Thank you very much. I wish to speak conceptually about constitutional reform as a part of an essential process of constitution making in the Commonwealth Caribbean. I therefore wish to speak to this against the background of our constitutional origin. Now, with respect to our constitutional origin, I’ve taken a sentence from a speech which was given by Sir Hugh Springer, then Governor-General of Barbados, on the occasion of the 350th anniversary of the Barbados Parliament, in which he said “Our constitution came from Britain but a dozen generations of Barbadians have made it their own”. In my opinion, these words of Sir Hugh Springer tell the whole story of the Commonwealth Caribbean. Essentially, all our independence constitutions have come from Britain but we have in some way, or some ways, tried to make them our own. So essentially then, it seems to me that these words of Sir Hugh Springer would be at the core of any possible narrative construction of our constitutional origin.

Now West Indian independence constitutions, notwithstanding the present status of Trinidad and Tobago’s constitution and Guyana’s constitution, West Indian independence constitutions are, for all intents and purposes, the kinds of constitutional arrangements that evolved in the United Kingdom over many centuries. They have had their juridical origins in statutes of the British Imperial Parliament and they trace their historical beginnings as far back as July 1627, when the King of England granted legis patent to James I, Earl of Carlyle, over the whole of the Caribbean islands, from 10° to 20° north latitude, a wide range of islands, including Grenada, St Vincent, St Lucia, Barbados, Dominica, Guadeloupe, Montserrat, Antigua, Nevis, St Christopher, as well as some of the smaller islands. And thus was born, according to Professor Lloyd Best, the political system of the West Indies. And this was marked by a series of developmental changes over the centuries, ultimately to the granting of political independence from the 1960s to the 1980s.
Emancipation: Origins of Constitution Making

Now these developmental changes can be said to have begun in earnest with the emancipation of the slaves in the West Indian colonies in 1834, an event which Professor Rex Nettleford describes as the greatest watershed event in the history of this part of the Caribbean, which millions have come to call home. By this, Nettleford means to say, that the abolition of slavery law on August 1st, 1834, by which West Indian society would have been emancipated from the debilitating transgressions of slavery, had made possible the emergence of an entire set of rules governing conditions of work and industrial relations, and safeguarding future society against the viler consequences of the wanton exploitation of labour which had persisted for two centuries before.

In a word, we are the creatures of that law, according to Nettleford, not merely in some abstract sense of being the subjects of empire, but rather in a more organic sense of relatedness, in that the abolition of slavery would have constituted the critical starting point, or at least set the stage, for the development of a new trend in colonial government in the West Indies colonies. And, over a century later, this eventually resulted in political independence and the granting of civil status to those persons who lacked it prior to emancipation. Thus, for Nettleford, the emancipation statute must be regarded, or must be accorded canonic status as the foundation document of West Indian constitutionalism.

Devolution of Power

Now the two decades following the Second World War witnessed the progressive liquidation of European colonial empires – in Asia, Africa and the Caribbean. In some cases this was quite voluntary and with perhaps a certain sense of relief on the part of the colonial power, of being able to shed a military or economic burden. In some cases it was quite reluctant and maybe the colonial powers had done so quite tardily. The process of decolonialization usually involved, in stages, the progressive devolution of qualified home rule, then self-government, and finally independence. This, in essence, describes the process of lawful devolution of sovereignty by which Britain granted independence to countries like India, Pakistan and Ceylon, 1947 to 1948, and ultimately to its colonies in
the West Indies, starting with Jamaica and Trinidad and Tobago in 1962 and ending with St Kitts, at least for the time being, in 1983.

This process, in its totality, often involved the constitutional transition of the colony through stages of semi-representative and representative government, and eventually semi-responsible government culminating in full independence with the formal enactment of the independence constitution by her Britannic Majesty in council. Now this process was established or adopted by Britain for treating with its colonies. Therefore, according to one scholar, it is notorious that the new post-colonial constitutions were invariably highly derivative and tended to borrow very heavily from the constitutional institutions and developed practices of the parent European colonial power involved.

Since the approach to self-government and independence on the part of the colonial territory concerned was usually conditioned upon the development within that territory of the democratic system of government as evidence of its capacity finally to govern itself, free from the benevolent paternalism of the erstwhile colonial power, it is perhaps not surprising that the emerging new post-colonial, indigenous, local, political elite should find it good, practical politics to copy the constitutional models of the colonial power and that the influence of the old colonial office legal draughtsmen should often be very, very persuasive.

In the instances of decolonialization, McWinney writes, where a parent, imperial government finally resolves to devolve political legal authority to an indigenous, local, colonial community, the imperial government normally in control of the constitutional rules of the game from the beginning, may prefer an orderly arranged state succession from its own government to a new local government created especially for the purpose. The transfer of colonial power thus becomes an elitist, oligarchic exercise with the constitutional charter of the newly created state often being one prepared in advance by the imperial government’s own colonial office functionaries. McWinney notes that when there has been adequate time, the British Empire practice was, as far as possible, to try to coordinate the imperial initiative in favour of constitutional devolution with some form of local constituent activity in the colonial territory concerned, on the part of the local
people, on some more or less genuinely representative basis. This was indeed the case in respect of the older and narrower European segment of the Empire, such as Canada, Australia and even the Union of South Africa. And the process was also successfully applied in the case of decolonialization and devolution of constitutional self-government and independence on the Indian subcontinent, where a local representative constituent assembly functioned from the beginning to work out the general principles, as well as the detailed institutions of the new constitutional system, or systems.

**Independence and Constitution Making**

This measured process of constitutional devolution was not, however, affordable to the rest of the Empire, particularly to Africa and the Caribbean. For, by the late 1950s, decolonialization had become a new international law imperative, which the United Nations and the emerging Third World countries sought to impose, often upon the unwilling and uncooperative parent imperial states or governments. In the circumstances, the actual transfer of power was often ungracious and hurried, with the consequence that the post-independence constitutional systems were often improvised or makeshift arrangements with a predominantly European colonial office personality reflected in the constitutional institutions. In other words, the post-decolonization succession states of the late 1950s, 1960s and 1970s did not really have the time to develop in comparative leisure, and their own proper constitutional initiative, their own genuinely local source of sovereignty in place of the received imperial grown law at the time of independence. In a word, their own locally developed constitutional institutions of practices more nearly reflecting the local, indigenous society and its aspirations.

In sum then, in the era of rapid decolonialization, British Empire constitutional systems were, with notable exceptions on the Indian sub-continent, normally devolved from above, from the parent authority. Thus they tended to have this elitist and certainly a non-popular root of political and legal sovereignty. Certainly, in the Commonwealth Caribbean, there was no active popular participation in constitutional drafting through a representative, elected, constituent assembly and later ratification by referendum. Rather, the process of constitutional founding in the Caribbean, allowing for some differences in detail in respect of each particular island, was one in which the local political leaders
journeyed to London to enter into negotiations with the Colonial Office functionaries over the terms of our constitutional arrangements.

Thus it is fair to say that notwithstanding this risk of over-generalization, that the process of establishing the West Indian independence constitution to mark the founding of the new independent sovereignty was, as described by McWinney, an elitist, oligarchic exercise. Constitutional founding in Jamaica, for example, the largest of the British West Indian islands and the first to gain political independence, was quite representative of the process, which obtained in the rest of the Commonwealth Caribbean. It did not involve the mass of the people, as such, but was essentially an elitist policy of negotiating with the Colonial Office. Thus the Jamaican independence constitution, like its sister constitutions throughout the region, reflected the normal tendency of the successive political class to copy the political culture of the imperial power. This is in the very nature of the colonial experience where the colonial society is penetrated at all levels of decision making, even in areas beyond its economic and political life. And it bears out the truth of McWinney’s observation that the new post-colonial constitutions were invariably highly derivative and tended to borrow very heavily from the constitutional institutions and the developed practices of the relevant parent European colonial power. This was the basic feature of the development of post-colonial constitutionalism, which was a natural sequel to the progressive liquidation of the European colonial empires in Asia, Africa and the Caribbean.

Now, given that the approach to self-government and independence on the part of the colonial territory concerned was usually conditional upon the development within that territory of the democratic system of government as evidence of its capacity finally to govern itself, free from the benevolent paternalism of the colonial power, it is perhaps not surprising that the emerging, new post-colonial, indigenous, local, political elite should find it good, practical politics to copy the constitutional models of the colonial power, and that the influence of the Colonial Office draughtsmen should be so persuasive or pervasive.

The process of constitution making, as I’ve briefly sketched it, was common to the entire Commonwealth Caribbean. The draft constitution of Jamaica, the draft
Jamaican constitution, which was produced in January 1962, was taken to London where significant alterations were made and subsequently ratified by the Jamaican Parliament on February 27th 1962. The constitution, however, came into force, in strict law, by imperial legislation – the Jamaican Independence Act 1962.

An exception to this pattern, however, was Trinidad and Tobago where indeed there was some engagement of the people in the process. I don’t think, in the Caribbean, we had seen such engagement. In the other countries, including Jamaica, I don’t think we had seen that. But, as I said, I speak to correction here.

The Impact of Dr Eric Williams

Now this engagement might well have been due, in large measure, to the entry of Dr Williams into active politics of the country in the mid-1960s (sic). It is hardly contestable that, upon his return to Trinidad following his studies at Oxford University and a brief stint as a professor at Howard University in the United States, Dr Williams has established himself as arguably the most dominant figure in the politics of Trinidad and Tobago and the leading advocate for constitutional change, leading ultimately to political independence. Williams’ public lectures on politics and constitutional reform at the University of Woodford Square in Port of Spain and throughout the country in the mid- to late 1950s had produced a level of civic education to Trinidad and Tobago quite unmatched in any of the other islands, including Jamaica.

Towards the end of 1961, following the collapse of the West Indies Federation – upon Jamaica’s decision to withdraw in September of that year – the PNM government under Dr Williams decided to concentrate its efforts on attaining full independence. By April 1962, in reply to a dispatch from the Governor, the Secretary of State for the Colonies agreed that Trinidad and Tobago should become independent as early as practicable in 1962. He proposed that an independence conference be held in London towards the end of May to agree on a constitution and the date for independence.

But, in the meantime however, in February 1962 the Government had published a draft independence constitution for public comment. Individual citizens and public and private organizations were invited to submit their memoranda. Those who responded to
the invitation were apparently invited to a three-day conference at Queen’s Hall, April 25th to April 27th, to discuss the draft constitution. The press was excluded from this conference, popularly known as the Queen’s Hall Conference. The proceedings were later broadcast and published uncensored, I was made to understand.

Following the conference the Government made certain amendments to its draft, which was then presented to a joint select committee of Parliament. On May 11th 1962 the report of the joint select committee to consider proposals for an independence constitution for Trinidad and Tobago was laid before the House of Representatives and adopted. It was this draft that the Trinidad and Tobago delegation took to London for the Independence Conference on May 28th 1962. Trinidad and Tobago became independent August 31st 1962.

Criticism of the Process of Constitution Making

In spite of all this, the Government’s handling of the independence issue and its method of consulting the people on the independence constitution had provoked severe criticisms. Many organizations and individuals condemned the government’s ‘indecent haste’ – this is the phrase one of the scholars used – in putting the independence constitution on the political agenda with only six weeks allotted for comment, especially since nothing had been done to consult the people on the unitary statehood proposition. Moreover, the original draft constitution, which was presented for debate by delegates at the Queen’s Hall Conference, was not a bipartisan document. Further criticisms of the draft concerned the sections on civil liberties, the provisions for entrenchment, the composition of the senate, the appointed power of the prime minister, and the machinery for the conduct of elections.

But the Government responded that the original draft embodied the elected government’s thoughts on the desirable form of constitution for Trinidad and Tobago and was intended to be the basis for discussion in the Queen’s Hall Conference, to which all citizens and organizations, including the political parties, were invited. Therefore - this is the Government’s reasoning – since it was the amended draft resulting from the Queen’s Hall Conference, and not the Government’s original draft, which went to the joint select
committee, of which the parliamentary opposition was a part, it therefore could not be claimed, they said, that they, the opposition, were excluded from any vital stage in the national debate of the constitution.

Still, it was felt by some delegates and the main opposition parties that, by limiting discussion to the Queen’s Hall Conference to the Government’s draft, no really fundamental questions with regard to the constitution could be put, for example whether Trinidad and Tobago should be a republic as opposed to a constitutional monarchy within the Commonwealth. Ironically, there was probably greater consensus of opinion about remaining a monarchy within the Commonwealth with responsible parliamentary government than on any other issue. Only a minority at the Conference openly opposed, or expressed any preference for a republican constitution. But be that as it may, very few changes were made in 1962, except those which would have anticipated the changeover from the colonial to an independent regime.

The basic structure of the constitution remained that which had been in 1961 in the Order in Council. The more substantive areas of change concerned sections on civil liberties, the provisions for entrenchment, the composition of the senate, citizenship, the authority of the political executive, particularly the prime minister. On this last issue, according to Professor Ryan, the question about the relationship between the governor-general and the prime minister posed the fundamental question about the basic ideological foundations of the constitution.

But, notwithstanding the criticisms levelled at the Government, it is quite remarkable that a process of constitutional founding of this sort had been undertaken in the West Indies on the eve of political independence. The Premier had boasted that the process was an honest and sincere attempt to achieve a democratic consensus on a matter of national concern. No other country in the West Indies, he thought, had adopted the course that Trinidad and Tobago had decided upon in soliciting public reaction to constitutional proposals. As Professor Ryan puts it, the constitutional conference held at Queen’s Hall on April 25th to 27th 1972 was perhaps one of the finest democratic exercises that Trinidad and Tobago had yet witnessed. Quite accidentally, he said, the Government had hit upon a method of obtaining popular participation in the constitution
making process and, as Dr Williams himself had stated, the presence of some two hundred citizens from all walks of life, including representatives of the religious, economic, labour, civic, professional and political organizations, as well as governmental agencies, constitutes a landmark in the history of the territory. “Today’s meeting represents the closest approximation we have as yet achieved towards the national community. All of you added together, with your collective views, however divergent, or contradictory, constitute a citizens’ assembly, the like of which had seldom been seen in the world. You are all here this morning” he said, “the nation in conference – an educated democracy in deliberations, a government seeking advice from its citizens”. So, as I said, I stand corrected on that.

**Overall View of West Indian Process**

Now, if the story of the founding of the Jamaica, Trinidad and Tobago, and even let us say the Barbados independence constitution - focussing on these as three dominant countries in the Commonwealth Caribbean – if the story of founding of these constitutions is indeed representative of the process that obtained throughout the region, then at least two essential points need to be underscored. One is that political independence in the West Indies was not a revolutionary repudiation of our colonial past and, equally important, that the people were not the authors of that which they have accepted as the fundamental law. The virtual absence of the people from the political independence process meant that West Indian constitutional founding fell far short of the democratic ideal which, to paraphrase Professor Frank Michaelman, is the idea that a country’s people see themselves in some non-fictively attributable sense, as the authors of the laws that constitute the polity; the laws, that is, that fix the country’s constitutional essentials, charter its popular, governmental and representative governmental institutions and offices, define and limit the respective powers and jurisdictions of those offices, and thereby express a certain political conception of themselves. Such authorship, according to Professor Sala Del Habid, requires that a country’s process for fundamental lawmaking be so designed and conducted that outcomes will be continually apprehensible as products of collective deliberation conducted rationally and fairly among free and equal individuals.
Commonwealth Caribbean citizens are heirs to a constitutional tradition that derives in large part from the English constitutional theory and practice. Until independence, West Indians were British subjects living under a constitutional monarchy. With independence, however, and unlike the Americans, West Indians did not reject the British constitution and affirm their own constitutional tradition. Rather, in the fundamental design of the political institutions, their retention of the Privy Council, and their continuing allegiance to the Crown, West Indians implicitly attest to a constitutional faith in that English constitutional tradition. The words of the Wooding Constitution Commission are very instructive here. He said “the constitution under which Trinidad and Tobago achieved independence in 1962 was in all its essentials a written version of the constitutional arrangements that evolved in the United Kingdom over many centuries”.

Could It Have Been Different?

But could the process of constitutional founding in the West Indies have been fundamentally different? Could it have taken a more revolutionary part say resulting in a repudiation of the Westminster style of constitution and much of its attendant practices? And could it have engaged the populace in a more communal conversation as to the kind of constitution they should wish for themselves and their posterity? My colleague, Steven Vasiani, suggests that hardly not. Strong political and intellectual forces, he reasons, coupled with the education and social formation of West Indian nationalists and political elite would have militated in favour of the Westminster model and against any revolutionary change. Moreover, the decision of the British government at a constitutional conference in London in June 1961 to grant political independence to some of its Caribbean territories, comprising the Federation, would simply have meant independence within the constitutional framework established by the British over the years for granting independence to its colonies.

But, particularly in the case of the British West Indies, the rapid pace at which independence came following the break up of the Federation meant there was hardly much time for any careful rethinking of the received constitutional forms and institutional arrangements. For, unlike the case of the older, narrower European segment of the
Empire – Canada and Australia, etc. – and subsequently in the case of decolonization and devolution of constitutional self-government and independence on the Indian subcontinent, in the case of the West Indies the imperial initiative may well have been occasioned by an urgent need to be rid of the burdensome West Indian territories. Time was therefore of the essence. In any event, Steven Vasiani says to me, in the case of Jamaica, following the results of the national referendum in 1961, the constitutional process became a matter of identifying the shortest and the least controversial route to independence. In addition, the British tradition of imperial tutelage would have required a colonial allegiance to the institutional requirements of constitutional government, which meant adopting the Westminster style of constitution and its Australian, Canadian, and Indian export versions.

Certainly, political leaders like Norman Manley, would have been well aware that the one sure way to prove to the British that we were ready for independence was to express a desire for an unbroken continuity of the Westminster style of constitution and its attendant practices, in particular, our continuing allegiance to the Crown. In the circumstances, therefore, political leaders would not have encouraged any debate but that which showed a clear preference for the Westminster style of constitution. And an early comment from Norman Manley, as far back as 1952, would seem to bear this out. For he said: “One thing we have learned from history in all this colonial development, is the greatest desirability of complete unity on the part of those in the colony who are making the demand for independence. It is the natural tendency of colonial powers to doubt the ability of the government to govern and rule themselves. This must be so, otherwise they would not dare continue to rule. If a man did not believe in his superiority to govern, he could not do so. Colonial powers must find reasons to justify slow progress and they are not to be quarrelled with for that because it is based on historical process”.

So, notwithstanding that constitutional change and development in the West Indies may in fact have resulted in part from the political uprisings in the 1930s, it still remains the case that the colonial process, the experience of being colonized, would have planted in the West Indian consciousness a negative perception of self and would have encouraged a longing to be like the colonial master. As our man of letters, George Lamming, puts it, “colonialism was not a physical cruelty, indeed the colonial experience
of my generation was almost wholly without violence, no torture, no concentration camp, no mysterious disappearance of hostile natives, no army encamped with orders to kill. The Caribbean endured a different kind of subjugation: it was the terror of the mind, a daily exercise in self-mutilation. This was the breeding ground for every uncertainty of self”.

There is no question then that our political imagination has been shaped by the historical experience of British colonialism. Therefore, the kind of constitutional discourse that would have attended the quest for political independence would have limited itself to reinforcing the belief that we were indeed ready for independence and, above all, that independence did not mean any radical departure from the pre-existing colonial constitution. That is to say, it did not mean the founding of a new constitution.

In essence, then, the desire for political independence would not have indulged in any serious reflection on the alternative constitutional frame such as the US presidential model, for example, which, in any event would have required a critical mass of intellectual exchange and awareness among the non-governmental sectors of the society.

**Constitution: A Plan for a Way of Life**

But, we must remember this: a constitution is a document of political founding or re-founding. It is a plan for the founding and ordering of a political society, commonly understood in modern terms as the state. It defines the arrangement of those essential powers, viz. the executive, the legislative and the judicial, that mark the sovereignty of the state and its authority over the countless other institutions of social life such as the familial, the economic, the cultural and the like.

In a broader, more fundamental sense, the term constitution comprehends virtually the whole of what is sometimes called the form of life of a human community, describing what that life should be like and ordering the institutional design for achieving that life in a given society. In a word, then, the constitution is a plan for a way of life. And this entails an enunciation of those values that would support a certain conception of the good life and also a certain conception of justice and an elaboration of those institutions by means of which this way of life is best achieved. It entails an enunciation
of the range of activities on which institutions will bear and who, as full citizens, that is those holding full political rights, will share in the operation of those institutions.

Constitutional founding then, which according to Professor Sheldon Wolling, is “the giving of form to collective life or the organization of a political community in which all its members are, in theory at least, implicated in a common life”, is certainly one of the most fundamental of human endeavours. Indeed it is reckoned to be the most notable action of which political man is capable.

   It is indeed to be superior to any other types of political acts because it aims to shape the lives of citizens by designing the structural dwelling, which they and the posterity will inhabit. It is an act addressed to a fundamental and universal human problem: the problem of defining some of the most fundamental relationships in which members of a society are to stand to one another and to their state. A constitution affects to define how human beings are to live with one another in society, more specifically the political ways in which people may live together, politics here taken to mean fundamentally concerned with the proper life of man in the polity.

   Constitutional law is therefore very much the study of human collective life. It addresses the problem of the way in which certain fundamental claims and needs of human beings are treated in the society in which they live. Indeed, it addresses the very fundamental questions of who are to be included as members of the political community: the kinds of rights, liberties and responsibilities that are thereby entailed. Thus the constitution’s reach, in a conceptual and practical sense, into the lives of the citizens can be extraordinary.

   As Professor Peter Steinberger puts it: “Where humans live together, there is likely to be some ultimate practice in terms of which particular forms of social life are, according to the fashion, either actively regulated or generously allowed to operate without overt interference, and where the decision actively to regulate or not is itself subject to review and revision. This practice, however formulated and instituted, is the practice of politics conceived in the broadest possible terms and, as such, is the defining characteristic of political society”. It follows then that all our ways of living together
are, at least in theory, subject to the claims and judgements of politics to which the constitution is central.

**The Moral and the Political**

So it is indeed the case that the constitution, in its broadest sense, speaks to the conditions of the common life, in theory at least, and all our ways of living together are subject to constitutional injunctions. In other words, the constitution speaks to our moral and political life, since it concerns not only the structure of power, and therefore the ways in which government may treat the citizens, but also the way in which individuals may treat each other in society. Thus the constitution must be conceived as defining both a moral and a political community, since it can be at one and the same time both an instrument of political order and an expression of a people’s moral aspirations for political life. It is ideally a collective, public expression of the essential political commitments of a people, of the kind of people they are and wish enduringly to be. This expresses two critical senses of the word constitution. As Professor Hannah Pitkin reminds us, “the use of the word constitution may refer to a characteristic way of life, the national character of a people, a product of the particular history and social conditions”. This is the sense in which Aristotle’s Politia uses the term, which refers, not to fundamental law or locus of sovereignty, but to the distinctive shared way of life of a polis, its mode of social and political articulation as a community.

The second use of the word constitution points to the act of constituting, that is of founding, framing, shaping something anew. In this sense, our constitution is an aspect of the human capacity to act, to innovate, to break the causal chain of process, and to launch something unprecedented. This underscores an elemental truth: that constitutions are made not found; that they are human creations, products of invention, choice, the specific history of a particular people and almost always a political struggle which some win and some lose.

These two senses of constitution, as fundamental character or way of life, and as the activity of constituting, conjoin in the political and legal sense of constitution. On this view, the political constitution of a people is an act of collective self-definition and
self-interpretation; an act by which a people constitute themselves as a people. As Professor Donald Lutz puts it, “at some point, if a political system is to endure, a people must constitute themselves as a people by achieving a shared psychological state in which they recognize themselves as engaged in a common enterprise and are bound together by widely held values, interests and goals”. Constitutional founding is therefore a process of collective self-definition.

Redefining Political Identity

Constitutional reform, as an essential aspect of the continuation of that process, of rethinking and reshaping our constitution through our collective activity, is equally an act of self-definition and self-interpretation. From this perspective, and a view of the foregoing story of our constitutional origin, the project of constitutional reform in the West Indies assumes a very urgent and profound mission. Above all else the task of constitutional reform must engage our human capacity for collective and deliberate creative action in rethinking and reshaping the polity; in a word, to make our constitutions our own. The distinctive challenge for constitutional reform today is therefore the redefinition of West Indian political identity. For whether or not we are mindful of the fact, West Indian independence constitutions provide us with images of ourselves and representations of our political identity that demonstrate the importance of authorship in the construction of political identity, as evidenced by our willingness to surrender to their inscriptions of the West Indian constitutional self. The question then for us, is whether based on a critical and comprehensive understanding of the origin and nature of our constitutional texts, of the constitutional world they have brought into being, and of the images they provide us of ourselves, whether we would wish to reaffirm rather than re-make, as it is within our human capacity to do, the foundational terms of our political order and the inscriptions of the collective constitutional self that are provided in our fundamental laws.

To repeat then, constitutional reform becomes an act of critical self-understanding because in the enterprise, we go back to our plan for public life in the hope of grasping who we authentically are, or aspire to be, even beyond the current state of our constitutional realization and the imaginings of our founders. Constitutional reform
therefore becomes an interpretive enterprise that seeks to understand and explain the connections between the written texts and the political order they have signalled into existence; our collective identity and the form of our politics. In a word, it becomes a project of active, affirmative theorizing, radical in the sense of getting at the root of things, beginning at the starting point of political consciousness of what we really are and knowing ourselves as a product of the historical process to date.

The central claim thus far has been that our post-colonial constitutions were drafted from above as part of an oligarchic, elitist exercise. And this helps to explain precisely why we still do not yet perceive our independence constitutions as our own; why we do not yet fully recognize the collective self as the author of the political community; why we do not yet have a sense of having constituted ourselves as a sovereign people in some positive act of communal self-constitution.

**Re-examination of the Relationship with the British Crown**

A possible corrective to this situation is given in the terms of reference regarding the patriation of the West Indian independence constitution. And a re-examination of our continuing relationship with the British Crown and possibly the establishment of a Caribbean court as a final court of appeal and the abolition of appeals to the Privy Council. Patriation of the constitution is taken here to mean simply some local event, or series of events, that may be taken as a measure of constitutional autochthony, meaning that the constitution may now be seen to derive its validity and authority from the local events rather than from the act of the British Imperial Parliament.

The patriation term of reference is therefore all important because it is the starting point in any possible replication of the ideal of constitutional founding, the idea of a people grounding their political community and establishing their own political identity in some positive act of fundamental lawmaking. The issue of patriation must therefore be fully addressed in our theorizing about constitutional reform. Of course, Trinidad and Tobago has already engaged in this process in 1976 with constitutional reform. But patriation is closely linked to the terms of reference regarding the continuing presence of
the British Crown in the West Indian constitutional order and the abolition of appeals to the Privy Council and the establishment of a Caribbean court of final appeal.

It can hardly be gainsaid the defining impact of the British Crown and its judicial committee on conceptions of West Indian constitutional self. On the assumption that we have retained the monarchy, we continue to define ourselves as subjects of the British Crown. Hence, our continued pledge of fealty and the Judicial Committee’s continuing location at the top of the West Indian judicial hierarchy, virtually ensure that our constitutional practices and judicial habits of mind would carry a distinctive British cast. Our colonial tutelage has no doubt resulted in the historical entrenchment of certain forms and practices. The institutions of constitutional democracy that emerged from that tutelage have, for the most part, remained remarkably stable, paradoxically producing a powerful impetus to preserve and to be faithful to that which we have inherited.

Still, the very strong opposition in some quarters, to either the removal of the British Crown or the abolition of appeals to the Privy Council, suggest a blindedness to the fact that the continuing presence of the Crown and its judicial committee represents a vestigial incongruity, a contradiction in the constitutional symbolism of a politically independent sovereign people. This incongruity is further underscored when one considers that the West Indian independence constitution is a written constitution with an entrenched bill of rights, very much in contrast to the largely unwritten British constitution and the absence of constitutionally entrenched rights.

This means that the domiciling of ultimate judicial power over West Indian constitutions in London would leave them (the constitutions) too much under the dominance of British constitutionalism and their interpretation less open to cosmopolitan intellectual influences. Thus, in a later part of this presentation, I would hope to show that the establishment of our own final court of appeal constitutes an essential part of the process of West Indian decolonialization and could have tremendous implications for the redefining of our political identity, through the kind of reading of the West Indian constitutional text and of the polity it recommends, in the more appropriate language of modern republican constitutionalism.
In summary, I make bold to say that this idea of constitutional reform presents itself as a kind of hermeneutical enterprise in constitutional theory, that is to say, a re-conception of the West Indian polity and a re-definition of West Indian political identity. Our political independence from Britain was only the beginning of this mission, the starting point in our struggle to make ourselves a free people. Achieving this goal must mean, among other things, refusing to inhabit without question an identity constructed for us by our colonial past and scripted by the texts and institutions that emerged from that tutelage. We can only be free by giving to ourselves texts, bequests and commitments by which we propose to live our lives over time, in a word, by a redefinition of the political inheritance from Britain.

Authors of Our Own Constitutional Text

This, according to Professor Reubenfeld, is the ideal of democratic constitutional self-government; an understanding of constitutional law that was initiated in the American founding or by American written constitutionalism. That is to say, breaking from a two thousand year old tradition, in which a democratic constitution meant constitution establishing a democratic form of politics. America understood a democratic constitution to mean, in addition, a constitution democratically made. America made democratic constitution writing part of democracy. Thus the authority, the legitimacy and value of American constitutional law, in large measure, depend on its claim to being law that embodies the nation’s self-given fundamental, political and legal commitments.

The task of constitutional reform, therefore, is to afford us the opportunity of realizing this idea of a nation living out commitments of its own authorship over time. Our written constitutions are certainly democratic in content but, as long as they continue to be perceived as the received constitutional instruments from our former colonial master, they would forever bear the taint of fundamental illegitimacy, of subjection or imposition, from without. As Professor Reubenfeld puts it, “a nation that lives under a constitution imposed from without, imposed say by an occupying army or a colonial power now departed, might come to accept the document, embrace its authority, perhaps even to revere it”. Still, such a situation would constitute a betrayal of an ideal
conception of self-government, of a people living out, over time, commitments of its own
authorship.

In the current enterprise of constitutional reform, we invoke this ideal of
democratic constitution making, which must include the possibility of the people’s re-
authorship of the fundamental law. But then even a founding moment of perfect popular
will will not suffice to secure the legitimacy of the constitution once and for all.
Constitutions, after all, are lived under over time and, in due course, they will come to
suffer temporal dysfunction. Aspects of the constitution may become unsuitable or the
people may no longer recognize some of the constitutional commitments as their own.
Happily, democratic constitutionalism rests on the very possibility of the supposition that
the process of framing a constitution continues long after the founding moment. In the
judicial, political and cultural discourse, through which a political community constantly
reassesses and reshapes itself, democratic constitutionalism therefore entails the
continuing possibility of the democratic rewriting of the fundamental law. Our current
constitutional reform project should at least achieve that much, so that our constitutional
charges can be said to have acquired, though only ex post facto, an unimpeachable
popular route of sovereignty.

**Parliamentary Republic, Not Monarchy**

Currently, all our independent sovereign states in the Commonwealth Caribbean,
with the sole exception of Guyana – I say *all*, all – are parliamentary rather than
presidential republics. In other words, it is nonsensical talk that you have constitutional
monarchies at this moment in the Commonwealth Caribbean. So it was nonsensical talk,
even in Trinidad and Tobago, that at independence you were a constitutional monarchy.
You were not. You were a republic; a parliamentary republic. And, in 1976, when you
declared yourself to be a republic, you were simply declaring yourself to be what you
already were. So they are all parliamentary except for Guyana, which is more or less a
form of presidential republic. This, to my view, was inevitably given as a result of our
historical relationship with Britain and the process of independence described above.
I have discussed the advantages and disadvantages of the parliamentary as opposed to the presidential republic for the island states. I have concluded that I would prefer to see that we retain the parliamentary model, because I think that is a more appropriate model and we could get into discussion of that. But the fact is we have retained the parliamentary model in large measure, except for Guyana. So it would seem to me that a central question for us is rethinking the conception of the parliamentary model that we have. In essence then, what I want to say is this: the British parliamentary model, which we follow, is what is referred to as a monist democratic model, in that the idea of majority rule is the central and defining element of constitutional democracy. It means then that the popular political majority, acting through the parliament, would essentially define even what rights the people of the community have.

The opposition to that is the American dualist model, that is, the written model which states that, at the founding there was a superior law, which is established – that is the constitution - and that the act of politics from day to day is separate and apart from that superior law. In short, therefore, the American model conceives of the possibility that there is an independent judiciary, with the power of judicial review, which acts essentially to preserve the superior model, the superior law, which had been established at the founding.

Now this is contrary to the British model in which the idea of judicial review preserving the superior law against the will of the legislature, for example, is unheard of in Britain. What I am saying for the West Indian constitutions – since they are written constitutions – is that we must re-conceptualise them to understand that, notwithstanding the relationship with the Westminster model, the West Indian written constitution is conceived in that very tradition which was inaugurated in the American founding. So it is possible to conceive of the West Indian independence constitution as essentially part of the dualist model of constitutional government that the American constitution is. That is to say, the practice of judicial review by an independent judiciary is central to the preservation of the West Indian constitution.
Caribbean Court of Justice

Now it means that, if one were to accept that re-conceptualisation, we could understand the central importance of establishing a Caribbean court of justice. The single most important fact that would distinguish the Caribbean Court of Justice from the British Privy Council is the fact that it would be a constitution of our own making.

In this sense, the Caribbean Court of Justice can be seen as a representative institution of the West Indian people. In other words, it has the obligation of constitutional fidelity to the West Indian people, namely that it would preserve their written constitution against the actions of the executive and the legislature when those actions seem to go contrary to what the constitution demands. It means that the judicial opinions of the Caribbean Court of Justice, as the judicial opinion of the United States Supreme Court for example, or even the Canadian Supreme Court, can come to be seen as if they are the judicial opinions of the people. The judicial voice of the court, as the highest court, would in fact be essentially an expression of the voice of the people since it was the people that established the court and not the legislature.

This is something that is pretty good. And, in the process of interpreting our constitutions, what the court is essentially doing is giving further elaboration to the fundamental principles that are articulated in the constitution to bring the constitution and the political order together because the written constitution constitutes the polity. So in the process of judicial review, what the court is doing is interpreting both the written text - the constitution itself – and the polity that the constitution has supposedly established. In this sense I see the establishment of the Caribbean Court of Justice as an essential part, an indispensable part, of this process of constitutional reform. Thank you.