

The people have the power.
All we have to do is awaken
the power in the people.

John Lennon

 quote fancy

A Modern Constitution For the 21st Century

CONSTITUTION REFORM SUBMISSION 2024

CONSTITUTION REFORM SUBMISSION

To the National Advisory Committee

on Constitution Reform

by Clyde A Weatherhead

Citizen and Attorney at Law

A Modern Constitution For the 21st Century

BY WAY OF INTRODUCTION

1. This latest thrust toward Constitutional Reform comes as our nation approaches two important milestones in our nation-building project and evolving political processes – 62 years of Independence and 48 years of Republicanism.
2. This is an ideal opportunity to assess how well our governance system and its political and electoral processes have served the all-round development and advance of nation-building project and the relevance of our Constitution for the next stage of that project as a modern society in our region and the global context.
3. John Locke inspired the fundamental constitutional principle as this: *“the individual can do anything but that which is forbidden by law, and the state may do nothing but that which is authorised by law.”*
4. The Constitution is the highest law in our land and is the source of constitutional law.
5. The Constitution and constitutional law describe the *“various organs of the government at rest”* (Holland) and deal with *“the general principles relating to the organization and powers of the various organs of the State and their mutual relationships and relationships of these organs and the individual”* (Jennings).
6. The evolving structures of governance and the relationships among them and the relationships among those structures and the individual, collectives of members of the body politic and the society as a whole is what we must examine and improve if we are to make further advances as a representative democracy.

7. The thinkers behind the establishment of constitutional systems in the former colonial powers and which became part of our received systems on Independence have provided some fundamentals – Separation of Powers, Checks and Balances, Government to Protect and Expand the Natural Rights of Citizens, the Rule of Law and Accountability as part of the Social Contract.
8. How is our Constitution measuring up to these fundamentals? What are we doing well and need to strengthen? What new is needed given our experiences and expectations?
9. These are questions we, as a society, must answer in this exercise.

POLITICAL EDUCATION, THE CONSTITUTION AND PARTICIPATION BY THE PEOPLE

10. Leading up to and at the time of Independence, great attention was paid to the political education of the people to equip them to become effective participants in the nation-building project as a new free nation responsible for its future.
11. Sixty Two years later, politicians and political parties, our education system have dropped the ball in equipping our body politic to fulfil their role stated in the preamble at (c) of our Constitution which states –*The People of Trinidad and Tobago “have asserted their belief in a democratic society in which **all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority**”.*
12. Has our political party system become a hindrance to encouraging the preparation and encouragement of our citizens to fulfil their role in this aspiration to ‘play some part’ in government and governance?
13. Our Constitution mentions political parties only in two instances – where it comes to the appointment of a Prime Minister (s. 76) and where it comes to removal of an elected representative in the ‘crossing the floor’ provision (ss. 49 and 49A).
14. Our constitutional and electoral laws do not recognize political parties as legal entities, yet they play a significant role in both political and electoral processes

and we are grappling with making them more accountable in terms of their financing through proposed party and campaign financing regulations.

15. This system of 'representative democracy' presents political parties created and funded by the most powerful sections of the oligarchy of finance capitalists and monopolies (the 1%) as the only "legitimate" political parties.
16. There is no place in this 'representative democracy' for the notion of the people governing themselves, being empowered to set the agenda and exercise control over their lives and the future of society.

WHERE SHOULD SOVEREIGNTY LIE?

17. Under our Independence Constitution of 1961, the British Monarch remained not just the Head of State of this independent country but reserved the right to "revoke, add to, suspend or amend" the very Order to which its Constitution was an annex.
18. The sovereignty of Trinidad and Tobago remained vested in the British sovereign, their monarch.
19. It is no accident that the law to remove this monarch, Act No 4 of 1976, the Republican Constitution, was passed in 1976. By this Act, the sovereignty of this country was, we were told, vested in the Parliament on behalf of the People.
20. Our experience of the last 48 years gives us the opportunity to examine whether, in fact, as opposed to British constitutional theory and legal definition, where the sovereignty of our country really lies and where it ought to. Moreso, if we are to realise the aspiration in our Constitution that "***all persons may, to the extent of their capacity, play some part in the institutions of the national life.***"
21. Should we now vest Sovereignty in the People or at least move things more in that direction?
22. The people cannot exercise their sovereignty and govern themselves so long as the elected subordinate the electors to themselves rather than the electors exercising control over them. **The concentration of power in the Cabinet and its Head must be ended.**

CONSTITUTIONAL CHANGES SINCE 1976

23. Since the most fundamental change in our Constitution made since Independence, in 1976, what other changes have been made to our highest law?

Between 1976 and 2007, Parliament has passed 20 Acts amending the Republican Constitution.

These amendments have, in summary, had to do with:

1. Party matters and the Parliament with the introduction of the 'crossing the floor' provision and the process of By-Elections to fill vacancies in the Lower House, created thereby or otherwise – **Acts 15 and 16 of 1978**, and for removal of the Speaker of the House – **Act 17 of 1995**.
2. Amending the jurisdiction and powers of the Public Service Commission – **Acts 8 of 1981, 13 of 1982, 177 of 1983, 21 of 1987, 8 of 1988, 10 of 1995, 43 of 2000, 82 of 2000**.
3. Amending the jurisdiction and powers of the Police Service Commission and the appointment of the Police Commissioner and Deputy Police Commissioners by final vote of the Lower House of Parliament – **Acts 6 of 2006 and 12 of 2007** and a series of Orders of the President under those provisions since then.
4. Requiring the Salaries Review Commission's Reports to be laid in Parliament – **Act 16 of 1978**.
5. Providing for the filling of vacancies in the Judiciary – **Act 2 of 1988**.
6. Inserting the Tobago House of Assembly as part of the Constitution – **Act 39 of 1996**.
7. Introducing Joint Select Committees of Parliament to inquire into and report on Ministries, Municipal Corporations, Statutory Authorities, State Enterprises and Service Commissions – **Act 29 of 1999**.
8. Including the Tobago House of Assembly, Municipal Corporations, statutory boards and state enterprises and others under the jurisdiction of the Integrity Commission – **Act 81 of 2000**.
9. Including Senators, Judges and Magistrates under the jurisdiction of the Integrity Commission – **Act 89 of 2000**. (See table attached)

CONCENTRATING POWER RATHER THAN EMPOWERING THE PEOPLE

24. All the changes to the jurisdiction and powers of the Public Service Commission had to do with confirming the Prime Minister's power to veto senior appointments, extend the disciplinary powers of the Commission over public officers including those in acting positions and make criminal convictions automatic disciplinary breaches, and including employees of the THA and RHAs (though RHA employees are not public officers).
25. Apart from the expansion of the jurisdiction of Joint Select Committees to have oversight roles over public bodies and Constitutional bodies like Service Commissions, as well as the inclusion of the THA, all these other amendments to the Constitution since 1976 have either been to address party matters – crossing the floor and allegations against a Speaker who was placed under House Arrest or to facilitate Government policies including privatisation (RHAs) or more direct power of appointment of the top officers of the Police Service.
26. None of these amendments have had to do with improving the accountability of the elected or appointed members of Parliament or Ministers to those who elected them or to the public. The JCCs in Parliament were a small step in that direction but they remain dominated by the Cabinet.
27. None of these amendments have increased the role of the People in decision-making which affects them or the society.
28. None of these amendments have resolved what President Richards at the 50th Anniversary of Independence, described as the 'area of brokenness' in our Constitutional arrangements – the issue of the relationship between Tobago and Trinidad and the Right to Self-determination of the people of both Trinidad and Tobago and ending the forced union and establishing a **free and equal union** between them.
29. The legislation relative to the work of the Integrity Commission has remained extremely weak in terms of enforcement or in deterring corruption or holding corrupt officeholders to account.
30. Vesting sovereignty in the Parliament has done little to ensure that the Parliament or Government (the Executive) acts in the interest of the People.

31. Proposals for further amendments in 2009 sought to further centralise power in the hands of the Head of Government while the Prime Minister continues to exercise even more powers in the absence of those changes.
32. The only proposal to give the electors some measure of control over the elected by establishing the Right of Recall to enable electors to hold their representatives accountable to them was unfortunately squandered in 2014 – 15.
33. **This 46th Anniversary of our Republican Constitution, is now, perhaps, the time for deep consideration to be given to vesting sovereignty truly in the People.**
34. In this regard, and for the future of our nation, the Constitution and what we do with it matter.

PROPOSALS FOR CHANGE

35. In this effort for constitutional reform, there are forces, which want to limit the people to fighting for short-term changes, which seek to ‘get us out of the present mess’ and protect the existing conditions.
36. While some of the demands being advanced may further expose the existing situation and assist in drawing conclusions about the necessity for change, there is need to keep an eye on the need for fundamental change.
37. Whatever changes we make must push us in the direction of meeting more effectively the fundamental tenets of democracy – the rule of the majority, accountability and real separation of powers and a power to Share rather than a Power to Deprive by concentrating power in fewer hands and alienating the majority from participation in decision-making that affects their lives and the development of the society and nation.
38. This direction is the move to Democratic Renewal of our Constitution fit for the 21st century and our political and electoral processes really empowering the majority to participate meaningfully in the institutions and affairs of national life, in the National Purpose.

39. Otherwise, the opposite becomes possible i.e. a move in the direction of more concentration of power, autocracy and decline rather than advance.
40. **Proposals already being made for a true Separation of Powers by detaching the Executive – Cabinet – from the Legislature and ending the automatic majority of the Executive in the Lower House of Parliament.**
41. **I support such proposals with the caveat that in doing so the oversight of the Parliament on the Executive power must be strengthened and Accountability must become a Reality and not just an Aspiration.**
42. **The institutions of Local Government, like the Tobago House of Assembly was previously, must be included for the completion of the defining of the Government and governance systems at all levels.**
43. **Two Term Limits for the Head of Government or for the Head of State in the event of an Executive Presidency is agreed by the people and Term Limits for the Heads of the THA and Local Government institutions too.**
44. **The Integrity Commission must be given more serious powers of enforcement to ensure accountability of public officeholders and to really combat the endemic corruption in our governance arrangements.**
45. A new and modern constitution must enshrine that all elected representatives and institutions are subordinate to the electorate.
46. The electors must no longer be reduced to voting cattle to be rustled into a booth every five years or whatever term period to put parties in power that do not represent their interests.
47. **The constitution must enshrine the following rights:**
- i. The right to an Informed Vote**
 - ii. The right of Recall of elected representatives at All Levels**
 - iii. The right as citizens to Initiate Legislation.**
48. Re i. above, this is where political education of the citizens is also important as well as a new approach by those seeking to be elected must be taken.

49. A system must be designed to ensure that under guarantee of such rights **No Election Without Selection by the Electors** becomes a fundamental principle. The Electors must select candidates, not parties or their screening committees.
50. These measures will all allow the majority of the society to exercise sovereignty, to participate directly in governing themselves and end the domination of political parties in the political system.
51. **To increase the participation of the Citizens in decision-making, provisions for the conduct of Binding or Non-binding Referenda on major matters of national concern must be introduced.**
52. **Issues like whether to replace the Privy Council with the CCJ as our final Court of Appeal, Whether to retain the Death Penalty, Whether there should be an Executive Presidency or Unicameral or Bicameral Legislature and participation in multilateral organisations – military blocs in particular should be left to be decided by the body politic through Referenda.**
53. The details of how these Referenda are to be conducted to avoid manipulation and ensure fairness should be included in legislation similar to the **Representation of the People Act.**
54. **The ‘Crossing the Floor’ provisions at sections 49 and 49A must be removed from the Constitution and the Electors in the Constituency must decide whether the Elected Representative is to be Recalled.**

OTHER FUNDAMENTAL QUESTIONS

55. No reform of the constitution can be carried out without also addressing some other fundamental questions facing the society.
56. What President Richards at the 50th Anniversary of Independence, described as the ‘area of brokenness’ in our Constitutional arrangements – the issue of the relationship between Tobago and Trinidad and the Right to Self-determination of the people of both Trinidad and Tobago and ending the forced union and establishing a free and equal union between the two nations.

57. The **forced union of Tobago and Trinidad** under colonial rule in 1889 and continued under the conditions of Independence must be brought to an end.
58. **The Right to Self-determination, up to and including the Right to Secession must be established for the people of both islands as the basis of a new free and equal union between the people.**
59. The **Hereditary and other Rights of the First Peoples** – the Caribs, other First Peoples and their descendants must be recognised and their place in society ensured.
60. The **Rights of all Citizens on the basis of their being human and being members of society as individuals and collectives** within the society must also be guaranteed.
61. The **present anti-social offensive** is accompanied by propaganda that people must become ‘independent’ or be ‘weaned off’ of the state (meaning of the society) to which they contribute and look after themselves.
62. This denial of social being is presented as ‘empowerment’ so that the most powerful in society can continue to appropriate by force for themselves the vast majority of the wealth created by others.
63. The society, to which all are born, and the governments which represent the society must have a responsibility to provide people with the highest possible standard of living and organise to meet the ever-increasing needs of the people for health care, education, culture, and other necessities of life.

The Service Commissions

64. The rationale for the inclusion of the Service Commissions in the Independence Constitution and reinforced in the seminal case of **Endell Thomas v Attorney-General of Trinidad and Tobago [1981] 3 W.L.R 601** i.e. *“the security of tenure and insulation from political patronage and pressure not only of members of the police force itself but also of every member of the public service (including the teaching service) of the state of Trinidad and Tobago”*, has not diminished.

65. There have been several moves by the political officeholders to undermine and diminish that fundamental purpose for these Constitutional institutions. These include the widespread use of contract employment in the Ministries and Departments of Government, in the Tobago House of Assembly and Statutory Bodies.
66. Also, whole sections of the Public Service have been and are being moved out of the Public Service and outside of the jurisdiction of the Public Service Commission like the RHAs, TTRA etc.
67. In 2006, in a bipartisan move by political parties on both sides of the aisle in Parliament, the Constitution was amended unanimously. What the 2006 Constitution Amendments did achieve is the sidelining of the PoISC by:
- 1) giving politicians full power to decide who is appointed as CoP and DCoP, and
 - 2) giving the CoP the same powers and authorities as the PoISC to the CoP over the thousands of Police Officers making the CoP more than equivalent to the PoISC given the span of his control compared to the 9 officers that remained under its control.
68. The Service Commissions are one part of the Human Resource Management system in the Public Service.
69. While Public Service Reform has been talked about since the 1980s, there has been no real effort by successive political administrations to strengthen the administrative support systems for the Service Commissions.
70. Rather they have let those institutions fall into disrepair and have reduced the number of officers under the jurisdiction of the Service Commissions as pointed out above.
- 71. The Service Commissions should be retained as Constitutional bodies and modern systems of management with realistic delegation of authority to Ministry and Department top level and lower management introduced and the promised digitization of the Human Resource function in each Service in the Public Service implemented to facilitate the efficient functioning of each Service Commission.**

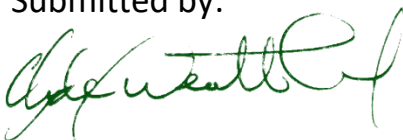
Conclusion

72. This Constitution Reform exercise is the third by the three most recent administrations and the fifth since Republicanism.
73. There is widespread skepticism as to the bona fides of the politicians in power as to their motives in embarking on this exercise based on the experiences of 2009 and 2014.
74. Will those who opposed Term Limits for the PM and the Right of Recall and Fixed Election Dates ten years ago now champion what they opposed then?
75. Will those who proposed those changes in the 2014 Constitution (Amendment) Bill now oppose them?
76. Administrations with even more extensive majorities before these last three failed to reform the Constitution in the direction of giving more Power to the People.
77. Nothing really fundamental has been done about the Constitution since 1976 and the amendments since then have done little to benefit the nation-building project or strengthen the fundamental tenets of democracy in our nation.
78. Those who are serious about the need for Democratic Renewal of our political and electoral processes, about the need for really representative and accountable governance and the economic, social, political and all-round advance of our society and the guaranteeing of the Rights of the Citizens which is a most basic duty of Government live in hope that those who call themselves and are called Representatives may open their eyes and ears and listen to the call for genuine Constitutional Reform for the sake of the future of All of Us.

IT IS EITHER WE WANT A HEALTHY DEMOCRACY OR A FAILING STATE.

EITHER DEMOCRATIC RENEWAL OR DESCENT INTO ANARCHY AND AUTHORITY RULE.

Submitted by:



Clyde A Weatherhead

cwlaw2000@gmail.com

12 April 2024

APPENDIX

CONSTITUTION CHANGES SINCE 1976

YEAR	ACT	CHANGE	COMMENT
1976	4	Repealed the 1962 Constitution and establish the Republic of Trinidad and Tobago with a President as Head of State	Republican Constitution
1978	15	Vacation of seat where member, having been a candidate of a party, resigns or is expelled	Introduction of 'crossing of the floor' policy
	16	By-election where vacancy arises in the Lower House within the first four years of the term	Introduction of by-elections for vacancies in the Lower House but not in 5 th year of term
1979	30	Amendment of s 141(2) to require Salaries Review Commission reports to be laid in both Houses.	SRC reports to be laid in Parliament
1981	8	Amended s 121 re Public Service Commission; repealed by Act 8 of 1988	Powers of Public Service Commission on appointments and PM veto clarified
1982	13	S 121 further amended	Further clarification with changes in the Public Service
1983	17	Includes Tobago House of Assembly office under the Public Service Commission in s 121	THA offices put under jurisdiction of the Public Service Commission
1987	21	S 127 amended; deleted by Act No 6 of 2006	Police Service Commission delegation to officers above Superintendent
1988	2	S 104 amended to deal with vacancies in the Judiciary	Filling of vacancies in the Judiciary
	8	Amendment No 2 Act includes service to the Tobago House of Assembly in the definition of the public service in the Interpretation Section s 3(1)	THA officers included in definition of the public service
1994	30	Includes Regional Health Authorities under the delegation of authority by the Public Service Commission in s 127	Public Service Commission's powers delegated to RHAs despite RHA employees not being public officers.
1995	10	Delegation of Public Service Commission powers is amended to say to the Boards of the Regional Health Authorities in s 127 (1)	Delegation specified to be to the Boards of the RHAs

	17	Inserting procedure for removal of the Speaker of the House by resolution of a majority of its members	Procedure for removal of Speaker of the House arising out of Occah Seepaul incident
1996	39	Inserts Chapter 11A – The Tobago House of Assembly	The Tobago House of Assembly included in the Constitution
1999	29	Introduces Joint Select Committees to inquire into and report on Government Ministries, Municipal Corporations, Statutory Authorities and State Enterprises and Service Commissions – s 66A-D	Expansion of the functions of Joint Select Committees for Parliamentary oversight over Ministries, Local Government Bodies, Service Commissions and State Enterprises and Statutory Authorities
2000	43	Introduces automatic guilt of disciplinary breach if public officer is found convicted of any criminal charge – s 129	Public officers deemed guilty of disciplinary breach without disciplinary procedure and dismissible by Service Commission
	81	Inclusion of the Tobago House of Assembly, Municipal Corporations, statutory boards and state enterprises and others under the jurisdiction of the Integrity Commission – s 138	Expansion of jurisdiction of the Integrity Commission
	82	Service Commissions disciplinary powers over persons acting in public offices – ss 121(1), 123(1) and 125	Expansion of disciplinary powers of Service Commissions over Acting public officers
	89	Includes Senators, Judges and Magistrates under the jurisdiction of the Integrity Commission – s 138	Expansion of jurisdiction of the Integrity Commission
2003	1	Extension of period to elect next President	ANR Robinson in office since 1997 and term should have ended 18 March 2022.
2006	6	Amendments to the Police Service Commission and its jurisdiction over the Police Service and the appointment of a Police Commissioner and Deputy Commissioner and Powers of the Police Commissioner over the Police Service s 123	Part of the reform of the management of the Police Service putting the Commissioner in charge of managing the bulk of the Service and introducing final appointment of CoP and DCoPs by decision of the Lower House

2007	12	Police Commissioner's performance to be appraised by the Police Service Commission ss 122 and 123	Authority of the Police Service Commission over the CoP
------	----	---	---