The complex and often controversial issue of constitutional reform has been at the forefront of public discourse across the Commonwealth Caribbean over the last two decades. The central contention, in this context, has been that post-independence Commonwealth Caribbean constitutions are not autochthonous, but largely reflect the legacies of British colonial rule and do not support a sufficiently robust conception of democratic governance (McIntosh, 2002). As a consequence of these criticisms several governments, though constrained by limited financial resources, have engaged in intense processes of national constitutional reform. This article will give a brief overview of contemporary processes in four Commonwealth Caribbean countries – namely, St Vincent and the Grenadines, Jamaica, Trinidad and Tobago, and Grenada.

### St Vincent and the Grenadines
In late 2009 the Vincentian public was asked to vote in a national referendum on the feasibility of implementing as their supreme law the recommendations contained in a Constitutional Reform Bill proposed by the now defunct Constitutional Reform Commission (CRC). Of the many proposals put forward, perhaps the most significant were:

- The creation of the position of President of St Vincent and the Grenadines to replace the Governor-General as the Queen’s representative
- The replacement of the Privy Council as SVG’s highest appellate court with the Caribbean Court of Justice (CCJ)
- An increase in the number of elected representatives in parliament from 15 to 17
- A confirmation of the legality of the death penalty
- An explicit statement to the effect that marriage is exclusively between a man and a woman

Despite having expended an estimated US$4 million in support of what proved to be a seven-year-long constitutional reform process,
54 per cent of voters in the November 2009 referendum voted against a reformed constitution; in other words, the 66.7 per cent threshold required to make the proposed changes to the constitution was not satisfied.

In hindsight, it can be argued that the process in SVG merely exposed some of the underlying challenges inherent in the quest for autochthonous constitutions in the wider Commonwealth Caribbean. A review of the 2009 constitutional reform process in the context of SVG appears to suggest that among the main forces that fuelled the overwhelming rejection of the proposed revised constitution were:

- A basic lack of understanding on the part of a large majority of Vincentians as to the import and implications of the proposed amendments.
- The complexity of the document which, although distributed to some 30,000 households, did not make for easy reading.
- The partisan political polarisation that was engendered by ‘yes’ and ‘no’ campaigns.

Moreover, a number of theoretical concerns also impeded what should have been a pivotal moment in SVG’s constitutional history. Firstly, there was no place in the Constitutional Reform Bill for the previously proposed National Advisory Council of Elders (NACE), which was due to be comprised of former heads of state, former heads of government and former judges from the St Vincent High Court, Court of Appeal and Caribbean Court of Justice (CCJ), and was proposed to perform several important functions, including providing the list of potential presidential appointees and advising on bureaucratic appointments. Secondly, unlike previous recommendations which attempted to limit (to two) the number of terms of office for prime ministers, the bill counterbalanced the pre-existing position that prime ministers should be allowed to serve an unlimited number of terms.

Finally, the bill, for the most part, maintained the controversial first-past-the-post system, which had proven in the past to be an avenue for heightened adversarial relations between political parties and was considered by some to be unfair or anachronistic. In short, as Matthew Louis Bishop aptly points out, with reference to the previous points it can be argued that although the Constitutional Reform Bill of SVG promised to improve the country’s governance through a variety of means, it was nevertheless ‘insufficient to alter radically the country’s politics in such a way as to genuinely transcend the limitations of Westminsterism’ (Bishop, 2011).

Jamaica

Unlike SVG, which ambitiously attempted to secure a two-thirds majority at the polls in a referendum to revise the entire constitution, Jamaica, after a 20-year constitutional reform exercise, introduced a limited revision to its 1962 Constitution in the form of the Charter of Fundamental Rights and Freedoms. The charter, which ascertained royal assent in 2011, sought to redefine and, in some instances, reaffirm the rights and obligations between the state and the Jamaican citizenry and, more controversially, in respect of relations between citizens. In relation to the latter point, perhaps the most far-reaching amendment brought about by the charter is provision, for the first time in the context of Commonwealth Caribbean constitutional law, for the horizontal application of human rights in a similar vein to the South African Constitution. In other words, not only does the charter envisage claims for redress on constitutional grounds brought by citizens against public bodies, but also claims between citizens aggrieved by the unlawful conduct of other citizens that infringes upon their constitutional rights as enshrined by the charter, and in relation to which there are no other alternative means of redress available. While this development is recent and its implications not yet understood, initial suggestions are that the Jamaican courts may, in fact, be prepared to take a limited and even rigid approach to construing the principle of the horizontal application of rights. Arguably, this would not take proper account of the context and intent surrounding the principle of the horizontal application of human rights (Wheatle, 2013).

On the other hand, as argued by Derek O’Brien and Se-Shauna Wheatle, the charter can, in some respects, be viewed as socially conservative, particularly regarding its approach to the controversial issues of the death penalty and criminalising of homosexuality and abortion (O’Brien and Wheatle, 2012). Furthermore, the fact that the charter does not place any real limitation on the extensive powers of the executive is also a sour point for a growing number of commentators.

That said, some commentators remain cautiously optimistic that the charter has introduced some progressive features. For example, it increases the number and extent to which certain rights are protected; extends the locus standi requirement to accommodate a potentially greater number of litigants; and removes the immunity from constitutional challenges of acts of parliament that have achieved a special majority. Notwithstanding the aforementioned difficulties, however, the Jamaican charter ultimately received royal assent and is now fully operational.

Trinidad and Tobago

The Constitutional Reform Commission (CRC) of the Republic of Trinidad and Tobago was established on 2 March 2013 with the objective of consulting the general populace about the feasibility of constitutional reform. In its report, published in December 2013, the CRC proposed four controversial amendments to the 1976 Constitution that were ultimately included in the

*Trinidad and Tobago: as of 2014, candidates must get at least 50 per cent (plus one) of votes cast*
Constitution (Amendment) Bill of 2014 (Government of Trinidad and Tobago, 2014).

The first of these amendments requires that candidates contesting for election must garner at least 50 per cent plus one of the votes cast in order to become members of parliament. If, however, that threshold is not met, a ‘run-off’ election must be held after 15 days have elapsed so as to determine which of the candidates should be elected to serve in the country’s parliament. While this proposed amendment has been touted in some quarters as discouraging so-called ‘tribal’ voting, given that candidates must now appeal to a more diverse electorate than hitherto, at least one political observer contends that such an approach, though standard practice in countries like France, may sometimes produce a vexing situation whereby the candidates who are in the lead may find themselves displaced in the second round, particularly in close elections (Ryan, 2014).

A second, though by no means subsidiary, proposed constitutional revision relates to the postulation that prime ministers will no longer be able to unilaterally determine the date for general and local government elections. This proposal appears to have garnered considerable bi-partisan support. The third proposed change, a limitation on the number of terms that can be served by heads of state (to merely two, rather than an indefinite period of time), appears also to be widely countenanced. The main criticism, in this context, relates to the question of whether it would be appropriate to deprive the electorate of the opportunity of benefiting from excellent leadership should they otherwise desire to elect their chosen head of state beyond the two-term limit. As pointed out by Selwyn Ryan, however, the prevailing view appears to be that limitation on terms of office would allow for a circulation of social and political power, and guard against impunity (Ryan, 2014).

One of the more controversial of the proposed changes to the constitution of Trinidad and Tobago surrounds the so-called ‘recall’ provision, which states that ministers can be recalled by voters (after a three-year period in office has elapsed) if they fail to adequately perform while in office. While it has been argued that such an approach can fuel political instability, others emphasise that although the required threshold is low (ten per cent), an actual recall can only be achieved with the support of two-thirds of all registered voters in a district. This would apparently make it difficult, if not very unlikely, that a minister of parliament would ever be recalled in practice (Albert, 2014).

At the time of writing, these, as well as several other, considerations had been robustly debated (and successfully passed) in the lower house of parliament and were being actively debated by the senate. It remains to be seen whether the simple majority required to effectuate these reforms will be gained.

Grenada

A Constitution Reform Advisory Committee (CRAC) was launched on 16 January 2014 by the Prime Minister of Grenada. The mission of CRAC is to engage actively in a nationwide consultation process on constitutional reform and, in this regard, to advise the government of Grenada on the way forward. As part of this important and, indeed, long-overdue process, on 14 July 2014 the Cabinet of Ministers of Grenada approved in principle 12 recommendations made to the Minister of Legal Affairs by CRAC (CRAC, 2014). The proposals of CRAC are quite nuanced and could potentially signal a new direction in the constitutional landscape of Grenada, truly reflecting the values of an autochthonous constitution. In this context, the proposals include that the appellate jurisdiction of the Caribbean Court of Justice (CCJ) should replace the privy council; that the name of the state should be changed from ‘Grenada’ to ‘Grenada, Carriacou and Petite Martinique’; and that the rights of citizens should be redefined so as to afford them stronger protection. More profoundly, CRAC has recommended the implementation of the Directive Principles of State Policy which, in principle, places a positive duty on the state to ensure the protection of the environment; the provision of adequate nutrition, and good primary and secondary health facilities to citizens; the protection of the disabled; and the provision of tuition-free education to children up to the age of 18 years. While undoubtedly far-reaching, given the experience of the neighbouring island of SVG, it will certainly be interesting to see whether these proposals are accepted by the Grenadian populace as they go to the polls in a national referendum. At the time of writing the results of the February poll had not been released.

Conclusion

The foregoing narrative suggests that, in large part, there is a general appetite for constitutional reform in the Commonwealth Caribbean, which is no doubt fuelled by the need for an autochthonous constitution. However, the experience of SVG demonstrates that adversarial politics, a basic lack of understanding as to the dynamics of constitutional reform and the complexity of proposals have all impeded the pace of change. Nevertheless, the Jamaican experience demonstrates willingness, albeit limited and belated, to better protect the rights of citizens through constitutional reform, though it can be argued the amendments brought about by the charter largely reflect prevailing political ideologies. The results of the Trinidad and Tobago, and Grenada constitutional reform processes are as yet unknown, however, early indications suggest that, despite a number of practical challenges, there is a strong prospect that these countries might be on the verge of weeding out several features of the Westminster system which can be seen as colonial anachronisms.

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References


