Table of Content

Chapter One: West Indies Federation

Before I focus on the period of self-rule I note some significant prior historical landmarks. The first was the end in 1838 of slavery, the most horrendous crime against humanity ever perpetrated. Another was the decision of the British in 1882 to lump Nevis and Anguilla with St. Kitts against the wishes of their people. The country is still more than 140 years later feeling the negative impacts of that decision.

One hundred years after the abolition of slavery working and living conditions for the masses of the people were still outrageously bad. In the mid 1930s the laborers on the sugar estates decided they had had enough and actively resisted their exploitation. The Buckleys uprising in 1935 was a significant landmark in that struggle. The murderous cruelty of the colonialists in the face of the uprising reverberated throughout the Caribbean and helped to embolden the working classes and the labor movement. The labor movement in various forms culminating in the St. Kitts and Nevis Trades and Labour Union and the associated Labour Party, became the catalyst for the march towards workers rights and towards political self-rule here.

With Britain severely weakened by the impact of the Second World War the movement for independence by the British colonies gained momentum. In the three years after the war India, Pakistan, Burma and Ceylon became independent. In the 1950s the British prepared to give independence to its Caribbean colonies. A two-step approach was decided – a political union of territories followed by a single state with full independence. Britain offered this status to all its territories in the Caribbean. Ten territories accepted namely Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, the then St Kitts-Nevis-Anguilla, Saint Lucia, St Vincent and Trinidad and Tobago. The Federation was established by the British Caribbean Federation Act of 1956. It took effect on January 3, 1958.

The territories which refused to join the Federation were Bahamas, Bermuda, British Virgin Islands, British Honduras (now Belize) and British Guiana (now Guyana). The Cayman Islands and Turks and Caicos Islands were at the time dependencies of Jamaica.

The Federal government was headed by an Executive Governor-General, appointed by Britain and included:

- a Prime Minister, elected from among and by the members of the House of Representatives
- a Cabinet comprising the Prime Minister and ten other elected Members chosen by him
- a Council of State presided over by the Governor General. The Council included the Prime Minister and Members of the Cabinet as well as three senators and three civil servants. The senators and civil servants were chosen by the Governor General. The Council of State was the principal decision making body at the start of the Federation. In 1960 Britain agreed to abolish this Council and allow the Cabinet to take over the powers of the Council.
- a forty-five member House of Representatives, with Members elected from among the Territories; and
- a nineteen-member Senate, nominated by the Governor General following consultation with the Prime Minister.

The Governor General was Lord Hailes of Britain and the Prime Minister was Sir Grantley Adams (Premier of Barbados). The Federal capital was located in Trinidad and Tobago.

During its brief existence (1958-62), a number of fundamental issues were debated with a view to strengthening the Federation. Among these were direct taxation by the Federal Government, central planning for development, establishment of a Regional Customs Union and reform of the Federal Constitution. The issue of direct taxation was particularly controversial. The constitution prohibited the Federation from imposing income tax for at least the first five years of its life. Added to this were the greatly differing positions among the Territories with respect to how other federal taxes should be levied.

In addition, the Federation began quickly to seek to establish federal institutions and supporting structures. It created a federal civil service. It established the West Indies Shipping Service (in 1962) to operate two multipurpose ships – the Federal

Maple and the Federal Palm – donated to it by the Government of Canada. It had also embarked on negotiations to acquire the subsidiary of the British Overseas Airways Corporation (BOAC), namely British West Indies Airways (BWIA).

Cooperation in tertiary education was consolidated and expanded during this period. The then University College of the West Indies (UCWI), which was established in 1948 with one campus at Mona, Jamaica, opened its second campus at St Augustine, Trinidad and Tobago, in 1960.

Popular support for the Federation in some of the territories was not strong. Insularity raised its ugly head from the outset and divisions arose between politicians in the union and between powerful politicians who did not participate in the Federal Government. The problems included dissatisfaction with the governance and administrative structures imposed by the British; disagreements among the territories over policies, particularly with respect to taxation and central planning; an unwillingness on the part of most Territorial Governments to give up power to the Federal Government; and the location of the Federal Capital. Jamaica was the largest but weakest link. Its distance from the Eastern Caribbean exacerbated the insular suspicions. Jamaicans felt they were not adequately represented in the Federal bodies, that the other islands would drain the island's growing wealth from bauxite and that the capital should have been located in Jamaica. It is ironic that 66 years later the smaller islands all have higher GDPs per capita than Jamaica.

The decisive development, which led to the demise of the Federation was the withdrawal of Jamaica as decided by its electorate in a national referendum in 1961. The vote was 54 per cent in favour of withdrawal. Trinidad and Tobago followed suit after the famous statement of Dr Eric Williams, the then Premier of Trinidad and Tobago, that one from ten leaves nought. The Federation collapsed in January 1962.

It is of significance to St. Kitts that Robert Bradshaw held the important Cabinet post of Minister of Finance of the Federation and moved to the Capital in Trinidad. It is also significant that the smaller Leeward and Windward Islands favored the federal arrangement and sought after the collapse of the West Indies Federation to join with Barbados in what was called The Little Eight.

Barbados declined and made its own way to independence in 1966.That led to the Leewards and Windwards Islands also going it alone in the two-step process of Associated Statehood followed by independence.

Chapter Two: Associated Statehood 1967 to 1983

Following the collapse of The West Indies Federation Jamaica, Trinidad and Tobago, Barbados and Guyana moved to full independence between 1962 and 1966. The British created an interim status called Associated Statehood for the smaller territories of the Leewards and Windward Islands - Grenada, St. Vincent and The Grenadines, St. Lucia, Dominica, Antigua and St. Kitts, Nevis and Anguilla. Under that system implemented in 1967 the states were internally self-governing and Britain was responsible for defence and external affairs. Each state had a constitution with fundamental rights, the separation of powers and a democratically elected government. St. Kitts, Nevis and Anguilla became the first of the Associated States on February 27, 1967. Bradshaw became Premier of The Associated State but had little or no support in Nevis or Anguilla.

St. Kitts, Nevis and Anguilla had been jointly governed by the British from 1882 much to the anger of the Nevisians and Anguillans. The three islands were different. St. Kitts had been a jewel in the Crown because of its fertile soil and profitable sugar industry. Nevis also produced sugar but less profitably. The industry declined there leaving the lands in the control largely of the Government and in smaller quantities by a substantial number of Nevisian families. The history of sugar in the two islands made the people vastly different in outlook as I describe in the next chapter.

Anguilla is a coral island with rocky soil able to sustain only subsistence farming. Before it developed a tourism industry it had to rely on subsistence farming and fishing. It is blessed with some of the best beaches in the world. Despite their cash poverty the people of Anguilla owned most of their land. Their tough living conditions and ownership of land helped to make Anguillians hardy and proud.

Bradshaw was accused of saying that he would make Anguilla a desert. In fact Anguilla was, in terms of infrastructure, not far from that. It had mainly dirt roads, no central water supply, few schools and minimal electricity. Despite its magnificent beaches it had no tourism. It was effectively ignored by the Bradshaw Government as was Nevis. Bradshaw was also accused of saying of Nevisians that he would put pepper in their soup and bones in their rice.

Only the most blinkered person would deny that the Anguillians had a just cause for concern that association and then independence as part of a state dominated by St. Kitts would result in further suffering for their people. It has been argued in defence of Bradshaw that St. Kitts had very little itself. St. Kitts undoubtedly had much more by way of development and infrastructure than did Anguilla.

Anguillians had protested vociferously over their poor living conditions including a petition in 1958 signed by more than 3,000 Anguillians calling on the Governor of the Leeward Islands to dissolve the political association of St. Kitts with Anguilla. The petition warned that 'a people cannot live without hope for long without erupting socially' (Colville L. Petty and A. Nat Hodge, Anguilla's Battle for Freedom).

Hurricane Donna, a category four hurricane, devastated Anguilla in September 1960.The Anguillians were very upset at what they considered the inadequate response of the central government to this disaster.

Anguillians were ridiculed by Kittitians who referred to them as 'Bobo Johnnies'. When I was growing up I learned derogatory jokes about Anguillians. Their accent was mocked. Those who attended school with me were constantly heckled. Anguilla was regarded as a backwater with nice beaches. Kittitians did not realise how proud, brave and independent Anguillians were. The British and St. Kitts governments mistakenly ignored that fierce pride and determination.

As statehood loomed, Peter Adams was the sole elected representative for Anguilla in the legislature of the Colony. He seemed prepared to play ball with the British and Bradshaw but his inclination to compromise was not shared by his people. A movement arose in Anguilla headed by the fearless Ronald Webster who galvanized support in Anguilla for total separation from St. Kitts and for Anguilla to remain a colony of the UK. Many involved in the movement seemed prepared to die for the cause and to kill if necessary.

Arrangements for statehood were finalised at a constitutional conference in London in mid 1966. The Anguillians were represented by Peter Adams. The arrangements included provisions for local Councils for Nevis and Anguilla as 'the principal organ of local government'. Those provisions were contained in section 109 of 113 sections of the statehood constitution in a chapter headed 'Miscellaneous'. You do not have to be a genius to figure out that the section was an afterthought. Its very

contents confirmed that. The membership of each Council was to be prescribed by the Legislature (controlled by St. Kitts) subject to two thirds of the membership being elected on the island it was to serve. Until January 1, 1968 each Council was to consist of such numbers as the Governor would determine and the members were to be appointed by the Governor acting in accordance with the advice of the Premier who was to consult with the Leader of the Opposition. The powers of the Council were not stated. A recipe indeed for the horror that followed.

After the constitutional conference the Bradshaw government proposed powers for the local Councils. The details of these proposals were not disclosed to the Anguillian people until the end of 1966 two months prior to the commencement of Associated Statehood. There was disquiet in Anguilla that the local council proposed it would be weak and ineffective with minor functions only. They were concerned too at the lack of provision for budgetary support from the central government in St. Kitts. The British sent a representative to Anguilla a month before Statehood Day (set for February 27, 1967) ostensibly to explain the proposals. He was given no real chance to do so. He was met at the airport by a large crowd of demonstrators. When later in the day he met with a group of Anguillian leaders the meeting place was stormed by an angry and hostile crowd and the meeting ended abruptly.

The Anguillians continued to take a forceful stand. A Statehood Queen Show held on February 4, 1967 was violently ended by protesters. The police used tear gas to disperse the protesters. In the days following, while investigating the disruption of the event, the police were shot at. Additional law enforcement was provided from St. Kitts and by the British. Efforts continued to resolve the situation but Statehood arrived on February 27, 1967 without any progress.

The likelihood of trouble in Anguilla was foreseen in London but the government there was bent on getting rid of its colonies. During parliamentary debates members of the House of Commons in London raised the issue and expressed serious concern but to no avail.

A week after Statehood the official residence of the Warden, the Government representative on Anguilla, was burned to the ground. More violence ensued and the pronouncements were clear that Anguillians were prepared to die for the cause. I did not hear of any Kittitians who were likewise committed to oppose them. The few police

stationed in Anguilla certainly were not because they went meekly when thrown off the island on May 29, 1967.

Then came the act which brought the struggle to St. Kitts. On June 10, 1967 a group of Anguillians sailed to St. Kitts. Some landed and fired shots at the Defence Force HQ at Springfield, the Police HQ at Cayon Street and the Electricity Power Plant at Needsmust. No one was killed and the violence petered out. However, there began the political tribalism which still racks St. Kitts. Bradshaw was convinced that the Anguillians were supported by the recently formed Peoples Action Movement headed by Dr William Herbert. PAM thought that Bradshaw wanted to get rid of them because they were posing the first real challenge to the Labour Party in St. Kitts after adult suffrage. What happened next strengthened their view.

In May a State of Emergency (including emergency powers of arrest and detention and a curfew) was declared throughout the State in response to the violence in Anguilla. 22 members and supporters or perceived supporters of PAM were detained at the Basseterre Prison under the emergency powers. Four Anguillians were arrested and charged with offences relating to what Bradshaw called an attempted coup. Dr. Herbert and Michael Powell were charged with treason. Several non-belongers, including citizens of Caribbean countries who had lived here for years, were deported. Most of the detainees were in August released by Order of the Court. The trials of those charged proceeded in October and November. Lawyers came from all over the Caribbean to defend the accused and the detainees. There was high tension throughout the island. After the acquittal of two Anguillians in the first cases the Judge was threatened, jurors were threatened and there was an illegal demonstration in Basseterre against the Court. The House of Assembly debated and passed a Motion of No Confidence in the Court which was broadcast on ZIZ Radio. The Chief Justice of the newly established West Indies Associated States Supreme Court Sir Allen Lewis flew from St. Lucia to St. Kitts, convened the Court and reminded Bradshaw and his Government in no uncertain terms of the separation of powers and the independence of the judiciary. His speech is a landmark in our history.

The trial of Herbert and Powell began but was discontinued by the Government. Bradshaw took instead to the media repeating his accusations against PAM of organizing a coup and he threatened to convene a Commission of Inquiry. The political

battle between PAM ‘cats’ and Labour ‘dogs’, as they call each other, has not stopped since.

Anguilla never returned to rule from St. Kitts. Anguillians established a de facto government but really wanted to return to British rule. The British co-operated with Bradshaw for a while in the hope of brokering a reunification. They continued to misjudge the Anguillians. When a British Minister of Government was roughed up in Anguilla in 1969 they decided to invade Anguilla by paratroopers from the air, expecting resistance. Instead they totally embarrassed themselves internationally. They were perplexed to be greeted with open arms and the British soldiers enjoyed like tourists the Anguilla beaches and hospitality.

Anguilla has been ruled by the British since and in December 1980 was by British Order in Council legally separated from St. Kitts and Nevis. That paved the way for independence. By then Bradshaw had died and Labour lost the 1980 General Election to the PAM/NRP coalition.

I set out some extracts from The Labour Spokesman, the printed mouthpiece of the ruling Labour Party and The Democrat, the printed mouthpiece of PAM.

The Labour Spokesman said the following:

The Truth About “Freedom Day” And Why It Flopped

‘Yesterday, Monday 12th June [1967], was supposed to have been “Freedom Day”, a day of rejoicing for the forces of violence, evil and disorder. From information which has recently come to light, it is clear that yesterday had been set aside for celebrations after the overthrow of the Government by force on Saturday and Sunday.

Those who had agreed to take up arms against the constitutionally and democratically elected Government of the State had already prepared a new flag, a new Cabinet and a new Civil Service hierarchy for the State.

That is what ‘Freedom Day’ was supposed to have marked - the beginning of Government by guns and explosives, the beginning of government by terror.

But our Police Force is more loyal than these criminals want to believe, and so is our Defence Force. And the Labour Government is more firmly entrenched in the masses of the people than the forces of destruction want to believe.

So 'Freedom Day' passed by without incident. Nearly all business places opened as usual, though one or two extremely bitter employers sent back home their employees who turned out to work.'

The Democrat said:

MASS ARRESTS FOLLOW SHOOTING INCIDENTS

'What is really behind all these arrests which include the leaders of the PAM, the only opposition political party, and WAM and CURE, two workers Trade Unions not connected with Government?

The only information which is available to the public is that which is repeatedly broadcast night and day by the Premier, who alleges his government to be democratic yet refuses the PAM, and those who hold contrary opinion, the right of reply through the same medium. We draw your attention in support of this to two letters from employers on page 2, the contents which speak for themselves.

The public will have to wait patiently for the whole truth. In the meantime a feeling of tension and fear permeates the whole community and even the Premier himself finds it necessary to go about armed in public.

There are also reports that the Government has found it necessary to arm questionable persons. As a result of this at least one incident has been reported of a gun being fired accidentally.

It is regrettable that irresponsible shooting has occurred in a peaceful community such as ours fortunately without serious injury or loss of life, but these incidents show that all is far from well in our new State.

It is high time that our Premier and other senior members of Government stay at home and work out a satisfactory solution to our problems in accordance with both the letter and spirit of our Constitution.'

The Democrat also published the following:

'Governor's Dep. Calls for Day of Prayer'

The following is the text of a letter from His Excellency the Governor's Deputy - Mr. B. F. Dias, O.B.E., to certain Heads of Denominations and the Christian Council of Churches in the State:-

'You will of course be aware of the recent acts of violence taking place in the State and of the continued state of tension which appears to be mounting rather than abating. I am of the opinion that only the hand of Providence moved by the prayers of our citizens, can avert a great catastrophe and cause us all to search our hearts and enter upon the road of justice and love for our fellow citizens, irrespective of colour, class, creed or political persuasion. I am therefore asking all Christian Churches in the State to declare Sunday 18 June, 1967 as a National Day of Prayer when all men will kneel and ask the Almighty to grant a just peace to this troubled State.'

Ronald Webster, who led the Anguilla revolt against association with St. Kitts, wrote a book entitled 'Revolutionary Leader' which was published in 2011. Webster is acclaimed in Anguilla as 'Father of the Nation' in much the same way as Robert Bradshaw is acclaimed in St. Kitts. Webster says very little in his book of the events of June 10, 1967. He mentions those events in passing in chapter 19 as follows:

'There was another round of discussions between the St. Kitts Government and a second delegation from Anguilla at the end of June prompted by an armed attack on St. Kitts by a group of Anguillians on June 10th, and a request by Premier Bradshaw to the Commonwealth Caribbean Governments for military assistance to end the Anguilla revolution.'

Much more is written of the events of the June 10, 1967 by Colville L. Petty (an Anguillian historian) and A. Nat Hodge (an Anguillian journalist and editor) in their book entitled 'Anguilla's Battle for Freedom 1967-1969' published in 2010. In note 1 to chapter 4 headed 'Armed attack on St. Kitts' they say as follows: 'The information in this Chapter is the result of extensive interviews with most of the men who took part in the attack on St. Kitts.'

In note 2 they say 'The names of the Kittitians who were involved in the attempted coup have been withheld out of concern for their safety and that of their relatives.'

Petty and Hodge wrote 'The notion of attacking St. Kitts was the brainchild of Ronald Webster and a prominent Kittitian lawyer. The attack was carried out on Saturday 10th June 1967. The party of armed men from Anguilla who landed in St. Kitts had two principal objectives which were interrelated. One was the defence of the

Anguilla Revolution. The other was the overthrow of the government of Premier Robert Bradshaw and the installation of a government sympathetic to the Anguillian cause.'

Ronald Webster was fearful of an invasion from St. Kitts and reasoned that the best way of preventing it was to attack St. Kitts and overthrow its government. Connell Harrigan observed: 'St. Kitts was trying to get into Anguilla by fair means or by foul. We were out in the night and so forth, and we were seeing boats coming in and we figured that Bradshaw might attack us at any time, so we attacked him first.'

Petty and Hodge also say that the Anguillians who attacked St. Kitts were misled into believing that there would be a general uprising in St. Kitts in support of them. They were surprised when they received little support on the ground in St. Kitts.

I am unable to verify any of the statements which I have quoted from Petty and Hodge nor have any of them been proven in a court of law.

The sad facts are that the British set up the Associated State to fail and so it duly did leaving St. Kitts and Nevis to face their issues which I describe in detail on this site.

Chapter Three: The Relationship between St.Kitts and Nevis 1882 to 1980

Nevis was joined with St. Kitts and Anguilla in 1882 having previously been part of the larger Leeward Islands grouping. The government of the new colony was based in St. Kitts which was its administrative and economic hub with approximately two thirds of the population and a strong sugar industry. Like Anguilla, Nevis was neglected by the central government in St. Kitts under the British and, after adult suffrage, under the elected government. Its infrastructure was inadequate. Charlestown, its capital, became almost a ghost town as soon as businesses closed each day. The sugar industry in Nevis had declined and many of the former sugar estates in Nevis had fallen into ownership of the government. Cotton was grown on some estates. In that regard Nevis was very different from St. Kitts where almost all the arable land was cultivated in sugar cane. Nevisians were proud of their land ownership and, although of limited means, were proud, self-sufficient and independent people.

In 1934 there were over 360 families in Nevis owning or leasing close to 2,000 acres in parcels of up to ten acres. They grew their own fruits and vegetables and raised animals. In St. Kitts at this time there were only 11 such holdings. This created a significant difference between the people of the two islands. The Nevisians were landholders, independent and self-reliant even though not wealthy. Kittitians were still largely dependent on the sugar estates and lived for the most part on the estates or in crowded parts of Basseterre and Sandy Point and in villages built on lands not used for sugar cultivation.

The people of Nevis resented the lack of infrastructure and economic opportunities in Nevis and the concentration of resources in St. Kitts. As happened with Anguilla most of the infrastructure and other development in Nevis came after Nevisians gained effective control of their own affairs. Unlike Anguilla, Nevis did not secede from St. Kitts. Political events in St. Kitts gave them that control peacefully and very successfully.

By the Constitution and Elections Ordinance 1952, St. Kitts–Nevis–Anguilla was given its first legislature to be elected under adult suffrage. The legislature was known

as the Legislative Council. It comprised ten elected members (seven from St. Kitts, two from Nevis and one from Anguilla), two nominated members and the Attorney General. The Legislative Council had power to make laws for the colony limited by the requirement of the assent of the Administrator.

Elected members from Nevis took the cause of Nevisians to the Legislature. Eugene Walwyn, a lawyer from Nevis was one such member of the 1957 Legislative Council. William Kelsick OBE was a nominated member and describes the debate in the Legislative Council on financing for Nevis in these terms:

> *One of the major economic issues faced at that time, related to the fact that St. Kitts had a wage day but Nevis did not. Every week, the sugar estates in St. Kitts paid wages. However, the economic activity in Nevis was quite different. Their sugar estates had gone out of business therefore, cotton was being planted on a share basis. As a result, cotton farmers had to wait for payment which was made whenever the cotton had been sold, so many lived from one pay day to the next, sometimes under very trying circumstances because this payment would take several months. This was the pattern from as far back as the post emancipation period when the free peasantry planted cotton. Incidentally, during the 1950's, large numbers of Nevisians came to St. Kitts to work on the sugar estates so that they could have regular incomes.*
>
> *All of this explains why requests for subsidies for Nevis was one of the debates (sometimes quite heated) frequently held.*

Nevis had a secession movement at the time. That movement showed its political strength in the early 1960s. Action included a demonstration in St. Kitts in support of secession by Nevisians who traveled to St. Kitts by boat for the purpose. Bradshaw temporarily stifled the movement by enticing Eugene Walwyn, one of its main leaders at the time, to join the Labour Party Government as Attorney General. Walwyn lost support in Nevis and was branded a traitor for selling out Nevis at the time of the arrangements for Associated Statehood. Walwyn went on to become a businessman, founding the Bank of Commerce in St. Kitts. He invested the Bank's money in speculative ventures including an airline. The bank went bankrupt in 1985 leaving many Kittitians and Nevisians without their savings. Walwyn was convicted in the High Court of fraud. He was fined $75,000.

The tragic sinking of the government owned ferry M.V Christena on its route from St. Kitts to Nevis on August 1st, 1970 leaving over 230 people (the large majority Nevisians) dead, further clouded relations between St. Kitts and Nevis. The tragedy was made worse because of legal smartness by Eugene Walwyn, then Attorney General. None of the families of the victims which lost breadwinners was able to sue the government for the obvious negligence of the captain.

In the aftermath of the disaster, caused by reckless overcrowding of the vessel, the Nevis Reformation Party (NRP) was formed in Nevis. Its main platform was secession from St. Kitts. Among the founders and leaders of that party was Simeon Daniel, a lawyer. While he served as a Civil Servant in St. Kitts for a short while in the mid 1960s, Bradshaw had courted him but failed. After Associated Statehood, Daniel returned to Nevis and immediately got into politics. He became Chair of the Nevis Local Council and then won election to the House of Assembly in 1975 and 1980. Daniel understood and captured the spirit of Nevisians by whom he was greatly loved. He was humble and sociable and spoke in soft tones. He had a brilliant mind and was fearless. He was belatedly and posthumously made a National Hero.

The following exchange of letters graphically portrays the divisions between St. Kitts and Nevis in 1975.

On December 13, 1975 the Premier Bradshaw wrote to Simeon Daniel, Leader of the Opposition and Chairman of the N.R.P referring to the results of the 1975 General Election held on December 1, 1975.

> In the circumstances, I am firstly to welcome you, personally, to the ranks of membership of the House of Assembly, and secondly to invite your Party which gained complete control of the Nevis Local Council on 1st instant to join with my Government to give full effect to the expressed wishes of the electorate; to take part in the urgent development of the State, as well as to re-unite our people and to heal whatever wounds the elections may have caused

Mr. Daniel replied on January 17, 1976 in a ten page letter including the following paragraphs –

> You have invited my party which gained complete control of the Nevis Local Council on December 8,1975 to join with your Government to give full

effect to the expressed wishes of the electorate. In the circumstances to give full effect to the expressed wishes of the electorate of Nevis would require frank recognition by you and your Government of the desire of the voters of Nevis to achieve Political Separation from the existing State of St. Kitts-Nevis-Anguilla as indicated by the recent overwhelming vote for candidates who campaigned on Secession. The people of Nevis are “united” in their resolve and no reunification is necessary for them; as to healing “whatever wounds the election may have caused” the injuries from which the Nevis People feel themselves to be suffering have antedated the recent elections by over two decades.

In conclusion, frankness requires that you be told the facts which your sycophants will never share with you:

a) It is the general feeling among Nevisians that your attitude towards them and the island is one of calculated malevolence.

b) By ignoring the anxious need of the people for proper roadways, adequate water supply, land use and development during your recurring administration you have demonstrated your complete disregard for and lack of interest in our island and its people; they have never forgotten and cannot forgive your well-kept promise of 1957 that they should have ‘Bones in their rice and Pepper in their soup’

c) The fictional character which your actions have ascribed to the Nevis Local Council since Statehood; your refusal to extend active constitutional recognition to it, or to include it in the administration of the affairs of Government regard and would continue to regard Nevis as a colonial appendage to St. Kitts a status which the people of Nevis would never continue to accept.

In the latter half of the 1970s, as NRP gained strength, Nevisians began to agitate very strongly for secession for Nevis. A referendum was organised unofficially in Nevis in 1977 and resulted in 99 per cent of the votes cast in favour of secession.

Bradshaw died in 1978 and Southwell in 1979 leaving the Labour Party under the leadership of Lee Moore. Moore was a brilliant advocate and a man of integrity but not a great politician. His short temper in the face of political rhetoric did not help. He refused to call a meeting of the House of Assembly after Kennedy Simmonds won, in a

by-election, the Central Basseterre seat which Bradshaw had held up to his death. It took a court case for that election to be finally determined. The returning officer rejected 99 ballots and declared the Labour Party candidate Anthony Ribeiro duly elected. Simmonds took the matter to the High Court. The Judge counted the ballots himself and declared Simmonds the winner by 22 votes. The Court of Appeal upheld the Judge's decision on August 10, 1979.

Rather than calling a meeting of the National Assembly and allowing Simmonds to be sworn in, Moore decided to call a general election. That election was held on February 18, 1980. There were seven seats in St. Kitts and two in Nevis. Moore's Labour Party won four seats in St. Kitts and PAM, led by Simmonds, won three. NRP won the two seats in Nevis. PAM joined with NRP to form the government with a 5-4 majority. Simmonds was made Premier and Daniel Minister of Finance. With his party holding the balance of power and in control of the key Ministry, Daniel temporarily shelved his secessionist agenda and focused his attention on redressing the wrongs done to Nevis in the past. His colleague Ivor Stevens, the other elected representative of NRP, joined Daniel in the Simmonds led Government as Minister of Communications and Works, another key Ministry from which to redress the imbalance from which Nevis had suffered. The resistance had been hugely successful.

Chapter Four: The ‘Federation’ and its Aftermath

In 1980 with the Anguilla situation resolved and Nevis secession on ice it was open for St. Kitts and Nevis to move to independence following the other Associated States of Grenada in 1974, Dominica in 1978, St. Lucia and St. Vincent and the Grenadines in 1979 and Antigua and Barbuda in 1981.The most controversial issue in the debate on the independence constitution was the relationship between St. Kitts and Nevis. Leveraging the balance of power which NRP held, Nevis ensured that it got effective control of its own affairs and much more.

The system chosen by the Government of the day was that of a ‘Federation’ but a very unusual one. Nevis was to have its own government but St. Kitts was not to have its own government. There was to be a Federal Government with elected representatives from both islands. The Federal Government would administer St. Kitts. To borrow the terminology of the Phillips Commission, Nevis was to be federated with St. Kitts and Nevis. That arrangement would create the possibility (as happened in 1980, in 1993 and in 2015 and may well happen again) of Nevis holding the balance of power in the Federal Parliament while controlling its own affairs in Nevis.

The Nevisians went further. They insisted on a secession clause for Nevis. There was to be none for St. Kitts. And they insisted that any amendments to several key provisions of the Constitution would require a two thirds vote in St. Kitts and a separate two thirds vote in Nevis.

Nevis is given a Premier and Cabinet called the Nevis Island Administration and its own legislature called the Nevis Island Assembly. Assembly elections are held separately from Federal elections. The result is that with Federal elections called by the Prime Minister and Assembly elections called by the Premier, Nevis can be in constant election mode.

The Nevis Island Assembly is given exclusive powers to make laws with respect to several key matters.

The Nevis Island Administration (NIA) is, subject to the constraint mentioned below, given exclusive responsibility for the administration in Nevis of airports and seaports, education, extraction and processing of minerals, fisheries, health and

welfare, labour, lands and buildings vested in the Crown, licensing of imports and exports. A constraint on the exercise of these powers is given to the Prime Minister who can notify the Premier in writing of matters of general policy or national concern. The NIA is not permitted then to take any action inconsistent with such policy without the prior concurrence of the Prime Minister.

There are provisions for use of Government lands in Nevis by the Federal Government. The NIA is required to make available to the Federal Government suitable Government lands in Nevis required for its use. If the NIA has to acquire such lands compulsorily the Federal Government has to pay the compensation to any private person from whom the lands are acquired.

The Constitution provides for powers over public safety and order. The Premier can give general directions in this regard so long as they do not conflict with orders given by the Prime Minister.

Consultation is required between the Prime Minister and Premier on the staff of the NIA. There must be consultations between the Federal Government and the NIA on proposals by the NIA to borrow money. Borrowing limits may be set for the NIA by rules made by the Governor General on advice of the Prime Minister with concurrence of the Premier.

The financial arrangements in the constitution are different to the political ones. Taxation is a Federal matter. The Nevis Island Assembly has very limited power of taxation. It cannot tax profits or income or property or imports or exports. The revenue sharing arrangements are very simple. Taxation revenue is to be shared on a per capita basis and in that accounting Nevis is to be assessed for its share of common services and debt. As simple as this arrangement may be it has never worked smoothly because of the politics. The major source of current contention is that Nevisians are not getting their fair share of the CBI money and are owed hundreds of millions (maybe billions who knows) of dollars by the Federal Government. Ironically the next big resource will be geothermal energy produced in Nevis. Let's hope that too does not stir mistrust.

As it is the national government, the Federal Government has control of external affairs and when the NIA borrows from abroad and a country guarantee is required only the Federal Government can give such guarantee on behalf of the country. Nevis also

has to rely on the goodwill of the Federal Government to share in aid from foreign governments. Until 2015 when Mark Brantley became Minister of Foreign Affairs in the Federal Government while retaining the position of Deputy Premier of Nevis, Nevis had no formal direct contact with such governments. Nevisians also claimed that Nevisians were ignored in appointments for diplomatic and external representative positions. At times the Nevisian leaders were not included in teams representing the country at regional and international forums. Given the importance of direct foreign investment to development, the NIA regarded that as a deliberate attempt by the Federal government to stymie important opportunities for exposure of the NIA to sources of investment capital. St. Kitts and Nevis often competed for such capital.

So Nevis has the benefit of the political arrangements but St. Kitts controls the money and external relations. Some may say that is an ideal balance. It certainly reflects the balance of political power at the time of independence. But it is not a stable long-term arrangement.

Within the 1980s, skillfully led by Simeon Daniel and buttressed by the Federal arrangements, Nevis advanced beyond recognition. In the first post-independence election in 1984, PAM won six of the eight seats on St. Kitts, giving them a majority of the eleven seats in the National Assembly. They did not therefore need the support of the NRP to run the Federal Government. However, NRP remained in the Federal Government. Daniel gave up the Ministry of Finance and took a less important Ministry which freed him up to undertake his responsibilities as the first Premier of Nevis. Ivor Stevens, Daniel's NRP colleague, remained actively involved in the Federal Government as Minister responsible for Communications and Works, still a key Ministry as far as Nevis was concerned.

The Federal election of 1993 brought another PAM/NRP government but this time a minority one with PAM/NRP holding 5 seats, Labour 4 and CCM 2. Violence erupted and a state of emergency was briefly declared. Tensions continued until November 1994 when the Four Seasons Accord was made.That Accord required an election within 18 months which was the only part of the Accord seriously implemented.

The Labour Party won power with an overwhelming majority in the National Assembly in the general election of July 1995. The party had maintained its vehement opposition to the Federal arrangements but said in its manifesto for the election that it

wanted ‘unity among the people’ and pledged that within the first 100 days of forming the government a constitutional reform conference would be convened to serve as a springboard for the decision of substantial constitutional reform for St. Kitts and Nevis. Those pledges reflected the very clear position of the Labour Party pre and post independence that the current constitutional arrangements established on independence are unfair.

However Amory jumped the gun and in April 1996 the NIA appointed a Constitutional Advisory (Review) Committee. That committee was given the following terms of reference:

a) to hold public meetings throughout Nevis and invite all shades of public opinion on the Constitution;

b) to examine and assess the Constitution as it relates to St. Kitts and Nevis;

c) to advise the Administration of what changes (if any) should be made to the Constitution;

d) *to advise the Administration whether a new Constitution should be drafted to govern the relationship between St. Kitts and Nevis*.

The NIA appointed Constitutional Advisory (Review) Committee started its review and noted the following trends:

(a) The current Constitution was originally intended to cover a three-year term. This has not (until now) been officially reviewed. It was therefore considered timely and appropriate to have the constitutional arrangements between St. Kitts and Nevis reviewed with the objective of correcting any obvious abnormalities;

(b) The majority of the persons interviewed felt that separate (local) governments for St. Kitts and Nevis should be considered with some type of “Treaty” arrangement put in place to govern areas of common interest like international trade, defence and foreign representation;

(c) It was considered important to maintain an amicable working relationship between both governments to facilitate free movement of nationals, goods and common services;

(d) As an alternative to the current constitutional arrangement a revised model was recommended which essentially advocates two separate Assemblies for St. Kitts and Nevis. This model would see all laws specifically affecting Nevis being passed in the Nevis House of Assembly, and laws specifically affecting St. Kitts being passed in the St. Kitts House of Assembly. The Assembly of one country (sic) would have no jurisdiction over the other. Elections to the first and subsequent local assembly (sic) under this arrangement (would) be held on a predetermined date every five years in both islands. A Federal Assembly (would) comprise an equal number of representatives from both local Assemblies. This Federal Assembly (would) "rubber stamp" laws passed in both Assemblies and (would) exercise jurisdiction over Federal matters like defence, foreign borrowing, foreign representation and the like. The Federal Assembly would be headed by a Prime Minister. This position would be rotated between the Premiers of St. Kitts and Nevis every five years. The Federal Assembly would be supported financially by both islands, using criteria other than population as the basis. Eventually, this would translate into some type of confederation between the two islands;

(e) A Federal Public Service Commission would comprise representatives of autonomous bodies in St. Kitts and Nevis, with the Chairman of the Nevis Public Service Commission serving as ex-officio and vice versa, to deal with transfers at the Federal level and other related matters;

(f) It was recommended that Clause 27 in the current Constitution be eliminated

The NIA Review committee was not however allowed to complete its work as, in June 1996, Amory announced that he was moving immediately for secession. In July 1996 he introduced a Separation Bill in the Nevis Assembly. The Assembly members from the Opposition NIA absented themselves from the sitting at which the second and third readings of the Separation Bill were tabled in November 1996. The Bill could not therefore receive the required two thirds majority of all elected members of the Nevis Assembly.

Amory decided to call an election. His CCM party campaigned on a secession platform. The election was held on February 24, 1997. CCM won three of the five seats with NRP winning the other two. In April 1997 Amory moved the Assembly again for

secession. The Separation Bill was duly passed on October 13, 1997 with NRP deciding it would leave the matter for decision by the people of Nevis.

The next step required by the constitution was a referendum of Nevis voters. For secession to take effect a two thirds vote in favour was required, that is two thirds of all votes validly cast.

On December 15, 1997, with the referendum pending, the Federal Government appointed a Constitutional Commission headed by Sir Fred Phillips, the first Governor of the Associated State of St. Kitts-Nevis-Anguilla. By then Sir Fred had long left St. Kitts and returned to private practice of the law through which he had earned an excellent reputation as a regionalist and a constitutional lawyer. The terms of reference of the Phillips Commission were:

(a) to consider whether the provisions of the 1983 Independence Constitution are such as to give expression to the normal relations between one unit of a federal entity and another;

(b) to review the existing constitutional arrangements in the country and to make recommendations as to the nature of any reforms deemed expedient; and

(c) in particular, to examine all practicable bases of future relations between St. Kitts and Nevis, including that of separation under section 113 of the Constitution.

Between January and July 1998 the Phillips Commission held several public meetings in St. Kitts and one in Nevis. A second meeting scheduled for Nevis was (according to the Report) cancelled at the last moment by the Nevis organisers. The Phillips Commission also visited the Virgin Islands, the United Kingdom, The United States of America and Canada where they consulted with Kittitians and Nevisians and with government representatives and with national and international organisations.

Not surprisingly, the NIA, more concerned with their campaign for secession, refused to participate in the deliberations of the Commission. The Phillips Commission presented its report to the Governor General on July 31, 1998.

The referendum on secession was held in Nevis on August 10, 1998. 2,427 or 61.83 per cent of those who voted did so in favour of secession. 1,498 or 38.17 per cent of the voters voted against secession. The percentage of 61.83 per cent in favour fell

just short of the two thirds required by the Constitution for the secession resolution to succeed.

With new breathing space from the unsuccessful referendum, the Federal Government decided to supplement the process of the Philips Commission and in January 1999 appointed a Task Force on Constitutional Reform again headed by Sir Fred Phillips. That Task Force had a wider composition than the Phillips Commission. The Commission comprised Sir Fred, Kenneth Rattray QC and J.R.P Dumas. Rattray and Dumas were distinguished Caribbean figures. The Task Force comprised Sir Fred plus Brynmor Pollard SC, Reginald Dumas, Cedric Harper and Professor Simon Jones-Hendrickson. The last two named are St. Kitts and Nevis nationals both distinguished in higher education, Harper at The University of The West Indies at Mona Campus, Jamaica and Jones-Hendrickson at the University of The Virgin Islands. Like the Commission, the Task Force consulted widely. It was reported on July 25, 1999. The recommendations of the Commission and the Task Force on the future relations between St. Kitts and Nevis are almost identical.

Before giving the details of the recommendations I set out two extracts from the Report of the Phillips Task Force. The Task Force began the chapter of its report on the relationship between St. Kitts and Nevis with this statement:

> *We begin by saying that among the people we spoke to and heard from, publicly and privately, in St. Kitts and Nevis during the last four months, we found overwhelming support for the continuation of the two islands as one state. Various suggestions were made on the nature and governance of that state, but the principle of oneness was almost universally accepted and supported.*

The second extract is from paragraph nine of the chapter referred to of the Task Force report:

> *It was represented to us that the official and institutional relationship between St. Kitts and Nevis left a great deal to be desired. We were told often that it was the politicians in both islands who were the problem, the implication being that they were out of step with the rest of the community. One wonders, if that were indeed so, why has not the rest of the community which elects the politicians, imposed its wishes on them.*

One would have hoped that with local representation on the Task Force Messrs Harper and Jones-Hendrickson would have answered the question but I certainly will. The answer is that too many in the rest of the community are inflicted with polarization, do not think for themselves and simply play 'follow the leader.' The politicians have little fear therefore that the community will impose its will on them and merrily go along playing their games.

It is worthy of note at this point that the Task Force met with the leaders of the main political parties and held private and public meetings on both islands including five public meetings on Nevis and a call in discussion on VON Radio, a popular Nevis based radio station. They were received by Premier Amory and the Report quotes him as saying that it remained the views of the CCM (after the referendum) that the interest of the people of Nevis can only be best achieved by constitutional separation from St. Kitts but 'we are prepared to work within a framework of constitutional reform, provided only that that is indeed the will of the people of Nevis.'

In the quarter century since the referendum there have been substantial improvements in business relations and in communication by travel and telecommunications between St. Kitts and Nevis and therefore much greater movement of people and contact between them. Social media has created a greater bond between young people. One hardly hears talk of secession these days. One never knows what might happen with politicians but it does not appear to be a waste of time to look at a summary of the Phillips Commission and Task Force proposals.

They recommended that:

- St. Kitts should have its own legislature with power to legislate on all matters for St. Kitts other than those allocated to the Federal Parliament (see below for those powers).
- Nevis should retain its own legislature with power to legislate on all matters for Nevis other than those allocated to the Federal Parliament.
- St. Kitts should have its own executive branch in the form of a Cabinet headed by a Premier and four or five Ministers.
- Nevis should retain its Cabinet with a Premier and two or three Ministers.

- The Ministers in each Cabinet should be appointed by the Premier from within or outside the island legislature and be subject to confirmation by the island legislature.
- There should be a Federal Parliament comprising equal numbers of elected members from St. Kitts and Nevis and non-voting independent members appointed by the President after consultation.
- The Federal Parliament should have power to legislate on matters of national security (including defence), foreign affairs and the judiciary.
- A seventy per cent majority of all elected members should be required to pass legislation in the Federal Parliament.
- The Head of State should be a President responsible for national security (including defence), foreign affairs and the judiciary subject to parliamentary oversight via national security and foreign affairs committees.
- The President should also have power to make appointments to sensitive positions subject to confirmation by Parliament.
- The Presidency should be rotated between Nevis and St. Kitts beginning with St. Kitts. A person would be qualified to be the President from St. Kitts or Nevis if he were born on the island or one of his or her parents was born on the island.
- The term of office of the President should be five years
- When a President is to be elected the two island legislatures should consult and agree on the nomination of two qualified persons to be put before the electorate for election. The electorate on both islands should vote between the persons nominated to elect a President.
- There should be a Vice President. The Vice President should come from the other island to the President. The Vice President should be nominated and elected in the same manner as the President.
- The President and Vice President should be able to serve a second term although of course not consecutively.
- The President should appoint two Secretaries of State from outside the legislatures and Parliament who would function as his Cabinet.

The recommendations address the major issues of all the parties. They give St. Kitts a separate government and they give Nevis greater control over taxation in Nevis and a say in security and foreign affairs. They provide a fair and balanced basis for a resumption of the discussion. Some may think that they are complicated and that it would be costly for a small country such as ours to add a third tier of government to the two we already have. My view is that it would be worth the cost if it would create stability and end the underlying mistrust and lingering resentment.

The Phillips Commission also addressed the important matter of dispute resolution. Again, given human nature and the nature of politics and given the St. Kitts and Nevis experience, it would be wise to have a formal dispute resolution process with the courts as a last resort. The mechanisms recommended by the Task Force are firstly a Conciliation Committee of the Federal Parliament, then if not resolved to mediation by a permanent group of facilitators chosen from nationals of Caricom by the Federal Government and the island governments. The Conciliation Committee should then seek to resolve the dispute based on the recommendations of the mediation group. If they fail then the dispute should be resolved by decision on a vote of seventy per cent of the Conciliation Committee, that decision to be binding. The recommended composition of the Conciliation Committee was three members from Nevis and five from St. Kitts.

As to the famous secession clause 113 of the Constitution, the Commission and the Task Force recommended a ‘sunset’ clause that is a fixed period of time after which the right to secession for Nevis would expire.

The wide differences over the constitutional arrangements between St. Kitts and Nevis remain unresolved and ripe for any politician, of any side, who wants to use them for political ends. This issue should be re-opened. It can with goodwill on all sides be resolved. St. Kitts and Nevis will then have one less factor contributing to our brooding democracy.

I am ever mindful that any change to the arrangements between St. Kitts and Nevis will require separate two thirds majorities in the Federal Assembly and in the Nevis Island Assembly and two thirds majorities in separate referenda in St. Kitts and Nevis. That is a tall order. It will require a complete change in political culture on both islands from tribal to issue based politics.

Long story short, because the constitutional status of Nevis is so deeply

entrenched in the constitution, St. Kitts and Nevis are stuck with a quasi-Federation which will come back in future to bite them and will deter the maturity of the nation.

Chapter Five: The Long Road to a Mature Nation

There is of course no precise definition of a mature nation. Nations are so different in terms of people, economy, culture, resources, size and history. But you know a mature nation when you see one. Singapore is a prime example of a mature nation. New Zealand is another small country with significant maturity. Mid size mature nations include the Scandinavian countries particularly Norway. But I will stop there because the purpose of this book is not to compare St. Kitts and Nevis with any other country.

St. Kitts and Nevis is a young nation and one of the smallest in the world in physical size and population with limited natural resources and serious natural disaster risks. It began life as a nation only 40 years ago with a weak economy and little support from the colonizers. Despite these challenges the nation has the potential to grow and mature.

I begin with the preamble to the Constitution of St. Kitts and Nevis which sets out very explicitly what type of nation our people want.

The Preamble

WHEREAS the People of Saint Christopher and Nevis –

declare that the nation is established on the belief in Almighty God and the inherent dignity of each individual; assert that they are entitled to the protection of fundamental rights and freedoms; believe in the concept of true democracy with free and fair elections; desire the creation of a climate of economic wellbeing in the context of respect for law and order; and are committed to achieve their national objectives with a unity of purpose;...

It is unquestionable that the declarations, beliefs and commitments in the Preamble are a good guide to the achievement of a mature nation.

The first declaration supports the pursuit of maturity because belief in Almighty God and the inherent dignity of each individual should provide a good direction. The first declaration should stimulate the true pursuit of the four other commitments set out in the preamble.

It is very sad to note that the last of the declarations has been the least respected. That commitment to achieve the national objectives with a unity of purpose has been non-existent because of the political polarization of the country. That polarisation has from day one transcended all norms of democracy and political competition. It has permeated every aspect of life in the country.

A perfect recent example of the party above country mentality is the lack of response of the public to the disclosure by Prime Minister Drew in Parliament that between 2008 and 2022 the government received direct revenue of 5.678 billion Eastern Caribbean dollars from the CBI. In most democracies this would have led to a public outcry for Drew to give full disclosure of all the carefully buried facts relating to the CBI including how much additional money was generated for government by the Sugar Industry Diversification Fund, how many passports have been issued since the program began, how many diplomatic passports have been issued and most importantly you would expect a call for an accounting of how the money was spent. But hardly an eyelid has been batted.

The question whether with that type of money the country should not already be a Sustainable Island State has not been widely asked. Nor have the questions been asked of why with such billions we are still without a good hospital, why are the mental health facilities virtually non-existent, why are the St. Kitts electricity and water services archaic, why has the airport terminal been allowed to become outgrown by airline arrivals,why have the schools and so many important public buildings been allowed to decay and why is there no established disaster relief fund. These questions lie buried in the political culture. The obvious reason for such resonating silence is that the period of the revenue crosses party lines. Labour (in coalition with NRP for part of that time) held government from 2008 to 2015. Unity (PAM, CCM and PLP) held government from 2015 to 2022. Each tribe had an equal seven years. So no political party will rock the boat. The country is none the wiser and seems to be happy that way.

How do we put the past behind us and achieve the unity of purpose that we claim to be committed to? I suggest we take the advice of two highly respected leaders.

Advice of P. J. Patterson

We could do well to heed the warning given by former Jamaica Prime Minister P.J Patterson to the joint sitting of the Jamaican Parliament held in November 2012 to

pay tribute to him. He said *'We must abandon the adversarial approach of the past and replace it with a consensual form of politics to embrace the best ideas regardless of the political quarters from which these ideas originate. I underline this problem to warn of the dangers ahead…. If we fail to posture in a political environment that discourages the brightest minds from participating in the political process, we are placing our democracy at risk.' The former Prime Minister added that politicians 'have contributed to our sad state of affairs by our utterances here and on public platforms.'*

Advice of President Obama

President Obama had the answer: *'We long for unity, but we are unwilling to pay the price. But of course, true unity cannot be so easily won. It starts with 'a change in attitudes - a broadening of our minds and a broadening of our hearts'.*

We need to take President Obama's words seriously. Our country needs direct and honest self-evaluation. The desire for unity of purpose does not mean that we must abandon the adversarial system of politics. Politics can be adversarial but issue based, strong but civil. It does not mean that we must abandon individual ambition and enterprise. It means that we must identify the issues on which there should be a truly national debate, for example sustainable economic growth, the CBI, land use, health, education, productivity, attitudes, crime. It means that civil society must wake up and play its intended role. It means that we must put principles above men.

The Preamble should be taught in the schools and colleges and debated not only on the political platform but also in the media and by Civil Society organizations. What kind of country do the people really want?

A sustainable economy is an important but not the only ingredient of a mature nation. I address this in a separate chapter. There are several wealthy countries where democracy does not exist or is at threat, where the rule of man or the rule of a party prevails over the rule of law and where the people are totally subdued. There are other wealthy countries which claim to be democracies but in which racism and violence prevail.

Other indispensable ingredients of a mature nation are food security, good healthcare and social services, an educated, motivated, productive and enlightened population, a strong democracy, entrenched fundamental rights, free and fair elections,

a transparent and accountable system of governance, reliable utilities, communication and public services, an independent media and an impactful Civil Society. These help create financial security, stability, peace, a healthy population and a good quality of life. These ingredients all fall within the objectives professed in the Preamble.

I believe that St. Kitts and Nevis is capable of ultimately achieving maturity as a nation and has made strides since independence but there is a tough road and steep challenges ahead especially in the changes of politics and reform of the public service and changes of attitudes generally needed. I set out in subsequent chapters to describe that road in the context of the Preamble to the constitution, to look frankly at the stumbles and pitfalls experienced over the last 40 years, to express my views on the weaknesses and challenges they have exposed and to suggest how we can convert our beautiful country into a settled and mature democracy and nation.

Chapter Six: The Fundamentals of True Democracy and The Rule of Law

The independence constitution provides a written foundation for St. Kitts and Nevis to be a true democracy. But laws and words alone do not make, preserve or improve a democracy. As important is the human element and the mentality of the leaders and people in the application of and respect for those laws and words. St. Kitts and Nevis has to its credit remained a democracy over the 40 years of independence but not without stumbles and pitfalls which have clearly exposed the vulnerabilities and deficiencies in our system. That is to be expected as a young nation grows. What is also expected of a democratic nation is that its people will acknowledge the need for changes and improvements based on their experiences. After 40 years we should be undertaking that exercise with wide consultation across the society and careful study of other democracies. As I have said and will repeat as often as I can, political tribalism has been the biggest obstacle.

True democracy can be a very complex and challenging concept. There is no one size fits all in democracy. Democracy is not *'automatic'* , said President Obama. Never take it for granted. It runs counter in many respects to human nature which is one of its biggest challenges. Its values run contrary to the personality of so many who are attracted to lead. It was interestingly described by Sir Winston Churchill in this way (after he had lost an election) - *'Democracy is the worst form of government - except for all the others that have been tried.'*

President Lincoln famously described the democracy he hoped to establish in The United States of America as Government of the people by the people for the people. That has been a widely used slogan for democracy particularly by people seeking power. But nowhere has it been truly applied because for the most part politicians (even where they come from the people and are given power by the people) always have been and are primarily for themselves. The notable exceptions like Nelson Mandela stand out a mile. We have had regular examples of that reality since independence. A very glaring fact of our short history of independence is that every

government has fallen apart because of disputes and fragmentation within the governing party and in every case between the Prime Minister and the Deputy Prime Minister. Simmonds fell out with Powell, Douglas fell out with Condor and others, Harris fell out with Richards and others. In fact that began even before independence when Lee Moore fell out with Southwell. In each of the four cases the governing party or parties lost the next election.

Government by the will of the people is another description of how democracy should work. That may take account of the fact that the people have a chance to elect a government in elections but it does not truly describe what happens in between to ascertain the will of the people. The true answer in our case is not very much. A mature democracy requires that while day to day running of the country is entrusted to an elected government the will of the people should be sought and reflected directly on critical issues.

Despite progress in many other areas of human life democracy remains volatile. Advances in science and technology have far outpaced improvements in human mindset, mentality and character. Power attracts some of the worst characters. That is the major destabilizing factor in democracy.

For the same reason while advances in science and technology have enabled humans to travel and communicate and help each other, there is more misunderstanding and aggression and war between peoples than ever before. And while humans can now travel to other planets they are destroying their own by abuse of the earth's resources. And while advances in science and technology have facilitated vast improvement in the quality of life they have also been used to produce nuclear and other weapons which could destroy the world at the press of a button.

The separation of powers and other checks and balances in our system are clearly inadequate to restrain governments from acting in the interest of those who wield the power. We need to consider adopting the referendum on important decisions affecting the country. That will also help to transfer the debate from personalities to issues. I will expand on this later.

The laws and rules by which democracy is practiced vary from country to country but the essential components of true democracy include:

- the rule of law
- a freely elected government
- separation of powers
- an accountable government with adequate checks and balances
- guaranteed freedoms including freedom of expression
- respect for and adherence to the principles of true democracy
- active participation by the people
- free and fair elections

The Rule of Law

The basic principle of the rule of law is that no man or woman is above the law. Democracy does not work well without the rule of law.

From time immemorial there has been a distinction between the rule of law and the rule of man in the governance of nations. The rule of law applies where there is a democratic system for the making of laws, checks and balances on those who are elected or otherwise exercise power, an independent judicial system, accountability and transparency in public affairs, equality before the law and where no man is above the law. The rule of man applies where a man who is above the law governs and can make the law and/or apply it or control its application as he decides without effective recourse by the governed. In ancient days the rule of man was the prevailing system with nations governed or controlled absolutely by kings, chiefs, emperors, dictators, demagogues or despots. But even in those days the rule of law applied in some forms. Three centuries before Christ the famous Greek philosopher Aristotle expressed a preference for *the rule of law in these words 'the rule of law ...is preferable to that of any individual' and 'For in democracies where the laws are not supreme demagogues spring up'.* A century before Christ the famous Roman statesman Cicero did likewise saying *'We are all servants of the law that we may be free'.*

In modern days the rule of law is widely regarded as the norm although it is under growing threat in many democratic countries. It is described as the bedrock of democracy. The United Nations expounds in great measure on the rule of law and expects it from member states. But that is not always the case as many countries, while

holding themselves out as constitutional democracies or while having the infrastructure for the rule of law, still (as Aristotle contemplated 2300 years ago) suffer from the rule of man.

Why is this? I preface my theory by saying that all men have good and bad qualities. My opinion is that despite the improvement in the human physical condition caused by advances in science and technology and education and despite greater political and social consciousness, retrograde human mentality is still too prevalent. Despite the intervention of Christ man is still too often motivated by love of power, greed, hatred, arrogance, egotism and jealousy as opposed to the values which Christ preached of love, tolerance, forgiveness and humility. Their negative traits often override their good qualities and drive men in a quest for absolute power and dominance over their own people. And we know what Abraham Lincoln said on the subject:

'Nearly all men can stand adversity, but if you want to test a man's character, give him power'.

History is replete with examples of countries which have, due to the dominant traits of the leader, descended from the rule of law to the rule of man. And in many of those cases persons within the country, driven by the same negative traits, have for personal gain supported the resulting tyranny.

It is instructive to look at South Africa under Mandela and Zimbabwe under Mugabe. Mandela and Mugabe were both freedom fighters for just causes, both endured lengthy imprisonment for their causes, both triumphed over their oppressors and both were elected to the highest office of their country on a platform of reconciliation and equality. But there the similarities end. Mandela applied his beliefs by forming a government of national unity with one of his former oppressors as his senior vice president. He established a Truth and Reconciliation Commission to promote forgiveness and healing. He began the fight to redress the economic imbalance created by the evil apartheid system. He sought no major personal gain, he readily admitted his own imperfections and was the epitome of humility. He served only one term as President and flatly refused a second.

On the other hand shortly after taking power Mugabe turned on his own black people as well as the former white oppressors. He fleeced the economy and

created extraordinary wealth for himself, his family and elite hangers-on while the vast majority of his people suffer untold hardship. Having begun as the freedom fighter he became the oppressor. He held absolute power for 47 years until the age of 93.

President Obama hit the nail on the head at the memorial service for Mandela when he said.....

There are too many leaders who claim solidarity with Madiba's struggle for freedom, but do not tolerate dissent from their own people. And there are too many of us who stand on the sidelines, comfortable in complacency or cynicism when our voices must be heard.

Does the rule of law apply here?

This country has to its great credit managed over its 40 years of independence to thwart those who had pretensions to endless rule. We have a constitution which protects fundamental rights, we have an independent and accessible court system, we have an elected legislature and some, albeit insufficient, checks and balances on the use of executive power. These are some essential features of the rule of law. Three of the main shortcomings are the woeful inadequacy of the checks and balances on executive power, our porous electoral laws and the lack of campaign finance legislation. By international standards we can on balance claim to have the rule of law. But this cannot be taken for granted. A constitution and laws do not alone guarantee the maintenance of the rule of law. As important are the attitudes of those in leadership and of the people to the constitution and laws and to each other. A people who do not respect the constitution and laws invite descent into the rule of man. A people who do not guard and exercise their rights stand vulnerable to lose them. It is up to all of us citizens to determine whether we will maintain and improve the rule of law.

Chapter Seven: The Practice of Democracy in St. Kitts and Nevis

True democracy is the genuine practice of democratic principles, not just laws and talk about them. It is not just about elections. It doesn't work on the turn of a switch. It is very much like many human skills. If you do not practice them you lose them. The preservation and strength of democracy are heavily dependent on the human qualities and the mentality which pervade the society. Practice of tolerance, mutual respect, community spirit, fairness, integrity, unselfishness, honesty, understanding, independence of thought are some of the positive human qualities required. The qualities and mentality which challenge true democracy include greed, love of power, ego, hate, dishonesty, divisiveness, inefficiency, arrogance.

Respect for democratic principles is required from the people and the politicians. Democracy is only as strong as the respect which those who seek office through it and the people generally have for it.

Truth is the foundation of democracy. Strangers to the truth often seek to create their own reality to influence the electorate and obtain power. Continuation of alternate realities or lies then threaten democracy because democracy does not sit well with lies and false propaganda. Totalitarianism is often the inevitable result to maintain the false reality. While on the positive side they promote free speech and public discourse, social media and the expansion of communication offered by the internet and technology provide mechanisms to spread false realities. It is even more important therefore that a people who cherish their democracy find a way to distinguish between truth and falsehood. That is a major challenge to our democracy.

India, despite all its other problems, is a good example of respect for democracy. That country held an election in May- June 2024 in which 642 million people voted over seven weeks to elect 543 Parliamentarians. Imagine if the St. Kitts and Nevis election took even one week how much confusion there would be. The election results have been accepted by the Indian population.

The UK is another good example with its unwritten constitution and respect for conventions. Conventions are rules that do not have the force of law but are respected

by all governments, all political parties and the people. Many of these rules are unwritten.

One of the most notable of these is the convention which requires the Prime Minister to resign when it is clear that he does not command a majority of the House of Commons. He does not wait on a Motion of No Confidence. Another is that a Minister must resign when he misleads Parliament or to clear his name when there is a publicly debated challenge to his integrity.

There is a Cabinet Manual in the UK which contains a guide to laws, conventions and rules on the operation of government. There is a Ministerial Code which sets out the standards of conduct expected of Ministers. The strength of those conventions is that the public expects them to be followed and will punish at the polls any Government or Parliamentarian who does not. That is a powerful component of the British system. A written constitution cannot cover every situation. A true democracy requires leaders to do the honourable thing. Why else are they called Honourable. And the strength of a democracy lies in the commitment of the people to hold their leaders to honourable standards of behavior. We happily adopted the fanciful British system of titles like Honourable but we have not been so great at adopting other more meaningful conventions. St. Kitts and Nevis needs to develop its system of conventions to supplement the constitution and the law.

The Political Culture

The primary damaging feature of the culture is the favoritism in government for party supporters and the resulting attitude that you should only be productive when the political party you support is in power.

Then there is the handout mentality that comes from the quest for long term power which too often prevails over the needs of the country. Successive governments have regarded handouts as more important than infrastructure development hence, despite the billions in CBI revenue, the poor state of our electricity and water systems which have not been properly maintained or upgraded to meet the growing demand. Our health system has likewise suffered.

The extent to which the handout mentality is embedded in the mentality of our people is graphically reflected by the member of our society who complained about his removal from one of the government handout programs because his earnings exceed the qualifying threshold. He complained bitterly that the handout he would no longer receive had become his savings every month and were banked by him.

We need policies focused on Government giving a hand up to those in need rather than the handouts that have become so embedded and are routinely expected.

Attitude of Politicians

True democracy hangs very heavily on the attitude of political leaders who exert strong influence within communities and electorates.

Active Participation by the People

Participation in the electoral process is often regarded as the main form of participation by the people in the democratic processes but it is not the only one. Equally important is continuous active participation of the people rather than waiting every four or five years to exercise their franchise in an election.

But even voting is too often regarded as a nuisance. There can in our system be up to 2006 days between elections and people still feel inconvenienced by having to devote one day to voting.

Compromise

Democracy requires compromise. Excessive political partisanship undermines democracy by the uncompromising fixation on the party tribe. Nowhere in our constitution will you see the term political party. Political parties are of course an integral part of our system but they do a disservice to democracy when party loyalty is the pervasive requirement on all issues. Our democracy has benefited from politicians leaving parties and changing allegiance. But even that has not cured the tribalism.

Direct Democracy

One of the major challenges with our system is that it entrenches majority power and totally shuts out the minority. This can lead to political tensions because oppositions develop the attitude of opposing everything the government does. For this

reason we should consider adopting elements of direct democracy in the form of the issue ballot or the referendum in which the electorate is given the right to express its opinion on specific issues. One such issue has been suggested as the overseas vote. But there are many other decisions on which by statutory compulsion or choice the Government should consult the people. Other such issues would be term limits for the Prime Minister and Representatives, the move to a Republic and the replacement of the Privy Council by the Caribbean Court of Justice as our final Court of Appeal. Other contentious proposals of Government should be resolved in this way as should important social and cultural issues.

We are no strangers to referenda. The Constitution provides for referenda to change certain sections of the Constitution. A secession referendum was held in Nevis in 1997.The recent history of referenda has not been good for ruling parties in the Eastern Caribbean but that in itself is a strong argument for holding them. Direct consultation of the people on specific issues is the purest form of democracy and should be expanded as suggested above.

Political Tribalism

A huge challenge to our becoming a true democracy is the tribal politics that pervades our culture and has done so since 1967. Even allowing for the relatively short period of self-rule and for the complexities of democracy, St. Kitts and Nevis has thus far failed to achieve real maturity in its constitutional democracy. This is in large measure because of the deep and bitter political tribalism which by all standards, regional and international, is unhealthy and damaging. That tribalism has exposed and aggravated the basic weaknesses in the constitution. It has demonstrated all the vulnerabilities of democracy and the flaws of human nature referred to above.

A very distinguished public servant who worked at length under the first two Governments after independence said this to me about politicians: ‘I have learnt that politicians don't create political systems. Instead political systems create the politicians. So that the politicians created by the system tend to become very similar over time.’

Follow the Leader

Most human beings are by nature followers rather than questioners. Often large numbers of people are so captivated by the influence of a leader or a political party or by allegiance to a group, be it because of family tradition or for ethnic, social or ideological reasons, that they fail to question the plans and ideas presented by the party they support or to listen to the opposing views. They follow blindly. Hence attitudes can limit the effectiveness of a democracy and where the prevailing attitudes of a country permit, its democracy can be usurped by ruthless or power-hungry individuals. Franklin Roosevelt thought that the real safeguard of democracy is education. But history has shown that view to be simplistic. Education does not necessarily overcome the tribe mentality nor, it seems from the early evidence of the Information Age, does the exceedingly ready access to information provided by modern technology. St. Kitts and Nevis boasts a literacy rate above 90 per cent and has universal, free secondary education but you would not believe that based on the politics alone.

Civil Society

It is said, and I agree, that a country is only as strong as its civil society. Civil society should by its influence contribute to the checks and balances on the executive. Its organs should promote good governance and the responsible exercise of democratic freedoms and fundamental rights. The civil society of St. Kitts and Nevis has been relatively ineffectual because the political tribalism has embedded itself within the constituent bodies and many who are unaffected by tribalism keep quiet out of fear. Many of the politicians appear to give deference to civil society but, below the surface, they seek to undermine the organisations. For example, some members of the Bar Association have from time to time refused to participate in its activities because they put party politics above their professional duties. If lawyers are so narrow minded and cowed one should not be surprised that many others in civil society are the same. The doctors are not organized and do not speak with one voice even on health issues affecting the country. Business organisations such as the Chamber of Industry and Commerce and the Hotel and Tourism Association have not been as impactful as they should be on matters of national importance. As a result civil society has not contributed as it should to the promotion of democracy.

Comments of the 1998 Constitutional Commission

Sir Fred Phillips was the first Governor of the Associated State of St. Kitts-Nevis-Anguilla. After he demitted that office, he was an outstanding constitutional lawyer and regionalist who contributed to the jurisprudence of the region. He served in various other capacities in the private and public sectors up to his late eighties. Sir Fred was appointed by the Government of St. Kitts and Nevis to head a Constitutional Commission which reported, after wide consultation, in 1998 and a Constitutional Task Force which also consulted widely and reported in 1999 with recommendations on very substantial changes to the Constitution.

The Task Force noted as follows on the political divisions within the country:

*The country is incredibly polarized. Virtually everything - a word spoken, to whom it is spoken, a phrase, a proposal – is scrutinized through a political magnifying glass for signs and signals, and thus for political and other attitudes and agendas. We are certain that the country wastes too much time and energy, which it cannot afford, on such activi*ty

In another section of the report the political polarization was referred to as the 'demon of political polarization.' The Phillips Reports are gathering dust on a shelf somewhere in Government Headquarters. I could give thousands of examples of the extreme polarization but I prefer to look forward.

Where To From Here

The people of St. Kitts and Nevis do not suffer from disputes over race or ethnicity or religion or land or resources. The vast majority of the people have the same history, the same heritage and the same culture. Despite differences over the years the people of St. Kitts and Nevis are for the most part related by blood. Yet three times in 50 years we have had national crises that could have torn the country apart. We were fortunate in 1967 and in 1993 that the violence was stopped without deaths. A national effort ensued in 1994 with the Four Seasons Accord setting out a basis for corrective action but the agreements were soon ignored by the political parties who were interested only in elections. We were fortunate in 2015 that our legal system saved the day without the crisis over the Motion of No Confidence descending into violence. We may not be so fortunate the next time especially with the proliferation of guns and the growing violence in the country.

We are as a country at crossroads. We can keep the 60 year old attitude of our leaders that there is nothing wrong so long as they win the election. We can continue with business as usual and stutter along towards the next crisis. Or we can be brave and take the tough decisions and promote the changes that are needed.

Chapter Eight: The St. Kitts and Nevis Government System

In this chapter I will look at how the Federal system of government is constructed and how it meets the essentials of democracy and the rule of law discussed in the preceding chapter.

A Freely Elected Legislature

St. Kitts and Nevis is a constitutional democracy. The constitution is the supreme law. It takes precedence over all other laws. It cannot be changed easily. The constitution provides for a representative system of government with elected Representatives and appointed Senators comprising the National Assembly. There is one elected Representative for each constituency and there are provisions for changes to and an increase in the number of constituencies. It is worth noting here that despite huge shifts in population centres the constituency boundaries have not been changed since 1984. The result is vast divergencies in the numbers of voters in each constituency. That is in total breach of the constitution. The result is the country has a freely elected legislature but not a truly representative one.

The term of the elected legislature is five years from the date of the first sitting of the National Assembly after an election but power is given to the Prime Minister in his absolute discretion to call an election sooner. If the National Assembly passes a Motion of No Confidence in the Prime Minister, the Prime Minister also has power to call an election within 90 days after.

Separation of Powers

The system of government established by the constitution is meant to be based on the separation of powers between three official branches of government, the legislative branch, the executive branch and the judicial branch each with its own role and powers. The purpose of the separation of powers is to create checks and balances in government of the country and to prevent the concentration of power in and the abuse of power by any one branch or person. The intention is also that none of these branches should encroach on the powers of the others.

The legislative branch comprises the elected Representatives and a minority of nominated Senators sitting in the National Assembly with powers to make laws within the constitution.

The executive branch comprises the Prime Minister and Cabinet which has power to carry on the day-to-day government in accordance with the constitution, the common law and laws passed by the National Assembly but otherwise as they consider in the best interest of the country. The Prime Minister is the elected Representative who carries support from the majority of elected Representatives. He appoints the Cabinet from among the elected Representatives and nominated Senators. He has power to remove members of Cabinet and many other powers which I will set out shortly.

The judicial branch comprises the Courts established at independence and otherwise in accordance with the constitution.

Powers of the Prime Minister

The Prime Minister and the Cabinet are appointed from the members of the National Assembly. The most powerful individual position is that of Prime Minister who is referred to as the Head of Government. The Head of State is currently the British monarch represented by the Governor General who has limited powers including the power to appoint the Prime Minister. But in practice the British Monarch appoints as his or her representative the person nominated by the Prime Minister. In effect therefore the Prime Minister appoints the person who has power to appoint him or her.

The Prime Minister has extensive powers. These have led eminent constitutional lawyers to refer to our system as ‘dictatorship by Prime Minister’ or ‘elective dictatorship’. Sir Fred Phillips, a highly regarded constitutional lawyer from St. Vincent, who was the first Governor of St. Kitts-Nevis- Anguilla when Britain gave the islands associated statehood in 1967 wrote this:

We must never forget that in small communities such as Caribbean States, it is easy for the Prime Minister wielding an all pervasive influence, to manipulate almost everything and everybody, especially since, in most territories, he (or she) is the appointing authority in respect of almost every person on every board operating in the public domain.

Here is a summary of the powers given to the office of Prime Minister. The Prime Minister in effect appoints the Governor General. He appoints the Cabinet from among members of the National Assembly. He can remove members of Cabinet. He controls the appointment of government Senators. He controls the appointment of the Speaker of the National Assembly. He controls the major appointments within the Civil Service and to public and statutory boards.

Through his foregoing powers the Prime Minister can exercise inordinate influence over the change of electoral boundaries and the conduct of elections. He decides the date of elections. He can dissolve the National Assembly at any time and trigger elections. This latter power exists even if the Prime Minister loses support of a majority in the National Assembly or a majority within his Cabinet. The only realistic ways in which a Prime Minister who does not resign can lawfully be removed from office are through elections or a Motion of No Confidence in the National Assembly.

The constitutional provisions to force the tabling of a Motion of No Confidence and the opportunity to manoeuvre and delay given to the Prime Minister in this regard were experienced by the country to its great detriment in the 2015 election. That election was held only after Douglas had dragged out the process for 26 months following the tabling of a Motion of No Confidence which he would obviously have lost. And as if that is not bad enough the constitution gives the Prime Minister the ridiculous power even when facing a Motion of No Confidence or after one is passed to dissolve the National Assembly and call an election within 90 days. We have seen why I call this power ridiculous in the experiences of the collapse of the Harris Government and the elections of 2022. These anomalies require urgent amendment failing which we will continually face the threat of autocratic Prime Ministers and a broken democracy.

A Prime Minister who loses the required support to remain in office should be removed from office and other Representatives should be given the opportunity to form another government. Only if that fails should there be an election. The dismissed Prime Minister should not have power then to determine the date of that election. Why should he retain that crucial power when he no longer enjoys the required support. Why should he remain in office until an election is held. He should remain a Representative because he was elected as such but he was not elected as Prime Minister. He should leave

immediately on being thrown out by Motion of No Confidence. A process should be established for the exercise of executive power until an election can be held and that election should be held in as short a time as is realistic set by the constitution.

Term limits may be another way to constrain the dictatorial powers of the Prime Minister. At least they remove the thought of entrenched power which may come to a Prime Minister. After 20 years of Douglas as Prime Minister the Harris government was elected on a promise (among others) to introduce term limits of two terms but we did not see any such legislation passed in the seven years of his administration. And as we saw Harris was seeking a third term in the 2022 election.

It is worth noting that in many cases where democracy collapses and is replaced by dictatorship the collapse is engineered by a leader or leaders who were democratically elected. Hitler was an elected leader before destroying German democracy and trying to take over the world through his dictatorship which ensued. The Second World War was the result.

The world is full of other examples. Here are a few:

- Poland: 1926-1989
- Austria: 1933-1945
- France: 1940-1945
- Spain: 1939-1976
- Brazil: 1964-1985
- Chile: 1973-1990
- Guyana under Burnham
- Nicaragua: 1979-1990, 2006-Present
- Venezuela: 2002-Present
- Hungary 2010- Present

While therefore our legislature may be freely elected and our Prime Minister comes from among the elected Representatives our system is open to abuse by a Prime Minister who is so inclined.

Another serious weakness in our system is that there is no real separation of powers between the legislative and executive branches of Government. This is mainly because of the size of our legislature and the fact that almost inevitably therefore the Cabinet will comprise the majority of members of the National Assembly. There are not enough seats to create genuine back benchers. Back benchers are Representatives who are not members of Cabinet and are not as such controlled by the Prime Minister and who are more likely therefore to exercise independent judgment in voting on legislation. The size of the legislature leaves the legislature under the control of the Prime Minister and the judiciary as the only branch left to provide the checks and balances which are so critical to our democracy.

The Public Service

While the Prime Minister and Cabinet are at the top of the power chain they are not the only ones who wield power. The Public Service is a crucial source of power and a key element in our democracy and our economy.

I use the term The Public Service to describe two main arms of the government - the Civil Service and the statutory and government controlled corporations and companies. They are intended to be the bedrock of government service to the public. Their purpose is to provide that service in an orderly, fair and efficient manner in accordance with the constitution and the laws. They are meant to recognize and respect the rights of the people whom they serve including the right to the best public service possible. They are intended to implement on a day-to-day basis the policies of the government in power and to provide for the smooth transition from one government to the next. They hold responsibility for government assets, government purchases, government businesses and government services. The attitude of Public Servants towards their role and the way they carry it out is crucial therefore to true democracy.

The Public Service consists of close to 50 per cent of the country's work force. It is very much a mixed bag. There are many highly committed, competent, efficient and capable men and women within the service. They include specialists and professionals and highly experienced personnel in many areas of the service. But there are also many who have no interest in hard work and regard their jobs as a political privilege. They come to work when they like. They leave when they like and nobody can tell them

anything. One of the few parliamentary debates I have heard in Parliament in which there was strong consensus across the floor was the debate in March 2024 on legislation aimed at monitoring and improving productivity. Every Parliamentarian who spoke stressed the need for improved service in the public sector. But what is even worse is that some of the Ministers lamented that they cannot do anything about it. More likely they don't want to do anything about it.

What then is so sacrosanct about this body of people that so many can be a waste of taxpayer money and a power unto themselves and bring a bad reputation on their committed and efficient colleagues. Why do so many blatantly and arrogantly ignore the word service in their title. It would be useful to start with the origin of the Civil Service and then move on to the statutory corporations which came after.

The Civil Service

The Civil Service comprises the thousands of people employed and responsible for the management and administration of the country in accordance with the law and the policy directions of the Cabinet of Ministers. Each department of the civil service takes direction on government policy from the Minister responsible for the department. Their focus is intended to be on service not politics.

The standards of performance of the Civil Service directly affect the performance and economy of the country and its reputation. Decisions and actions (and lack of decisions and inaction) of the Civil Service affect the fundamental and other rights of citizens and residents on a daily basis. The Civil Service should be impartial and politically neutral whatever the political views are of individual Civil Servants. The Civil Service should have public trust and that can only be achieved by fairness, efficiency, integrity and impartiality.

The role of the Permanent Secretary is crucial to the Civil Service. The Permanent Secretaries head the respective Government Departments and are meant to be advisors to the Government on the subjects covered by the Ministry. Permanent Secretaries are therefore intended to be the leaders of the Civil Service.

Permanent Secretaries should be able to distinguish between their personal right to support whatever political group they want and their professional right to serve

impartially and fairly and without political bias. They are meant to provide continuity and experience to the Civil Service and thereby enable it to operate efficiently and productively in serving all the people, not just supporters of the ruling clique.

The word Permanent is intended to reflect the role of the Permanent Secretary as transcending Governments and as non-political with primary responsibility to the people and not to the political party or parties in power. For that reason the position is protected by the Constitution.

No Government since independence has changed the structure of the Civil Service nor the rules which apply to it. The name Permanent Secretary inherited from the British has remained. However in practice Governments have selected Permanent Secretaries and the holders of lower ranking offices based mainly on loyalty to the governing party and politicians. Integrity, competence and experience are lesser considerations. Because of the protection given to the office it is not easy to fire a Permanent Secretary hence Governments have simply transferred them into insignificant and non-leadership or meaningless positions or appointed advisors who make the decisions instead of the Permanent Secretary. Hence the Civil Service is full of Permanent Secretaries all over the place getting well paid and with benefits as such. Those who have been sidetracked simply do as little as possible and wait for their retirement package. And they get the annual Civil Service bonus which has become the norm.

We should not therefore be surprised that a body which has such extensive power and which has such a crucial role in the operation of the country should be so largely dysfunctional and inefficient and political biased. And we should not be surprised that the standard of service of the Civil Service should be so variable and inconsistent because the whole system has been politicized. We should not be surprised that mediocrity is so readily accepted and that excellence is a bad word. That is why the Civil Servants who provide neutral and excellent service stand out a mile.

Reform is badly needed. The reform of the Inland Revenue Department is clear evidence that it can be done all across the institution. The politicians should stop complaining in Parliament about lazy Civil Servants and recognize they created them and can reverse the damage they have caused in politicizing the Civil Service.

A very interesting piece of history was when Lee Moore took office as Premier after the death of Paul Southwell in 1979. He expressed his dissatisfaction with the standard of service provided by the Civil Service by ordering the whole body to appear at the Basseterre High School where he gave them a stern lecture. Well who tell him do that. He was defeated in the election a few months later and this was a contributing factor.

Ever since the Civil Servants have ruled the roost and no government has done anything significant to change the rules of the game despite continuous reviews over the years. Every government has exacerbated the problem by pandering to those who abuse the service. They have appointed political lackeys who they know are not capable, they have sidetracked those who do not support them and they have tolerated incompetence and poor service. The latest practice developed over the past three governments has been to give universal bonuses. Everybody gets the same level of bonus whether they work or don't work. And the size of the service has increased exponentially with Civil Service jobs as a reward rather than an obligation.

St. Kitts and Nevis will never become a Sustainable Island State with this type of Civil Service. Consistent productivity and efficiency across the board will only be achieved if the public service is reformed into a modern entity. Productivity in the public service will not come from talk in Parliament. It requires a change by the leaders in the political mentality. It requires substantial reform of the structure of the service and recruitment and human resource training to make government employees more productive and accountable.

Statutory Corporations

The system of statutory corporations and government controlled companies (both of which I will call government corporations) have been used by successive governments to circumvent the archaic systems, logjams and limitations of the Civil Service in the operation of Government businesses and services. The intention was to use the more efficient corporate management structure. Employment in a government corporation is not entrenched in the way it is in the civil service. Employees can be engaged by contract and can be disciplined or removed for misconduct or poor performance or incompetence. The management of a government corporation is more

flexible. Governance of such entities falls under Boards of Directors who are usually not full-time employees but provide policy direction and decision making as do Boards of Directors of companies in the private sector.

Like the Civil Service there are many excellent people in the governance, management and operations of the government corporations. However in many instances the government has made its corporations subject to the same political manipulation as the Civil Service. Boards are too often appointed based primarily on political loyalty. Directors do not carry out their legal duties but follow the dictates of the Minister. Many do not realize or care that they can be personally liable for losses suffered by the corporation due to their failure to act in accordance with their legal duties. In some corporations management is also appointed based on political loyalty rather than competence. Many employees behave like Civil Servants because of their political protection. Productivity is disregarded. The result is too often financial loss and costs to the public purse.

Here are the government corporations in existence at May 31st, 2024.

(a) Corporations established by an Act of Parliament for a public purpose or as a subsidiary company of that corporation registered under the Companies Act, including but not limited to:

(i) Development Bank of Saint Kitts and Nevis;

(ii) Social Security Board;

(iii) St. Kitts Investment Promotion Agency;

(iv) Financial Services Regulatory Commission;

(v) Medical Cannabis Authority;

(vi) National Disaster Management Agency;

(vii) National Housing Corporation;

(viii) Clarence Fitzroy Bryant College;

(ix) WhiteGate Development Corporation;

(x) Frigate Bay Development Corporation;

(xi) Saint Christopher Air and Sea Ports Authority;

(xii) Saint Christopher Tourism Authority;

(xiii) Saint Christopher and Nevis Solid Waste Management Corporation;

(xiv) National Handicraft and Cottage Industries Development Board;

(xv) Agricultural Land Development Authority;

(xvi) National Carnival Committee;

(xvii) Saint Christopher National Trust;

(xviii) Nevis Solid Waste Management Authority;

(xix) Nevis Air and Sea Ports Authority;

(xx) Nevis Cultural Development Foundation;

(xxi) Nevis Electricity Company Ltd.;

(xxii) Nevis Tourism Authority;

(xxiii) Nevis Housing and Land Development Corporation;

(b) A bank or corporation owned by the Government of Saint Christopher and Nevis or in which the Government of Saint Christopher and Nevis has a controlling interest including but not limited to:

(i) St. Kitts-Nevis Anguilla National Bank Limited;

(ii) ZIZ Broadcasting Corporation;

(iii) Urban Development Corporation;

(iv) St. Kitts Electricity Company;

(v) St. Kitts-Nevis Cable Communications Limited;

(vi) La Vallee Greens Limited.

The system of government corporations is a good one in principle. That principle needs to be converted more widely into practice.

Chapter Nine: The Judicial Branch

The West Indies Associated States Supreme Court was established on February 27th, 1967 simultaneously with the grant of Associated Statehood to St. Kitts-Nevis-Anguilla. Its jurisdiction covered Antigua, Dominica, Grenada, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent. The jurisdiction was extended to the colonies of Montserrat and the British Virgin Islands and (after its separation from St. Kitts in 1980) Anguilla.

The court was created with two divisions. The High Court sits on an ongoing basis in each island with one or more resident judges. The Court of Appeal, based in St. Lucia, exercises an appellate jurisdiction and sits in each country at fixed times in each year and otherwise virtually. As the Associated States gained independence the name of the court was changed to the Eastern Caribbean Supreme Court which remains today as the court of first instance and the first appellate court. The final appellate court for St. Kitts and Nevis has remained the Privy Council in London despite the establishment of the Caribbean Court of Justice (CCJ), more on which will be said later.

Because of the overlapping nature of the legislature and the executive, the courts play an even more significant role in the separation of powers. Their independence is critical to our democracy. The courts function as the guardian of the constitution and the fundamental rights of the citizen and as the arbiter of legal disputes. Their power is intended to deter abuse by and keep the powerful executive in compliance with the constitution and the laws. Thankfully the British saw the wisdom of creating a regional court rather than a separate court system for each island. I hate to think what would have happened in 1967 or in 2012-15 if St. Kitts and Nevis had a separate court with the Government exercising influence on the appointment of judges.

The first real test of the new West Indies Associated States Supreme Court came in St. Kitts within six months of its establishment. The test came in the form of the legal objections to the detention in prison of opponents of the Government under the state of emergency and the trials of those charged with offences arising out of the events of June 10th, 1967.

Applications were made by way of habeas corpus by Dr William Herbert, Leader of the Peoples Action Movement (detained on June 10th, 1967) and Mr Henry Charles (detained on June 14th, 1967) for their release from detention under the state of emergency on the ground that their detention was a breach of their fundamental right to personal freedom and therefore unlawful. The High Court judge dismissed the applications, but on August 10th, 1967 the Court of Appeal found their detention to be unconstitutional and ordered their release.

Then came the criminal trials in October and November. The accused in the first and second cases, charged with shooting at police officers, were acquitted by the jury. The third case, known as the treason case, involved seven persons accused of conspiracy to overthrow the lawful government of the State. The accused included Dr. Herbert and Michael Powell who was to become in 1983 the first Deputy Prime Minister of independent St. Kitts and Nevis.

On November 14th, 1967, following the acquittal in the second trial and just before the commencement of the treason case, the House of Assembly unanimously passed a resolution as follows:

Be it resolved that this House expresses its complete lack of confidence in the administration of justice as applied to this Associated State under the present Constitution and supports such action as Government may take to…….inquire carefully into ways and means by which the existing Supreme Court Order, including the Agreement, can be amended to ensure that the rule of law is impartially observed.

Bradshaw wanted to change the Court system within a year of the beginning of self rule. The Labour Spokesman, newspaper mouthpiece of the Bradshaw-led ruling Labour Party, on the following day, referred to the resolution as historic.

In a hugely significant step, on November 20th, 1967 before the treason trial began the Chief Justice Sir Allen Lewis convened the Court in Basseterre and made a statement the first part of which is reproduced in full:

The attention of the Court has been drawn to a resolution passed in the House of Assembly expressing lack of confidence in the administration of justice in this State, and

also to the debate which took place on that resolution and was broadcast over the St. Kitts radio station.

The Court recognizes the right of the Legislature to entertain and debate resolutions, but deplores the fact that Government should have introduced this resolution into the House in the midst of a series of trials of persons accused upon charges alleged to be concerned with an attempt to overthrow the existing Government and immediately before the commencement of the trial of the most important of the charges, namely, conspiracy to overthrow the Government.

The Court must take note of the fact that these trials are in sense political trials, a leading member of the Opposition Party being the central figure, and that the introduction of the resolution and the debate in the House follow immediately upon verdicts of acquittal by the jury in the first two of the trials.

The Court deprecates the fact that in these circumstances the debate was used by Ministers of Government for the purpose of criticizing the conduct of the two trials by the trial judge and of impeaching his integrity, no other reason being stated but that of the Government's dissatisfaction with certain rulings made by the trial judge and comments by him in the course of his summings up.

The Court takes note of the fact that during the debate statements relating to the subject matter of the pending conspiracy charge were read out. This conduct tends to prejudice the fair trial of the accused and constitutes a contempt of court. This course of action was pursued notwithstanding a written request from the Chief Justice to the Premier that while the trials were pending the radio station should abstain from broadcasts which might tend to prejudice the fair trial of the accused.

The Court is not concerned with the opinions expressed during the debate as to the status of the House except to say that they were very misleading and display a complete misunderstanding of the respective status of the House and of the Supreme Court under the Constitution of this State.

The Chief Justice then went on to relate the facts including

- *some five hours after the verdict of acquittal in the first trial was returned, an illegal demonstration of disorderly persons was staged outside the hotel at*

which the trial judge (Mr. Justice St. Bernard) was residing, protesting that the judge was biased;

- *the Chief Justice immediately visited St. Kitts and inquired from the Government whether it had any information suggesting that the trial judge might have a special interest in leaning in favour of the accused or against the Crown and was informed that Government had none and was not impeaching the personal integrity of the trial judge;*
- *between the first and second trials the judge was threatened by telephone and by letter;*
- *during the second trial two jurors received threatening letters which included a threat on the life of the judge;*
- *two requests by the Chief Justice that an official appeal should be made to the public over the St. Kitts radio station not to interfere with the trials went unheeded;*
- *immediately after the accused in the second trial were acquitted Premier Bradshaw telephoned the Chief Justice and requested the immediate removal from the State of the trial judge;*
- *Mr. Justice St. Bernard asked to be relieved of presiding over the remaining trials for personal reasons and was replaced by Mr. Justice Bishop.*

The statement of the Chief Justice ended as follows:

While the Supreme Court is an essential part of the structure of Government established by the Constitution of this State, it is constitutionally independent of the Executive and the Legislature. Its judges take no side in disputes, political, personal or otherwise. They will continue to administer justice according to law to all persons, fearlessly and with impartiality, and in accordance with the oaths which they have taken.

This Statement is made with the approval of all the judges of the High Court and of the Court of Appeal.

The treason trial began the same day. A week later the prosecution informed the court that it was offering no further evidence against any of the accused

who were then acquitted. The fourth and fifth cases against Herbert and Powell respectively were likewise disposed of.

The Government then publicly circulated a 'handbill' in which, attempting to justify the decision of the prosecution to discontinue the prosecution, it said that it was clear that the jury would not acquit any of the accused. It said that the trials were being used for political propaganda and outside lawyers had come in and used the court to launch vicious political attacks on the government. The Government said it would establish a Commission of Inquiry into the events of June 10th, 1967.

It is worthy of note that lawyers came to St. Kitts from all over the Caribbean to join local lawyers in representing the detainees and the accused in the trials. The lawyers who came in included Lloyd Luckoo QC of Guyana, Malcolm Butt QC and Karl Hudson Phillips of Trinidad, Dudley Thompson and Lloyd Barnett of Jamaica, Bernard St. John and Jack Dear of Barbados and Jenner Armour of Dominica. Local lawyers included Sir Maurice Davis, later QC and Chief Justice of the Eastern Caribbean Supreme Court, Frank Henville QC and Fred Kelsick, later QC. These lawyers all had or went on to distinguished careers in the law and were recognized for such in the region.

A headline on the front page of The Labour Spokesman of October 7th, 1967 said *'Why are they bringing in 20 Lawyers from Abroad? An effort to influence the court.'*

The litigation arising from the events of 1967 continued until 1979. John Reynolds, one of the detainees, sued the Government in 1968 for damages for his wrongful detention. In July 1967 the Government lawyers had told the tribunal appointed to consider the evidence against the detainees that the Government had no evidence against Mr Reynolds. Despite this, the Government kept him detained until August 10th,1967 when he was released with the other detainees following the judgment of the Court of Appeal referred to above. Mr Reynolds continued his suit into the 1970s and was awarded exemplary damages by the Court of Appeal although the total sum awarded him of $18,000 was surprisingly miniscule.

The Government had tried to avoid any liability for the wrongful detention of the detainees by passing an Indemnity Act. That contemptuous piece of legislation was given short thrift and struck down as unconstitutional by the High Court, the Court of

Appeal and the Privy Council which ended the matter when the Government appealed against the damages awarded to Mr Reynolds. In 1979 The Privy Council upheld the damages awarded to him by the Court of Appeal.

The abuse of the fundamental rights of Mr Reynolds, the disrespect for and attack on the court and the attempt to cover their unlawful deeds by the diabolical Indemnity Act show that in times of political tension politicians, who might in normal times respect the separation of powers and the independence of the judiciary, can easily lose that respect. All the more reason why we need strong courts.

The St. Kitts and Nevis constitution contemplates in section 38 the move from the Privy Council to a regional court as the country's final court of appeal. The establishment of a final regional court was debated over many years. In 2001 the Caribbean Court of Justice (CCJ) was established by agreement between Caricom countries who agreed to fund it by capital contributions up front to a trust fund via the Caribbean Development Bank. This method of funding made sense as the governments did not trust each other (and very few people would have trusted them) to fund the court by periodic contributions. The way that successive governments of Trinidad and Tobago have changed position justifies the trust deficit.

The CCJ has an original jurisdiction to hear disputes under the Caricom Treaty. All Caricom members are subject to this jurisdiction. The CCJ also has an appellate jurisdiction, the intention of the founders being that all English speaking Caricom member countries would make the court their final court of appeal to replace the Privy Council in London. This step was seen as the final act of independence of the countries and as completing the repatriation from Britain of their sovereignty. However, despite all founder countries contributing financially to the Court, only five members of Caricom – Barbados, Guyana, Belize, Dominica and St. Lucia - have, as at May 31st, 2024, acceded to its appellate jurisdiction. The other English speaking member countries continue to cling to the British apron strings. Even Trinidad and Tobago which provides the headquarters of the court has not acceded to its appellate jurisdiction.

National referenda held in St. Vincent (2009) and in Antigua and Barbuda and Grenada (both in 2018) resulted in the electorate rejecting the move from Privy Council to the CCJ. A notable fact is that the Government in each of those countries had a

strong majority in Parliament and went on to win the next General Election but did not convince a majority of the electorate to support the move proposed by the referendum. It is worth of note that St. Kitts and Nevis does not require a referendum to make the move. As the last of the OECS territories to gain independence the British made it easier for the move requiring only a two thirds majority in the National Assembly.

The British Government has told the regional governments nicely that it would be happy if they would complete the repatriation of their sovereignty and it will not continue indefinitely to fund the Privy Council as their final court. Why then you might ask would governments so hooked on sovereignty not accept their own court for which they (or more correctly their taxpayers) pay? The immediate stimulus for the establishment of the CCJ to replace the Privy Council was said to be that the Privy Council opposes and was making it difficult for enforcement of the death penalty. Another good reason to establish our own court. Why then the delay?

Various reasons have been put forward but the real reason in my opinion is that the reticent governments wanted before joining to see how strong the CCJ would be in holding governments to proper governance. They were worried that the Privy Council was becoming too intrusive as in the Barbados case of Williams v Blackman where the Privy Council held in 1994 that the court could review a Cabinet decision to award a large government contract made under a statutory power. They were also concerned by the 2001 decision of the Privy Council in the Gairy case in Grenada. The Privy Council held in that case that the Minister of Finance of Grenada was obliged to pay monies found due for the unlawful acquisition of Gairy's property. The Privy Council also held that, under our constitution, government officials can be subject to orders of mandamus to protect fundamental rights. Breach of an order of mandamus can lead to imprisonment of the official responsible for making the payment.

The CCJ has shown very clearly from its inception that it will be similarly strong in the face of malfeasance by governments and government Ministers. The reticent governments feel caught between a rock and a hard place. They will eventually move but for now they prefer what a senior St. Kitts and Nevis King's Counsel, who frequently represents the government, says – *'to take their chances with the white people.'*

I have not the slightest doubt of the capacity of the judges of the CCJ to provide top quality justice and of the structural and actual independence of that court from the governments of the region. I doubt however that if formally tested in St. Kitts and Nevis that view would prevail and particularly not at this time.

The decisions of the three levels of our courts in the 2015 Boundaries case have reinforced the unfortunate but widely held perception that the regionally based courts are not as strong as the Privy Council in protecting the fundamental rights of the people. Many people believe that some of our regionally based judges will not be able to resist the subtle and not so subtle pressures which they know Caribbean Prime Ministers will put on them. The facts do not bear this out but perception and confidence often prevail over actuality. It is partly and sadly a lack of self confidence in the people that facilitates that perception. But there is also an understandable lack of confidence in the leadership of the region and serious doubt as to the commitment of Caribbean leaders to the rule of law and to democracy.

The perception of which I speak was graphically described in an editorial in the influential Jamaica Observer newspaper shortly after the 2015 St. Kitts and Nevis election. The editor wrote:

We have, in the past, leaned towards supporting the idea of the CCJ, based on our very solid commitment to regionalism. But given developments, such as that in St. Kitts and Nevis, we are increasingly worried about dispensing with the UK Privy Council at this point in time.

Until we are certain that we will have in place a legal superstructure that mirrors the confidence inspired by the Privy Council, untouchable by local politics, it would be foolhardy to make the CCJ our final appellate court.

Our wise ancestors used to say 'tek sleep mark death'. The inexplicable rush to jettison the Privy Council in favour of a Caribbean court which is, at best, still a work in progress, could unravel what legal gains we have made in the region. This clearly is a case in which we must make haste slowly.

As to the future, the move to the CCJ will eventually come for all the islands but that move has been severely set back by the events of 2015 in St. Kitts and Nevis. In any

event there is an immediate need for a constitutional and administrative law division of the Eastern Caribbean Supreme Court staffed by experienced judges and with the infrastructure to respond quickly on a regular basis to urgent applications. That will require additional funding from the governments. Providing such funding would be one way for the governments to allay the lack of trust of their people for their commitment to the rule of law.

Also, there are serious constraints, including low salaries, in recruiting judges in the OECS. As we are a multi-country jurisdiction we also suffer because the Eastern Caribbean Supreme Court has to rely on financing from the nine member countries and territories all of whom are not always as forthcoming as they should be. We need a review of Judges' terms and conditions. We need a similar funding arrangement to that of the Caribbean Court of Justice to allow the court to achieve full financial independence.

The value of the true separation of our court system from the rest of the government can be seen when we observe reports from the USA on legal matters. You always hear the political allegiance of the prosecutor and the lower court judges and in the case of the Supreme Court whether the judge was appointed by a Democrat or Republican President. Despite the entrenched positions of the Federal judges their political allegiance is the first thing mentioned and often demonstrated in their judgments. As I have said before our democracy would be stone dead if our judges were political appointees.

The appointment of magistrates on contract by the Executive is a major blemish on the system of justice and should be corrected by amendment of our constitution to take the appointment of Magistrates out of the hands of politicians. That would complete the separation of powers between the Executive and the Judiciary.

However the country is blessed to have courts which have upheld the rule of law and not capitulated to those who prefer the rule of man.

Chapter Ten: Free and Fair Elections

Free and fair elections are fundamental ingredients of a true democracy. The words free and fair have different meanings. The word free connotes that persons who are entitled to register as voters and to vote in elections are not unreasonably impeded (by fear or compulsion or otherwise) in their exercise of those rights in accordance with applicable laws. Fairness is a more elusive concept but is generally accepted to connote that there are laws which reasonably provide for the conduct of elections, that there provide genuinely equal opportunities for all competing, that the electoral process is under control independent of the politicians and that there are transparent regulations as to how persons are registered to vote.

In a small country such as St. Kitts and Nevis, with a constituency and 'winner take all' system and approximately 30,000 registered voters, a few votes can make the difference in deciding who gains the government in an election. The slightest abuse or distortion of or error in the system can therefore have a significant effect.

By and large elections in St. Kitts and Nevis have been free but their fairness has been questionable. I will point out some of the reasons for the unfairness and make suggestions for improvements.

Constituency Boundaries

The constituency boundaries have remained unchanged since 1984. Since then vast changes have occurred in the numbers of inhabitants in several constituencies to such a degree that the largest constituency in terms of voters was almost five times the size of the smallest constituency in the August 2022 election. That clearly contravenes the constitution. Boundary changes are therefore imperative.

The constitution establishes a Constituencies Boundaries Commission the composition of which is entirely political and favors the political party or parties in power at the time. That has been a major factor in the delay in changing the current boundaries. The composition of the Boundaries Commission should be reviewed to restrict gerrymandering and other abuse. A clear and democratic process should be

agreed between all political parties for public and professional consultation on the establishment of new boundaries.

It is important to keep in mind the basic principle in the boundary process set out in Schedule 2 of the Constitution that all constituencies shall contain as nearly as equal numbers of inhabitants. To apply this law there should be regular and fair reviews. The exact provision is as follows:

Rules for Delimitation of Constituencies

1. There shall be not less than eight constituencies in the island of Saint Christopher and not less than three constituencies in the island of Nevis and if the number of constituencies is increased beyond eleven, not less than one-third of their number shall be in the island of Nevis.

2. All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Constituency Boundaries Commission to be reasonably practicable but the Commission may depart from this rule to such extent as it considers expedient to take account of the following factors, that is to say,

(a) the requirements of rule 1 and the differences in the density of the populations in the respective islands of Saint Christopher and Nevis;

(b) the need to ensure adequate representation of sparsely populated rural areas;

(c) the means of communication;

(d) geographical features; and

(e) existing administrative boundaries.

Overseas Vote

This is a highly contentious issue. The arguments on both sides are well known.

It is important to note that the right to vote is not a fundamental right given by the constitution to all citizens. It is a right which can be circumscribed by legislation. It is incorrect therefore to assume that citizens resident overseas have an automatic right to vote. A large number of countries tie the right to vote to residence in the country. The

United States is one country which does not but, it is important to note, the United States makes all citizens wherever resident pay income tax on their worldwide income. Those who inherit from them are also liable to death duties on the deceased citizen's assets worldwide. To that extent US citizens wherever they reside pay directly in taxes for their government and have a direct interest in the election of their government. The US has a population of three hundred and thirty million and an electorate of over one hundred and fifty million people. A few thousand overseas votes do not have the same impact in the US as a few dozen votes here which can decide an election. Citizens of St. Kitts and Nevis who reside abroad do not have to pay income taxes here. While I agree that some pay property taxes and many bank their money here or send remittances, that number is small compared to the tens of thousands who have no vested interest whatsoever in the country but are eligible to register to vote in elections here. Many do not put foot here except to register and to vote.

In this regard I quote from the late Sir Lee Moore, former Premier of St. Kitts-Nevis and a revered member of the Labour Party, as reported in the edition of The Labour Spokesman newspaper of November 2, 1983:

'the people living in St. Kitts and Nevis could find their wishes overruled by people living abroad'… [this can…] " subvert democracy, making the exercise of the franchise of no effect and giving rise to instability in the country.'

The same Labour Party blamed its defeat in the 2015 election on the late arrival of 2 of its 20 plus charter flights. Its leader gave the exact numbers of persons who were on those flights intended to vote in two named constituencies. That was a blatant admission that it was relying on the overseas vote. It is an abomination that plane loads of citizens can fly in just before, vote on election day and fly out the same or next day. At least ten per cent of the voters in the 2015 General Election were overseas voters.

I recall the true story of a well-dressed lady who was asked at the ferry terminal in Basseterre on an election day where she was coming from. She said in her American accent that she was coming from Nevis where she had just voted. She continued *'I did not know Nevis was so nice.'* Can we really have fair elections when tourists can decide the result?

How did we get there? The first election under adult suffrage took place under the Constitution and Elections Ordinance 1952. Under that law residence was an absolute requirement for registration as a voter. That law remained in effect until November 8, 1983, less than two months after Independence Day, when it was changed by the National Assembly with the PAM/NRP majority. The amending law gave the right to register to vote to a citizen of St. Kitts and Nevis of the age of eighteen years or upwards if resident or domiciled in the country at the date of registration. Residence was removed as an absolute requirement for a citizen to vote. Domicil is a nebulous legal concept and should not be used as a criterion for voting. To qualify as domiciled in the country all a citizen resident abroad has to say is that one day he or she intends to come to St. Kitts or Nevis to live. That question is not even asked of those who register. No rules were put in place to determine to which constituency an overseas voter belonged for registration purposes. That meant that a citizen could essentially choose where he would register. You do not have to be a rocket scientist to realize that overseas voters could be registered to suit the interests of the party which they support. And that is exactly what happened. And, not surprisingly, the practice developed of moving residents citizens around to suit the interests of the party they support.

I asked a senior member of the PAM Party long after that party had lost power in 1995 why they decided on so lax a law. He said that they did not intend the free for all that has resulted but that, under the old system, some of their members, who had moved to the Virgin Islands and wanted to come home to vote, had been knocked off the voters list on objections from Labour representatives. I said to him cynically in reply that they had opened a Pandora's box which they no longer had the opportunity to close.

This issue should be resolved by a referendum. If it is decided to continue the practice the rules for registration in a constituency should be tightened and not allowed to continue as a free for all.

It may not be untimely to consider also the ramifications of the inevitable call in future, as technology improves even further, for online voting or voting by overseas voters at designated polling stations at embassies and consulates in the diaspora. Why should an overseas voter have to come home to exercise what so many argue is a

fundamental right. Then maybe those who favour the overseas vote now will then realize that there are far more citizens resident abroad than in the country.

Another option, suggested by the late Justice Lloyd Williams, was the creation of an overseas constituency so that all overseas voters will vote for a single Representative to represent their interests. That is an interesting compromise.

Voter Registration

It is important to review the history on this subject.

As indicated above the original post-independence legislation was passed in 1983. The voter registration provisions were very loose and manipulable and allowed voters to register easily in constituencies in which they did not reside. In 2006 the Labour Government initiated a reform process which, it said, resulted from the review of the report of the Commonwealth Expert Team of the 2004 elections, the report of the Caricom Observers of the 2004 election and the report of the Commonwealth Assessment Mission of 2005. The Government said that the review would implement the commitment given by the Labour party in its 2000 manifesto *'to overhaul the voters list to eliminate any perception of fraud.'*

A very elaborate process was designed including five committees, one being the *'Electoral Reform Consultative Committee.'* The process was intended to be concluded by 2007. The Reform Committee (as I will call it) consulted with the public and with civil society groups. The PAM party, the creators of the mess, refused to participate.

The Reform Committee issued a report which recommended a complete re-registration of voters. A Commonwealth Assessment Mission recommended likewise. It referred to the existing system as archaic and recommended its replacement with "a modern system" and "a clean list". However, instead of starting afresh a politically contrived process called 'reconstruction' of the old list was introduced by the Douglas regime. Under reconstruction a voter on the old list could 'confirm' his registration by a fixed time if not he could be struck off the list on reconstruction. On confirmation (sounds like a religious ceremony) the voter would receive one of the new ID cards. Persons eligible to vote who did not confirm their registration or who had not

previously registered could register anew in compliance with the new provisions for resident and overseas voters.

As noted, the amending Act retained the overseas vote. The amendments did not establish the transparency so badly needed to determine the constituency in which a voter would be registered nor did it provide a workable and fair dispute resolution process to deal with objections.

To compound matters, the new law maintained the unfair and ridiculous requirement that a person objecting to registration of a voter based on his place of residence has to prove that the voter does not live where he says he does. Most countries require the voter to prove his residence by documentary evidence - utility bills, social security registration, passport, driver's licence. The Chamber of Commerce presented to the Reform Committee a detailed form which it proposed be completed by each applicant to be registered to verify his residence under sanction of perjury. The Chamber suggested adoption of the system used in Trinidad where registration officers verify residence by visits to the address given by the applicant. That would be very workable in a small country.

But none of these recommendations were accepted. Instead the prior fraud was entrenched and it is just as easy for new fraud to be perpetrated. The result is that we have a system which is better only in having voter ID cards and in having removed the names of dead persons from the voters list. Thus we continue to have free but not fair elections.

I quote from the Report of the 2005 Commonwealth Assessment Mission:

The Mission was inundated with complaints about the possibility of party supporters from stronghold constituencies to register in marginal ones in order to boost the party's chances of winning seats. If true this practice would make a mockery of the present constituency system, which is the basis for the First-Past the-Post electoral system, which obtains in St. Kitts and Nevis.

That mockery remains as another reason for our brooding democracy and is a serious threat to our maturity as a nation.

Proof of Residence

The rules governing proof of residence are grossly inadequate. There is so much official documentary proof of residence that it should not be difficult to agree on a comprehensive set of rules.

One can only assume that failure to impose strict rules is due to the overseas vote with legislators pandering to the strongly held sentiments of residents who feel strongly that if overseas voters can in effect choose where they vote so should they.

Dispute resolution as to voter registration.

It is a grave deficiency to give laymen registration officers the power to resolve disputes as to voter registration. This process is a legal one which requires due process including the taking of evidence from and cross examination of witnesses, the careful consideration of arguments as to the facts and written decisions. Even if there were a transparent process for the appointment of registration officers it is not a power which should be exercised by such officer. That process should be assigned to legally trained officials, either a Magistrate, a Master of the High Court or a High Court Judge. The legislation should mandate the expeditious hearing of disputes of this type and require the government to provide all resources required for the purpose.

Electoral Commission

The highest authority in the conduct of elections is not the Supervisor of Elections, it is the Electoral Commission. The Electoral Commission comprises only three persons, one nominated by the Prime Minister, one by the Leader of the Opposition and the Chairman appointed by the Governor General acting in his own deliberate judgment. The Chairman must be a legal practitioner with at least seven years of practice of the law.

The function of the Electoral Commission is to *'to supervise the Supervisor of Elections in the exercise of his functions……'* For the Commission to carry out its function more effectively a larger Electoral Commission is needed with stronger provisions to ensure independence of the Commission from political interference. The budget provided for the electoral system should include adequate funding to enable the Commission to have its own secretariat and its own office and to take independent legal and other advice. The Commission should be required by the Constitution to issue a full

and complete report after each election. The electorate should not have to rely solely on reports from outside observers.

In its Report on the August 2022 elections the OAS Observer Mission noted that it detected signs of strain in the working relationship between the Electoral Commission and the Supervisor of Elections. That should not surprise anyone when some Supervisors of Election have acted like a law unto themselves with the support of the political party in power. The Mission commented that the Chair and members of the Electoral Commission typically remain in the background during electoral processes. Too often in the past the Supervisor of Elections has ignored the above quoted provision of the constitution which gives the Electoral Commission power to supervise the Supervisor of Elections in the exercise of his functions. Some Supervisors of Elections have considered themselves as having the primary role in the electoral process and have defied the Electoral Commission. The Electoral Commission must assert its role and the Supervisors of Election must as provided by the constitution take directions from the Electoral Commission.

Supervisor of Elections

The public officer responsible for the day to day operations of the electoral process is the Supervisor of Elections whose responsibility is given by the Constitution as *'to exercise general supervision over the registration of voters in elections of Representatives and over the conduct of such elections.'* That role should be carried out entirely independently of politics. The Supervisor of Elections is appointed by the Governor-General acting in his own deliberate judgment after consulting the Prime Minister and the Leader of the Opposition.

Another way of facilitating the Supervisor of Elections in acting independently is to extricate him or her from any direct reliance on the Prime Minister or Cabinet for administrative or financial support. The entire electoral system should be given an ample annual budget voted by the National Assembly after consultation with the Electoral Commission. Appointment of every officer in the Electoral Office should be made, on application, by the Supervisor with the approval of the Electoral Commission. The administrative structure of the Electoral Office and the names, qualifications and duties of every such officer should be published in the local newspapers. The names of

every applicant for any electoral position should be published in advance of appointment to allow representations to be made to the Supervisor and the Commission as to the suitability and independence of the applicant.

Campaign Finance

Election campaigns have become an expensive process. While it is important to our democracy that those seeking office get their message out and that costs money, there comes a point at which money can undermine the system.Those who provide vast sums expect a return on their investment and that return is usually provided not by those who received the money, but by the country. I cannot put the argument any better than did the President of Trinidad and Tobago. He said *'..... Election campaign financing is a veritable juggernaut that results in financiers arrogating political power unto themselves and thereby undermining the system of governance.'* He continued *'The time has come when we must bite the bullet of campaign financing reform and introduce appropriate transparency and accountability in the management of the country's electoral system.'* We should take that advice.

The need for campaign finance laws is even greater here because of the overseas vote. Some legal minds think that it is electoral bribery to provide a charter for overseas voters, but whether that is good legal opinion or not, the public has the right to know who provides the money for the charters and the other massive spending on election campaigns. Even if the overseas vote is eliminated, that right to know should in my opinion be recognised as a fundamental right in the constitution, which should also set out the structure of the system of disclosure. That would set the framework for the necessary legislation and make it more difficult to frustrate the right.

Campaign finance legislation is essential also to avoid aspersions being cast against politicians who receive large donations for themselves or their party that they are in the pocket of political donors. Such legislation was one of the recommendations made in the May 2005 report of the Advisory Committee on remuneration for Members of the Federal Parliament in St. Kitts and Nevis. The government of the day readily accepted the pay increases for Parliamentarians and Ministers of Government recommended in the report but ignored the recommendation for campaign finance legislation. It is important for democracy that the citizenry can feel confident that their

representatives are not on the take. Corruption usually starts from the top and, where it is perceived rightly or wrongly, to exist it spreads like wild fire throughout the public service. There are examples of this all over the world.

I set out one of the comments of the Advisory Committee on this subject:

We fully endorse this expressed need [in the Venner Report quoted above] for priority attention to be afforded to some meaningful statutory regulation of electoral financing, and recommend accordingly. Left unaddressed, this has serious potential to undermine the democratic gains made in Caribbean societies. There is ample scope for St. Kitts and Nevis to become a leader in the region in this regard. To fail to address this issue in a timely manner is to run the real risk of the Caribbean being perceived by our own people and others further afield as a region in which public life can be degraded by unscrupulous practices. We recommend that specific legislation with concrete and effective measures be put in place urgently to guard against this risk. Our history demands not only that our leaders not be bought or sold, but that we proudly proclaim that this is virtually impossible and that any attempts to do so would be subject to criminal sanctions imposed by law.

Confidence in the Electoral Process

In its report on the August 2022 election the OAS Observer Mission noted that the Code of Conduct prepared by the Coalition of NGOs, which invited political parties, candidates and supporters to observe responsible forms of behavior and language was not adhered to in practice.

The Mission also noted *some distrust surrounding and within the authorities responsible for the organization of the elections. Stakeholders advised that challenges with past Supervisors of Elections have resulted in lingering misgivings around that office and that as the Chair and members of the Electoral Commission typically remain in the background during electoral processes, distrust of the Supervisor's office has the potential to influence the electorate's perception of the overall electoral process.*

The OAS Mission commented in its report that it found no evidence that any action had been taken to implement or consider implementing recommendations made by previous OAS Electoral Observer Missions in 2020, 2011 and 2015.

In his book Commonwealth Caribbean Constitutional Law Sir Fred Phillips made a vital statement which should always be borne in mind.

We hope in the preceding pages we have shown that a Constitution is not an end in itself, it is how a constitutional instrument is permitted to work that matters. The most well-intentioned instrument may easily become entirely counter-productive.

Elections are particularly vulnerable to disquiet and worse which stem from mistrust and lack of confidence in the system.

Fair elections therefore require competent and impartial authorities to earn the confidence of the electorate. They require high quality management and organization. They require the direct participants to show respect for the law and the system.

Commonwealth Citizens

The Constitution provides for citizens of Commonwealth countries to vote in elections here subject to conditions established by legislation. The legislative provisions have since independence set a residential requirement of a minimum of one year. Many Commonwealth countries allow nationals of other Commonwealth countries this right but the residential requirement varies. In Antigua for example the residential requirement was three years and has recently been increased to seven. In a small country where margins of victory are often small, one year is in my opinion too short a period for a Commonwealth citizen to establish a connection with the country that gives him or her a real stake in its governance.

There is a growing community of Commonwealth citizens residing here. I welcome law abiding Commonwealth citizens who can contribute to our economy without marginalising the local citizens. However they should not be able to swing an election with their votes which is now a real possibility. A businessman of Indian origin boasted to me that he controls 400 votes in East Basseterre of Indian nationals resident there. An exaggeration perhaps, but the margin of victory in that seat was 4 votes in 2015.

The minimum residential requirement should be seven years to coincide with the period after which a resident of a Commonwealth country can obtain permanent

residence. Consideration should also be given to allowing long term residents of any nationality, not only Commonwealth citizens, to register.

Chapter Eleven: Accountable Government

A freely elected government and the separation of powers do not alone guarantee that the government is accountable to the people by whom they are elected. The Government is held to account by the electorate in elections every five years or sooner but accountability is an ongoing responsibility and should not have to await an election.

The purpose of ongoing accountability is to establish and maintain public confidence in government performance and to deter corruption. It involves the obligation by public officials to act in accordance with the law and their duties, to work efficiently and fairly and impartially, to disclose information to which the public is entitled by law and to explain their decisions. It also requires actions and legal measures that enable the public to enforce accountability.

Government accountability is achieved in a true democracy through the use of a variety of mechanisms - political, legal, and administrative. Legal accountability mechanisms include the constitution, legislation and other legal instruments that govern actions that public officials can and cannot take. The mechanisms define in some instances how citizens may take action against those officials whose conduct is considered illegal or unsatisfactory.

Just as important are the unwritten rules which integrity and honesty and the pride of public service should lead public officials to demonstrate.

Accountability mechanisms include:

- Parliamentary oversight;
- Laws with codes of conduct for public officials;
- Conflict of interest and financial disclosure laws, requiring public officials to divulge the source of their income and assets;
- Procurement legislation establishing processes for the award of government contracts;

- Freedom of Information laws, providing the press and the public access to most government records and information;
- Judicial review, providing courts the power to review the decisions and actions of public officials and agencies;
- Laws to impose fiscal responsibility;
- The Ombudsman, responsible for hearing and addressing citizen complaints;
- The Auditor General who scrutinizes the use of public funds for signs of misuse and issues an annual report;
- Laws protecting so-called whistleblowers, those within government who speak out about corruption or abuse of official authority, from reprisals.

I will consider in this chapter and in later chapters if and how the above mechanisms apply in our government system.

Parliamentary Oversight

An important oversight role of the National Assembly in providing checks and balances on the Executive is intended to be carried out by the Public Accounts Committee of the Assembly. The Committee is intended to comprise of five members three from the Government side and two from the Opposition benches. If the Leader of the Opposition is one of the two appointees from the Opposition he can opt to be Chairman of the Committee. If not the Committee elects its Chairman.

The powers and duties of the Committee are to examine the reports of the Director of Audit tabled in the Assembly, to inquire into and report to the Assembly on any items or matters in that report. The Committee has power to subpoena the Financial Secretary, any other Permanent Secretary and the Accountant General to give evidence on oath before it on any matter under investigation by the Committee. The Committee is intended to table an annual report in the Assembly and any member of the Committee can table a dissenting report.

This Committee is a key mechanism for accountability of the government in many democratic countries but it is virtually non-existent in ours. Although the Opposition is in a minority on the Committee the rules applicable to it provide an ideal

opportunity for the Opposition to investigate and hold the Government to account and to expose lack of accountability and wrongdoing of the Government. The access to the Opposition of the chairmanship of this Committee also gives the Opposition strength in its function.

However, the Committee has never functioned as intended. Governments have frustrated its appointment and opposition parliamentarians have shown no real interest in the analytical work involved in making the committee effective. They prefer simply to oppose everything the government does. They prefer to talk generally and campaign in the National Assembly. The National Assembly cannot therefore be relied on to carry out its oversight role in this area.

Fiscal Responsibility

Fiscal responsibility is pursued widely in countries across the world by legislation establishing a rules-based framework to guide the conduct of Government spending and borrowing and other financing activities. The framework usually sets out the principles in the form of fiscal rules and targets that the Government is expected to adhere to except in instances where the laws are suspended in emergencies such as natural disasters, Covid and worldwide recessions. The legislation sometimes establishes independent bodies to monitor, provide oversight and report to Parliament on Government compliance with the rules.

The purpose of this system is to ensure that the country's financial affairs and government borrowing are conducted in a transparent and prudent manner. It enables the country to maintain public sector debt at prudent and sustainable levels. In simple words this system is intended to stop governments from spending and borrowing more than the country can afford.

These rules can include caps on the growth of public expenditure, ratios on expenditure on the Government wage bill to GDP and ratios on debt to GDP. Some countries even require balanced budgets by their constitution. St. Kitts and Nevis has no such legislated framework with measurable standards and targets for fiscal responsibility.

This country almost fell off the cliff in debt under Douglas and was saved only by the timidity of its creditors in going into Douglas' barber's chair and taking a haircut. A country will not get away many times with that type of shenanigan and should not boast of it as happened here.

St. Kitts and Nevis needs comprehensive fiscal legislation and a law which imposes direct personal liability on any Government Minister or official who participates in the infringement of the fiscal limitations.

Director of Audit

I look now at the role of the Director of Audit as another of the accountability mechanisms. The office of Director of Audit is governed by the Constitution. The Director is appointed by the Governor General on recommendation of the Public Service Commission (PSC). The Constitution says that the Director of Audit shall not be subject to the direction or control of any other person. The Director may only be removed from office for inability to function or misbehavior and only on recommendation after an inquiry of a tribunal appointed by the Governor General comprising three judges or former judges (from any Commonwealth jurisdiction) selected by the Chief Justice. The position of Director of Audit is as independent as you can get in our system for any officer in the public service excluding Judges of the Supreme Court.

The role of the Director of Audit is

- to express an opinion as to whether the annual accounts submitted by the Accountant General represent fairly the financial position and results of operation of the government;
- to satisfy himself or herself that all monies appropriated by Parliament and disbursed have been applied to the purposes designated on appropriation and in accordance with the authority governing it;
- to audit and report on the public accounts of the government.

The report of the Director of Audit for the year 2022 is very instructive. It was made available only in December 2023 after the Budget sitting. In it the Director describes her role as primarily to promote *'better governance, transparency and accountability in the public sector.'*

It is interesting to consider some of the reservations and comments made in the report which incidentally covered two governments as there was an election on August 5, 2022 in which the incumbent government was defeated.

The Director drew attention in her report to the law that when a budget is approved by the National Assembly the Government can exceed the amount approved for expenditure to cover unforeseen and urgent spending by up to 25 per cent. But in 2022, in breach of the law, the Government spent 45 per cent more than budgeted, exceeding the limit of 25 per cent by 20 per cent. In dollars and cents the Government spent more than $190 million dollars above the amount allowed by law.

The Director also reported what the Ministry of Finance said about her complaint. *'The Ministry notes the observation and will put systems in place to adequately monitor the level of expenditure authorized by special warrants and to inform the Executive arm of the Government so that the appropriate action may be taken.'*

That means that the Government didn't care about the law and there was no system in place within the Ministry of Finance to monitor the illegality.

The Director of Audit also commented as follows: *'The credibility of the budget is at stake if programmes continue to be implemented year after year without inclusion in the budget.'* That suggests that the overspending in 2022 was not a one-off abuse.

The report of the Director of Audit did not separate the amounts overspent by each of the two governments. I simply note that 2022 was an election year with money being spent like crazy before the election.

This shows graphically the need for taxpayers whose money is being abused, civil society, the media and the public in general to pay greater attention to the report of the Director of Audit. Unfortunately very little public attention is paid to abuses of this type. That is sadly because of the immaturity of our people in their lack of concern for their money and their democracy. If that happened in the USA you would hear it a hundred times per day on CNN. We need as a people to hold our governments accountable. The report of the Director of Audit is an excellent mechanism and it should be regarded as such.

Judicial Review

As most people know or should know the Court plays an important role in holding the Government to account. Government can be held accountable in the courts where a decision, act or failure to act is a breach of a person's constitutional right or a right given by statute or other law. Claims can also be brought under the process of judicial review. By that process a Court can on application by an affected party review the decision of a public official body or authority and can overturn the decision, prevent implementation and make related orders. Such orders include an injunction stopping the offensive action and an order of mandamus compelling the public official to take specific action as directed by the Court.

The main grounds on which a person can invoke the process are illegality because the decision maker abused his her or its power; procedural unfairness for example bias or improper procedure or lack of due process; irrationality which means that the decision was irrational in that no reasonable person acting reasonably would have come to that decision.

The Court here has not had to handle as many such cases as in the other Caribbean countries but the numbers are growing as awareness increases. I will give some examples of important judgments holding Governments to account under the process of judicial review.

Commercial Contracts

The Privy Council has decided that the Government is accountable for commercial contracts made by it. The Courts can review such contracts and overturn them if the government acted in excess of its statutory or other authority or where there is fraud, corruption or bad faith or favoritism in the making or terms of the contract. Individuals or companies affected by the contract can challenge it in the Courts. Contracts made by the Government by way of political favoritism may be subject to challenge under this jurisdiction if such favoritism amounts to corruption as is often the case.

Environmental matters

The Court has also intervened in planning and environmental matters. On February 27th, 2024 the Privy Council advanced the rights of citizens to challenge

Government decisions by judicial review in a landmark case in Antigua and Barbuda. The case arose out of a decision of the government to build an airport in Barbuda. The Government took advantage of the destruction of Barbuda by Hurricane Irma which left the island uninhabitable. The Government rushed to build the airport while the island was abandoned. When work began in September 2017 no planning approval had been granted.Two Barbudans took the Government to Court claiming among other things that the airport as designed posed a danger to the environment and the decision to build it as planned was a breach of environmental principles. The Government disputed the applicants' right to bring the claim on the ground that they did not have the expertise or standing to challenge the decision and could not do so simply as citizens. The Court of Appeal found in favour of the government. The applicants appealed to the Privy Council.

The Privy Council overturned the judgment of the Court of Appeal and clarified the law with these important words *'Where an application for judicial review involves issues of environmental concern it is not necessary that the applicant demonstrates some knowledge or concern for the subject. So an amateur ornithologist or bird-watcher might raise a concern about the potential loss of a bird's habitat; or a fisherman about the effect of a hydro-electric scheme on fish; or a local historian about the effect on an archaeological or historical site; or a local resident on the loss of a local beauty spot frequented by the local community.'*

That means that you don't have to have a doctorate in environmental science as the government was trying to argue to challenge a decision of the government which has a negative impact on the environment. You just have to be a well intentioned citizen or resident.

That judgment brought to mind the Privy Council judgment in 2001 in the famous Observer Radio case in Antigua when they ordered that a radio broadcast licence be issued to the Observer radio station which had been denied a licence for over five years because of politics. In that judgment The Privy Council disagreed strongly with the suggestion made by one of the Court of Appeal judges that the constitution is secluded behind closed doors or that it is aloof. The 2024 Barbuda case marks a great advance in the jurisprudence of judicial review and expands the accountability of government.

Use of Ports

In 2014 The High Court struck down a decision of The St. Christopher Air and Seaports Authority prohibiting the offloading of commercial cargo at the Basseterre Ferry Terminal. The case was brought by the owners of the MV Sea Hustler which had been offloading cargo at the Basseterre Ferry Terminal for 20 years. The Court exercised its power of judicial review to quash the notice. The judge held that the Port Authority had exceeded its statutory authority and its decision was made in breach of the principles of natural justice, it was irrational and unreasonable and was not proportionate to the objective of protecting public safety.

Ombudsman

The office of Ombudsman was established by the Ombudsman Act of 2006. The Act says that the Office is established for the purpose of protecting and enforcing the rights of citizens. The Ombudsman is appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition. The Ombudsman is intended to investigate allegations of maladministration or unreasonable delay or abuse of power or unfair or illegal or discriminatory or mistaken action taken by government departments or public authorities or government boards or government corporations.

The Ombudsman is required at all times to act independently and impartially and to take no side in the process of investigating a complaint.

The Ombudsman can play a useful role in pressuring public officials to be accountable for their decisions or lack of decisions and their actions or inaction but the office has no real teeth as the Ombudsman can only make recommendations and cannot direct or order anyone to do or refrain from doing anything.

The natural question is if Ministers of Government complain about their inability to change attitudes in the public service what do you expect from an Ombudsman.

It will take substantial maturity in our political culture to persuade citizens aggrieved to avail themselves of the services of the Ombudsman to investigate their complaints and to make public officials respect the role of the Ombudsman. At present most people are afraid of the adverse consequences of challenging public officials and

too many public officials will ignore the Ombudsman or find ways around his recommendations. That accounts for the very limited effect of the office in its 18 years of existence. Reform and depoliticization of the Civil Service are required to make this a useful mechanism of accountability of government.

Chapter Twelve: **Guaranteed Freedoms**

I begin with the fundamental rights and freedoms which are summarized in section 3 of the Constitution as follows:

Whereas every person in Saint Christopher and Nevis is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, birth, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

a) *Life, liberty, security of the person, equality before the law and the protection of the law;*

b) *Freedom of conscience, of expression and of assembly and association; and*

c) *Protection for his personal privacy, the privacy of his home and other property and from deprivation of property without compensation……'*

We are fortunate to enjoy in large measure the freedoms in a) and c) but we should not take them for granted. Continuous vigilance is required to maintain and to recognize when they are threatened by any leader or others. History shows that such threats are often indirect and devious and creep up on a society. Our excessively high murder rate is one such threat which needs to be curbed. We cannot afford in a tiny country like ours to become fearful for our lives and security.

I will focus on the set of freedoms in b). These I refer to as the conscience freedoms. Everyone knows the right of free speech. We have much more however than the right of free speech. I will list the conscience freedoms. They are *freedom of thought, freedom of speech, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference, freedom from interference with correspondence*. How have we done in the exercise of those rights since independence. A summary answer is we have a long way to go to be categorized as enlightened in this aspect of democracy.

I will list a few factors which have inhibited the growth of the conscience freedoms: the divisive politics, the comparatively large size of government and the

reliance of so many people on it, the secrecy of government, the weakness of Civil Society, the lack of respect by politicians on all sides for the conscience freedoms as evidenced by successive governments monopolizing and politicising the government owned media.

Until 30 years ago what passed for media consisted of The Democrat, the Labour Spokesman and ZIZ, two political rag sheets and the government radio and TV station. Despite the several pronouncements of the courts that there should be fair access for all to the government owned media successive governments have ignored the courts and the rights involved. Further details are given below.

The right to freedom of expression and the circumscription of that right have become all the more topical as the still new Information Age unfolds and communication technology becomes more prevalent. Our nation needs to begin the debate on making the most of the positive effects of the technology. But it is equally important to counter the negative effects on our democratic processes of fake and distorted news.

We see the debate taking place across the globe about what is cynically called fake news and alternative facts. Fake news is now a weapon of international relations bearing out Lenin's claim that if a lie is repeated often enough it becomes the truth. We need to strategise about protecting ourselves individually and collectively from its dangers. The most pleasing element of this phenomenon however is that it makes it all the more difficult to suppress the conscience freedoms.

I comment on the exercise by our leaders of their right of free speech. They do not set a good example in much of the political discourse. Too many of their mouthpieces abuse the privacy of social media to attack opponents with MDM - misinformation, disinformation and malinformation. Internet laws are cropping up in various countries but they are not yet effective to deter the malignant abusers. But the time will hopefully come when sense and decency prevail.

Protection from Political Discrimination

Another right that most surprisingly is rarely enforced is the right not to be discriminated against on grounds of political opinions or affiliation. As defined in the

constitution this discrimination is committed by any public officer or authority who in the exercise of his duty affords different treatment to different persons for political reasons. I can't think of a right that has been more frequently breached over the last 40 years. It is breached daily across the Civil Service and government corporations. And that is not a difficult breach to prove. I can only assume that the reason for the lack of enforcement of the right by legal action is that each side expects to be discriminated against when it is in opposition and waits to return the favour when the shoe is on the other foot. That has been a deep ditch on our road to freedom and true democracy.

Freedom of Information

The first legislation to be passed to define the fundamental right to information in relation to Government information is the Freedom of Information Act passed by Parliament in May 2018 but not brought into law (with amendments) until 2023.

The purpose of the Act is stated to be *'to make provision for the disclosure of information held by public bodies or by persons providing services for them and for connected persons.'*

Information which is available under the Act must be provided within 40 working days or in the case of information which reasonably appears to be necessary to safeguard the life or liberty of a person, within three working days.

The Act contains a process intended to facilitate requests for information including Information Officers and an Information Commissioner. The Commissioner is meant to be independent and to monitor compliance with the Act and otherwise facilitate its implementation. He also has an important role to hear complaints by persons who have been refused information and he has powers of redress.

As can be expected there is a whole range of protected information which cannot be disclosed. That includes banking and other information made confidential by law, personal information, information subject to legal privilege, commercial and trade secrets, information received from other countries or international organizations, personal medical records, law enforcement records, defence and security records, information the disclosure of which would endanger life, health and safety of any person, certain information relating to policy making and operation of public bodies,

Cabinet records. An excepted category I will single out which is very vague is information that could seriously prejudice the ability of Government to manage the economy or seriously prejudice the legitimate commercial or financial interests of a public body. The last category shows that to be effective the Act will require the fair and honest interpretation of the exceptions by the Government.

The role of the Commissioner is also key to the success of the Act. If he or she is really independent that would set an important tone for the operation of the Act and give the public confidence in its usefulness.

The country needs more brave citizens to lead the way and enforce their rights under the Constitution and the Act. They will then put the Government to the test as to its genuine desire for transparency and the Commissioner as to his independence. The Court system, the most independent arm of our country, is available to enforce the Act. If the current culture continues then the Act could be window dressing. If properly applied the Act can be a very important step towards a mature democracy.

Government Media

The Courts have ruled that there is a right of access by everyone to ZIZ and the government media in Nevis. Despite some liberalization in the ZIZ programming there remains the entrenched perception that ZIZ should be the mouthpiece of the ruling party.

For there to be real reform of ZIZ the powers behind that reform must recognize the fundamental constitutional right of access to the station as pronounced by the Courts and confirmed in the 2012 case of Brantley v Parry and others. In delivering the judgment of the Court of Appeal in that case Mr. Justice Mitchell said this:

For the reasons given above I would dismiss the appeal brought by Mr. Parry, and I would uphold the findings of the learned trial judge that Mr. Brantley's right to freedom of expression and his right not to be treated in a discriminatory manner by reason of his political opinions under sections 12 and 15 of the Constitution of Saint Christopher and Nevis have been contravened by the failure of the Nevis Island Administration on its nightly Nevis News Cast to cover any of the political events organised by Mr. Brantley's political party during the campaign leading up to the election of 11th July 2011.

The Court also said:

The duty of the government-owned media to work in support of and not to obstruct the public's right to freedom of information and freedom from discrimination on the basis of political affiliation has been established in our region since at least the decision of Justice Saunders in the first-instance decision Suit No. 56 of 1997, (decided 8th January 1998), in the Talk Your Mind case from Anguilla: Benjamin and others v Minister of Information and Broadcasting and another [2001] UKPC 8.

The John Benjamin case as it is famously known throughout the Commonwealth and beyond was brought by a Kittitian lawyer (recently deceased) who was resident in Anguilla. He practiced mainly there but also in St. Kitts. In his later career he served as a Judge of the Eastern Caribbean Supreme Court. John is a legend of fundamental rights and a true hero of our country for bringing his landmark case which has become indelible in our history and the jurisprudence of all Caribbean and Commonwealth countries.

It is worth remembering the full facts of the case as set out in the judgment of the Privy Council which finally decided it. I quote:

1. *Radio Anguilla is a Radio Station owned by the Government of Anguilla and run by a non-statutory department of government within the responsibility of the Minister of Information and Broadcasting. It is the only secular radio station broadcasting throughout Anguilla, the other station being a privately owned station concerned with religious matters.*

2. *In 1994 a radio programme was instituted called "Talk Your Mind" which enabled members of the public to telephone their comments as part of the programme. Mr Benjamin, a lawyer and an active member of the community who had experience of producing a radio programme, was appointed to host the programme on the condition that he was responsible for its format and for obtaining sponsorship. This arrangement was made at the instance of the Director of Broadcasting and with the approval of four Ministers of the coalition government formed in 1994, following undertakings by the political parties in the coalition to free broadcasting. The programme first went out on 19th October 1994 and was it seems a great success.*

Issues of wide importance to the public were ventilated and government ministers took part in the discussion. But by 1996 there was much criticism of the government during the programme and in July 1996 the Minister of Information and Broadcasting suggested that the programme should be changed to one with discussion panels but no phone-in participation by the public. Mr Benjamin considered this an interference with the public's right to freedom of expression and was unwilling to change the format which he personally arranged and paid for. The programme was then closed down which led to widespread criticism, indeed anger, on the part of the public. Subsequently, on 23rd October 1996, the programme was reinstated with the Minister of Information and Broadcasting as guest speaker.

3. *On 16th July 1997, during the programme, a question was raised by a caller as to the legality and propriety of the national lottery which had recently been set up. Mr Benjamin expressed the view that the lottery was not appropriate for Anguilla and said that it had been turned down by the House of Assembly. Indeed he said that in his view it was illegal. A Mr. Todd Washington, the Vice President of the Anguilla Lottery and Gaming Company Limited, also spoke to put his views. The next day Mr. Washington asked for equal time to respond to the criticisms made in the programme but by letter dated 17th July 1997, he gave notice of the company's intention to sue Radio Anguilla and Mr. Benjamin 'for defamation, malicious intent to injure and destroy the economic interests of the Company in Anguilla and for other serious tortious actions'.*

4. *The government then without discussing the matter with Mr Benjamin suspended 'Talk Your Mind'. The appellants applied to the High Court and, by their amended notion of motion, sought a declaration that the suspension of the programme was a contravention, active suppression and abridgement of the First-named Applicant's rights to freedom of thought, freedom of expression and freedom from discrimination as guaranteed by sections 1, 10, 11, 13 and enshrined by sections 10, 11, 13 and 16 of the Constitution of Anguilla.*

The Trial Judge Mr Justice Adrian Saunders (now President of the Caribbean Court of Justice) held that the Minister's decision to suspend the programme on July 19th, 1997 was a contravention of the Applicants' rights to freedom of expression

guaranteed and enshrined in the Constitution and protected by section 11. He ordered that Mr Benjamin should have damages to be assessed by a judge in Chambers and that those damages be paid by the Minister. That was another highly desirable first in our jurisdiction. A Minister breaks your constitutional right he must pay you damages personally.

The Government of Anguilla appealed and the Court of Appeal was reactionary in its finding, dismissing John Benjamin's case and saying that the public did not have a right to speak on a public radio station.

As it has done in other free speech cases in our jurisdiction the Privy Council saved the day and upheld the judgment of Mr. Justice Saunders. The Privy Council quoted from an earlier Commonwealth case the following judicial statement about democracy:

Democracy is a government by the people via open discussion. The democratic form of government itself demands of its citizens an active and intelligent participation in the affairs of the community. The public discussion with people's participation is a basic feature and a rational price of democracy which distinguishes it from all other forms of government.

Thus, there is every legal precedent and authority that could be needed to force the reform of ZIZ. Whether the country will do so will reflect on the maturity of its democracy.

In summary there are three fundamental rights enshrined in the constitution which ZIZ (and the Government in its operation and control of same) has a duty to respect. These are freedom of expression, freedom from discrimination on grounds of political affiliation and freedom of information. ZIZ has from inception ignored its duty to respect these rights and has operated as a mouthpiece of the political party in power. The following recommendations could assist in achieving the due recognition and application of the duty:

1. The establishment of a professional and independent news service which applies the tenets and standards of news reporting accepted regionally by The Association of Caribbean Media Workers.

2. It is particularly important that journalists be trained to ask incisive and difficult questions rather than pandering to the interviewees as is the norm when politicians and other government connected persons are interviewed.
3. Fair and ample coverage should be given to the Opposition parties in keeping with their fundamental right and consistent with the news reporting standards. This should occur at all times not only at election campaigns.
4. The station should promote televised debates between opposing politicians during pre-election periods. There is a body in Jamaica which does this - the Jamaica Debates Commission. The Commission has in the past, through members who visited our country, expressed an interest in providing advice to St.Kitts and Nevis in organising such debates.
5. Programmes on matters of public importance and interest should be broadened and improved to inform and educate the public using local and available foreign expertise on the subjects involved and in appropriate instances allowing public participation. These programmes should include unrestricted discussion on controversial matters.
6. The relationship between the ZIZ News Service and the Government Information Service should be established by transparent and published rules.
7. Policies of ZIZ which incorporate the above should be established and published.
8. A review committee should be established comprising a cross section of Civil Society recommended via a process established in consultation with Civil Society bodies. The duty of the review committee should be to monitor the broadcasting of ZIZ, to receive complaints from members of the public on unfair reporting, other breaches of the reporting standards and any abuses by and of the station, to report publicly on its findings on such complaints, to interact with and make recommendations to the

corporate board of ZIZ and to report annually to the public. The station should fund the operations of the committee.

9. A code of conduct and process for the appointment of the corporate board of ZIZ should be established with the objective of achieving a fair balance within the membership of the board and obtaining the requisite expertise. A seat should be reserved on the Board for a representative of the Opposition.
10. The commercial exploitation of the station in terms of advertising revenue should be professionalised.
11. The station should conduct regular surveys within the community to guage public interest in its programming. The results of the surveys should be published.
12. Copyright of artistes should be respected and paid for.

Role of the Non-government Media.

The media is a critical organ of democracy. It is correctly referred to as the fourth estate. It informs and facilitates discourse and provides a platform to the citizen for the exercise of the conscience freedoms. It helps to counter the huge power of the Prime Minister and to keep politicians in check. The media should be a positive influence for good in a democracy. The St. Kitts and Nevis media is young. It is only since the mid 1990s that newspapers independent of Government have sprung up and since the turn of the century that independent radio stations have appeared with any consistency. Before that the only real media were the Government owned radio and TV stations.

As can be expected some of the radio stations have had a political agenda and reflected that in their news and broadcasting but that is their right. More independent stations like WinnFM are required to allow all views to be expressed and promote responsible journalism.

In the face of the government spin machine the media should play a key role in ferreting out the truth, protecting the fundamental right of free speech and enhancing democracy. However the standard of journalism is still substantially below international standards and hence the impact of the growing media has not been as strong as it

should be. As noted above the expansion of social media has widened communication but has hardly improved the level of dialogue. Both will hopefully prove more impactful in future as our young people lose the fear they inherited and exercise their fundamental rights responsibly and widely to the benefit of the country and the detriment of the fakesters.

It is worth noting some of the constraints on the growth of the media:

- limited earning capacity of journalists reducing the attraction of talent and the quality of service
- the limited market for advertising which can affect the range of stories on which journalists can report
- the huge size of government commercial activity and advertising power
- the competition of social media for the market
- the political hostility which independent reporting can invoke
- the effect of social media in dramatizing news.

Effect of Technology

As with inventions from time immemorial there are positive and negative effects and they can be exploited for good and bad. The modern technology is no different. Just as it promotes free speech and keeps people in touch so it can be abused for lies and DMM. So much depends on human mentality and character and moral values which vary from country to country. The truth with human mentality is that despite the massive advances in science and technology greed, self-indulgence, ego, mistrust, hatred, jealousy, violence, fraud, lies, propaganda and other political abuses are as prevalent as they were 2000 years ago.

Parents rely on the telephone to bring up their children. Humans don't have to kill each other with the sword now. They can destroy each other online. They can spread lies and DMM with a single finger. They can get information true or false just as easily. They can speak to each other across the world without cost but many can't speak the language properly and miscommunicate regularly.

Everything is instant so books are out of fashion. You have to get what you want immediately without spending the time needed to learn and understand what you are pursuing. Everybody is a Google doctor and lawyer and engineer and scientist because they can ask questions online and take the answers at face value. You don't need to understand the principles or study in depth.

I have little doubt that use of the internet, AI and other technology will improve and there will be genuine benefits but the question is will societies implode or destroy each other before that happens. The new technology should solidify democracies but the exact opposite is happening in many countries. Albert Einstein said "a little knowledge is a dangerous thing so is a lot". Nowadays a little knowledge makes everybody an expert in everything.

The question for St. Kitts and Nevis is will our society follow the other societies which are plunging towards autocracy or will we come to grips with the blessings of our democracy and use the technology to make it stronger and more mature.

Chapter Thirteen: The Dangers of Corruption

This topic requires the focus of a separate chapter because of its threat to the democracy and the economy of the country. Corruption is a major problem. Certainly all politicians think so because every Opposition Party has accused the Government of the day of widespread corruption and promised to change the law to stop it. The dominant public reaction to corruption is based entirely on politics. Corruption is wrong but the party and politicians they support are not corrupt. The other side is totally corrupt. They get that from the politicians.

The other feature of St. Kitts politics is that a political party that wins does not touch the corrupt politicians it defeated. Defeat at the polls is enough punishment. So there is no real deterrent to corruption. The only risk to a politician is that he may lose power but if that happens he will be able to walk away with his gains and he may even win again in future.

When the Labour Party was rebuilt to contest the 1993 election it railed about corruption by the PAM/NRP Government. By the 1995 election Labour supporters were happily repeating the name of Devil's Island given to St. Kitts by an international publication reflecting the drug trafficking which was rampant in the island. When Douglas won the 1995 election he established a Commission of Inquiry to investigate corruption by his predecessors. The Commission sat extensively at great cost and with great fanfare but not one disciplinary or legal action or prosecution was taken against any of the prior Government. No meaningful legislation was passed by the Douglas Government in its 20 years in office and the Civil Service which Douglas accused as the base of corruption remained in exactly the same form except for his people in place of the PAM/NRP people. Douglas passed two token pieces of legislation. The Procurement and Contract (Administration) Act was passed in 2012 but no subsidiary legislation was passed so the Act had no teeth. The Integrity in Public Life Act was passed in 2013 but that too was not operationalized.

Unity (a coalition of three Opposition parties PAM, CCM and PLP) won the 2015 election because the electorate was persuaded by them that the Douglas Government

had become undemocratic, outmoded and corrupt and was in power for too long. They were adamant that the system needed fundamental changes. That was their mantra and theme throughout the campaign. They set out in their manifesto a long list of good governance legislation which they promised. They also promised term limits for the Prime Minister to prevent a repeat of the Douglas regime.

What did they actually do. In 2018 they passed a Freedom of Information Act but had not brought it into force when they left office in 2022. They passed an Integrity in Public Life Act in the same year but never operationalized it and never filed their statements of assets of which they had made a big deal. They had second thoughts on term limits as power became sweet and they abandoned Campaign Finance Reform when they realized they were now on the receiving end of campaign goodies. So like Douglas, Unity did sweet FA about the corruption of which they complained so bitterly. Unity imploded in 2022 with accusations of abuse of office between members and particularly the Prime Minister.

The current Labour government is the first to introduce a co-ordinated legislative agenda to address the threat. I quote from a post from Prime Minister Drew online on April 4, 2024. He began *'One of the commitments that I made to the people of our beloved Federation was, to as far as possible, institute a good governance agenda.' He ended 'There are some who hate good governance but this is the only way we can truly advance.' In between he touted the good governance legislation introduced by his government which he referred to as 'the most comprehensive suite of good governance legislation in the Caribbean'*. He also said *'the whole system led by Team Unity was corrupt.'*

Some obvious questions arise on Drew's statement. Firstly I agree entirely that the good governance way is the only way we can truly advance. But I am concerned about his qualification at the very beginning of his statement that he would introduce the good governance agenda *'as far as possible'*. Is it not fully possible? Are there untouchables or are there political barriers or limitations on how far he can go or was that just a Freudian slip? The clarification is all the more needed when he accused Team Unity of being wholly corrupt but said nothing, positive or negative, about the Labour government which preceded Team Unity for 20 years. If his silence means that there was no corruption in that government then he should be sailing on his new mission

because he only has seven years of corruption to unravel. And then one wonders why Team Unity has gotten off scotch free if the whole system was corrupt. Whatever the answers Drew may well be held to a higher standard than his predecessors. Drew wants the country to believe that due to the legislation passed the system will correct itself while remaining exactly the same in structure. That will not happen.

Corruption is in large measure illegal or should be illegal and often threatens the rule of law. As it usually results from dishonesty, abuse of power, greed and the pursuit of easy money corruption has been around for a long time. It exists in the public sector and the private sector. It is by its very nature mostly secretive and therefore difficult to unearth. Before I look at that evil in our context I quote a few famous statements on the subject.

'Corruption is a cancer, a cancer that eats away at a citizen's faith in democracy, diminishes the instinct for innovation and creativity.' - President Joe Biden.

'Corruption is paid by the poor' - Pope Francis.

'Integrity, transparency and the fight against corruption have to be part of the culture. They have to be taught as fundamental values.' - Angel Gurría, OECD Secretary General.

"Without strong watchdog institutions, impunity becomes the very foundation upon which systems of corruption are built. And if impunity is not demolished, all efforts to bring an end to corruption are in vain." - Rigoberta Menchú, Nobel Prize laureate.

"People's indifference is the best breeding ground for corruption to grow" - Delia Ferreira, Chair of Transparency International.

A paper published by the IMF in 1997 made these comments:

"Empirical evidence suggests that corruption lowers investment and retards economic growth to a significant extent." That is still an unchallengeable statement.

Corruption is most dangerous to an economy when it becomes systemic as it is in many countries across the world. Corruption is a financial burden on a country. It offends human rights. It corrodes the morale of a country. It is counterproductive to hard work and creativity. It promotes dishonesty and tax evasion.

If corruption is widespread why should young people aim to become educated. Why should those who benefit from corruption work hard when they don't have to. Why should the rest of the community work hard when contracts are corruptly or unfairly awarded. Why should people pay taxes to be handed out to corrupt beneficiaries of government contracts and largesse.

That is all the more relevant in our country where Government owns most of the land and has excessive influence on the means of production; where Government controls the largest bank; where government is the biggest employer; where the culture is one of handouts to vote and to live; where the Prime Minister has enormous powers; where politicians rely on gifts from undisclosed sources to run campaigns and become beholden to those who pay them and therefore call the tune.

The temptation is all the greater to join the corruption bandwagon instead of relying on education, creativity and productivity.

The real prohibition of corruption is a key step to creating accountable and transparent governance.

The Singapore model

Singapore is the size of St. Lucia with no natural resources. It grew from a veritable backwater thrown out by Malaysia to one of the most successful economies in the world based on meritocracy, creative industrialization, government effectiveness, productivity, education, keeping corruption at bay and competitive compensation.

Corruption is strongly investigated and prosecuted in Singapore and success rates with jail terms are high. We have seen recently a Minister of government charged criminally with corruption.

The pay of top Government officials in Singapore is among the highest in the world to limit the temptation for Ministers to become corrupt.

The successful economic model of Singapore is however based on much more than high executive salaries and strong anti corruption legislation. Singapore has high productivity in every sector, a well organized, efficient and responsive public sector, an attractive investment climate, an outstanding education system, responsible attitudes.

It is a meritocracy and it is one of the safest countries in the world. We would do well to look closely at Singapore model.

Ministerial pay

Our government has quoted the Singapore model for its good governance agenda and for the recent increase in the pay of the Prime Minister, Ministers and Parliamentarians.

Let's look at the good governance agenda.

Anti-Corruption Legislation

The following legislation has been passed in the National Assembly as part of the agenda. The Anti-Corruption Act, 2023; the Integrity in Public Life Act, 2013 (amended in 2023); the Freedom of Information Act, 2018 (amended in 2023); the Whistleblower Protection Act, 2023; the Unauthorized Disclosure of Official Information Act, 2023; The Procurement and Contracts (Administration) Act 2012 (amended in 2024).

Let's look at what this legislation is intended to do.

Anti-Corruption Act

I begin with the Anti-Corruption Act the purpose of which is stated as *'to define and create criminal offences of corrupt conduct and to create the office of a Special Prosecutor to receive complaints, investigate and prosecute acts of corrupt conduct of persons in public life in St. Kitts and Nevis'*.

The Act establishes the office of Special Prosecutor but it is to be noted that the Special Prosecutor requires the consent of the Director of Public Prosecution and the Integrity Commission to institute or withdraw a prosecution against the higher ranking officials from Prime Minister to Assistant Secretary in the Civil Service. In contrast only the DPP need consent to the prosecution by the Special Prosecutor of lower ranking Civil Servants and employees of Government corporations. I have not heard a tenable explanation for the extra hoop to prosecute the big boys.

The Act sets out and defines the crime of corrupt conduct for which officials and officers may be prosecuted.

Integrity in Public Life Act

This Act establishes a Code of Conduct for Public Officials. It provides for the criminal offences of abuse of office, misconduct and neglect of duty. It provides for the filing of Declarations of Interest by specified Public Officials with the Integrity Commission which it establishes. It gives additional oversight duties to the Integrity Commission which is the key body in its operation.

Unauthorised Disclosure of Official Information Act

This Act has the purpose of deterring and creating penalties for unauthorized disclosure of official government information by persons in public life. Some argue this Act frustrates the effect of the more important Whistleblowers Protection Act. Potential whistleblowers have to think twice about making disclosures of illegal activity when they could be charged with unauthorized disclosure.

Whistleblower Protection Act

This Act has the purpose of deterring and combating corruption and other improper conduct by encouraging and facilitating bona fide disclosure of such conduct and protecting the persons who make such disclosures. The persons to whom a whistleblower may make a protected disclosure are the Chairperson of the Integrity Commission, the Special Prosecutor, the Director of Public Prosecutions, the Ombudsman, the Chief Medical Officer or any other person designated by the Minister provided that a whistleblower who wishes to disclose a matter that would prejudice the national security, defence, international relations or the physical environment of the country may make the disclosure to the Prime Minister.

Freedom of Information Act

The legislation listed above enhance substantially the accountability of public officials. Now we will see if the political leadership changes the centuries old Civil Service and the deeply embedded political culture of winner take all to compliment these new measures or if they will remain as ever. And if they remain as ever whether those charged with enforcing the new legislation will take the bull by the horns and exercise their statutory powers to address the corrupt conduct and abuse of office inherent in them.

Missing legislation

But the most important piece of legislation is missing. That is to regulate campaign finance which involves millions paid by people many of whom want their pound of flesh in return. Some of that money is used to pay for election charters which in my view is election bribery and at least corruption of our electoral system. Some of it is handed out privately and even openly in public to pay voters to vote for a particular candidate. That is election bribery. If that culture is not changed widespread corruption will not be eradicated from the system.

All of the legislation was revised or passed for the first time in 2023 or 2024. The most noticeable implementation of the legislation has been the filing by the public officials required by the Integrity in Public Life Act to do so of their annual statements of income, assets, liabilities and private interests. This was done with great fanfare including publicized extensions and threats of prosecution by the Director of Public Prosecutions. It seems that most people complied or resigned. We will see if this good start continues or if this was just a one off.

Chapter Fourteen: Where does our Democracy Stand

I have in the prior chapters of this part looked at some of the strengths and weaknesses of our democracy. I summarize these:

Rule of Law- exists but should not be taken for granted.

Freely elected government- meets basic standard.

Separation of powers -we have it in principle but in fact it is limited as there is minimal separation between executive and legislative. The judiciary is the only really separate of the three branches of government.

Public service -strong in some areas but weak and unproductive in many because of the political culture and the entrenchment of incompetent Civil Servants.

Justice system- the strongest component.

Accountability and open Government- growing but much improvement needed.

Respect for democracy- A long way to go because of the tribal politics and weak Civil Society and media.

Freedoms- relatively strong but growing insecurity because of violent crime and the challenges of disinformation, misinformation and malinformation.

Elections- free but far from fair.

Unity of purpose- non existent.

The main weaknesses are in areas affected by politics and negative attitudes. It will take a seminal change in the culture of political tribalism and a new political maturity to learn from the experience of 40 years of independence and to adapt and upgrade our constitution and governance system. This is particularly so because most of the key changes to the constitution will require approval by two thirds majorities in separate referenda in St. Kitts and Nevis.

I believe there is hope of generational change as the tribal politics wear off. The younger generations have more exposure to higher education and to the outside world,

many are more aware and communicate with each other much more than most of their predecessors. They will not simply fall into line with the culture. The key will be whether they take their new culture into politics or simply fall into line with the existing culture.

International ranking

One of the major world indices on the strength of democracy in countries across the world is the Rule of Law Index prepared and published by the World Justice Project. The World Justice Project is an international civil society organization with the stated mission of *'working to advance the rule of law around the world'*. The term rule of law is used in this Index to cover most of the essentials of democracy.

WJP has published its Index annually since 2009. The Index is prepared by an independent multidisciplinary team from across the world. It is subject to a rigorous methodology. It is the world's leading source for original democracy data. The Index is used by governments, multilateral organizations, businesses, academia, media, and civil society organizations around the world to assess and address gaps in democracy.

The factors used in the rating of each country covered by the Index are:

- constraint on government powers,

- absence of corruption,

- open government,

- fundamental rights,

- order and security,

- regulatory enforcement,

- civil justice

- criminal justice.

The 2023 Index covered 142 countries. The following conclusion of WJP on the state of the rule of law across the globe is worth quoting.

'The world remains gripped by a rule of law recession characterized by executive overreach, curtailing of human rights, and justice systems that are failing to meet people's needs. People around the world are paying the price.' That reflects the

growing autocracy despite the advantages of technology in communication within and among nations.

In the Index St. Kitts and Nevis ranks overall 39th out of the 142 countries covered and regionally (Latin America and the Caribbean) 6th out of 32 countries.

The individual factor rankings are:

Constraint on government powers- global 41/142 and regional 6/32

Absence of corruption- global 39/142 and regional 6/32

Open government – global 94/142 regional 26/32

Fundamental rights- global 36/142 and regional 8/32

Order and security- global 54/142 and regional 4/32

Regulatory enforcement- global 39/142 and regional 6/32

Civil justice – global 25/142 and regional 2/32

Criminal justice – 31/142 and regional 2/32.

The rankings are mixed. Not surprisingly our justice system has the highest rankings. The lowest is in open government at 94/142. That reflects the real picture here and shows the great need for accountability and transparency in government. We will see whether the latest governance legislation improves our rankings in future years.

The ranking in order and security is not surprising either given the very high murder rate and the theory that prevailed until 2022 that a country can pay criminals to behave.

I expand on the foregoing:

1. *Constraints on Government Powers*. This is the first factor considered by WJP, for

good reason. It recognizes the human tendency to get carried away with power and the huge powers exercised by governments.Government power in St. Kitts and Nevis lies in effect with the Prime Minister. He controls two of the three branches of Government. He appoints and can fire members of the Cabinet. He recommends the

Governor General. He is allowed to control the Civil Service and other public bodies. He controls most of the land on St. Kitts. As Government is majority shareholder he has leverage on the National Bank. Our system, and that of the other OECS countries, is referred to quite rightly by Simeon MacIntosh a constitutional scholar of blessed memory as *'dictatorship by Prime Minister'*.

As a result constraints on Government powers are in our case largely constraints on the Prime Minister. What are the constraints on the powers of the Prime Minister? The four main ones are meant to be the Motion of No Confidence, elections, the Courts and the media. We see what happened to the MONC. We know the flaws in our electoral system. These include the abuse of voter registration provisions, the absence of campaign finance regulation and the lack of any semblance of independence in the Boundaries Commission which invites gerrymandering. In these circumstances we are blessed that we have an independent justice system which has saved democracy and the rule of law time and time again, the last time being in 2015 when the Prime Minister of the day having trampled over the MONC tried and very nearly succeeded in doing the same with the electoral system. We are also fortunate to have a growing media and the availability of social media but there is still a way to go towards a strong, independent media. We see from the US the vital role played by the media.

We could do a lot better in constraining government power by (a) limiting the Prime Minister to two terms (b) converting to a Republic and providing greater entrenchment and powers to the office of the Governor General (c) enacting campaign finance legislation (d) strengthening the powers of the Auditor General and giving that office the resources to exercise its intended power to investigate the use of Government money (e) properly funding The Electoral Commission to do its constitutional duty (f) making The Boundaries Commission more transparent. I suggest other changes in the next Chapter.

2. *Open Government* is the third listed WJP factor but it goes in tandem with

Constraints on Government powers. Here our ranking is abysmal at 94. That is 5 places below Russia and the lowest OECS and Caricom country. That is a disgrace but not surprising given the facts.

The Open Government factor in the Rule of Law Index is the widest of the categories measured in the Index. It includes several of the essentials of democracy that I have discussed in this Part. I quote the definition of Open Government in the Index:

Open Government (Factor 3 of theWJP Rule of Law Index) measures open government defined as a government that shares information, empowers people with tools to hold the government accountable, and fosters citizen participation in public policy deliberations. The factor measures whether basic laws and information on legal rights are publicized, and evaluates the quality of information published by the government (3.1). It also measures whether requests for information held by a government agency are properly granted (3.2). Finally, it assesses the effectiveness of civic participation mechanisms–including the protection of freedoms of opinion and expression, assembly and association, and the right to petition (3.3), and whether people can bring specific complaints to the government (3.4).

It is not surprising that St. Kitts and Nevis ranks so low in this category. The low ranking of 94 out 142 countries bears out the criticisms I have made of the way Government operates.

The ranking reflects the fact that Government is a closed shop. Government does not publish the vast majority of its policies. Reasons for decisions are hardly ever given. The Civil Service was designed by the British over a hundred years ago to keep the shop door closed. Reform of the Civil Service is long overdue. It has been talked about regularly since independence but don't hold your breath. In breach of the fundamental rights of free speech and the right to information given by the constitution, Government monopolizes the state media. Those are some of the factors which account for our abysmal ranking.

Another international report just out- the World Press Freedom Index- is not very complimentary about us. That report assesses that the media in the OECS is *'under tight surveillance'*. The report warns of the potential for politicians to hijack the media. The OECS is ranked together at 93 out of 180 countries which is not very complimentary.

3. *Now to Absence of Corruption*. It is good that WJP thinks we are at number 39 in

the world in Absence of Corruption. But the position of 94 in Open Government overlaps with this area. The more open a government is the more likely it is that corrupt practices will be disclosed. And one of the biggest sources of corruption across the world is in government contracts. Until recently we had a half-baked Procurement Act introduced by the Labour government in 2012 but never brought into full effect because neither that government nor its successor Unity government saw it fit to introduce the necessary regulations. Improved legislation has been promised. The jury is out on whether this will materialize and if so how it will be enforced.

4. Our ranking at 36 in *Fundamental Rights* is reflective of the relative strength of that

part of our constitution which guarantees those rights and the court system which enforces them.

5. Our ranking of 54 in *Order and Security,* particularly in order, does not say much

for the rest of the world. Disorder, ill-discipline and poor attitudes are too prevalent. Look around you every day and you see that. These stem in large measure from the entitlements mentality which has grown out of the tribal politics with governments routinely rewarding their supporters and disadvantaging their opponents. This reflects also in the attitude to work. Productivity is low with the result that more and more foreigners are coming in to join the workforce.

The disorder, ill-discipline and poor attitudes have contributed to the gang culture and high murder rate. The community is not setting a good example to its young people. The community is expecting the security forces to work miracles without acknowledging its responsibility in the maintenance of law and order. Our society needs to take deep reflection on improvements in this area. If not the security situation will deteriorate even further.

6. *Regulatory Enforcement* is a mixed bag. It is strong in some areas and non existent

in others. In many areas regulations exist but are not enforced. The country has done well to rank at 39 in this area.

7. Not surprisingly our best ranking is at 25 in *Civil Justice.* Our courts deserve this

credit. I am sure that our ranking will improve even more when the selection and terms of employment of Magistrates make that Court, like the Supreme Court, truly independent of Government.

8. We rank lower at 32 in *Criminal Justice*. The major factors here are weakness in

crime detection contributed in large measure by the lack of co-operation by the public with law enforcement, delays in the criminal justice system and the very poor prison conditions.

The rankings for 2024 with comparisons to 2023 were:

Global ranking -38 (up 1)

Regional ranking – same at 6

Constraints of Government Powers – 40 global (up 1) and 6 regional (same)

Absence of Corruption- 38 global (up 1) and 6 regional (same)

Open Government - 82 global (up 12) 22 regional (up 4)

Fundamental Rights - 35 global (up 1) 7 regional (up1)

Order and Security - 55 global (down 1) 4 regional (same)

Regulatory Enforcement – 40 global (down 1) 6 regional (same)

Civil Justice - 22 global (up 3) 2 regional (same)

Criminal Justice – 31global (same) 1 regional (up 1)

While there has been some improvement in the rankings in the category of Open Government the 2024 ranking is still by far the lowest of all the rankings of the country. My comments on the 2023 rankings remain the same for 2024.

Chapter Fifteen: Constitutional Change

I will now address how the Constitution can be changed and the changes which should in my view be contemplated.

How to change the Constitution.

The Constitution contains clauses which are entrenched and others which are not. The entrenched clauses can only be removed or changed by a two thirds majority in the National Assembly followed by two thirds majority votes in St. Kitts and in Nevis. The non-entrenched clauses can be removed or changed by the National Assembly on a two thirds majority.

The entrenched clauses

- *Chapter 1- the description and territory of the country and the supremacy of the constitution*
- *Chapter II- the fundamental rights and freedoms*
- *The establishment of the office of Governor General (GG) and the authority vested in that office.*
- *Establishment and composition of the National Assembly (NA), the election of Representatives and the appointment of Senators*
- *Establishment and composition of the Electoral Commission and the office and functions of the Supervisor of Elections*
- *Powers of the High Court to determine questions of membership of the NA*
- *The powers of the NA to make laws*
- *The provisions for summoning, proroguing and dissolving the NA and for the timing of elections*
- *Establishment and functions of the Constituency Boundaries Commission*
- *Establishment and functions of the DPP*

- *Chapter VI containing the finance provisions including establishment of the Consolidated Fund, restrictions on withdrawals from it and establishment of the office of Director of Audit*
- *Chapter VII providing for the Public Service*
- *Chapter IX containing the powers of the courts in interpreting and enforcing the constitution.*
- *Chapter X containing the provisions for government in Nevis and including Clause 113 on secession*
- *Schedule 2 providing rules for delimiting constituencies*
- *Schedule 5 setting out the exclusive legislative powers of the Nevis Assembly*
- *Provisions of the Supreme Court Order establishing the Supreme Court and providing for the appointment of the Chief Justice and Judges of the Court and the tenure and remuneration of Judges and the establishment and functions of the Judicial and Legal Services Commission all intended to protect the independence of the judiciary from the executive and legislature*

Suggested Changes

Republic

It is high time we move to a Republic. This will require changes to entrenched clauses. Retaining the British monarch as Head of State may have been a wise step in the early days of independence to help the country find its feet and become established in the international order but after 40 years the country is old enough to go on its own. We have outgrown the need for the purely formal role of the monarchy. But approval for that change may not be the walkover it should be. We haven't seen it fit yet to replace the Privy Council with the Caribbean Court of Justice even though approval by referendum is not required for that change. Many think the value of the Privy Council was shown definitively in 2015 when the Privy Council prevented Douglas' seizure of power through illegal boundary changes. You cannot blame many who thought the British connection saved our democracy in that case. The same suspicion may apply to

changing the monarchy to an appointed or elected Head of State. I will therefore begin by addressing that position.

Head of State.

The key issue for national debate over the move to a Republic will be the role and powers of the person who replaces the British Monarch as the Head of State. This will require changes to entrenched clauses. Some may argue why do we need to continue with a Head of State separate from the Head of Government. The simple answer is the Prime Minister as Head of Government already has excessive powers. Do you want to give him or her more?

We have examples to look at in other Caribbean countries which have made the move to a Republic like Trinidad and Tobago, Dominica and Barbados. The issue is also being debated in Jamaica which is contemplating the move. The primary power of the Governor General as representative of the monarch in our current system is to appoint the Prime Minister. That power is exercised by the Governor General in his or her independent judgment. It should be a relatively straightforward decision but the fact that the Governor General is recommended by the Prime Minister unfortunately brings the political baggage to bear on the public perception of the decisions made in that regard by the Governor General. We have unfortunate experiences of that in 1993 and 2020. The prime concern in determining the powers of the Head of State in a Republic will be to establish a system of appointment to the office that brings wide public confidence. If the decision is that the Prime Minister will appoint the Head of State, our Republic will be doomed from day one. Same will happen if the appointment is made on a simple majority vote in the National Assembly. Even if the appointment is ultimately made by the National Assembly it should be by a two thirds majority from nominees recommended by a panel of highly respected nationals and by way of a fully transparent process in the nomination and in the National Assembly.

Then what powers should he or she have? Our Caribbean colleagues who have taken the move have given varying additional powers to the Head of State in all cases called the President. I will use that term. In Trinidad and Tobago the President has powers going beyond those of our current Governor General. Acting in her own judgment the President appoints 9 of the 31 members of the Senate. The President also

makes several appointments to the judiciary and the Electoral and Boundaries Commission. The President also makes key appointments to the public service after consultation with the Prime Minister and the Leader of the Opposition and not on the directive of the Prime Minister.

The St. Kitts and Nevis President should have power over and above the appointment of the Prime Minister. The President should, acting in his or her independent judgment, appoint independent Senators, the entire Electoral Commission, the Supervisor of Elections, the Boundaries Commission and the independent office holders in the public sector including the Public Service Commission, the Police Service Commission, the Integrity Commission, the Director of Audit and the Salaries Review Commission. That would de-politicize these appointments and help to make them more independent and transparent.

The term of appointment of the President is also an important consideration. In Barbados the term length is four years renewable once. In Dominica it is five years renewable once. In Trinidad and Tobago it is five years renewable indefinitely. I support five years with one renewal.

Term limits

Term limits for the Prime Minister and Representatives do not require changes to any entrenched provisions and can therefore be done by two thirds majority of the National Assembly without referenda. We have seen first hand that the rule of law can be overcome by the rule of man if the people are not vigilant especially as the Prime Minister of St. Kitts and Nevis has many autocratic powers and our system lacks many of the traditional features of a constitutional democracy to promote accountability of the executive.

The Phillips Task Force addressed the subject of term limits at page 30 of its 1999 report. It said this;

It was strongly represented to the Task Force that a limit of two successive terms (not necessarily ten years) should be set for Parliamentarians, both elected and appointed. The person could re-enter Parliament after an intermission of one term. The Task Force feels that this proposal should be given serious consideration in all its aspects.

My view is that a Prime Minister should not serve in that office for more than two terms in total. This is an important lesson from the country's experience.

I will take a brief look at the history of term limits and their prevalence in today's world. The ancient Greeks had term limits in their system of governance 2,700 years ago. The Romans had them around the time of Christ. A large number of modern democracies have them. Two thirds of sub-Saharan African countries have them. Almost all of Latin America does as well. A large number of Asian countries have them. They are not however common in Europe nor in the Commonwealth Caribbean. The United States restricts its President to two terms but does not limit terms of Representatives and Senators in its Congress.

Let's look at the arguments for and against term limits. The main argument against them is that voters are deprived of their right to elect whomsoever they want to public office. It is also argued that removing longer serving politicians from office can result in the election of inexperienced politicians. Another argument is that when an elected politician is coming to the end of his term and cannot seek re-election he does not have to heed the concerns of his constituents and can use his power to set himself up in the future whereas if he had to face the electorate he would have to worry about how voters think. It is also argued that you do not necessarily get better leaders by rotating them.

The main arguments in favour of term limits are:-

- they prevent persons in power from using that power to remain in office indefinitely;
- they make room for fresh candidates, new faces, and encourage participation in the process;
- they deter politicians from making choices solely to prolong their career; and
- most importantly they recognize the negative and often disastrous impact which power can have on human nature.

I used to think, when I was young and idealistic, that term limits were not necessary because no one would want to subject himself for too long to the pressures of political power. It is interesting that the framers of the US Constitution seem to have

held that view because the term limitation on the US President was imposed only in 1951. I have, after 54 years of watching our democracy, changed my mind principally on the basis of the last argument that I recited in favor of term limits that is they recognize the negative and at times disastrous impact which power can have on human nature. While the world has in physical conditions advanced in the 2700 years since the Greeks imposed term limits, human nature has remained the same.

I said that term limits are rare in Commonwealth countries. That is because we inherited the British system which does not impose term limits. The issue is however being hotly debated in our region, particularly among our youth. It featured in the debate in St. Vincent on constitutional reform which, for other reasons, failed in a referendum.

In considering this issue we should look at the peculiarities of our system. As I said we do not have a true separation of powers. We have an elective dictatorship and an office of Prime Minister which can, as has been very apparent, be easily used by any holder to manipulate almost everything and everybody except the judiciary. And we have a political tribalism that promotes hatred and the one-sided exercise of political power, that aggrandizes and almost deifies politicians and demonizes others. We have an entitlements mentality which says that Government must provide for all our desires, the result of which is that, given its financial limitations, Government cannot satisfy everyone's needs and therefore favours some over others. We have a country motto of 'Country above Self' but in practice it is 'Party above all else'. This form of politics, which none of our leaders of the past has tried to change, makes it extremely difficult for a leader to provide balanced governance for a long period of time, no matter how idealistic he or she may have been when he or she began in politics. It encourages instead an autocratic and self-centered application of power which degrades the objectivity of a politician who is in it for too long. As I have quoted previously the system moulds the Prime Minister not vice versa.

In my opinion there should be a limit of three consecutive terms (a maximum of 15 years) and four terms in total for elected representatives in the National Assembly; subject to that limitation, a limit of two terms (a maximum of 10 years) for Prime Minister; and two terms (a maximum of 10 years) for non-elected Senators.

Motion of No Confidence

We saw in 2013 and again in 2022 the ridiculously excessive powers granted to a Prime Minister who has been defeated in or who faces and wants to postpone a Motion of No Confidence. Even after he is thrown out of office by the National Assembly he can still decide when within 90 days the next election will be held. He should have no such power. When he is thrown out he should leave office immediately and there should be a process which enables a new Government to be formed with the support of a majority of Representatives. If such majority does not exist then the President should immediately call an election.

The constitution should be amended also to require that a Motion of No Confidence be tabled in the National Assembly within 14 days of its filing with the Speaker. There should also be an amendment expressly to enable the Court acting quickly to mandate a Speaker to comply with the requirement. This would not require changes to any entrenched clause and can be done without referenda.

Political parties are not officially recognised in our Constitution. This is because we have a constituency system under which each constituency elects as its Representative a person who is qualified (in accordance with the Constitution and any laws made under it) to sit as a member in the National Assembly. Membership of or allegiance to a political party is not a qualifying requirement in the Constitution or any law made under it. Nor do the provisions relating to voting in the Assembly say anything about political parties.

The provisions of section 52(2) for appointment of a Prime Minister also reflect the independence of Representatives (in that capacity) by providing that *'whenever the Governor General has occasion to appoint a Prime Minister he shall appoint a Representative who appears to him likely to command the support of the majority of the Representatives'*. No mention whatever is made of political parties nor is there any other constraint on how the Representative determines whom he supports. Same with section 52(6) dealing with removal of the Prime Minister following a vote of no confidence. Those sections leave it open to Representatives to give their support to any other Representative after a general election and to vote as he or she wishes on a vote of no confidence. It is on this basis that coalitions are formed to assume executive power and Prime Ministers are removed by vote of no confidence. If the leader of a political party

whose members hold the majority of seats in the Assembly was automatically entitled to be Prime Minister for a full term of five years there would be no need for the discretion given to the Governor General in section 52(2) nor for the provisions for a vote of no confidence in section 52(6).

The vote of no confidence is the counter balance created by the Constitution to the overwhelming powers given to the Prime Minister. Those powers are vested personally in the man or woman who holds the office and not in him or her as leader of a political party. The Prime Minister is not bound to follow any party positions and can bring any member of the Assembly (regardless of party affiliation) into the Cabinet. The Prime Minister appoints and removes Cabinet members. Likewise the Representatives can in effect appoint or remove him.

Issue ballots

A mature democracy requires that while day to day running of the country is entrusted to an elected government the will of the people should be reflected directly on critical issues. The checks and balances in our system are clearly inadequate to restrain governments from acting in the self interest of those who wield the power. We need referenda on important decisions affecting the country. That will also help to transfer the debate from personalities to issues. A system should be established to permit specific issues to be put to the people at an election or separate referendum.

Legislation can be passed by simple majority to enable the Government to call a referendum to take the views of the people on any issue but such referendum would not necessarily be binding. The ideal solution would be to amend the Constitution to make referenda binding. That would likely require changes to entrenched provisions by two thirds majorities in St. Kitts and separately in Nevis.

Election of Speaker

The Douglas 26 Month Election showed the need for this change. Rather than being elected by the National Assembly, the Speaker should be elected by the electorate in a ballot at the time of each general election. While that would not guarantee his or her independence, it would expose candidates to public scrutiny. The provisions for appointment of the Speaker are not entrenched provisions of the Constitution and can

therefore be changed by two thirds majority of the National Assembly without the need for referenda.

Removal of Bryant clause

Section 27 of the Constitution is known as the *'Bryant clause'* because its effect (many think intention) was to prevent Fitzroy Bryant, who had served as a Minister of Government under Labour administrations pre-independence, to qualify post-independence to become a candidate for election. Bryant had become a citizen by residence under the Statehood Constitution and his citizenship continued after independence. However, after independence, section 27 deprived him of the right to contest an election for the National Assembly as neither he nor his parents were born in St. Kitts. Section 27 has no place in a modern constitution. Qualification for election should not be based only on citizenship. People who buy citizenship should be excluded in any event. The Constitution should allow qualification based on citizenship by birth, descent or long-term residence. As the Constitution stands residence is not a requirement for election. Thus we have the anomaly that a citizen who was born abroad and has never lived here but who has a parent born here can qualify but not a person like Bryant, born in Antigua but who spent most of his life here. Section 27 is not an entrenched clause and can therefore be removed or changed without referenda.

Removal of dual nationality clause

Likewise, Section 28 of the Constitution which is referred to as the dual nationality clause. That clause creates the ridiculous anomaly that a person who was born here and then takes a second nationality of choice cannot seek elective office, but his son or daughter who was born abroad and has two nationalities, may not be debarred.

Strengthening the right of free speech

The fundamental right of free speech should be strengthened by the addition of provisions which allow the public to exercise that right effectively in relation to government owned media. The Courts have ruled in recent years that candidates for political office have a fundamental right of access to the Government owned media. That was agreed by all political parties as long ago as 1994 in the Four Seasons Accord,

but to no avail. Provisions should be added to the Constitution to guarantee that access to the public and to allow for independent monitoring of the use of government media. Access to government owned media is part of our fundamental right of free speech and should be fully and meaningfully implemented. That is another lesson of the 26 Month Election. The charade that took place on election night on ZIZ TV should not be allowed to happen again.

Any changes to the fundamental rights provisions of the Constitution would require referenda as the whole Part containing such rights is entrenched.

Election of Ombudsman

The Ombudsman should ideally be an elected position under the Constitution but that can be achieved by legislation without changing the Constitution. That would give the holder of that office greater independence and powers to protect the citizen from the abuse of government power. It would also give the office higher profile. Very little is heard of the Ombudsman or his work under the current legislation. If he were removed from the influence of the Prime Minister the office might be more effective to protect the interests of the citizen in his or her dealings with the public service.

Constituency System

Changes to the constituency system would require changes to entrenched provisions of the Constitution and therefore require referenda. There is a strong argument for the replacement of the constituency system with a system of proportional representation or a combination of both. There are grounds too for more localized government e.g Local Councils with limited powers. There are models in the Caribbean and all over the world which can be studied for application or adaptation. This is an excellent topic for research and debate in the CFB College and in the High Schools to sensitize our people, particularly the young who may have to decide. Civil Society should also initiate this discussion outside of the political process and elements.

I support the view expressed as follows by the late Professor Simeon MacIntosh, who was Dean of the Faculty of Law at UWI and Professor Emeritus of Law at Howard University in Washington, U.S.A.

The 'winner-take-all' situation or 'to the victor the spoils' mentality that our current electoral system indulges compounds the problem ten-fold. As Professor Selwyn Ryan observes, our Westminster-type democracy, under a 'winner-take-all' electoral rule, has encouraged a too destructive competition for political office. It has placed too heavy a concentration of power in the hands of the ruling elites and has encouraged the marginalization and alienation of a substantial part of the population from participation in the governance and development of their society. On this view, it would seem that proportional representation is the more attractive electoral system.

I agree entirely with these views. The constituency system adds to our culture of political patronage, which like the political tribalism from which we suffer, is a yoke on our country's democracy. We are a very small country – in fact we are really a village in international terms. We do not need a constituency representative to lean on to improve conditions in our constituencies. Any Government Minister is just as reachable as any constituency representative.

Proportional representation would change for the better our system of political campaigning. It would help to shift the focus from personalities to issues. The inclination to deify a party's candidate and demonize the opponent would be lessened. While the competence of individual politicians will always be relevant to elections, the removal of multiple head to head election races will help to focus the election debate on issues.

The role of Senators

The role of Senators in the Assembly was also highlighted by the 26 Month Election and should be reviewed. In a small Parliament like ours the vote of Senators can carry great weight. The votes of Senators were influential in the passage of the Senators Bill which was later struck down by the Court. If the Act was allowed to stand there could have been a total of 7 Senators which is far too many with only 11 elected Representatives.

Based on this experience, it is argued that the Constitution should be changed to prevent Senators from voting on legislation to expand their number. There is ground also to require that the Assembly should debate the nominees for Senator before they

are appointed. While that would not guarantee that competent people would be appointed it would allow scrutiny in public of such nominees. The reduction in political partisanship would help in the appointment of persons to the office of Senator who will exercise mature and independent judgment and not just be puppets. These changes would not necessarily require changes to entrenched provisions of the Constitution. Depending on the extent and nature of the changes they might not require referenda.

Chapter Sixteen: Sustainable development

The Government describes the fulfillment of its constitutional duty to create a climate of economic wellbeing in the context of respect for law and order as the creation of a Sustainable Island State. It gives the major pillars as food security, green energy transition, economic diversification, sustainable industries, creative economy, COVID 19 recovery, social protection. The Government says boldly we need a fresh start and positive change and the qualities required must include resilience, cooperation and strength. This is very creditable. It is a pity that this important goal was not previously recognized especially when the country had the money to make substantial progress along this path. But it is high time that action be taken to achieve the goal instead of the use of the word “sustainable” as a catch word twenty times a day and in every speech by those in power.

The pillars stated by the Government are the key pillars to support the Sustainable Island State. However below the pillars there must be solid, immovable foundations. These include:

- accountable governance
- an attractive investment climate
- fiscal stability
- a trained workforce
- good standards of productivity and service across the economy
- availability of capital for investment
- a strong private sector
- stability in the rule of law
- a strong legal system
- constitutional protection of property
- a fair tax system

- control of corruption
- good infrastructure
- a strong public service
- positive attitudes
- strong pursuit of excellence
- savings for a rainy day

I have addressed in various sections of this book the current state of some of these foundations. I will focus in this chapter on others which are or were too often ignored.

The human element

The most important part of the foundations of sustainable development is the people. Sustainability will only be achieved if the people want it and if they approach it and perform accordingly. Too often we look at all the fancy economic theories and ignore the human element. Attitudes and human development are the key human elements. Realisation of this has been clouded by the entrenched political culture. If that culture is not changed the human foundation will not be built and a Sustainable Island State will not be achieved. In place of the prevailing culture we need a culture of high performance and excellence.

We call our national heroes The Right Excellent. We ought to truly honor them by developing a culture of excellence. A key ingredient in building a sustainable state is human excellence. The statement attributed to Aristotle is so pertinent. “Excellence is not an act it is a habit.” We need to create that habit as part of our culture. The required excellence should be reflected in positive attitudes, strong productivity, high quality of service, good public order, a consistent system of public discipline and widespread individual discipline. These all require awareness and commitment from the people as well as the leaders. They require action as well as talk. Establishment of a culture of excellence requires the unity of purpose which our constitution says is our goal. The leaders have to lead the way and influence the cultural changes needed.

You can do all the physical development you want but people are the core of the state and their outlook and mentality have the biggest influence on its real development and growth. St. Kitts and Nevis has for too long overlooked this. This is due in part to the political culture which has been to pander to the people and not to tell them the hard facts. The hard facts are that productivity is very low, the quality of service is variable, public order is vulnerable, standards of public and individual self discipline are inconsistent and there are too many negative attitudes and cultural habits. Human excellence and unity of purpose are the most important but will be the most difficult components of sustainability to achieve.

The goal of converting St.Kitts and Nevis into a Sustainable Island State is achievable but will be a huge task. Despite the miniscule size of the country and its limited natural and human resources and the increasing risk of natural disasters St. Kitts and Nevis is ranked by the International Monetary Fund as a high-income economy. The country cannot therefore expect concessionary treatment in the international market. It will have to compete with countries of all sizes. It has been very fortunate to have had substantial direct financial assistance from Taiwan over the 40 years of independence. We have to hope that Taiwan continues to exist as an independent economy and continues its support for the development of the economy.

The UN defines sustainable development as ‘meeting the needs of the present without compromising the ability of future generations to meet their own needs’. That definition means nothing unless specific goals and targets are set and their achievement is measured consistently against the set goals and targets. In this case it is also crucially important to recognize and accept what is not sustainable. I expect that the government will flesh out its policy and set targets to build the stated pillars. However accepting what is not sustainable will be much harder because that will require uncompromising leadership and involve massive changes in the national mindset.

Here are some of the things that are not sustainable.

- reliance on the CBI for close to 50 per cent of national non recurrent revenue

- continued bloating in the size of the government service

- the handout mentality that government must as well as providing for the needy give people everything they want

- the favoritism of government supporters

- marginalization of the opposition in economic development

- the low level of productivity in the public service and elsewhere in the economy

- continued run down and lack of maintenance of public property

- the continued decline in law and order

Continuation of these conditions will drag the economy down and prevent the establishment of a Sustainable Island State.

The government has recognized that Singapore provides a good model in terms of its policy on remuneration of Government leaders. I suggest that Singapore also provides a useful model in specifying and targeting its sustainability goals. In its usual transparent way and with its strong pursuit of excellence Singapore has published a model of its Green Plan 2030 which is well worth reviewing as an example. It contains detailed targets by year. The importance of this is to make Government accountable for its progress towards the targets set.

I will highlight some of the areas which have been given least prominence in the national debate on this topic. These will severely test the qualities of resilience, cooperation and strength quoted by Government as essential ingredients of the struggle ahead.

Respect for the rule of law

The constitutional principle accepted by the country ties economic well being to respect for law and order. That is a proper connection because without law and order our economic wellbeing is seriously threatened. Here are a few examples where there have been failures within Government to respect the rule of law resulting in challenges to economic wellbeing.

The rule of law has been infringed by the wanton disregard of the Constitution in the registration as citizens of persons who do not qualify under the Constitution or the Citizenship Act. Cheating on the grant of citizenship does not bode well for the future. It

is bad enough that we sell citizenship like a commodity but to give it away as has happened for political benefit in the past is a recipe for chaos.

As I have described in the chapter on Accountability the Finance Committee of the National Assembly does not function as intended or at all. That degrades the effect of the National Assembly as the main feature of the legislature, one of the three branches of Government. It reflects the political culture that the Opposition must oppose every decision taken and programme introduced by the Government in power. Nothing done by the Government is good and no constructive criticism must be given. If the country can't trust its elected leaders to follow the rule of law in their affairs who will?

Blatant disregard of the Finance Administration Act in extra budgetary appropriations as indicated in the Director of Audit report for 2022 is another major breach of the rule of law. The expenditure in 2022 was 45 per cent higher than approved by the National Assembly in the budget. That degrades the importance of the National Assembly in the budgetary process. It hides from the public the actual Government expenditure which opens it to suspicion. Extra budgetary expenditure in the Prime Minister's office in 2022, an election year, exceeded 31 million dollars which puts that office under scrutiny given the vast powers of the Prime Minister.

Corruption

I have described the threat posed by this plague. Unless it is decimated St. Kitts and Nevis will not become a Sustainable Island State.

Taxation

The level of taxation is moderate and incentivizes investment, personal and corporate. The Inland Revenue Department has been substantially reformed to the benefit of the country with many highly trained and efficient management and staff. That reform needs to be taken to the next step in enforcement of the tax laws across the board and in rationalizing the legal basis for tax incentives.

Tax systems everywhere are not foolproof to corruption. While individual taxpayer information will not be available to the public under the Freedom of Information Act it is imperative that Government find ways to instill confidence in the

public that the tax laws are being fairly applied. Many in our local business community feel that, while they are hammered for all taxes and more, the same is not applied to many foreign businesses. If taxpayers do not have confidence in the enforcement of tax laws not only will Government be deprived of tax revenue but the investment climate will be negatively affected.

Meaningful national consultation

I have addressed this problem at length on this site. It is very relevant in this context. There is an urgent need to adapt the political culture to reduce the divisiveness and promote genuine and meaningful national consultation on our economic wellbeing by whatever name we call it.

Productivity

The measurement of productivity of a country is a complex process but it is important in the assessment of economic development. Productivity measures are used to indicate how well a country uses its human and physical resources to generate economic growth. The growth in our GDP over the years suggests that our productivity has improved. Ultimately though we have to ask ourselves how efficient at work are we as a nation. The current honest answer is we could do much better.

St. Kitts and Nevis is primarily a service economy heavily reliant on tourism. In our context therefore productivity means largely the quality and efficiency of service in the tourism industry. That industry is one of the most competitive industries in the world. The competitiveness of the country in tourism is highly dependent on the quality of the tourism plant and service. That in turn depends heavily on the standard of performance of management and workers in the industry. The industry includes not only hotels and restaurants but all businesses which serve the industry directly and indirectly. The service in our tourism sector can best be described as variable and in need of improvement.

The standard of productivity in other sectors of the economy is also important as we seek to attract investment. That includes the public sector as well as the private sector. The public sector carries approximately half the country's work force. I am sure we all agree that there is plenty room for improvement in productivity in all sectors of

our economy. As I repeat it would help if the Civil Service concentrated on the service in its name rather than the power base it reflects.

It is heartening to see that this weakness is being directly confronted with the establishment of the National Productivity Council and the very important involvement of the ECCB in the work of the Council and in making recommendations. But much more is needed than the Council to enhance productivity. Urgent reform of the Civil Service is needed as are changes in a range of societal attitudes which I will address.

Harsh as it may sound there is justification in the comment that our people have the demands of a first world people but not the work habits. We need a culture that rewards excellence in service and deters lazy and unproductive work habits. If the changes that have been suggested to legislation to entrench employment regardless of performance are pursued the private sector will mirror the public sector. That would kill all efforts to improve productivity in our economy. It would make the National Productivity Council redundant. Workers rights should be protected but the importance of performance should be strongly promoted and incentivized.

We have thousands of immigrants from the OECS, Caricom, Dominican Republic, India, Philippines and elsewhere. Most of them are gainfully employed and content with life here. They have little by way of handouts to support them. Their productivity attracts employers while so many of our people complain with their hands out to the politicians. Further growth of our economy will be heavily dependent on the productivity of many of these immigrants and on improved productivity by locals.

Chinese business

It will also require rationalization of Chinese owned businesses which have built in advantages in funding from their own government and cheap (almost slave) labour.

No government has explained why they are allowed in endless numbers when our people are anathema to them and they make no contribution to our community, to sport, to carnival, to culture. All they do is sit in their shops and steps, sell their goods and laugh at our people.

This country has had excellent diplomatic, commercial and other relations with Taiwan for the entire 40 years of independence. There is a treaty which established the

methods of participation of Taiwan and its people in this economy. The Taiwanese have respected that agreement to the letter. No attempt has ever been made by Taiwan to exploit this country or its people. Yet the country which has no diplomatic or other formal arrangements with China has allowed Chinese nationals to come in and exploit the country in ways I have described.

The political culture

The biggest deterrent to achieving a Sustainable Island State is the prevailing political culture and the negative attitudes which it has spawned and embedded in our country. I have addressed this at length elsewhere in this book.

If the culture I have described is perpetuated there will be little hope of a Sustainable Island State save in lip service. What is needed is a long term plan and for the people to be persuaded that the plan is feasible.

Crime

The criminal activity and the payment of criminals to behave (which has not worked anywhere and never will) has very sadly overshadowed the excellent upbringing and achievements of so many of our young people and tarnished the good name of the country.

The solution to misguided youth is long term but there is need for a fresh start and strength in addressing it and that should include at the forefront the problem of parenting. This requires a whole of society approach. The attitude to parenting and the absence of parents in the upbringing of many of our young people has resulted in the increasing number of lost young men whose anti-social and criminal behavior reflect their disregard of societal norms and in some cases are a direct challenge to the society. This is really disappointing given the economic progress and the universal accessibility of education. It is not helped by the segment of the music culture which glorifies violence. It is known elsewhere in the Caribbean as “murder music”. The glorification of violence even appeared in a Jouvert troupe on Boxing Day 2023 with the feature of each costume being a plastic machine gun.

There are programmes to assimilate the wayward youth into positive citizens but programmes are also needed to instill responsibility in and to assist the wayward and

irresponsible parents in the upbringing of their children and to avoid the problem becoming a permanent one.

As simple as it may seem the prevalent lack of inter-personal respect, respect of parents for teachers and respect for the laws of our roads by drivers and pedestrians alike reflect the decline in attitudes that should be reversed by a combination of persuasion and law enforcement.

Sovereign Wealth Fund

We have mostly graduated from aid except from our great friends Taiwan. We are not guaranteed support from the developed world in the event of disaster.
We therefore have to look for ourselves. That's why it is such an outrage that successive governments did not create a Sovereign Wealth Fund to save and invest some of the billions generated from the CBI. Instead that money was almost entirely spent with focus mainly on political benefit to themselves by the parties in power at the time. An effective Sovereign Wealth Fund is required for what's left of the CBI money.

Publication of Government policies, key decisions and statistics.

Secrecy has been a tool of Government policy. That is why it has taken so long for the Parliament to bring a Freedom of Information Act into effect despite the clear constitutional rights that such legislation gives effect to.

But government should not wait on requests for information to be made for disclosure of Government policies. Such policies should not be secrets. Access to the full extent of such policies is crucial to economic development. All Government policies including those affecting the operation of business, investment and development should be published online and updated except those genuinely withheld for security and defence. Statistics on all aspects of the economy should also be readily available.

I can only highlight the need for significant changes by a personal story. In 2009 I was invited by the Douglas Government to chair the National Competitiveness Council an informal body comprising prominent private sector businessmen and professionals and nominees from the public service. The purpose was to review and report on the standard of economic competitiveness. The Council asked specifically to be provided with all reports and statistics available to Government and relevant to its task. The

Council was told by Government officials that there was no prior report. The Council met frequently and presented its report to Government in 2010. It was then discovered that the United States had funded just two years earlier a substantial report on the competitiveness of the country. When I went to Cabinet to present the report of the Council I asked whether the Cabinet knew of the US report. They all said they did not. One of them commented that maybe a PS had it hidden under her skirt.

Diaspora

A national plan should be created with public and private sector co-operation to

promote access to and investment by the diaspora. There is no exact figure as to the number of nationals living abroad but it cannot be doubted that given the 'liberal' application of our citizenship laws that figure runs into the tens of thousands.

Entrepreneurship

The programmes in place for the promotion of entrepeneurship among nationals should be expanded with greater consultation between Government and Civil Society to promote an entrepreneurial spirit and to encourage and train nationals to compete with those from abroad who enter the open economy of the country. Otherwise there is a growing risk that nationals of St. Kitts and Nevis may be reduced to the status of consumers.

Financial education and savings

It is very good to see an awareness at last of the importance of financial literacy to the sustainability of the country. Standards of financial literacy and discipline within the communities are variable. It is a key element in the creation of entrepreneurs but it is essential to the entire community. Enhanced financial literacy will promote greater self-reliance, financial independence and reduce dependence on the Government.

Financial literacy is a cultural habit which the people of St. Kitts and Nevis should be encouraged and taught to develop. Education on this topic should begin from an early age. Research shows it can have an impact even at the age of seven. The children and adults should be taught that money is not there just to spend impulsively and on desires but to be spent wisely and saved. People from other cultures among us understand that intrinsically. They will always have an advantage in business and generally if the people of St. Kitts and Nevis do not develop this culture.

Pursuit of this worthy goal should not be limited to the promising programmes under development such as ‘Elevate’ but should be the subject of a national dialogue and awareness campaign.