attention of the Minister of Health, should have elicited an even more urgent response in the post flooding weeks, in the last two weeks or so, because we know that we are particularly at risk in this period, and our peoples are particularly at risk. In fact, the newspaper reports are indicating that an increased number of cases is being treated at the San Fernando hospital.

What reassurances do our citizens get from the Minister of Health and the Ministry of Health at this time, Madam President? There is no word from the



ministry on what is happening. There is no indication that the surveillance and prevention programmes are in place to curb this impending epidemic and, I submit that this is not the sort of action that the people would have expected from a newly elected government, this Government that speaks the mantra of “People are our priority”. I believe that action speaks louder than words, Madam President, and the real message I am getting here is that people are your liability rather than your priority.

On behalf of the country’s citizens, who are struggling to put their lives together again after such horrific disasters, who are at risk, who continue to be at risk of contracting this debilitating disease of leptospirosis, we on this side demand that the Minister of Health immediately take steps to institute, in the areas most at risk and to the peoples most at risk, the necessary surveillance and prevention programmes. Madam President, we talk of developing this society to developed country status by 2020. I submit that we are not going to get up magically on the morning of January 2020 and say that today we are a developed country. What we do every day, the positions we take, the actions we take in a focused, responsible manner every day, sector by sector, the decisions we take, as the Director of Carec said, will determine whether our country is on the path to developed country status.

Therefore, we on this side demand that developed nation status actions be taken right now, sector by sector, that we no longer, you know, pretend that we are helpless in the face of these crises. The methods of dealing with these crises are well documented throughout the world. Technical help is available locally and from other countries that have the experience and so on and developed country attitudes and developed country decisions and focus must be brought to bear on every challenge that we face. This is the way that we are going to show that we are serious about bringing this country to developed country status by 2010, 2020 whatever.

So Madam President, there are clearly outlined preventative measures. In the literature, serological assays can be done with respect to people at risk. You can do blood tests. You can see who are the ones at risk. Antibiotics are very effective. There is a whole range of antibiotics that is very effective, and I believe that our people deserve better. I believe the people at risk in Central, South and North Trinidad, wherever we have people at risk, can be directed to the health centres and a whole mobilization campaign of the health sector should be brought to bear on the situation. This is a very serious situation.

I mean, leptospirosis is not a joke, it is a serious disease and it affects every area of our life. People who contract this disease are unable to work. Productivity falls. The ability to provide for families and so on—it causes serious economic hardship for families who can least afford this sort of neglect. So Madam President, I humbly suggest that our people and our children—we appreciate the Government's stated intention to carry us to developed country status by 2020, but I humbly suggest that it will be a bit difficult to enjoy developed country status if one is dead or severely disabled, and we have to be alive to enjoy that status.

Madam President, again I reiterate a call for immediate, urgent action to be taken to prevent this impending epidemic. I thank you. [*Desk thumping*]

**The Minister of Health (Hon. Colm Imbert):** Thank you, Madam President. Madam President, when I received notice of this Motion, I had absolutely no idea what the hon. Senator was talking about. Having heard what the Senator has said, I have even less of an idea. Now, the Motion before the Senate deals with the Government's plan, if any, to address the impending epidemic of leptospirosis, which threatens the health of the nation.

I made sure to check the dictionary to get the definition of "epidemic". I know the Senator was not trained at a school that deals in the English language—I think she studied in a Spanish speaking country—so I shall read the definition of epidemic.

"An epidemic is something that affects or tends to affect a disproportionately large number of individuals within a population."

Having said that, the number of reported cases of leptospirosis for the year 1999—168 with 28 confirmed lab cases. In the year 2000—152 reported cases; 20 laboratory confirmed cases. For 2001—137 reported cases; 16 laboratory confirmed cases; and for 2002, from January 01 to November, as we speak, the number of reported cases, 113; number of lab confirmed cases, 12.

Now, Madam President, I know that mathematics may not be a strong suit of the hon. Senator, but for the benefit of the Senator, 12 is less than 28; it is also less than 20 and it is less than 16. Therefore, the number of confirmed laboratory cases of leptospirosis has been declining over the last three years. In addition, 12 cases in a population of 1.2 million cannot possibly be something that is tending to affect a disproportionately large number of persons within a population and therefore there is no epidemic of leptospirosis in Trinidad and Tobago. It is a

figment of the Senator's imagination. I have absolutely no idea from where the hon. Senator got her figures, maybe from the Rienzi Complex, but certainly not from any authoritative source. In fact, I have a graph [ *Holding up document* ] for those of you who—for the benefit of the Senator, this is a graph of reported cases for the year 2002. It starts at 16—in January 2002, 16 cases—and goes down to two cases in November 2002. The downward trend of this graph will show that the number of cases is declining.

So Madam President, I do not know what to say. Why would someone bring a Motion like this into this honourable Chamber? Why? Why come here and quote bogus statistics, to try to frighten people about an imaginary epidemic? Why? I know that the Senator has some training. I am very disappointed. This is a waste of this Senate's time. It is frivolous and vexatious; an abuse of the Senate's time. I thank you, Madam President. [ *Desk thumping* ]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 5.28 p.m.*