

# TO MAKE OUR CONSTITUTION OUR OWN

## AN INTRODUCTION

1. In this noble endeavour upon which we are now embarked, of **re-writing**, **re-naming**, and **re-enacting** our Constitution and re-constituting ourselves as a political community, we come face-to-face with certain fundamental questions about ourselves as a people. Are we, for example, as Naipaul has intimated of the region as a whole, ‘a half-made society’, filled with charming imitations of an erstwhile colonial master, forever trapped in the shadow of our colonial past? Or are we greater than that, capable of the moral and intellectual powers required to **re-make** our world in a more creative response to the weight of our colonial history?
2. Without a doubt, we have laboured under the ‘antagonistic weight of the past,’ and have carried these past centuries a heavy psychological burden for slavery and colonialism. It is often said that the ‘dispossession’ that followed upon the European discovery of our islands has had the effect of a massive brainwashing. In consequence, it is said, the Caribbean imagination has been imprisoned by the word ‘discovery’, a confinement that has had as its end-product our desire to mimic our colonial masters. It were as though we have created nothing for ourselves. Thus, as one of our finest poets, Professor Edward Kamau Brathwaite, has written:

... the land has lost the memory of the most secret places.  
We see the moon but cannot remember its meaning.  
A dark skin is a chain but it cannot recall the name of its tribe.  
There are no chiefs in the village.
3. And to this we add the words of our Poet Laureate, Professor Derek Walcott:

Here there are no heroic palaces  
Netted in sea-green vines or built on magic savannahs,  
The cat-thighed, stony faces of Egypt's cradle, easily unriddled  
If art is where the greatest ruins are,  
Our art is in the ruins we became,  
You will not find in these green desert places  
One stone that found us worthy of its name,  
Nor how, lacking the skill to beat things over flame,  
We peopled archipelagoes by one star.

4. However, as was argued in the recent work on *Caribbean Constitutional Reform*, with political independence, we acquired the authority to re-define ourselves as a people and to re-construct our political community, independent of any continuing political connection to the British Crown and its Parliament and Judicial Committee. Now, in this noble endeavour, we are taking those critical steps towards re-constructing, re-constituting and re-defining our political world. For, it is certainly within our powers as a sovereign people to imagine a more perfect constitutional order; and we possess the political craftsmanship to construct a constitutional text to advance that order by fostering a more transparent and responsible practice of democratic governance.
  
5. In this regard, it bears repeating that, in respect of our political history, the eminent Grenadian historian, the late Dr Patrick Emmanuel, has reminded us that at no time in the history of Grenada's constitutional development have we been governed by an instrument of our own making. Most important, our very Independence Constitution, by which we were constituted a sovereign people and are now governed, was an act of the British Imperial Parliament. This means that the originating consciousness behind the making of our Fundamental Law was not our own. This **law** will therefore forever bear the taint of political illegitimacy, no matter how much we venerate it, or how enthusiastically we embrace it. And this has been compounded by the fact that we have retained the British monarch as our head of state and its Judicial Committee as our final appellate tribunal. The overwhelming purport, then, in this exercise of our sovereign, constituent power, in this self-defining act, is our authorship of our own Fundamental Law to **name**

our world anew, so that posterity may find in ‘**these green desert places**’ at least one foundation stone worthy of our name.

6. Simply put, therefore, this enterprise upon which we are now embarked, in particular the **re-writing** and **re-enacting** of our Fundamental Law, is the most noble act of sovereignty; it is an act of self-definition, the original right of a people to write for themselves the Fundamental Law by which they are to be governed. As the Grenadian novelist, Professor Jacob Ross, might put it, this is the opportunity for the people of Grenada, Carriacou and Petite Martinique to construct their own narrative and tell their own story. For it bears emphasis that this sovereignty which we now affect to exercise is at once ‘poetic’ and political. It is poetic in the sense that it is through the sovereignty of the imagination that we conceive of a better political world for ourselves and our posterity; and this imagination bodies forth in words the political world we enact into being in the exercise of our political sovereignty, and thereby give to our Constitution ‘**a local habitation and a name.**’ In fine, our new Constitution will be the manifestation of our collective speech, the authoritative expression of our collective **voice**. Thus, this process of public consultation on the redrafting of the Constitution is an expression of our collective moral right of self-determination; a genuinely collective exercise of inscriptive and deliberative, democratic politics in which it is open to every citizen of Grenada, both at home and abroad, to participate in a communal conversation on the nature and content of the new Constitution.
7. It is given that a constitution is a document of political founding or re-founding. In this noble enterprise we are engaged in the re-founding and the re-constitution of the Grenadian polity. The production of this **Working Draft** of a new Constitution, following on the work of the Grenada Constitution Review Commissions, 2006 and 1986, is a critical first step in the people’s authorship of their own Fundamental Law. For this **Working Draft**, as we have noted, is to be the subject of an intense public consultation with all Grenadians, both at home and abroad. This means that everyone will have a voice as to the content of their

Fundamental Law. And, following upon this process of public consultation, the final revisions will be made to the Document, before it is submitted to the people for their ratification on a public referendum.

8. It must be emphasized that it is at the public referendum, in the ratification of the Constitution, that the sovereign people of Grenada, Carriacou and Petite Martinique will **enact** their Constitution into **Law**. For, in every vote in favour of the new Constitution at the public referendum, the citizen symbolically appends his or her signature to the Text, signifying it to be the Fundamental Law of our Tri-Island State. In modern political theory, as was made evident in the American founding, this is what makes the Constitution **law**, and not what the Legislature may or may not subsequently do to the Document. Thus, the critical importance of this process of public consultation and popular ratification can never be overstated. For, there is great educative value in this process of public consultation; and the popular ratification of the Constitution binds the people to the document, thereby making it their own.
9. It is therefore left for us briefly to consider the content of the Working Draft, focusing mainly on those subjects considered to be constitutionally essential. That is to say, in this act of re-writing our Constitution, we engage certain fundamental questions about ourselves, among other things, our true political status as a sovereign people; our active participation, along with our sister States, in the establishment of some of our most critical institutions of democratic governance, such as the Caribbean Court of Justice and the Caribbean Single Market and Economy, and the Eastern Caribbean Supreme Court; and, generally, our reconstituting and strengthening all our indispensable institutions of democratic governance : the Head of State, the Executive, the Legislature, and the Judiciary, in addition to the critical administrative offices of the State.
10. It has been said that a constitution inevitably entails a vision of a form of life for the people whose lives it must govern according to the moral principles it either

expressly or impliedly engages. For, as a political text with an expressly constitutive purpose, a constitution is not only concerned with the ways in which the political community is organized, but also with the ways in which certain fundamental human relationships are addressed and defined. That is to say, a constitution must necessarily address the fundamental and universal moral problem of defining the relationships in which members of a society are to stand to one another and to their State.

- 11.** In virtue of the foregoing, therefore, we simply wish to emphasise certain key observations about this Draft Constitution. First and foremost, the Preamble has been rewritten to underscore the salient point that this new Constitution is of our own making; and, therefore, it is the authoritative expression of our collective **voice**, rather than the legislative expression of the British Imperial Parliament. By the same token, the Preamble is followed by the Chapter in which we make the formal declaration of our true political status as a parliamentary, republican State. Thus, henceforth, the (British) Crown will no longer be the all-important emblem of our sovereign State.
- 12.** Next is the Chapter on Fundamental Rights and Freedoms; the fundamental rights and freedoms that give to the Constitution a substantive moral content and define the fundamental moral relationships in which citizens are to stand to one another and to their State. The overriding ambition in the redrafting of this Chapter is to make clearer to the entire citizenry the fundamental rights and freedoms that are protected under this Constitution, and the way or ways in which these rights and freedoms are to be understood. For example, the Chapter is at pains to underscore that the constitutionalist, democratic State may, as occasion requires, delimit by law the exercise of these rights and freedoms in order to protect the rights and freedoms of others and, also, to meet the exigencies of the common good.
- 13.** Therefore, consonant with these rights and freedoms are the fundamental duties of every citizen to honour and respect the rights and interests of fellow citizens, to

uphold the law and to participate to the fullest extent of their abilities in the governance of the State. And, in addition, the Constitution recognizes that there are certain human interests that may not be articulated as rights in the Constitutional Text, but which are universally regarded as essentials of human well-being, which the State has the moral and political obligation to help secure for the benefit of its citizens. We are referring here to such interests as food, shelter, clothing, health care, education, etc. Therefore, in recognition of the fact that effective protection of these interests would be better achieved by a variety of policy measures that do not require enactment as constitutional rights, it was thought that these interests are more appropriately addressed in a General Welfare Clause. Note, for example, that article 22 of the Universal Declaration of Human Rights acknowledges that economic, social, and cultural rights are to be realized “in accordance with the organization and resources of each State.” These interests are therefore better recognized by States as determinants of present aspirations and guides to present policies.

14. Next, we come to the institutions comprising the State, starting with the Office of Head of State, The reason for starting here is to underscore the absolutely critical importance of this office to sound democratic governance in our parliamentary, republican system; and to put paid to the idea, once and for all, that this office is largely ceremonial. In consequence, we have articulated the institutional position of the Office of Head of State as standing apart from the institutions of Executive and Legislature; notwithstanding that the Head of State will have certain executive and legislative functions. And in order to reinforce the importance attached to the Office of Head of State, the Draft Constitution has vested the office with certain powers of ‘cherished’ appointments, which were, formerly, largely those of the Office of the Prime Minister. And, finally, the Draft Constitution emphasises certain powers of the Office of Head of State to take the necessary steps to protect the Constitution and the State in the face of imminent danger, when there is a breakdown in the workings of the central institutions of the State; or where the life of the State is threatened by violence, or even natural

disasters. However, above all else, the method of appointment to the Office, advocated in the Draft Constitution, means that, henceforth, appointment to the Office should no longer be perceived as a “gift” of the Prime Minister’s Office.

- 15.** The next subject addressed in the Draft Constitution is that of the Executive Authority of the State. In our parliamentary system, the true executive authority rests with a Cabinet, headed by a Prime Minister. The Chapter therefore addresses how the Prime Minister and other Ministers are to be appointed; the qualifications for their holding office; the tenure of their offices and their powers, etc.
- 16.** Then there is the Legislature. On the recommendation of the Constitution Review Commission, the Parliament of Grenada is reconstituted under the new Draft Constitution as a unicameral Legislature, consisting of some members elected on the basis of the principle of first-past-the-post, and others, proportionately, on the basis of the percentage of votes received at the general elections by the political party to which they belong. This makes the Parliament of Grenada a fully elected body, and, also, more truly representative of the electorate. The net result is more likely to be better representative government in Grenada.
- 17.** The next central competence of the State is the Judiciary. This is an indispensable institution of democratic governance in our small tri-island State, where the governing party in Parliament is both the Government and the majority in the House. It therefore means that the Cabinet of Grenada has almost total control of the Legislature. This seriously compromises the democratic practice and puts in sharp relief the need for a strong and independent Judiciary to protect the citizenry against the excesses of government. For the independence of our Judges is equally requisite to guard the Constitution and the rights of individuals from the effects of ill-conceived legislative, executive, and administrative actions.
- 18.** The principal move in strengthening the Judiciary will be Grenada’s delinking from the Privy Council and adopting the Caribbean Court of Justice as our final

appellate tribunal. For it must be stressed that the British institution, thousands of miles away from our shores, is not truly one of our institutions of democratic governance; in fact, not being one of the institutions of our State, its presence is not substantially felt. The Caribbean Court, on the other hand, being of our own making, has, among other things, the opportunity to exercise greater influence on the local judicial system and to function as a truly genuine institution of democratic governance for Grenada and the rest of the Commonwealth Caribbean.

- 19.** Then, Grenada's participation as a constituent member of the Eastern Caribbean Supreme Court continues. It remains for Grenada to join with her sister States of the OECS in strengthening the institutional position of the Supreme Court. In this regard, certain amendments to the Supreme Court Order may be required in order to ensure that the appointment of the Chief Justice does not suffer any unconscionable delay, thus undermining the integrity of the office. In order, then, to minimise the possibility of executive interference in the workings of the Supreme Court, the OECS may be well advised to place the ultimate choice of the Chief Justice in the hands of the Heads of State, consulting with the respective Prime Ministers and Leaders of the Opposition; or, simply, on the recommendation of the Judicial and Legal Services Commission. And, by the same token, it may be necessary that the institutional position of the Judicial and Legal Services Commission be strengthened, very much on the order of the Regional Judicial and Legal Services Commission. However, in the final analysis, the Lord Chancellor of the United Kingdom should no longer have anything to do with the appointment of the Chief Justice of the Eastern Caribbean Supreme Court.
- 20.** The remaining tier of the Judiciary is the Magistracy, the system of Magistrates' Courts established by the Parliament of Grenada. By placing the Magistracy squarely under the Judiciary, and out from under the Public Service, we automatically enhance the institutional position of the Magistracy. The

- appointment of Magistrates will now be the purview of the Judicial and Legal Services Commission, and they will enjoy the tenure of office similar to that of the Judges of the High Court. In addition, they would have the opportunity for advancement in the Higher Judiciary, thereby making for a more satisfying career.
- 21.** The remaining offices of the Draft Constitution are also essential to good governance: Citizenship, the Electoral and Boundaries Commission, the Public Service Commission, the Protective Services Commission, the Office of Director of Audit, and the Office of Director of Public Prosecutions. Each of these has a separate chapter in an effort to strengthen their institutional position in the governance of the State. First is the Chapter on Citizenship.
  - 22.** The question of citizenship is obviously of fundamental importance; it is a question as to who do or do not belong to the polity and, therefore, who may have the right to vote and to stand for and hold public offices. The constitutional right of citizenship is therefore regarded as a basic human right. Fortunately, the Grenada Constitution provides for the equal ascription of the right of citizenship among all persons legitimately entitled to it as a matter of birth or descent. The sole outstanding issue concerns the right of a citizen, who has lived abroad and has acquired citizenship in a foreign country, to stand for and to hold public office in Grenada, upon his or her return home. Currently, the Constitution denies a citizen the right to stand for and to hold office if that citizen owes voluntary allegiance to a foreign State.
  - 23.** In the Draft Constitution, due recognition is given to the reality of Grenadians having to live abroad in metropolitan countries in order to better their position in life and, therefore, having to take advantage of citizenship in the host country. It is submitted that this should not prevent such an individual from participating to the fullest extent of his or her ability in the governance of the country upon his or her return home to take up permanent residence. The Draft Constitution lays down certain critical conditions: the citizen, upon return home, should satisfy the

residency requirements of at least two to five years; and, most important, the foreign State, to which the citizen owes voluntary allegiance, must be a constitutional democracy with which Grenada shares diplomatic relations and an unsurpassing commitment to the protection of the basic human rights of the human person, and respect for the rule of law.

- 24.** The Electoral and Boundaries Commission is the subject of a separate Chapter, rather than being a section of the Chapter on the Legislature. This is to underscore the institutional importance of the Commission to the sound democratic governance of Grenada. Equally important, the power of appointment of the members of the Commission is vested in the Office of Head of State, in consultation with the Prime Minister and the Leader of the Opposition. This is to minimise the control that a Prime Minister may have over the Commission. In the Draft Constitution, the Commission is very much accountable to the President, and not to the Prime Minister or the government of the day. This is a critical step in ensuring that elections are free and fair.
- 25.** The Public Service Commission is, arguably, the most important Commission in the governmental structure of the State. The draft Constitution takes full account of the importance of the Commission and affects to strengthen its independence and its ability to discharge the duties of its office without fear or favour, by vesting the power of appointment of the members of the Commission in the Office of the Head of State, in consultation with the Prime Minister and the Leader of the Opposition.
- 26.** The remaining Commission is the Protective Services Commission, which covers the Police, Prison and Fire Services. Having regard to the fact that these three must often work in concert with each other for the protection and safety of the society, and for the maintenance of law and order, it was thought that they should be placed under one Commission. Moreover, it would prove too costly for a small society to have a separate commission for the Police and another for Prisons.

However, as is the case with the Public Service and the Electoral Commissions, appointment of the members of the Protective Services Commission is placed in the hands of the President, in consultation with the Prime Minister and the Leader of the Opposition.

- 27.** Next are the Offices of Director of Public Prosecutions and Director of Audit. The critical importance of these two offices to good governance can hardly be overstated. Therefore, the overriding objective in the drafting of the two Chapters on these Offices is to strengthen their independence, so that they may discharge the duties of their Offices without fear or favour. And, in similar vein, special note should be taken of the Chapter on Finance; a subject which demands the highest degree of integrity, given that, without financial resources, it is hardly worth speaking of good government.
- 28.** Two additional Chapters: The Alteration of the Constitution, and International Treaties and Executive Agreements, are worthy of special note. First, regarding the alteration of the Constitution, the question is whether such an important subject should be treated under a separate chapter, rather than being left as a section of the Chapter on the Legislature. The importance of the subject speaks to the propriety of putting it under a separate Chapter, so that the Constitution may spell out in sufficient detail the procedures for its amendment. Moreover, due consideration has also to be given to the alteration of the Constitution consequent on, or in conjunction with, Grenada's entry into political and/or economic union with other foreign States or with sister States of the Caribbean Community, for its social and economic development. This further justifies the need for a separate Chapter.
- 29.** Finally, there is the Chapter on International Treaties and Executive Agreements. Again, these subjects speak their own propriety. Although, in our parliamentary system, the matter of international treaties is treated as though it were exclusively

an executive concern, when, in fact, by its very nature, it ought to have legislative sanction.

- 30.** Unfortunately, because of the way this matter has thus far been handled under the West Indian parliamentary system, the State becomes a signatory to various international treaties and conventions, but the citizens never fully enjoy the full benefits of these instruments, since it is given that the State's legal obligation to honour them is consequent upon their being enacted into local law. The International Human Rights Conventions, for example, have thus far not been enacted into law in Grenada. In order to address this serious anomaly, this Chapter speaks to a more enlightened way we may settle this question of our negotiation and ratification of international treaties and conventions, so that they automatically become part of the law of Grenada.
- 31.** Then, there is the matter of the Executive Agreement. The situation may arise where, given the nature of the subject matter and the need for urgent dispatch, a negotiated and ratified treaty may not be the appropriate instrument to adopt. Instead, it may be wiser to leave the Executive with the discretionary authority to enter into an agreement with either another State or an international organization for the good of Grenada. This means that such an agreement will not become part of the law of Grenada, unless it were subsequently submitted for parliamentary approval.
- 32.** In conclusion, the reader of the Draft Constitution would note that there is a very brief Chapter on Local Government. The Chapter merely repeats the language of the Independence Constitution with respect to local government for Carriacou and Petite Martinique. It then adds a section regarding possible provision for local government for the rest of Grenada, including the Town of St. George.
- 33.** There can be no denying that a system of local government is one of the most effective mechanisms for promoting participatory democracy in Grenada.

However, it would be ill-advised to spell out that system in the Constitution. Instead, this should be addressed through ordinary legislation, after intense public debate on the most appropriate form of local government for the Country. This would also make for the ease of amendment to the legislation, as the need arises. In similar vein, there are no Chapters addressing the subjects of an Integrity Commission and an Ombudsman. Again, enlightened judgment counsels against this, having regard to the fact that these are easily the subjects of ordinary legislation, so that they can be readily amended as necessity determines. No matter how important certain subjects may be to good governance, in the final analysis, only such matters regarded as constitutional essentials, defined in terms of their indispensability to achieving a close approximation of the ideal of the constitutionalist State should be fully articulated in the Constitution's Text.