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The Associated States of the Commonwealth Caribbean: The Constitutions and the Individual

WILLIAM C. GILMORE*

I. INTRODUCTION

With the demise of the West Indies Federation in 1962¹ and the subsequent inability of the Leeward Islands, Windward Islands and Barbados to establish a "truncated" federation in the Eastern Caribbean,² the British authorities were faced in the Commonwealth Caribbean³ with the problem of devising a scheme of partial decolonization which could come to terms with the social, political, and economic realities of the separate societies of the smaller Eastern islands:

Some had the resources adequate to support the usual attributes of internal self-government; none had a population of over 100,000, or the revenue a country would need to sustain the trappings of full independence, and none appeared anxious to gyrate on the international scene. On the other hand, the United Kingdom was committed to decolonization as rapidly as possible, seeing no reason to present itself any longer as a major target for anticolonialist rancour at the United Nations.⁴

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1. For the statutory authorization for the creation of the Federation and for its constitutions see R. PREISWERK, *DOCUMENTS ON INTERNATIONAL RELATIONS IN THE CARIBBEAN* 285-329 (1970). A concise account of the factors contributing to the demise of the Federation is, Springer, *Federation in the Caribbean: An Attempt that Failed*, in *THE AFTERMATH OF SOVEREIGNTY* 189-213 (1973).

2. Lewis, *The Agony of Eight*, in *THE AFTERMATH OF SOVEREIGNTY* (1973); Marshall, *Attempts at Windward/Leeward Federation*, 18 *CARIB. Q.* 9-15 (1972); Phillips, *A Decade of West Indian Constitutionalism, 1957-1967*, at 105 (1968) (unpublished M. Cl. Thesis, McGill University, Montreal). Barbados subsequently became independent, see generally *REPORT OF THE BARBADOS CONSTITUTIONAL CONFERENCE*, CMND No. 3058 (1966). For the original text of the Barbadian Constitution see *BARBADOS STAT. INST.* 1966, No. 1455, 2d Sched.

3. The term "Commonwealth Caribbean" is now commonly used to indicate all of the past and present possessions of the United Kingdom within the Caribbean region, including Guyana and Belize.

4. S.A. DE SMITH, *MICROSTATES AND MICRONESIA* 69 (1970).

To the British authorities, neither independence nor traditional formulas of colonial government seemed appropriate.⁵ In response to these needs there evolved, in the summer of 1965, the basic outlines of a new constitutional experiment to be placed in the decolonization "laboratory" of the Caribbean;⁶ it was that of statehood in association with the "mother country."

Based substantially on the existing relationship between New Zealand and the Cook Islands,⁷ the association experiment consisted of four parts. First, there would be a grant of virtual autonomy, to the six territories⁸ in their internal affairs. Second, the individual units would be given the power to unilaterally terminate the status of association and move on to independence should they so desire. Third, the United Kingdom was to remain responsible for the exercise of power and authority in the spheres of external affairs, defense, citizenship, and "royalty." In this regard, the United Kingdom was to retain the executive and legislative capacity necessary to carry out these tasks in full. Finally, assurances were given to the effect that the territories would remain eligible to receive aid from Britain. It was also recognized that direct budgetary aid would not be precluded.⁹

This status relationship was finally embodied in the West Indies Act of 1967.¹⁰ Since that time, the plan has attracted a fair amount of academic comment,¹¹ particularly in relation to the nature of the

5. Certain of the delegations at the Windward Islands Constitutional Conference asked the United Kingdom to consider the alternative of a grant of full internal self-government along the lines of the more traditional colonial formula. See REPORT OF THE WINDWARD ISLANDS CONSTITUTIONAL CONFERENCE, CMND No. 3021 (1966), at 6-7 [hereinafter cited as WINDWARD ISLANDS CONSTITUTIONAL CONFERENCE].

6. The use of the term "laboratory" is one borrowed from Ince, *The Decolonization of Grenada in the U.N.*, in INDEPENDENCE FOR GRENADA—MYTH OR REALITY? 43 (1976). At the time of the formulation of these proposals there existed, within the Caribbean, examples of the three basic methods of decolonization thus far attempted; full independence, integration into the body politic of the metropole, and Commonwealth status as it existed in Puerto Rico.

7. See the statement of Lord Brockway, 280 PARL. DEB. H.L. (5th ser.) col. 162 (1967). For a review of the Cook Islands scheme see A. LEIBOWITZ, *COLONIAL EMANCIPATION IN THE PACIFIC AND THE CARIBBEAN* 132-46 (1976).

8. Antigua, Dominica, Grenada, St. Kitts (St. Christopher)/Nevis/Anguilla, St. Lucia, and St. Vincent. Montserrat, with its land area of 39.5 square miles and population of 15,000, was to retain its Crown Colony status without immediate change.

9. See generally CONSTITUTIONAL PROPOSALS for Antigua, St. Kitts/Nevis/Anguilla, Dominica, St. Lucia, St. Vincent, Grenada. CMND No. 2865 (1965) [hereinafter cited as CONSTITUTIONAL PROPOSALS].

10. West Indies Act, 1967, c. 4.

11. See generally Broderick, *Associated Statehood*, 17 INT'L & COMP. L.Q. 368 (1968), and W. Gilmore, *Legal Perspectives on Associated Statehood in the Eastern Caribbean* (forthcoming).

precarious balance between internal autonomy, reserved powers, and unilateral termination.¹² However, little attention has thus far been paid to the new internal constitutional structures which came into effect with the advent of Associated Statehood. It is the intention of this paper to take a first step in redressing that imbalance in the literature.

In approaching this task, the author will endeavor, by way of an overview or "macro" approach, to illustrate the essential structural elements of the systems of democratic government which have been introduced in these West Indian states. In addition, and of equal importance, the author will seek to convey an understanding of the nature and extent of individual rights, duties, and obligations within those structures. Such an examination will also attempt to provide some insights into the implicit assumptions upon which the Westminster system of government is based.¹³

II. OVERVIEW OF THE CONSTITUTIONAL STRUCTURE

Origins of the Constitutions

From the time of the 1965 "Oxford Conference,"¹⁴ it had been agreed that, upon the introduction of Associated Statehood, new constitutional structures for the islands would be promulgated.¹⁵ The nature and extent of these changes were discussed at the various constitutional conferences in 1966,¹⁶ and generally were agreed to by both British and island representatives.¹⁷

Thus, under the authority of section 5(1) of the West Indies Act, Her Majesty was given the necessary powers to provide for such new

12. See, e.g., P. ALLEYNE, C. GAIRAJ & H.J. GEISER, *LEGAL PROBLEMS OF CARIBBEAN INTEGRATION* (1976); W. BRISK, *THE DILEMMA OF A MINI-STATE: ANGUILLA* (1969); Simmonds, *Associated Statehood: A Caribbean Dilemma*, in 2 *MISCELLANEA W.J. GANSHOF VAN DER MEERSCH: STUDIA AD DISCIPULIS AMICISQUE IN HONOREM EGREGII PROFESSORIS EDITA* 455 (1972).

13. See Patchett, *Legal Problems of the Mini-State: The Caribbean Experience*, 1975 *CAMBRIAN L. REV.* 57 [hereinafter cited as *The Caribbean Experience*].

14. For a brief description of this rather unusual event see, 740 *PARL. DEB.*, H.C. (5th ser.) 337 (1967).

15. See *CONSTITUTIONAL PROPOSALS*, *supra* note 9, at 5-11.

16. See generally *REPORT OF THE ANTIGUA CONSTITUTIONAL CONFERENCE*, CMND No. 2963 (1966); *REPORT OF THE ST. KITTS/NEVIS/ANGUILLA CONSTITUTIONAL CONFERENCE* CMND No. 3031 (1966); *WINDWARD ISLANDS CONSTITUTIONAL CONFERENCE*, *supra* note 5.

17. In the context of the Grenada discussion in particular, opposition elements objected to the formulation agreed upon in a number of key areas. See *WINDWARD ISLANDS CONSTITUTIONAL CONFERENCE*, *supra* note 5, at 42-47.

constitutions by way of Orders in Council. In each case, the new constitutions became operative on the day that the new status took effect,¹⁸ with the intent that they "be a meaningful and authoritative expression of a permanent, as distinct from a transitional, system of government."¹⁹

These individual constitutional instruments are characterized by a substantial similarity both in terms of their general approach to the overall structure of government and in terms of the specific provisions adopted to implement that structure.²⁰ This is not to say, however, that they are all identical for, as shall be discussed below, there are certain substantive differences between them, which were inserted to take account of particular local conditions or political views.

The new constitutions also bear a striking resemblance to the fundamental laws of the then independent Commonwealth Caribbean States,²¹ in particular, those of Jamaica and Barbados;²² in fact, it appears that "the leaders of the smaller territories would have no less."²³

18. The appropriate constitutional citations are as follows: ANTIGUA STAT. INST. 1967 [hereinafter cited as ANTIGUA CONST.], No. 225, 2d Sched.; DOMINICA STAT. INST. 1967 [hereinafter cited as DOMINICA CONST.], No. 226, 2d Sched.; GRENADA STAT. INST. 1967 [hereinafter cited as GRENADA CONST.], No. 227, 2d Sched.; ST. KITTS/NEVIS/ANGUILLA STAT. INST. 1967 [hereinafter cited as ST. KITTS CONST.], No. 228, 2d Sched.; ST. LUCIA STAT. INST. 1967 [hereinafter cited as ST. LUCIA CONST.], No. 229, 2d Sched.; ST. VINCENT STAT. INST. 1969 [hereinafter cited as ST. VINCENT CONST.], No. 1500, 2d Sched. Since Grenada is no longer a state in association with the United Kingdom, references to its former constitution will be inserted only when circumstances so require. The present anomalous situation in Anguilla will not be treated here; see W. Gilmore, *supra* note 11, at Part c.

19. Forbes, *The West Indies Associated States: Some Aspects of the Constitutional Arrangements*, 19 SOCIAL & ECON. STUDIES 59 (1970) [hereinafter cited as *Constitutional Arrangements*].

20. See SIR F. PHILLIPS, *FREEDOM IN THE CARIBBEAN* 81 (1977). See also Forbes, *Subsidiary Lawmaking Process: Antigua, Dominica and St. Kitts*, 18 INT'L & COMP. L.Q. 533, 534 (1969).

21. At that time, these were BARBADOS STAT. INST. 1966, No. 1455, 2d Sched.; GUYANA STAT. INST. 1966, No. 575, 2d Sched.; JAMAICA STAT. INST. 1962, No. 1550, 2d Sched.; and TRINIDAD AND TOBAGO STAT. INST. 1962, No. 1875, 2d Sched.

22. For instance, Trinidad and Tobago adopted a rather different form for the protection of Fundamental Rights and Freedoms, while Guyana, although adopting a unicameral legislature, provided for election by way of proportional representation. Neither of the above is reflected in any of the constitutions of the Associated States. As we have noted elsewhere, one should recall that the constitution of Barbados was itself considerably influenced by that of Jamaica. See Gilmore, *Sugar and Agricultural Diversification in the Barbadian Economy: An Overview, 198-204* (1977) (unpublished M.A. thesis, N.P.S.I.A., Carleton University, Ottawa).

23. Phillips, *supra* note 2, at 118.

The relevance of these independence enactments was specifically mentioned by Mrs. Hart, then Minister of State for Commonwealth Affairs, upon the occasion of the Second Reading of the West Indies Bill. She stated, in part; that each enactment "contains the provisions which are normal in a modern independence Constitution, subject to the requirements of our responsibility for defense and external affairs, and also the preservation of a common citizenship."²⁴ Notwithstanding these qualifications, the constitutions of the Associated States differ from the earlier independence enactments in other respects.²⁵

Although it is arguable that insufficient attention may have been paid to "the legal problems which are the consequence of . . . smallness,"²⁶ a recognition of these factors did have an impact on the nature of certain constitutional provisions. In this regard, the composition of the legislature and the judicature, and the roles of the Attorneys General, the Directors of Public Prosecution, and the "Speakers" are perhaps the most obvious examples of the individual tailoring of the constitutions.²⁷ All of these constitutional documents are similar in the sense that they seek to reproduce, in some fashion, the basic elements of what has come to be known as "the Westminster model" of parliamentary democracy.²⁸

In spite of the fact that serious questions have been posed as to the utility of exporting such a structure of government to underdeveloped entities,²⁹ it appears that no serious consideration, on either side, was given to the possibility of fundamental innovation. The basic reasons for this omission, which is by no means confined to the Caribbean territories, are perhaps best expressed in the following words of the late Professor de Smith:

Administering countries have tended to reproduce their own constitutional features in their dependent territories. Their wards, after having served a prolonged and zealous pupilage, will in due course be admitted to membership of that select club which enjoys

24. 740 PARL. DEB. H.C. (5th ser.) 340 (1967).

25. See Phillips, *supra* note 2, at 118.

26. Patchett, *The Caribbean Experience*, *supra* note 13, at 57.

27. See notes 61-86 *infra* and accompanying text.

28. Lord Diplock stated that "there can be discerned in all those constitutions which have their origin in an Act of the Imperial Parliament at Westminster or in an Order in Council, a common pattern and style of draftsmanship which may conveniently be described as the 'Westminster model.'" *Hinds v. The Queen* [1976] 1 All E.R. 353, 360.

29. See, e.g., REPORT OF THE TRINIDAD AND TOBAGO CONSTITUTION COMMISSION 7, 13 (1974) [hereinafter cited as TRINIDAD AND TOBAGO REPORT]. Similar views have been frequently expressed elsewhere.

the full benefits of the metropolitan system of government. And the very fact of being denied some of these privileges, ostensibly on the ground that they are not ready to receive them, has stimulated among dependent peoples a clamant demand for the authentic article.³⁰

Thus, not only do the constitutional elements in question reflect the "master craftsmanship of the Colonial Office"³¹ and hence reflect British self-interest, they also meet the expressed desires and aspirations of the local political leaders.³² Consequently, it is apparent that the basic purpose of these clearly non-autochthonous constitutional creations³³ was to reproduce "the form of government and the balance of powers evolved in the United Kingdom."³⁴

The version of the Westminster system adopted by the Associated States can be more accurately described as a colonial export model, in that it differs from the existing British system in several important respects: the absence of the doctrine of the sovereignty of Parliament, the existence of the power of judicial review, the specification of fundamental rights provisions, and the fact that these constitutions are committed to writing.

There are, in addition, a host of relatively minor changes which implant as rules of law many of the recognized British political and constitutional conventions: "[T]he Westminster model has undergone a number of modifications in its journeys overseas. Most of these modifications have been designed either to give concrete expressions to principles which in Britain rest upon unwritten understandings or to afford reassurance to minority groups."³⁵

30. S.A. DE SMITH, *supra* note 4, at 95. The desire to ensure the continuity of a structure with which many were familiar was more important within a Jamaican context than in the case of Associated States. See notes 170-173 *infra* and accompanying text.

31. Forbes, *Constitutional Arrangements*, *supra* note 19, at 58.

32. See generally Munroe, *Origins of the Jamaica Independence Constitution*, 1972 JAMAICA L.J. 58. For an "ontological" overview and analysis of the processes used in its drafting, see Kelly, *The Jamaican Independence Constitution of 1962*, 3 CARIB. STUD. 18 (1962).

33. Autochthony, from the Greek meaning "sprung from that land itself." An autochthonous constitution is, following the precedent established by K.C. Wheare, one which is not imported from the United Kingdom. See K.C. WHEARE, *THE CONSTITUTIONAL STRUCTURE OF THE COMMONWEALTH* 89 (1960). It is also difficult to classify such constitutions as autochthonous in a political sense. See Munroe, *supra* note 32, at 65-66.

34. Patchett, *English Law in the West Indies: A Conference Report*, 12 INT'L & COMP. L.Q. 922, 923 (1963).

35. S.A. DE SMITH, *THE NEW COMMONWEALTH AND ITS CONSTITUTIONS* 107

Each of the constitutional instruments in question establishes the principal organs of government, defines their interrelationships, and imposes limitations within which each must operate.

The Head of State

Each of the territories retains the British Monarch as the head of State.³⁶ Her Majesty is to be represented locally by a Governor. Unlike the position of Governor in the more traditional type of colonial relationship, however, such a person is, by and large, "relieved of any political or legal responsibility for the actual business of government."³⁷ As in the Dominions and the independent Commonwealth Caribbean states which are not Republics,³⁸ the office of Governor in the Associated States is designed to provide a symbol of and a focal point for national unity. The Governor is appointed by Her Majesty, primarily upon the advice of the local Premier.³⁹

In practice, the formulation of principles on such appointments would appear to be somewhat more restrictive of local control than had been anticipated at the time of the 1965 Constitutional Proposals.⁴⁰ Although the appropriate British Minister (in practice, the Secretary of State) will normally follow the recommendation of the local Premier in tendering advice to the Monarch, he will not do so if he finds "that there are substantial reasons to act otherwise."⁴¹ In the

(1964). In the analogous case of Jamaica, Munroe stated, "(A)ny violence done to Westminster procedures was justified primarily in terms of inscribing Westminster conventions in the structure of the sovereign Jamaican State." T. MUNROE, *THE POLITICS OF CONSTITUTIONAL DECOLONIZATION: JAMAICA 1944-1962*, at 157 (1972).

36. See ANTIGUA CONST., § 17; DOMINICA CONST., § 18; ST. KITTS CONST., § 19; ST. LUCIA CONST., § 19; and ST. VINCENT CONST., § 19.

37. Forbes, *Constitutional Arrangements*, *supra* note 19, at 68.

38. Following their independence, Guyana and Trinidad and Tobago have transformed themselves into Republics; the remaining states have not.

39. This intent was first expressed at the time of the 1965 Constitutional Proposals:

The Queen's Representative will be appointed by Her Majesty. In relation to such appointments it will be understood, although not expressed in law, that the Secretary of State will be guided by the advice of the Chief Minister of the Territory when submitting advice to Her Majesty; there will be consultation between the British Government and the Chief Minister before the Chief Minister makes any recommendation to the Secretary of State.

CONSTITUTIONAL PROPOSALS, *supra* note 9, at 5.

40. Commonwealth Office Grenada Dispatch No. 83 of 22 February 1967 (H. Bowden to I.C. Turbott, Administrator of Grenada. The conditions were accepted by Grenada in Dispatch No. 58 of 23 February 1967 (I.C. Turbott to H. Bowden).

41. Dispatch of February 22, *supra* note 40, at para. 2(b).

final analysis, the understanding protects the position of the local Premier only to the extent that consultations on the appointment are mandatory and that "the United Kingdom Minister will not advise Her Majesty to appoint a person known by him to be unacceptable to the Premier."⁴²

The above formula is less reflective of local autonomy than that used for the independent entities of the Commonwealth; what this indicates "is that the British Government wishes to take a much more direct interest in the appointment of the Queen's Representative in the associated states than in the case of independent states."⁴³

The Executive

It is within the sphere of executive activity that the influence of the "pure" Westminster model is most evident. The primary distinguishing factor lies in the fact that "the conventions which have evolved in the United Kingdom constitution have been committed to a written form and [become] a legal obligation" in the Associated States' constitutions.⁴⁴

As a formal matter, the executive authority of the State is vested in Her Majesty and exercised on her behalf by the Governor, either directly or through officers subordinate to him.⁴⁵ In reality, however, such powers inhere in the Cabinet and, except in certain extraordinary circumstances, the Governor is directed to act in accordance with the advice of that body.⁴⁶

The Cabinet structure is accorded official constitutional recognition and it is to be collectively responsible to Parliament for the general direction and control of the government.⁴⁷ It is comprised of the Premier and such other persons as may be appointed by the Governor acting upon his advice.⁴⁸ Its members, with the possible

42. *Id.* at para. 2(c).

43. Forbes, *Constitutional Arrangements*, *supra* note 19, at 69.

44. Patchett, *English Law in the West Indies*, *supra* note 34, at 923.

45. See ANTIGUA CONST., § 17; DOMINICA CONST., § 18; ST. KITTS CONST., § 19; ST. LUCIA CONST., § 19; and ST. VINCENT CONST., § 19.

46. ANTIGUA CONST., § 69(1); DOMINICA CONST., § 55(1); ST. KITTS CONST., § 55(1); ST. LUCIA CONST., § 56(1); ST. VINCENT CONST., § 55(1).

47. ANTIGUA CONST., § 61(1); DOMINICA CONST., § 52(3); ST. KITTS CONST., § 52(1); ST. LUCIA CONST., § 53(2); ST. VINCENT CONST., § 52(2).

48. *E.g.*, ANTIGUA CONST., § 62(3).

exception of the Attorney General,⁴⁹ are to be drawn from the legislative body or bodies.⁵⁰

In the affairs of the Cabinet, the Office of the Premier, as is normal, is the *locus* of power. Not only does he control the appointment of his Cabinet colleagues and their removal, he is also responsible for the assignment of all of the portfolios of government.⁵¹ In addition, he summons the Cabinet,⁵² and advises the Governor on the appointment of all Parliamentary Secretaries.⁵³ In recognition of his position of preeminence within the governmental structure, the Premier also retains the power to appoint key figures to both the legislative body⁵⁴ and the civil service.⁵⁵

Following the traditional formula, the Premier is selected by the Governor. The Antigua Constitution states:

The Governor, acting in his discretion shall appoint as Premier the member of the House of Representatives who appears to him best able to command the support of the majority of the members of that House and who is willing to be appointed.⁵⁶

Yet, in an area characterized by large Parliamentary majorities,⁵⁷ the Governor exercises this discretionary power only in the rare event that no party has an absolute majority in the "House."

The Premier will continue to hold office as long as he remains a member of the House of Representatives and maintains the confidence of the legislature. Unlike in the United Kingdom, a lack of confidence must normally be expressed in the form of a resolution of no confidence in the Government.⁵⁸ The Governor also may, in his discretion, remove a Premier from office prior to the first meeting of the Legislature if, subsequent to a general election, "he considers that in consequence of changes in the membership of the House re-

49. ANTIGUA CONST., § 61(3); DOMINICA CONST., § 52(2); ST. KITTS CONST., § 51(2); ST. LUCIA CONST., § 104(4); ST. VINCENT CONST., § 52(2).

50. *E.g.*, ST. VINCENT CONST., § 51(4).

51. ANTIGUA CONST., § 65; DOMINICA CONST., § 53; ST. KITTS CONST., § 53; ST. LUCIA CONST., § 54; ST. VINCENT CONST., § 53.

52. *E.g.*, ANTIGUA CONST., § 66.

53. *E.g.*, DOMINICA CONST., § 59.

54. *See generally* notes 60-101 *infra* and accompanying text.

55. *But see* notes 138-158 *infra* and accompanying text.

56. ANTIGUA CONST., § 62(6). *See also* DOMINICA CONST., § 51(2); ST. KITTS CONST., § 50(2); ST. LUCIA CONST., § 51(2); ST. VINCENT CONST., § 51(2).

57. *See* Emmanuel, *Independence and Viability: Elements of Analysis*, in *SIZE, SELF-DETERMINATION AND INTERNATIONAL RELATIONS: THE CARIBBEAN* 13-14n. 16 (1976).

58. ANTIGUA CONST., § 63(2); DOMINICA CONST., § 51(6); ST. KITTS CONST., § 50(6); ST. LUCIA CONST., § 51(6)(a); ST. VINCENT CONST., § 51(6)(a).

sulting from that election the Premier will not be able to command the support of a majority of the members of the House.”⁵⁹ In normal circumstances, the removal of the Premier requires that his ministers also vacate their offices.⁶⁰

The Legislature

As with the independent states of the Commonwealth Caribbean, the constitutions of the Associated States focus on the composition, powers, privileges and immunities of the central governments of their unitary states. The sole exception is in the case of St. Kitts/Nevis/Anguilla, where, as requested at the 1966 conference,⁶¹ recognition has also been given to the position of “local government” in Nevis and Anguilla.⁶²

In terms of the structure of the legislative branch of government, a significant departure from tradition has occurred with the choice of a unicameral legislature by all of the Associated States except for Antigua and Grenada. At the same time, however, the strong West Indian tradition of government by nominated legislators remains evident. In this regard, the recent Constitutional Commission Report for Trinidad and Tobago stated that:

There is . . . a strong tradition of government by nomination, a fear that the elected person will not be as educated or as intelligent as the nominated member and consequently will not be as capable of making decisions for the country.⁶³

This tradition of government by nomination is most evident in Antigua, the only existing Associated State with a bicameral legislature. The Antiguan Upper House or Senate is composed entirely of nominated persons. Of its ten members, seven are appointed by the Governor upon the advice of the Premier, the others being appointed by the Governor “acting in his discretion after consultation with the Premier.”⁶⁴ In Antigua, unlike members of the House of Lords,

59. *E.g.*, ANTIGUA CONST., § 63(3).

60. *Id.* at § 64(4)(a).

61. *See* REPORT OF THE ST. KITTS/NEVIS/ANGUILLA CONSTITUTIONAL CONFERENCE, *supra* note 16, at 9.

62. *See* ST. KITTS CONST., § 109. *See also*, the Parliamentary discussion of this matter, *supra* note 7, at cols. 409 and 410; Forbes, *The Nevis Local Council: A Case of Formalism in Structural Change*, 11 CARIB. STUD. 21 (1971).

63. TRINIDAD AND TOBAGO REPORT, *supra* note 29, at 43. Within the specific context of the Associated States, see Forbes, *Constitutional Arrangements*, *supra* note 19, at 64-65.

64. ANTIGUA CONST., § 23.

nominated members don't have any real form of security of tenure. This is normal in Commonwealth Caribbean states. Although in the normal course of events they will vacate their seats upon the dissolution of Parliament, they may be removed from office at any time by the Governor, who shall act in accordance with the advice of, or as the case may be, after consultation with, the Premier.⁶⁵

In the remaining territories, with the exception of St. Kitts/Nevis/Anguilla, the one legislative body includes a certain number of nominated members, usually three.⁶⁶ In St. Kitts/Nevis/Anguilla, when the Attorney General is a nominated member, the total will be four.⁶⁷ As with Antigua, the Governor appoints the majority of such members upon the advice of the Premier;⁶⁸ the remainder are appointed either upon the advice of the Leader of the Opposition⁶⁹ who, in every territory except Antigua, is given constitutional recognition,⁷⁰ or "by the Governor acting in his own deliberate judgment."⁷¹ As in the case of Antigua, security of tenure has not been a major consideration. A nominated member may, at any time, be removed from office by the Governor acting upon the advice of the official upon whose advice such member was appointed in the first instance.⁷² In St. Lucia, however, dismissal in this fashion is not permitted. The nominated member, except in certain circumstances,⁷³ will retain his seat until the occurrence of the first dissolution of the House, subsequent to his appointment.⁷⁴

65. *Id.* at § 26. It is for this reason that Forbes has stated that "[i]t is within the absolute will of the Premiers to reduce the Senate to the position of the imitative monkey of the calypso which docilely does anything at all its master wishes it do." Forbes, *Constitutional Arrangements*, *supra* note 19, at 76.

66. DOMINICA CONST., § 23(1)(b); ST. LUCIA CONST., § 24(1)(b); ST. VINCENT CONST., § 24(1)(b).

67. ST. KITTS CONST., § 24(2).

68. DOMINICA CONST., § 27; ST. KITTS CONST., § 28; ST. LUCIA CONST., § 28(1)(a); ST. VINCENT CONST., § 28.

69. DOMINICA CONST., § 27; ST. KITTS CONST., § 28; ST. VINCENT CONST., § 28.

70. DOMINICA CONST., § 58; ST. KITTS CONST., § 59; ST. LUCIA CONST., § 60; ST. VINCENT CONST., § 69.

71. ST. LUCIA CONST., § 28 (1)(b). *See also* the terms of ST. LUCIA CONST., § 28(2).

72. DOMINICA CONST., § 28(2); ST. KITTS CONST., § 29(2); ST. VINCENT CONST., § 29(2). Also of interest in this regard is *In re Maharaj*, [1966] 10 W.I.R. 149.

73. ST. LUCIA CONST., § 29(2)(a), 30.

74. *E.g.*, ST. LUCIA CONST., § 29(1). In addition, the constitutions, as is normal, establish certain qualifications for membership in both elected and nominated categories, such as citizenship. They also provide for the disqualification of members in cases in bankruptcy, insanity, criminal convictions, and so forth.

Notwithstanding this strong West Indian tradition of government by nominated legislators, however, in all of the unicameral legislatures, elected members from constituencies represented by one person are dominant. In Antigua, the House of Representatives, an elected body, is clearly in a position of predominance vis-à-vis the Senate.

While following the tradition of government by nomination, the majority of the Associated States have been more innovative with regard to the structure of the government. Aware that their "smallness," and especially their underdevelopment, will mean a scarcity of adequately trained persons, they have generally chosen to have only one legislative chamber. It is significant that St. Lucia, which retained the option of creating a second chamber,⁷⁵ has resisted such a move, in spite of the simple constitutional procedure for doing so and the obvious opportunities for political patronage which such a move would occasion.

Evidence of these same factors can be seen in the roles given to the Speaker of the Legislature (or of the House of Representatives, as in Antigua) and to the Attorney General. Each of the constitutions empowers the Legislature or Lower House, as the case may be, to elect a Speaker who is not a legislator,⁷⁶ and who "shall be a member of the House by virtue of holding that office."⁷⁷ Barring subsequent disqualification, the Speaker holds office until the first meeting of the legislative body taking place after dissolution. In instances where the Attorney General is a public officer, he shall, by virtue of his office, be an *ex officio* member of the House.⁷⁸ Additionally, in Antigua, at the request of the Speaker of the Senate, the Attorney General may attend its sittings, and take part in the proceedings of the Senate which relate to the business specified in the request, as if he were a member of that body. He may not, however, vote in the Senate.⁷⁹

Although the constitutions pay some attention to the scope of the privileges and immunities of the legislative branch of government,⁸⁰

75. See ST. LUCIA CONST., Sched. 2, for details of this "Standby scheme."

76. ANTIGUA CONST., § 34(2); DOMINICA CONST., § 29(2); ST. KITTS CONST., § 30(2); ST. LUCIA CONST., § 31(2); ST. VINCENT CONST., § 30(2).

77. E.g., DOMINICA CONST., § 29(5)(b).

78. DOMINICA CONST., § 23(3); ST. KITTS CONST., § 24(4); ST. LUCIA CONST., § 24(3). Much the same result is arrived at in Antigua by virtue of the terms of ANTIGUA CONST., § 30(3).

79. ANTIGUA CONST., § 29.

80. See, e.g., ANTIGUA CONST., §§ 8(1)-(2), 48, 49, 51; DOMINICA CONST., §§ 8(1), 8(8), 32, 35, 43; ST. KITTS CONST., §§ 8(1), 8(8), 33, 43; ST. LUCIA CONST., §§ 8(1), 8(8), 34, 37, 45; ST. VINCENT CONST., §§ 8(1), 8(8), 35, 45, 46.

these are matters which are primarily regulated by local statute⁸¹ and by the common law.⁸²

Considerable attention is devoted within the constitutions to defining the manner in which the legislature actually functions. Each legislature is given the authority to make laws for the peace, order, and good government of the state.⁸³ As with the "pure" Westminster model, the normal method of expressing the legislative will is through passage of bills by a simple majority of those legislators present and voting, subject only to quorum requirements.⁸⁴

In Antigua, like the House of Lords, legislative measures passed in the appropriate manner by the House of Representatives can become law notwithstanding the absence of a simple majority in the Senate. The powers of the Senate are essentially those of delay rather than veto⁸⁵ and are particularly limited with regard to "Money Bills."⁸⁶

The Amendment Process

Following the general pattern of the constitutions of the "New Commonwealth,"⁸⁷ (unlike the position in the United Kingdom), any legislation designed to amend the basic constitutional instruments of the Associated States⁸⁸ is subject to special procedures. A statement in the Report of the Constitution Commission of Trinidad and Tobago illustrates the rationale behind these procedures:

81. For example, in St. Kitts, this would be the Legislative Council (Powers and Privileges) Act, 1961, c. 167; in St. Vincent, the Legislative Council (Privileges, Immunities and Powers) Act, Revised Laws, 1966, Title VI, c. 2.

82. See generally *Jagan v. Gajraj*, [1963] 5 W.I.R. 333.

83. ANTIGUA CONST., § 37; DOMINICA CONST., § 33; ST. KITTS CONST., § 34; ST. LUCIA CONST., § 35; ST. VINCENT CONST., § 36. An authoritative definition of this term is to be found in the Trinidad and Tobago case of *In re Prakesh Seereeram* (Unreported Court of Appeal decision, Civil Appeals nos. 11, 15) (1975) (Rees, J.A.), at 13.

84. It is of significance to note that a Speaker who is not otherwise a member of the House, with the exception of Antigua, has no vote. See DOMINICA CONST., § 39(3); ST. KITTS CONST., § 39(3); ST. LUCIA CONST., § 41(3); ST. VINCENT CONST., § 41(3). For the position in Antigua, see ANTIGUA CONST., § 41(2)-(3).

85. ANTIGUA CONST., § 46.

86. *Id.* at § 45(1), as defined in § 47. See also ANTIGUA CONST., § 44(2).

87. The term "New Commonwealth" was issued to differentiate the Commonwealth Third World States from the "Old Dominions," such as Canada and Australia.

88. In addition to the constitutional text, a certain sanctity is also accorded to certain provisions of the Orders in Council establishing and regulating the regional judiciary. See, e.g., ANTIGUA CONST., § 38; DOMINICA CONST., § 34; ST. KITTS CONST., § 35; ST. LUCIA CONST., § 36; ST. VINCENT CONST., § 37. See also STAT. INST. 1967, No. 224.

The rationale would seem to be that in a multiracial society. . . there is always likely to be, quite understandably, some measure of anxiety that the basically agreed constitutional structure may at some time be radically changed by a narrow majority. Hence care should be taken to require a broad consensus before an important alteration can be effected.⁸⁹

In each of the constitutions, two distinct amending procedures are outlined, which specifically distinguish those "basic clauses" essential to "the arrangements for democratic government" from other clauses of the constitution.⁹⁰ In effect, the instruments provide for two levels of constitutional entrenchment.

The most essential provisions are enumerated in Schedule 1 of each of the constitutions. These provisions can be amended only by way of the same onerous procedures which have been established for unilateral termination of the status arrangement by the individual Associated States.⁹¹ These procedures require a nine-day "cooling off" period, a two-thirds majority of all elected members of the legislature, and an affirmative vote by the electorate, equal to two-thirds of all votes cast in a referendum.⁹² In Antigua, because of its bicameral legislature, the process is, in theory at least, even more complex.⁹³

As to the constitutional sections not included in Schedule 1, the mechanisms for amendment are more straightforward.⁹⁴ In those territories which have only one chamber, a two-thirds majority of *all* of the *elected* members of that House is required for amending these "non-basic clauses."⁹⁵ In Antigua, a similar two-thirds rule is used insofar as the lower House is concerned; the upper House, which has no effective veto power and which, in any event, has a built-in government majority, continues to act only as a potential delay to the change.⁹⁶

89. TRINIDAD AND TOBAGO REPORT, *supra* note 29, at 107.

90. CONSTITUTIONAL PROPOSALS, *supra* note 9, at 3.

91. West Indies Act, 1967, c. 4, at § 10(1), which is to be read in conjunction with Schedule 2 thereof.

92. DOMINICA CONST., § 34(3); ST. KITTS CONST., § 35(3); ST. LUCIA CONST., § 36(3); ST. VINCENT CONST., § 37(3).

93. ANTIGUA CONST., § 38(4).

94. Measures designed to amend the constitutional position of local government for Nevis or Anguilla require a rather complex formula; *see* ST. KITTS CONST., § 35(4).

95. DOMINICA CONST., § 34(2); ST. KITTS CONST., § 35(2); ST. LUCIA CONST., § 36(2); ST. VINCENT CONST., § 37(2).

96. ANTIGUA CONST., §§ 38(2)-(3). In Antigua, the Premier appoints the majority of the Senate's members.

As a result of these amending procedures, a certain amount of the flexibility that characterizes the British constitutional framework⁹⁷ is lost. The general view appears to be that, although a degree of constitutional rigidity results, it "is by no means an unreasonable price for maintaining public confidence or mutual trust."⁹⁸ In fact, given social and political realities, the degree of difficulty which is placed in the way of the legislatures, especially with regard to the "non-basic" sections, may not be great.

An appropriate perspective is provided by Forbes:

[T]he requirements of a two-thirds majority as a precautionary safeguard against whimsical amendment loses a great deal of the significance intended by the framers of the constitutions because of the existence of social structures which facilitate the development of dominant mass party systems, in which the party leaders are the central overtopping figures who exercise a close personal control.⁹⁹

In addition, section 5(4) of the West Indies Act of 1967 provides an opportunity to circumvent these mechanisms:

Where the constitution of an associated state provided by a Constitution Order has come into effect, Her Majesty may at any time, by Order in Council made at the request and with the consent of that state, alter that constitution or any part of that constitution, or alter any law which alters that constitution or any part of it.¹⁰⁰

The legislature of each of the States, by a simple majority of those present and voting, can request the initiation of this procedure.¹⁰¹ Although the British authorities have clearly indicated that they will not feel obliged to comply with such a "request and consent,"¹⁰² it is evident that they would be reluctant to refuse to do so.¹⁰³

The Superior Courts

It is within the structure of the Superior Courts that deviation from constitutional norms is most evident. Of particular interest is the

97. Patchett, *English Law in the West Indies*, *supra* note 34, at 923-24.

98. TRINIDAD AND TOBAGO REPORT, *supra* note 29, at 107.

99. Forbes, *Constitutional Arrangements*, *supra* note 19, at 78.

100. West Indies Act, 1967, c. 4 § 5(4).

101. *Id.* at § 19(5).

102. As was stated in the 1965 Constitutional Proposals: "It will be understood that there will be no obligation on the British Parliament or Her Majesty in Council to comply with a request from the territory to alter its Constitution." CONSTITUTIONAL PROPOSALS, *supra* note 9, at 7.

103. See, e.g., STAT. INST. 1974, No. 197, Sched. 1.

establishment, under the authority of the West Indies Act, of a common Supreme Court structure for all the Associated States.¹⁰⁴ This body is "divided into a High Court and Court of Appeal, with a High Court judge resident in each State."¹⁰⁵

The creation of such a structure, however, was not revolutionary. In fact, it could be described more accurately as the natural outgrowth of the twin forces of tradition and innovative conservatism. It is traditional in the sense that a system of common courts has been in existence for these islands since 1859.¹⁰⁶ Its structure is really innovative only in that, by the exercise of its jurisdiction over Montserrat and the British Virgin Islands,¹⁰⁷ the system applies simultaneously to entities with differing forms of constitutional status.¹⁰⁸

An Imperial Order in Council created the common Supreme Court and established the basis for its jurisdiction.¹⁰⁹ It provides that within each territory, the divisions of the Court shall have such jurisdiction and powers as may be conferred on them by the Constitution or any other law of the State. In addition, the Order provides that "the process of the Supreme Court shall run throughout the States and any judgment of the Court shall have full force and effect and may be executed and enforced in any of the States."¹¹⁰ The Constitutions have, by specific provisions, granted to this body extensive jurisdictional powers in relation to such matters as constitutional interpretation, fundamental rights, and membership of Parliament.¹¹¹

Although it is true that "[t]he constitutions do not anywhere explicitly give the Supreme Court jurisdiction to review substantive legislation and to pronounce upon the *vires* of such legislation,"¹¹² it

104. West Indies Act, 1967, c. 4, § 6(1); STAT. INST. 1967, No. 223.

105. 1967 ANNUAL SURVEY OF COMMONWEALTH LAW 11 (1968).

106. See Laing, *Crown Indivisibility, Governmental Liability and Other Problems in the West Indies Associated States*, 23 INT'L & COMP. L.Q. 127, 128-29 (1974).

107. See STAT. INST. 1967, No. 223; STAT. INST. 1967, No. 234. Such an arrangement was specifically authorized by the West Indies Act, 1967, c. 4. See also STAT. INST., *supra* note 103, at § 10.

108. The British Virgin Islands and Montserrat are Crown Colonies. It is of interest to note that, subsequent to its independence, Grenada has continued to make use of this court structure.

109. STAT. INST. 1967, *supra* note 103, at § 9. See also, The West Indies Associated States Supreme Court Agreement (February 24, 1967) (unpublished).

110. STAT. INST., 1967, *supra* note 103, at § 9(3).

111. See ANTIGUA CONST., §§ 51, 55, 102-104; DOMINICA CONST., §§ 16, 32, 96-98; ST. KITTS CONST., §§ 16, 33, 98-100; ST. LUCIA CONST., §§ 16, 34, 96-98; ST. VINCENT CONST., §§ 16, 35, 99-101.

112. Forbes, *Constitutional Arrangements*, *supra* note 19, at 82.

is generally agreed that there is now no doubt that the power of judicial review arises from the constitutional instruments, as it does in the independent Commonwealth states of the region, by necessary intendment.¹¹³ The Supreme Court, it should be stressed, has on a number of occasions acted under this assumption,¹¹⁴ and the Privy Council has done likewise.¹¹⁵

By virtue of this power, the Courts are empowered, and indeed obliged, to void *pro tanto*¹¹⁶ such legislative enactments as conflict with the specific or implied provisions of the constitutions.¹¹⁷ As the late West Indian jurist Sir Hugh Wooding stated in the analogous case of Trinidad and Tobago, "I am. . . in no doubt that our Supreme Court has been constituted, and is, the guardian of the Constitution."¹¹⁸

The powers of a common Supreme Court have important political ramifications. First, judicial review, in effect, imparts to the superior courts a political role in the process of positive government. Second, by the process of constitutional interpretation, the courts, in effect, mold the substance of the constitutional document, and hence political life itself. Since constitutional law is primarily political theory expressed in legal language, the members of the bench, in reaching

113. On the position in the independent states, see Carnegie, *Judicial Review of Legislation in the West Indian Constitutions*, 1971 PUB. L. 276. Such a capacity, when viewed within a historical colonial context, cannot be viewed as revolutionary in spite of the major deviation from the pure Westminster model. See Alexis, *The Basis of Judicial Review of Legislation in the New Commonwealth and the United States of America*, 7 LAW. AM. 567, 588-89 (1975). See generally Forbes, *Constitutional Arrangements*, *supra* note 19, at 89; PHILLIPS, *supra* note 20, at c. X.

114. The existence of the power of judicial review of legislation had been taken for granted and been exercised to strike down the Public Meetings and Processions (Amendment) Ordinance, 1967, as being inconsistent with the rights guaranteed by sections 10 and 11 of the Constitution of that state to freedom of expression, and of association and assembly, respectively, in *Chief of Police v. Powell*, [1968] 12 W.I.R. 403; see also *Charles v. Phillips*, [1966-67] 10 W.I.R. 435, where the Court of Appeal of the Associated States struck down an Imperial Order in Council, the Leeward Islands (Emergency Provisions) Order in Council 1959, as being unconstitutional. A challenge failed on the facts in *Francis v. Chief of Police*, [1970] 15 W.I.R. 1.

115. Although not yet used to strike down a legislative enactment, the judgment in *Attorney Gen. v. Antigua Times Ltd.*, [1975] 3 All E.R. 81 must be regarded as having implicitly accepted the doctrine.

116. In this sense, *pro tanto* means void to the extent of the inconsistency but not otherwise. It is, however, possible for an enactment to be void *in toto* under a *pro tanto* provision if the part deemed unconstitutional is so fundamental to the legislation that it cannot be meaningfully severed from the rest.

117. For the importance of implied terms see *Hinds v. The Queen*, *supra* note 28, 1 All E.R. at 359 (Lord Diplock).

118. *Collymore v. Attorney Gen.*, [1967] 12 W.I.R. 5, 9.

their decision, *per force*, manipulate juristic theories of politics. As a consequence, these constitutions have apparently by design,¹¹⁹ made the judges principal holders of political power.¹²⁰

Her Majesty's Privy Council has been retained as the final court of appeal in all important constitutional matters.¹²¹ This provision was not unusual in the Commonwealth Caribbean, and only Guyana, among the independent states, has seen fit to terminate its involvement with this essentially external judicial body.¹²² The same course of action, however, has been recommended for Trinidad and Tobago.¹²³

The retention of the Privy Council raises serious problems. It is an example of "mechanical jurisprudence,"¹²⁴ which ignores the unique factors in the process of constitutional adjudication.¹²⁵

Without substantial exposure to such factors as the customs, traditions, socio-economic circumstances, and political conditions of the territories in question, many believe the Privy Council cannot hope to channel the evolution of these constitutional structures in a way which is socially appropriate.¹²⁶ The Privy Council will, by and large, be unaware of local conditions.¹²⁷

119. See CONSTITUTIONAL PROPOSALS, *supra* note 9, at 4, 8-9, and WINDWARD ISLANDS CONSTITUTIONAL CONFERENCE, *supra* note 5, at 14.

120. See generally Gilmore, *Towards the Demystification of the Processes of Constitutional Adjudication in the Independent West Indian States*, in CURRENT ISSUES IN WEST INDIAN LAW (forthcoming publication).

121. ANTIGUA CONST., § 105; DOMINICA CONST., § 99; ST. KITTS CONST., § II 101; ST. LUCIA CONST., § 99; ST. VINCENT CONST., § 102.

122. See generally the Republican Constitution of 1970 and Act No. 7 of 1973.

123. See TRINIDAD AND TOBAGO REPORT, *supra* note 29, at 85-88. For a variety of reasons, such a suggestion does not find reflection in the new Republican Constitution of the Republic of Trinidad and Tobago, Act No. 4 of 1976. See also Constitutional Reform: Speech by the Prime Minister in the House of Representatives (1975).

124. See Gilmore, *supra* note 120, at Parts II & III.

125. *Id.*

126. In the analogous case of the independent states, Patchett has made the following remarks:

Again, it may be asked whether the Judicial Committee should retain this power after independence. For independence bears with it responsibility for one's own development. Although the Judicial Committee represents impartiality and objectivity, many of the constitutional issues turn upon concepts, such as equality and reasonableness, which should be applied not abstractly but by those who are aware of their meaning and effect in a particular society. If the judiciary is to be required to decide these issues, it is as much an instrument for the development of the society as the executive.

Patchett, *English Law in the West Indies*, *supra* note 34, at 929.

127. This has been made evident in a recent decision of that body on appeal from

The Privy Council has traditionally relied heavily on the House of Lords for its members. "Accordingly, from the standpoint of juridical philosophy and principles, [it] is heavily influenced by British common law."¹²⁸ In this context, it is significant that the late Sir Hugh Wooding has been the only West Indian, at least in modern times, to sit in active adjudication on that bench, and then only in one instance.¹²⁹

Serious questions therefore arise, as to the extent of the political maintenance capability¹³⁰ of the Associated States. "Particular political structures live or die according to whether they can remain compatible with their cultural and natural environment; whether by making themselves suitable to it or by modifying it to suit them."¹³¹ It remains to be seen whether the Privy Council can aid them to do either.

It should be noted that the constitutions all seek to limit the review powers of the courts. Two types of mechanisms have been commonly used in the West Indian constitutions to do so. First, in the independence constitutions, a "savings clause" has been inserted which seeks to protect pre-existing law from constitutional challenge.¹³² As will be shown below, such provisions have no counterpart in the constitutions of the Associated States. Second, a fairly large number of "non-justiciability" provisions have been included within the constitutional texts of both status groups.

The purpose of these provisions is to place certain of the activities of specified persons or bodies beyond the purview of the courts. Section 114 of the Antigua Constitution is a good illustration of the general approach taken:

When by this Constitution the Governor is required to perform any function in accordance with the advice of, or after consultation

Jamaica. Lord Diplock, in rendering the judgment of the majority stated as follows:

No evidence has been adduced by the appellants in the instant case to rebut the presumption as respects the interests of public safety and public order. Unlike the judges of the Court of Appeal, their Lordships have no personal knowledge of public safety and public order. Unlike the judges of the Court of Appeal, their Lordships have no personal knowledge of the circumstances in Jamaica which gave rise to the passing of the 1974 Act.

Hinds v. The Queen, 1 All E.R. at 369.

128. Forbes, *Constitutional Arrangements*, *supra* note 19, at 82.

129. The case was *Lau Liat Meng v. Disciplinary Committee*, [1968] A.C. 391.

130. Political "maintenance" capability is the process by which a structure adjusts itself to changes in the environment or modifies the environment to suit itself.

131. F. BAILEY, *STRATAGEMS AND SPOILS* 10 (1969).

132. JAMAICA CONST., § 26; BARBADOS CONST., § 26; GUYANA CONST., § 18; TRINIDAD AND TOBAGO CONST., § 3; *supra* note 21.

with, the Cabinet or any Minister, the question whether the Governor has acted in accordance with such advice, or whether such consultation has taken place, shall not be enquired into in any court of law.¹³³

Although this author has been unable to locate specific decisions from the Associated States Supreme Court, or judgments from the Privy Council arising from an appeal from that Court, it is possible to speculate, with some degree of certainty, as to what the attitude to such provisions is likely to be, because, here, as in many matters, the general approach of West Indian and British jurists coincide.¹³⁴

The approach of the West Indian courts is to take an extreme distaste for provisions, whether statutory or constitutional, which seek to deny their jurisdiction. For example, in the leading Trinidad and Tobago case in this area, *In re Maharaj*,¹³⁵ the bench decided the issue at hand on strict procedural criteria without mentioning the section of the constitution which purported to exclude its jurisdiction. A similar approach has been adopted by the courts in the several cases which have arisen since independence in the Co-Operative Republic of Guyana.¹³⁶ In essence, they have sought to "minimize" the effect of such attempts to oust their jurisdiction, thereby "maximizing" the boundaries of their "guardianship."

In proceeding in this fashion, they may be regarded as continuing a British judicial tradition which dates back to *Smith's Case* in 1670.¹³⁷ As H.W.R. Wade has stated in his analysis of the House of Lords decision in *Anisimic Ltd. v. Foreign Compensation Commis-*

For three centuries. . . the courts have been refusing to enforce statutes which attempt to give public authorities uncontrollable powers In effect they have established a kind of entrenched provision which the legislature, whatever it says, is compelled to respect.¹³⁸

133. In addition, see the following constitutional provisions: ANTIGUA CONST., §§ 20(2), 38(7)(b), 47(4), 59(5); DOMINICA CONST., §§ 21(2), 34(7)(b), 49(7), 107; ST. KITTS CONST., §§ 22(2), 35(8)(b), 48(7), 112; ST. LUCIA CONST., §§ 22(2), 36(8)(b), 49(11), 107; ST. VINCENT CONST., §§ 22(2), 37(8)(b), 111.

134. See generally TRINIDAD AND TOBAGO REPORT, *supra* note 29, at 85-86.

135. [1966] 10 W.I.R. 149.

136. See C. OKPALUBA, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN GUYANA (1972).

137. [1670] 86 Eng. Rep. 46.

138. Wade, *Constitutional and Administrative Aspects of the Anisimic Case*, 85 L.Q. REV. 198, 200 (1969).

Separation of Powers and Zones of Neutrality

The interrelationships between the three central branches of government of the Associated States are limited by the doctrine of the separation of powers,¹³⁹ the existence of which is essential in a modern democratic state.¹⁴⁰ In *Hinds v. The Queen*, Lord Diplock stated that even without an express statement of the doctrine in these constitutions, it "is left to necessary implication from the adoption in the new constitution of a governmental structure, which makes provisions for a legislature, an executive and a judicature. It is taken for granted that the basic principle of separation of powers will apply to the exercise of their respective functions by these three organs of government."¹⁴¹

In the Associated States' constitutions, however, the separation is not a complete one. For example, the ministers of the Cabinet are also members of the legislative branch. It is equally evident that in States which have adopted the Westminster model of parliamentary democracy, the form of the separation of powers doctrine intended is that which has "been developed in the unwritten constitution of the United Kingdom."¹⁴² Given the influence of the British system, it is not surprising to find that, insofar as their specific terms are concerned, the constitutions pay particular attention to the position of the Superior Courts. Thus, it is deeply entrenched in each constitution that all civil and criminal matters be tried by "an independent and impartial" body established by law.¹⁴³ In addition, all of the provisions of the Imperial Order in Council designed to protect the independence of the judiciary are similarly entrenched in the constitutions.¹⁴⁴

139. The "pure" form of this doctrine, as first expounded by Aristotle and subsequently refined by Locke and Montesquieu has been defined in the following terms:

Each branch of government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch. In this way each of the branches will be a check to the other and no single group of people will be able to control the machinery of the state.

VILE, CONSTITUTIONALISM AND THE SEPARATION OF POWERS 13 (1967).

140. *Id.* at 16.

141. *Hinds v. The Queen*, 1 All E.R. at 359.

142. *Id.*

143. ANTIGUA CONST., §§ 8(1)-(2); DOMINICA CONST., §§ 8(1)-(2); ST. KITTS CONST., §§ 8(1)-(2); ST. LUCIA CONST., §§ 8(1)-(2); ST. VINCENT CONST., §§ 8(1)-(2).

144. It should be noted that certain of the constitutions specifically disqualify Su-

The obvious intention of these provisions is to remove the conduct of judicial affairs from political interference or coercion, whether direct or indirect.¹⁴⁵ All judges, with the exception of the Chief Justice, are to be appointed by a Judicial and Legal Services Commission.¹⁴⁶ They are to hold office until the age of sixty-five in the case of members of the Court of Appeal, or sixty-two for Puisne Judges and:

Provided that the Judicial and Legal Services Commission acting with the concurrence of the Premiers of all the States may permit a judge to continue in his office after attaining the age prescribed. . . for a period or periods not exceeding in aggregate three years.¹⁴⁷

During his tenure of office, "the salary and allowances. . . of a judge shall not be reduced and the terms and conditions of office applicable to a judge upon his appointment shall not be made less favorable to him during the currency of that appointment."¹⁴⁸ Finally, security of tenure is guaranteed, and a judge can only be removed from office for an inability to discharge his functions or for misbehaviour.¹⁴⁹

The existence of such grounds for removal is determined by a highly complex procedure in which the Judicial Committee of the Privy Council makes the final decision.¹⁵⁰

The significance of such provisions to the overall scheme of the separation of powers is undeniable.¹⁵¹ These provisions, however, are also symptomatic of a more general desire to insulate "sensitive areas of public activity from direct political influence."¹⁵² The Courts, therefore, are but one of the "politically neutral zones" created by these constitutions.

As in the constitutions of the independent states of the region, certain provisions of the Associated States' constitutions focus on the

preme Court Judges from membership of the legislature; see ANTIGUA CONST., §§ 25(1)(g), 32(1)(g); and ST. VINCENT CONST., § 26(1)(c).

145. See Patchett, *English Law in The West Indies*, *supra* note 34, at 928.

146. See STAT. INST., *supra* note 104, at § 5. Membership of the Judicial and Legal Services Commission is organized in such a way as to minimize the possibility of the use of political influence; see STAT. INST., *supra* note 104, at §§ 18, 19.

147. *Id.* at § 8(1).

148. *Id.* at § 11(1)(b).

149. *Id.* at § 8(3).

150. *Id.* at §§ 8(4)-(9). This formula has been the subject of criticism by Patchett, among others; see Patchett, *English Law in The West Indies*, *supra* note 34, at 929.

151. See generally *Hinds v. The Queen*, 1 All E.R. at 353.

152. S.A. DE SMITH, *supra* note 35, at 136.

position of the civil service and the police¹⁵³ in an attempt "to secure the careers of members of these services from the control of future political leaders."¹⁵⁴

The mechanism used to achieve this goal has been the creation of a number of autonomous agencies in each of the territories: a Public Service Commission, a Police Service Commission, and a Public Service Board of Appeal. The use of such bodies is by no means novel, and has its origins not only in the organization of the Colonial Service, but also in domestic British practice. The purpose of this system was to curb "[t]he notorious effects of party patronage on the public service [which] had been criticized in the still influential 1855 Northcote-Trevelyan Report. This Report led to reforms which eventually resulted in the establishment of a Civil Service Commission which preserves the British public from unfit appointees."¹⁵⁵ In essence, the constitutional provisions in question seek to do no more than that.

Following the precedent established in the drafting of the Jamaican Constitution, attempts have been made "to safeguard the stream of criminal justice from being polluted by the inflow of noxious political contamination."¹⁵⁶ Thus, in instances where the Attorney General is a political figure, a Director of Public Prosecutions is to be appointed who (unlike his counterpart in England) is to be given a separate constitutional status and is to be free of the directions of the Attorney General in carrying out his tasks.¹⁵⁷

At the 1966 Constitutional Conferences, it was agreed that "[a]t any time when the Attorney General is a civil servant the powers of the Director in relation to criminal prosecutions may be exercised by

153. See ANTIGUA CONST., c. VI, §§ 71, 72, 79, 80; DOMINICA CONST., c. VI, §§ 60, 61, 63, 64, 73, 75; ST. KITTS CONST., c. VI, §§ 60, 61, 64, 73, 75; ST. LUCIA CONST., c. VI, §§ 61, 62, 64, 73, 75; ST. VINCENT CONST., c. VI, §§ 60, 61, 63, 64, 73, 75.

154. Collins, *Some Notes on Public Service Commissions in the Commonwealth Caribbean*, in *THE AFTERMATH OF SOVEREIGNTY: WEST INDIAN PERSPECTIVES* 94. In a somewhat bolder manner, Forbes has written:

[T]he Public Service Commission is the agency relied upon to offset the grosser forms of nepotism and to promote recruitment practices based upon universalistic standards of achievement and thereby help to create an efficient bureaucracy which is a useful prop supporting the ideals of the constitutions.

Forbes, *Constitutional Arrangements*, *supra* note 19, at 73.

155. Forbes, *Constitutional Arrangements*, *supra* note 19, at 96.

156. S. A. DE SMITH, *supra* note 35, at 144.

157. ANTIGUA CONST., § 72; DOMINICA CONST., § 64; ST. KITTS CONST., § 64; ST. LUCIA CONST., § 64; ST. VINCENT CONST., § 64.

the Attorney General and it will not be necessary for there to be a separate holder of the Office of Director of Public Prosecution."¹⁵⁸

Although the basic intent of these schemes is to insulate the persons or bodies in question from political influence, there are certain exceptions. The most important of these relates to the appointment of the Chief Justice of the regional Supreme Court. As set out in the West Indies Associated States Supreme Court Order of 1967, that office is to be filled by Her Majesty, acting upon the advice of the appropriate British minister, by way of Letters Patent.¹⁵⁹

At the 1966 Constitutional Conferences, however, certain "understandings" were reached as to the procedures which would be followed pursuant to this provision. These were, in turn, set out in dispatches to the island administrators prior to the entry into force of the new status arrangement. They state that:

(a) [T]he Minister of Her Majesty's Government in the United Kingdom who will advise Her Majesty will be the Lord High Chancellor of England;

(b) before tendering advice to Her Majesty the Lord Chancellor will consult the Premier of each of the Associated States in which the Supreme Court has jurisdiction.¹⁶⁰

Although the room for direct political influence in such appointments was greatly minimized by the role of the Lord Chancellor, subsequent practice has indicated the weakness of the scheme,¹⁶¹ and hence the importance of the politically neutral zones which have been created.

158. REPORT OF THE ST. KITTS/NEVIS/ANGUILLA CONSTITUTIONAL CONFERENCE, *supra* note 16, at 17. This agreed course of action is reflected in the terms of ANTIGUA CONST., § 71(4); DOMINICA CONST., § 63(4); ST. KITTS CONST., § 63(4); ST. VINCENT CONST., § 63(5). The position of St. Lucia is somewhat different in that its constitution envisages the eventual creation of both offices on a permanent basis with the Attorney General always a political figure; see WINDWARD ISLANDS CONSTITUTIONAL CONFERENCE, *supra* note 5, at 33. This is clearly reflected in ST. LUCIA CONST., § 52. *But see* the transitional provision, ST. LUCIA CONST., § 104.

159. STAT. INST. 1967, No. 223, § 5(1).

160. See Commonwealth Office Grenada Dispatch No. 84 of 22 February 1967 (H. Bowden to I. G. Turbott, Administrator) (unpublished). Terms agreed to in Grenada Dispatch No. 59 of 23 February 1967 (I. G. Turbott to H. Bowden) (unpublished).

161. This is well illustrated in the context of the nomination of Mr. P. T. Georges, a native of Dominica and former Chief Justice of Tanzania, to fill that post. In spite of a broad based support for his candidacy, the opposition of one of the island leaders, who favored another local jurist, blocked his appointment, and the position was eventually filled by a candidate generally believed to be less qualified to hold office.

III. FUNDAMENTAL RIGHTS AND THE CONSTITUTION

Historical Evolution

Since the incorporation of fundamental rights provisions into the body of the constitutional structure constitutes a major departure from British legal orthodoxy,¹⁶² it is of value to trace the historical reasons for this change and to note the sources of the provisions which have been adopted.

Until 1959, there was no comprehensive treatment of the human rights issue within the constitutional frameworks of the United Kingdom or its colonial territories. The reasons for this is the Benthamite tradition¹⁶³ of British jurisprudence, which is well summarized by de Smith as follows:

The English lawyer finds political manifestoes out of place in a legal document, particularly when their philosophical foundations are insecure. He instinctively prefers brass tacks to noble phrases, pragmatism to metaphysics, and obstinately insists that the proof of the pudding is in the eating. Nor is he in the least impressed by the history of liberty in the majority of countries which have had constitutional declarations or guarantees of rights. Above all, there is a natural tendency to feel that lessons drawn from one's own experience have universal validity.¹⁶⁴

The first major break with this Benthamite tradition came with the formulation of the Nigerian Independence Constitution of 1959.¹⁶⁵ It is evident that the decision to incorporate fundamental rights provisions arose from the nature of the local political situation in which certain minority groups feared for their future.¹⁶⁶

The rights which were agreed upon were brought into force prior to the date of independence. As Elias explained: "[t]he provisions were introduced just before the federal elections of December 12,

162. This is not an appropriate forum to trace the controversy regarding the need for a U. K. Bill of Rights. See *A Bill of Rights for Britain?*, 3 COMMONWEALTH L. BULL. 503 (1977).

163. Bentham once wrote of such provisions, "look to the letter, you find nonsense—look beyond the letter, you find nothing." De Smith, *Fundamental Rights in the New Commonwealth*, 10 INT'L & COMP. L.Q. 83, 84 (1961).

164. *Id.* at 86.

165. STAT. INST. 1960, No. 1652.

166. See De Smith, *Fundamental Rights in the New Commonwealth*, *supra* note 163, at 215-16; T. O. ELIAS, *NIGERIA: THE DEVELOPMENT OF ITS LAW AND CONSTITUTION* 141-43 (1967).

1959. This was at the insistence of some of the Nigerian leaders who apparently believed that they would be enabled thereby to campaign without let or hindrance, particularly in the Northern Region."¹⁶⁷

The Nigerian solution was to create a precedent of constitutional decolonization within the "Empire." In 1960, the same route was taken in relation to the constitutional proposals for Sierra Leone, Kenya, and the Federation of Rhodesia and Nyasaland,¹⁶⁸ and in 1961, for British Guiana.¹⁶⁹

The practice, then, had been in existence for some time when the discussions were opened in 1961 on the formulation of the Jamaican fundamental law. There was, however, little enthusiasm among the political leaders of the island for the inclusion of such provisions in their independence constitution:

The real impetus came from the clamant demands of the capitalist interests whose predominant advocacy was for the protection of property rights. The call for constitutional guarantees of human rights also received support from academic and middle class elements who probably apprehended future intrusion on the freedoms of conscience and expression. In the result, a Chapter on Fundamental Rights and Freedoms was inserted in the Jamaican Constitution.¹⁷⁰

After the decision had been made to include specific fundamental rights within the Constitution, there arose "considerable disagreement . . . on the status and force of these provisions."¹⁷¹ Some of the drafters preferred to place minimum constraints on parliament's powers, while others sought to entrench such rights. In the end, a compromise was reached whereby the provisions were to be entrenched within the constitutional document, but a clause would be inserted limiting their scope by "saving" existing laws from constitutional challenge.¹⁷²

In its final form, Chapter III of the Jamaican Constitution closely followed, both in formulation and content,¹⁷³ the example of the Nigerian Constitution.

167. ELIAS, NIGERIA, *supra* note 166, at 141.

168. See De Smith, *Fundamental Rights in the New Commonwealth*, *supra* note 163, at 83-84.

169. See Patchett, *English Law in the West Indies*, *supra* note 34, at 924.

170. Barnett, *The Constitution: Ten Years After*, 1972 JAMAICA L.J. 49, 54 (1972).

171. Munroe, *supra* note 32, at 64.

172. See MUNROE, *supra* note 35, at 159.

173. See S. A. DE SMITH, *supra* note 35, at 193.

Shortly thereafter, the decision was made to insert similar protections into the independence instruments for Trinidad and Tobago. The original draft closely followed the Nigerian/Jamaican formula, with each individual right and its limitations, best classified as "Bills of Exceptions" rather than as "Bills of Rights," set out in considerable detail.

The Trinidad and Tobago Bar Association objected to this formula and insisted "that the fundamental rights and freedoms should be briefly and simply stated."¹⁷⁴ Their view eventually prevailed. The final document closely resembles the Canadian Bill of Rights, although it should be stressed that the actual interpretation of such guarantees is significantly different.¹⁷⁵

Four years later, however, at the independence conferences for Barbados and Guyana, the influence of the Nigerian/Jamaican formula was again evident. Both states eventually decided in favor of the "Bill of Exceptions" method of protecting fundamental rights and freedoms.¹⁷⁶

The Associated States have followed the general trend. The provisions adopted in their constitutions closely parallel and freely borrow from the Nigerian/Jamaican formula. The origins of these individual rights provisions are essentially European. Chief Justice Elias asserted that the Nigerian formulation was based on the provisions of the European Convention on Human Rights.¹⁷⁷

174. REPORT OF THE TRINIDAD AND TOBAGO CONSTITUTION COMMISSION, *supra* note 29, at 18.

175. See S. A. DE SMITH, *supra* note 35, at 193.

176. It appears that the Trinidad Formula was not seriously considered by Barbados or Guyana.

177. See ELIAS, NIGERIA, *supra* note 166, at 142. Chief Awolowo, on the other hand, argued that the source of such provisions was the Universal Declaration on Human Rights. See O. AWOLOWO, THOUGHTS ON NIGERIAN CONSTITUTION 120 (1966). It would seem, however, that both views are correct since the former is based substantially on the latter. See, e.g., L. SOHN & T. BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS 1002 (1973). This view was expressed by Lord Fraser of Tulleybelton:

The arrangement and wording of the chapter evidently owe much to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed by certain members of the Council for Europe in 1950. The European Convention was itself largely based on the Universal Declaration of Human Rights adopted by the United Nations General Assembly.

Attorney Gen. v. Antigua Times Ltd., [1975] 3 All E.R. 81, 84 (Lord Fraser of Tulleybelton). Similarly, it should be noted that the Trinidad provisions owe much to the Universal Declaration; see, e.g., THINKING THINGS THROUGH 5 (Constitution Commission of Trinidad and Tobago, 1972).

As a consequence of their origins, the constitutional provisions focus on individual rights, liberties, and immunities, but say nothing as to individual duties, or social, cultural, or economic matters. For example, within the Jamaican context, it has been said that

The fundamental rights provisions seek to express the Rule of Law in the merely negative form which is usually associated with nineteenth century liberalism, and therefore protects the individual against arbitrary government but does nothing to protect him from many insidious forms of oppression or to encourage or stimulate his material or moral advancement.¹⁷⁸

This does not suggest, however, that these constitutional sections are an exact reflection of the European Convention. On the contrary, there are marked differences in approach and wording in several areas.

Perhaps the most important of these differences is to be found in the sphere of the protection given to property rights. Here the divergence in treatment first appears with the formulation of the Nigerian provisions. As de Smith has noted, the European model

affords private property only ambivalent and half-hearted safeguards, but the [Nigerian] Constitution requires adequate compensation to be provided by law in respect of compulsory expropriation, specifies in detail the classes of laws that fall outside the scope of this guarantee, and gives jurisdiction to the High Courts to determine the right to compensation.¹⁷⁹

The Nigerian property provision and the subsequent schemes based on it, however, follow the European experience to the extent that the protection provided is deemed to be applicable to artificial or legal persons (such as companies), as well as to natural persons.¹⁸⁰

Within the Jamaican context, the question was raised as to whether or not such a subject matter was suitable for inclusion within the constitutional text; considerable debate produced a fundamental divergence of opinions. Substantial pressure was brought to bear by local businessmen, landowners, and foreign investors, and seemingly, as a consequence of their intervention, the decision was eventually

178. MUNROE, *supra* note 35, at 159. This approach has been widely criticized; see, e.g., Georges, *Commentary*, in *INDEPENDENCE FOR GRENADA*, *supra* note 6, at 91, 92. See generally, Roberts-Wray, *Human Rights in the Commonwealth*, 17 INT'L & COMP. L.Q. 908 (1968).

179. De Smith, *Fundamental Rights in the New Commonwealth*, *supra* note 163, at 221. See also ELIAS, *supra* note 166, at 155-56.

180. See *Attorney Gen. v. Antigua Times Ltd.*, 3 All E.R. at 84.

made to follow the Nigerian precedent.¹⁸¹ The Jamaican wording is somewhat different in its final form, however, calling for the payment of "compensation" as opposed to the "adequate compensation" formula used in Nigeria.¹⁸²

The Barbadian draft article on this subject, which was based on the Jamaican text, also generated considerable debate at the 1966 Constitutional Conference. The official report states:

The Barbados National Party proposed that the Constitution should expressly require the prompt payment of adequate and fair compensation for any property compulsorily acquired under the law instead of providing that the principles on which and the manner in which compensation should be determined and given should be prescribed by law.¹⁸³

The Chairman of the Constitutional Conference noted that precedent existed for the form in which the article appeared and ruled that the draft wording, which was supported by the then governing party, should stand. That decision is now reflected in section 16(1) of the Constitution.

There was no major objection to including a property clause in each of the Associated States constitutions. In terms of the degree of protection to be afforded, however, three differing methods were adopted. Antigua¹⁸⁴ and St. Kitts/Nevis/Anguilla¹⁸⁵ opted for the Jamaica/Barbados approach. Dominica requested the insertion of a provision calling for the payment of "adequate compensation" within "a reasonable time."¹⁸⁶ St. Lucia and St. Vincent went even further and included a requirement for the "prompt payment of full compensation."¹⁸⁷

In view of their European origins, it is appropriate to conclude by stressing that these protection provisions "express the assumptions of *political* liberalism; but on matters of economic and social policy they are ideologically neutral, except insofar as they safeguard existing property rights against confiscation. . . ."¹⁸⁸

181. See MUNROE, *supra* note 35, at 159-62.

182. See § 18(1) of the Jamaican Constitution, *supra* note 21 and ELIAS, *supra* note 166, at 155.

183. REPORT OF THE BARBADOS CONSTITUTIONAL CONFERENCE, *supra* note 2, at 5.

184. ANTIGUA CONST., § 6.

185. ST. KITTS CONST., § 6.

186. DOMINICA CONST., § 6.

187. ST. LUCIA CONST., § 6; ST. VINCENT CONST., § 6.

188. S. A. DE SMITH, *supra* note 35, at 185. Dominica is in a rather unique

The Nature of the Protection Afforded

Chapter I of each of the constitutions in question seeks to provide protection of fundamental rights and freedoms in the following spheres: life; liberty; security of the person; freedom of conscience, of expression, of assembly and association; freedom from discrimination and slavery; protection for privacy, and from deprivation of property without compensation.¹⁸⁹ The right to vote is not included anywhere in the Constitutions.¹⁹⁰

Section 1 of each of these constitutions makes it clear that the enjoyment of the above is subject "to respect for the rights and freedoms of others and for the public interest."¹⁹¹ The philosophy behind this approach is reflected in the statement by Patanjali Sastri in *A.I. Gopalan v. State of Madras*:

Man, as a rational being, desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals. Liberty has, therefore, to be limited in order to be effectively possessed.¹⁹²

position in this regard in that her constitution alone has a preamble which reads as follows:

WHEREAS the People of Dominica—(a) have affirmed that the state of Dominica is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person, and the equal and inalienable rights with which all members of the family are endowed by their Creator; (b) respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means or livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity; (c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority; (d) recognize that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law; (e) desire that their Constitution should make provision for ensuring the protection in Dominica of fundamental human rights and freedoms; NOW, THEREFORE, the following provisions shall have effect as the Constitution of Dominica.

189. See generally ANTIGUA CONST., §§ 1-16; DOMINICA CONST., §§ 1-17; ST. KITTS CONST., §§ 1-18; ST. LUCIA CONST., §§ 1-18; ST. VINCENT CONST., §§ 1-18.

190. This exclusion follows the pattern set elsewhere in the West Indies; see *Thompson v. Forrest*, [1967] 11 W.I.R. 296.

191. ANTIGUA CONST., § 1; DOMINICA CONST., § 1; ST. KITTS CONST., § 1; ST. LUCIA CONST., § 1; ST. VINCENT CONST., § 1. This provision codifies the ancient maxim *salus populi suprema*—the safety of the people is the highest law.

192. [1950] S.C.R. 88, 190-91.

The legislature is given a substantial role as the custodian of the public trust.

The fundamental rights provisions, which are non-retroactive in nature,¹⁹³ commence with an introductory section which has been the source of some judicial debate: "[W]hereas every person. . . is entitled to the fundamental rights and freedoms."¹⁹⁴ The use of such phraseology has led some to argue that the provisions of the constitutions are no more than a codification of pre-existing common law protections.

While this proposition may be valid with respect to the independent Commonwealth Caribbean states,¹⁹⁵ it does not seem to be true in the contemporary constitutional law of the Associated States. Justice Glasgow stated in relation to section 1 of the Constitution of St. Kitts/Nevis/Anguilla that "[i]t is true that persons in the State enjoyed certain rights and liberties before the Constitution came into force, but those rights and liberties existed only at common law, and were not necessarily the same as those guaranteed by the constitution."¹⁹⁶ Moreover, although "many [of the Constitutional rights] appear to state well recognized rules developed at common law,"¹⁹⁷ others "had only a very dubious existence prior to the commencement of these Constitutions."¹⁹⁸ The accepted view is that the section in question "is an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow."¹⁹⁹ It is not, however, to be regarded as the "master section" of the Chapter, as the "nature and extent of the rights and freedoms protected. . . depend on the provisions of the sections respectively protecting them."²⁰⁰

Within the rights themselves, there exists an implied classification or grouping. On the one hand, there are those rights which are absolute in the sense that they permit no derogation except by way of formal constitutional amendment. This grouping is limited to

193. See *Chief of Police v. Powell*, [1967] 12 W.I.R. at 416.

194. ANTIGUA CONST., § 1; DOMINICA CONST., § 1; ST. KITTS CONST., § 1; ST. LUCIA CONST., § 1; ST. VINCENT CONST., § 1.

195. Alexis, *After Thornhill*, 1977 WEST INDIAN L.J. 24 (1977).

196. *Chief of Police v. Powell*, 12 W.I.R. at 415.

197. Patchett, *English Law in the West Indies*, *supra* note 34, at 925.

198. Alexis, *New Rights in the Commonwealth Caribbean and the American Constitutions*, in CURRENT ISSUES IN WEST INDIAN LAW: A TRIBUTE TO THE LATE SIR HUGH WOODING, *supra* note 122, at 64.

199. *Oliver v. Buttigieg*, [1966] 2 All E.R. 459, 461.

200. *Attorney Gen. v. Antigua Times Ltd.*, 3 All E.R. at 85.

the right of life,²⁰¹ freedom from slavery,²⁰² and freedom from inhuman treatment.²⁰³ The remainder, to one extent or another, may either permit derogation from the basic right for specific purposes,²⁰⁴ or, in certain circumstances,²⁰⁵ be subject to interpretations of "reasonableness."

Rather than attempt to describe in detail the nature and extent of each of the constitutional protections afforded,²⁰⁶ the author will focus on the standard forms of limitations on and exceptions to the rights and freedoms provided in the constitutions.

The standard form of limitation on the authority of the legislature in the fundamental rights sphere is one of "reasonableness." The provisions of section 7 of the Constitution of Antigua well illustrate the general position adopted:

7. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provisions—

(a) that is reasonably required in the interests of defense, public safety, public order, public morality, public health, public revenue, town and country planning or the development and utilisation of any property in such a manner as to promote the public benefit. . . .²⁰⁷

The "reasonableness" of any enactment is a question for the courts. Given a presumption in favor of the constitutionality of legislation,²⁰⁸ however, the courts will "presume, until the contrary appears

201. ANTIGUA CONST., § 2; DOMINICA CONST., § 2; ST. KITTS CONST., § 2; ST. LUCIA CONST., § 2; ST. VINCENT CONST., § 2.

202. ANTIGUA CONST., § 4(1); DOMINICA CONST., § 4(1); ST. KITTS CONST., § 4(1); ST. LUCIA CONST., § 4(1); ST. VINCENT CONST., § 4(1).

203. ANTIGUA CONST., § 5; DOMINICA CONST., § 5; ST. KITTS CONST., § 5; ST. LUCIA CONST., § 5; ST. VINCENT CONST., § 5.

204. See, e.g., DOMINICA CONST., § 6(6).

205. For example, during the continuance of a state of war.

206. Some studies worthy of note have already been done in this area; see Alexis, *New Rights in the Commonwealth Caribbean and the American Constitutions*, *supra* note 198 and Okpaluba, *Fundamental Human Rights, the Courts, and Independent West Indian Constitutions*, in *INDEPENDENCE FOR GRENADA*, *supra* note 6, at 79.

207. ANTIGUA CONST., § 7.

208. This well accepted criteria has been analyzed in the Trinidad and Tobago case of Attorney Gen. v. Mooto, (Unreported Court of Appeals decision, Civil Appeal No. 2, at 6-10) (1975) (Hayatali, C. J.).

or is shown, that all Acts passed by the Parliament. . . were reasonably required.”²⁰⁹ The presumption is a rebuttable one, but the test to be applied is a strict one. The following words of Lord Diplock in connection with an analogous clause in the Constitution of Jamaica well exemplifies this point:

The presumption is rebuttable. Parliament cannot evade a constitutional restriction by a colourable device. But in order to rebut the presumption, their Lordships would have to be satisfied that no reasonable member of Parliament who understood correctly the meaning of the relevant provisions of the Constitution could have supposed that hearings in camera were reasonably required for the protection of any of the interests referred to; or, in other words, that Parliament in so declaring was either acting in bad faith or had misinterpreted the provisions of. . . the Constitution under which it purported to act.²¹⁰

Following the precedent set in pre-independent British Guiana,²¹¹ all of the Constitutions here under review, with the exception of Antigua, provide for an additional test in relation to a substantial number of the Fundamental Rights provisions.²¹² Basically, the question is whether the legislation or activity under scrutiny is reasonably justifiable in a democratic society. It has been noted that by virtue of such provisions, the Courts “have been empowered to take into account the circumstances which obtain in the West Indies and in their decisions could well contribute to the development of a differently conceived democratic society.”²¹³

Generally, when questions of reasonableness arise, “the onus is on anyone seeking to impugn a statute to show that in the circumstances which existed at the time it was passed, the legislation violated rights enshrined in the constitutions.”²¹⁴ In the cases of *Charles v. Phillips and Sealey*²¹⁵ and *Herbert v. Phillips and Sea-*

209. *Attorney Gen. v. Antigua Times Ltd.*, 3 All E.R. at 90.

210. *Hinds v. The Queen*, 1 All E.R. at 368-69.

211. Patchett, *English Law in the West Indies*, *supra* note 34, at 927.

212. See DOMINICA CONST., §§ 6(6)(a), 7(2), 9(5), 10(2), 11(2), 12(3)(b), 12(3)(h); ST. KITTS CONST., §§ 6(4)(a), 7(2), 9(5), 10(2), 11(2), 12(3)(b), 12(3)(h); ST. LUCIA CONST., §§ 6(6)(iii), 7(2), 9(5), 10(2), 11(2), 12(3)(b), 12(3)(h); ST. VINCENT CONST., §§ 6(6)(vii), 7(2), 9(5), 10(2), 11(2), 12(3)(b), 12(3)(h).

213. Patchett, *English Law in the West Indies*, *supra* note 34, at 927-28.

214. *Attorney Gen. v. Antigua Times Ltd.*, 3 All E. R. 81 (Corbin, J.A.). See also *Francis v. Chief of Police*, [1970] 15 W.I.R. 1, 17 (C. Lewis, J.A.)

215. [1967] 10 W.I.R. 423.

ley,²¹⁶ however, the Court of Appeal of the Associated States decided that in instances of emergency legislation, the onus of establishing justification lays on the Crown.²¹⁷

The constitutions themselves provide for the temporary curtailment of some of the ordinary rights and freedoms of citizens in times of emergency.²¹⁸ The basic formula used is well illustrated by the provisions of section 14 of the Dominica Constitution:

Nothing contained in or done under the authority of a law enacted by Parliament shall be held to be inconsistent with or in contravention of section 3 or section 13 of this Constitution to the extent that the law authorizes the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Dominica during that period.²¹⁹

In each instance, the rights and freedoms adversely affected are the right to liberty and freedom from discrimination. Extensive provisions are, however, enshrined in the Constitution, which establish a certain level of protection for persons detained under emergency laws.²²⁰

An emergency is deemed to exist in any period during which Her Majesty is at war, when a proclamation by the Governor declares that a state of emergency exists, or when a Parliamentary Resolution, passed by special majority, declares that democratic institutions are threatened by subversion.²²¹ The last two of these situations are regulated by the Constitution in terms of the methods to be adopted and the time frames in which they are to be effective.²²²

The United Kingdom authorities have retained certain extensive powers in the area of rights and freedoms. By virtue of the terms of section 7(2) of the West Indies Act, Her Majesty may by Order in Council, unilaterally, make "as part of the law of that state such provisions as appear to Her Majesty to be appropriate, including (if by reason of war or other emergency it appears to Her Majesty to be

216. [1967] 10 W.I.R. 435.

217. 1968 ANNUAL SURVEY OF COMMONWEALTH LAW 121.

218. *Herbert v. Phillips*, 10 W.I.R. at 444 (C. Lewis, J.A.).

219. DOMINICA CONST., § 14. *See also* ANTIGUA CONST., § 13; ST. KITTS CONST., § 14; ST. LUCIA CONST., § 14; ST. VINCENT CONST., § 14.

220. ANTIGUA CONST., § 14; DOMINICA CONST., § 15; ST. KITTS CONST., § 15; ST. LUCIA CONST., § 15; ST. VINCENT CONST., § 15.

221. ANTIGUA CONST., § 16(4); DOMINICA CONST., § 17(2); ST. KITTS CONST., § 18(2); ST. LUCIA CONST., § 18(2); ST. VINCENT CONST., § 18(2).

222. ANTIGUA CONST., §§ 16(5)-(7); DOMINICA CONST., §§ 17(3)-(5); ST. KITTS CONST., § 17; ST. LUCIA CONST., § 17; ST. VINCENT CONST., § 17.

necessary and that fact is expressly stated in the Order) provisions derogating from the provisions of the constitution of that state relating to fundamental rights and freedoms.”²²³

The retention of such powers by the United Kingdom was not contemplated at the time of the 1966 Constitutional Conferences,²²⁴ a fact which was a subject of much controversy in the House of Commons during the passage of the West Indies Bill.²²⁵ Furthermore, the authority so retained is open-ended and its exercise is non-reviewable by the courts.²²⁶ As a consequence, the possibilities for abuse are similarly unlimited. The dangers associated with the retention of such absolute powers by the metropole are well illustrated in the use of section 7(2) authority as the legal basis for the March 19, 1969 invasion of Anguilla by British Forces.²²⁷ In this sphere, the protection afforded to the individual in the Associated States falls far short of that enjoyed by the citizens of the independent Commonwealth Caribbean territories.

By way of contrast, there is a sphere in which the constitutions of the islands here in question provide for a considerable increase in the scope of individual protection compared with that enjoyed by persons within the independent states. This protection stems from the fact, noted by Chief Justice Boller in *D'Aguiar v. Cox*,²²⁸ that the constitutional instruments contain no provisions similar in wording or effect to the so-called “savings clause,” which is common to all Fundamental Rights Chapters of the Constitutions of the independent entities, with the sole exception of Grenada.²²⁹ This rather curious provision, which on its face is seemingly incompatible with the philosophy of independence, has been consistently interpreted by the courts, whether properly or not,²³⁰ as saving pre-independence laws from constitutional challenge in the human rights area.²³¹ It goes far beyond such normal and necessary provisions as are designed to preserve the validity of colonial or pre-status laws.

223. West Indies Act, 1967, c. 4, § 7(2).

224. See, e.g., WINDWARD ISLANDS CONSTITUTIONAL CONFERENCE, *supra* note 5, at 8.

225. See PARL. DEB, *supra* note 14, at cols. 348, 382, 393-94.

226. See West Indies Act, 1967, c. 4, § 18(3).

227. See generally STAT. INST. 1969, No. 371.

228. [1971] 18 W.I.R. 44, 50.

229. STAT. INST. 1973, No. 2155.

230. See generally Alexis, *When is an Existing Law Saved?*, 1976 PUB. L. 256 and Robinson, *The “Saving-Law” Clause*, 2 U.W.I. STUDENTS L. REV. 35 (1977).

231. See *D.P.P. v. Nasralla*, [1967] 2 A.C. 238.

Not only is the savings clause scheme inapplicable to the Associated States, but in a series of general constitutional provisions, existing laws are subject to procedures designed to bring them into accord with the new constitutional requirements. Section 103 of the St. Kitts constitution²³² is illustrative of the approach adopted:

[S]ub-section (1) provided that all previous laws were, in effect, to be read *mutatis mutandis* in order to conform with the new constitutional arrangements, while sub-section (2) provided that where any matter that fell to be prescribed or otherwise provided for under the Constitution was provided for by existing law, that existing law should be treated as though it had been made by the competent authority under the new Constitution.²³³

In addition, by virtue of the terms of sub-section (3), the Governor is empowered, for a limited period of time, to make such amendments to any existing law as seem to him "to be necessary or expedient" in order to bring it into accordance with "the provisions of the West Indies Act of 1967, this Constitution and the Court's Order."²³⁴ This power is indeed considerable in scope, for as Chief Justice Lewis noted in the *Charles* case, it includes "modifying, re-enacting with or without amendment, suspending, repealing, adding new provisions, or making different provisions."²³⁵

If it is not possible to construe an enactment in such a way as to make it compatible with the constitution, any amendment made by the Governor notwithstanding, then the courts are obliged, by virtue of section 103(1), to void the offending provisions "to the extent of their inconsistency with the Constitution."²³⁶

IV. TENTATIVE CONCLUSIONS

The structure of government adopted is the traditional "Export Model" of the Westminster form of Parliamentary democracy. The Jamaican experience has been of considerable influence. The decision of Jamaica to adopt such a system, however, was heavily influenced

232. ST. KITTS CONST., § 103. See also ANTIGUA CONST., § 107; DOMINICA CONST., § 101; ST. LUCIA CONST., § 101; ST. VINCENT CONST., § 104. In a trilogy of Kittian cases, the law in this area has been subjected to extensive judicial commentary. See cases cited notes 198, 216, and 217, and ST. KITTS CONST., § 103(1).

233. 1968 ANNUAL SURVEY OF COMMONWEALTH LAW 120.

234. ST. KITTS CONST., § 103(3).

235. *Charles v. Phillips*, 10 W.I.R. at 432 (Lewis, C.J.).

236. *Chief of Police v. Powell*, 12 W.I.R. at 415, 432 (Glasgow, J.). These issues are discussed in detail in Alexis, *When is an Existing Law Saved?*, *supra* note 230, at 256-62.

by a genuine familiarity with its inner workings.²³⁷ In the Associated States, this was not the case: "[i]t was not until 1960, a little over a parliamentary term before the introduction of associated statehood, that one was able to discern the first clear outlines of a constitutional framework which contemplated a government responsible primarily to the electorate."²³⁸

It must be open to serious question whether the "Export Model," even given the modifications which the author has noted, can be regarded as appropriate to the needs of these communities. The Westminster system, itself, evolved within the context of a large advanced industrial economy. The Associated States of the Eastern Caribbean are both small and underdeveloped. As a recent World Bank study has clearly demonstrated, if poverty is used as the gauge of development, these countries rate among the least developed in the Latin American and Caribbean region.²³⁹ With an average per capita gross domestic product of U.S. \$340, only Haiti is in a worse position.

Given the dimensions of these economic differences, one can speculate that the minimum conditions for the successful operation of the system are not present.²⁴⁰ By 1973, the imitation of the Westminster model (which brings with it the Whitehall system of public administration)²⁴¹ had resulted in the creation of forty-two ministries, supported by an establishment of 15,443 persons, at an estimated cost of E.C. (East Caribbean Currency) \$53 million,²⁴² this figure representing approximately 42% of total estimated public expenditures.

Even given the diseconomies of government with which small states are confronted,²⁴³ the available evidence suggests that in the reception of this governmental structure, the Associated States may be imposing economic non-viability on themselves.²⁴⁴

237. See Munroe, *Origins of the Jamaica Independence Constitution*, *supra* note 32, at 61.

238. Forbes, *Constitutional Arrangements* *supra* note 19, at 63.

239. See generally THE ECONOMIC AND SOCIAL DEVELOPMENT OF THE LEEWARD AND WINDWARD ISLANDS (I.B.R.D. 1975).

240. See generally Patchett, *The Caribbean Experience*, *supra* note 13.

241. See generally Mills, *Public Administration in the Commonwealth Caribbean: Evolution, Conflicts and Challenges*, 1970 SOCIAL & ECON. STUDIES 16.

242. P. Emmanuel, V. A. Lewis & A. McIntyre, *The Political Economy of Independence for the Leeward and Windward Islands* 43 (1975) (unpublished report available for inspection at U.W.I., I.S.E.R. Library, Cave Hill, Barbados).

243. See, e.g., De Vires, *Development Aid to Small Countries*, in DEVELOPMENT POLICY IN SMALL COUNTRIES 164, 172 (1975).

244. See Emmanuel, *Independence and Viability: Elements of Analysis*, *supra* note 57, at 9.

On a more positive note, the courts are given a crucial role to play in the overall system of government. With the exception of the reserved powers of the United Kingdom, the extent of the fundamental rights provisions contained in these constitutions, and their efficacy in practice, are almost entirely dependent upon the role which the courts decide to play.

In the spheres of emergency powers²⁴⁵ and freedom of the press,²⁴⁶ the regional Supreme Court has not only reaffirmed its independence,²⁴⁷ but has also served notice that, in spite of a continuing adherence to the common law traditions of the region,²⁴⁸ it will not be inactive when it perceives the occurrence of violations of these enshrined rights. In adopting such a posture, the courts' position is one of some strength in that, as a result of the regional nature of the court structure, they have been effectively removed from political pressures.

Finally, in the area of individual rights, the constitutions afford, by virtue of the absence of a "savings clause," a wider degree of protection than has thus far been given to the inhabitants of the independent states of the region.²⁴⁹

ADDENDUM

In the time which has elapsed since the above article was written, there have been a number of significant constitutional developments in the territories in question.

The most important developments relate to the attainment of independence and full membership in the community of nations. Dominica took that historic step on November 3, 1978²⁵⁰ and it has recently become clear that all of the remaining Associated States will be following suit in the near future. This decolonization process is at

245. Charles, 10 W.I.R. at 423; Herbert, 10 W.I.R. at 435.

246. Attorney Gen. v. Antigua Times Ltd., 3 All E.R. at 81. See generally D. WHITE, *THE PRESS AND THE LAW IN THE CARIBBEAN* (1977) for an extensive examination of the legal aspects of freedom of the media.

247. See Okpaluba, *Fundamental Human Rights, the Courts, and Independent West Indian Constitutions*, *supra* note 206, at 90.

248. See generally STAT. INST. 1974, *supra* note 103.

249. In theory, the reserved powers of the United Kingdom in this sphere are sufficiently extensive to place in doubt the overall effectiveness of these constitutional provisions, but they have never been used in this manner.

250. See, Washington Post, Nov. 3, 1978, at A-15; TIME, Nov. 13, 1978, at 56. See also 4 BULL. OF EASTERN CARIBBEAN AFFAIRS NO. 2, at 1-23 (1978).

its most advanced stage in St. Lucia and St. Vincent and it is likely that both will have obtained independence prior to the publication of this volume. The Government of Antigua is looking toward a late 1979 date, as is the Government of St. Kitts/Nevis/Anguilla. In the latter case, however, the need to reach an agreement with the United Kingdom over the future of Anguilla²⁵¹ and the recent rise in separatist sentiment in Nevis²⁵² may delay the process somewhat.

This movement is reflective of widespread dissatisfaction with the associated statehood scheme as embodied in the West Indies Act of 1967²⁵³ but does not represent any serious desire on the part of the territories in question to alter their internal constitutional instruments in a radical manner. That general view is well reflected in the St. Lucia Green Paper on Independence:

It is the view of the Government that the existing Constitution is a sound document and has generally served us well. No substantial changes have been made by Grenada nor have any been proposed by Dominica, whose constitutions are similar to ours. Apart, therefore, from the minor changes proposed below, no substantial change is contemplated.²⁵⁴

At the present time, several constitutional changes have taken place in Dominica and changes have been agreed to in St. Lucia. The remaining jurisdictions will have to await treatment on some future occasion.²⁵⁵

In Dominica, the decision was taken to adopt a republican system of government to be headed by a President whose powers are restricted to non-executive matters. A suggestion that the President be directly elected was not accepted and the Constitution now calls for his selection by agreement between the Prime Minister²⁵⁶ and the

251. For a detailed examination of the current status of Anguilla *see generally* Simmonds, *Anguilla—An Interim Settlement*, 21 INT'L & COMP. L.Q. 151 (1972). *See also* REPORT OF THE COMMISSION OF INQUIRY APPOINTED BY THE GOVERNMENTS OF THE UNITED KINGDOM AND ST. CHRISTOPHER—NEVIS—ANGUILLA TO EXAMINE THE ANGUILLA PROBLEM, CMND NO. 4510 (1970).

252. *See generally* 10 CARIBBEAN MONTHLY BULL. 38-40 (1976) and The San Juan Star, June 4, 1977, at 18; Aug. 18, 1977, at 13; Aug. 19, 1977, at 10; Aug. 20, 1977, at 18; Aug. 27, 1977, at 10.

253. An extensive examination of the status question appears elsewhere. *See generally* W. Gilmore, Legal Perspectives on Associated Statehood in the Eastern Caribbean, *supra* note 11.

254. GOVT. OF ST. LUCIA, OFFICE OF THE PREMIER, INDEPENDENCE FOR ST. LUCIA, at 12 (1977).

255. As of this writing, it has not been possible to obtain the report of the St. Vincent Constitutional Conference due to industrial action at H.M.S.O.

256. The new title for the Premier.

Leader of the Opposition, subject to formal endorsement by the House of Assembly. "In the event that agreement could not be reached between the Prime Minister and the Leader of the Opposition, the matter would be decided by vote of the Assembly."²⁵⁷ In St. Lucia, however, the link with the monarchy was not severed. Thus Her Majesty will, upon independence, remain as Head of State and will be represented locally by a Governor-General; "[t]he appointment will be made by Her Majesty on the advice of the Prime Minister."²⁵⁸

In both Dominica and St. Lucia, the restructuring of the legislative branch of government received considerable attention. With regard to St. Lucia, the dormant provisions of the 1967 constitution relating to a Senate composed entirely of nominated members will be activated.²⁵⁹ The bicameral system was also discussed in relation to Dominica²⁶⁰ but it was determined that a single chamber would be more suitable.²⁶¹ There was, however, a wide divergence of opinion between Government and Opposition as to the composition of that chamber. The Government was of the view that, in addition to the 21 elected representatives, it should include 9 nominated members; 5 to be appointed upon the advice of the Prime Minister and 4 upon the advice of the Leader of the Opposition. "The opposition delegation at the [Constitutional] Conference favored a smaller Assembly with only 13 members elected from constituencies but with 8 additional members elected on the basis of proportional representation from party slates."²⁶² In the final analysis, it did not prove possible to reconcile these divergent views and the independence Constitution incorporates the Dominica Government's suggestions while empowering the House of Assembly to change the selection system for senators by a simple majority vote.²⁶³

In the sphere of fundamental rights and freedoms, the basic thrust and structure of the existing provisions has been retained. In both jurisdictions, however, there will be a number of modifications

257. DOMINICA: TERMINATION OF ASSOCIATION, CMND No. 7279, at 5 (1978).

258. GOVT. OF ST. LUCIA, OFFICE OF THE PREMIER, LAYMAN'S GUIDE TO THE CONSTITUTION FOR AN INDEPENDENT ST. LUCIA, at 3 (1978).

259. See REPORT OF THE ST. LUCIA CONSTITUTIONAL CONFERENCE, CMND No. 7328, at 3-5 (1978).

260. See REPORT OF THE DOMINICA CONSTITUTIONAL CONFERENCE, CMND No. 6901, at 3-4 (1977).

261. See DOMINICA: TERMINATION OF ASSOCIATION *supra* note 257, at 6.

262. *Id.* at 6.

263. *Id.* at 6-7.

and additions to the 1967 Constitutional provisions. For example, in both Dominica and St. Lucia, the circumstances in which a criminal trial can take place in the absence of the accused will be specifically regulated within the Constitution.²⁶⁴

In addition, it has been agreed that, upon independence, the Constitution of St. Lucia will specifically mention:

- (a) that a person arrested or detained shall have the right to engage a lawyer to represent him, and that he must be permitted to speak to such lawyer in private; and
- (b) the amount of bail fixed for a person who is arrested must not be excessive.²⁶⁵

Although it appears that the greater number of modifications to the fundamental rights and freedoms provisions are narrow in scope, this is not universally true. For instance, at the St. Lucia Constitutional Conference in July 1978, it was agreed that:

Section 6(4) should be amended so as to permit the imposition of reasonable restrictions on the remission to another country of any amount of compensation for the deprivation of property for the purpose of controlling the export from St. Lucia of capital raised in St. Lucia or capital raised in some other country the government of which has entered into arrangements with the Government of St. Lucia for the purpose of controlling the export of such capital.²⁶⁶

In spite of these and other changes, it is fair to say that the general constitutional structures for Dominica and St. Lucia are substantially similar to those created under the authority of section 5(1) of the West Indies Act when the associated statehood experiment was first introduced. If this experience is followed by Antigua, St. Kitts/Nevis/Anguilla, and St. Vincent, which appears likely, then "The Associated States of the Commonwealth Caribbean: The Constitutions and the Individual" will continue to be of some value to those interested in the contemporary constitutional realities of the Eastern Caribbean islands.

264. See INDEPENDENCE FOR ST. LUCIA *supra* note 254, at 13; *supra* note 260, at 4-5.

265. LAYMAN'S GUIDE TO THE CONSTITUTION FOR AN INDEPENDENT ST. LUCIA *supra* note 258, at 3.

266. *Supra* note 259, at 2.