

**“CONSTITUTIONAL RENEWAL, CARIBBEAN INTEGRATION
AND THE RULE OF LAW: CHARTING THE REGION’S NEXT
CHAPTER”**

BY

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AT

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INTEGRATION AND THE RULE OF LAW: CHARTING THE
NEXT CHAPTER”**

Salutations

and Preamble:

1.

Regard invitation to deliver this Annual Lecture as a tremendous honour. The subject is vast and so difficult to cover within a time frame when the audience will still be awake that I wondered whether it was a Tom Fool’s joke.

The wide scope of our theme indicates the broad range of his excellence and extensive legacy. His life’s work is a testament to the search for justice as he entered the political arena to promote social justice for his people.

I eventually decided that my incalculable debt to NW for his legal and political mentorship left me no choice but to tackle these “Issues of national and regional importance through the lens of law, governance and public policy”.

2. Constitutional Reform

The Jamaica Constitution:

“Did not embark on any original or novel exercise – but one with which we were familiar with those modifications that the circumstances of Independence deserved.” NW

Our Constitution obtains its supremacy by the clear stipulation in Section 48 which renders void any enactment that exceeds the defined boundaries.

The most consequential and significant change?

The Fundamental Rights and Freedoms have been replaced by the Charter of Rights

There are substantial differences:

- i. The litmus test is no longer according to public interest
but what is permitted in a fair and democratic society
- ii. Declaration of States of Emergency requires 2/3rd support

- iii. State – not claimant, must prove the conformity with the rights conferred by the charter

- iv. Additional – protections of the environment; access to primary education, the right to vote in free and fair elections, et al

3. **How will the present legislative stalemate be broken?**

It cannot be a secret. The people have a right to know!!

Will previous Bills be retabled or will a bipartisan consensus be sought?

- i. The clock will have to start clicking to satisfy the time table which the Constitution stipulates

Dwindling electoral participation – which reflects continuing apathy, particularly among younger voter – trend undermines the base of democratic authority.

Regrettably, our 65th anniversary will come and go with the Monarch still on the throne, the Privy Council still our Final Court, a Constitution which still exists by an Order in Council

and a cumbersome process for amendments by the existing encumbrances of Section 49.

Time to repatriate our Constitution and turn the final page.

We must use our 64 years of experience and learning to guide us in shaping a new Constitution of our own making.

4. We have adopted the Westminster system. That does not make it sacrosanct or impervious to change. 65 years have shown we need a New Testament.

- i. The present framework engenders divisiveness and hinders national unity. We need a new design (sui generis) for building a harmonious Participatory Democracy – one that unites our nation rather than one which entrenches a perpetual divide into permanent rivalry as “hostile tribes”.

There are those who may seek to make mischief.

Please observe that I am not advocating – a move from democratic pluralism. Nor the abolition of political parties

- ii. We have to fashion a model that takes into account our “unique history” to satisfy our shared aspiration. How we embarked to constitute the EAC the first of its kind is a precedent for what we can accomplish when we come together as one.

That new Constitutional design may require a structure which fuels a wider, broader pool for Cabinet: but limits the proportion of Cabinet Membership in the Legislature – without that the Ministers can outnumber the Government Backbenches and the 2 Chambers of Parliament then operate as rubber stamps.

- iii. An autonomous Legislature which provides for enacting laws, and enables it to meaningfully represent the interests of the constituents in the vetting of public policy and budgetary allocation.

No more the heresy that Public Policy is the sole preserve of the Cabinet and the Legislature has no power to question it.

Admittedly, that truly Indigenous Constitution cannot be rushed. It has to follow a period of self-discovery and a process of extensive consultation with the broad populace to secure that governance is accountable, responsive and inclusive.

Your student generation must have the audacity to invoke this and be active participants in sparking that constitutional revolution.

5. "The Rule of Law"?

"We enjoy and accept as a part of the air we breathe a system in which the rule of law prevails." NW

The Caribbean people as a whole have developed a pattern of observing the rule of law.

I do not contend that we have not seen disturbing signals from time to time to the rule of law, e.g.

- i. Elsewhere – the failure to appoint or confirm High
Judicial Officers
- ii. Political attacks on Institutions and Persons charged
with ensuring integrity and fiscal accountability.

- iii. Glaring instances where the norms and conventions which underpin the Westminster tradition are ignored or disregarded

We, servants of the law, must be particularly mindful of public confidence and trust to ensure that there is only one justice system. No one is above the Law. No one is beneath the social ladder to be denied due access to the Rule of Law because of pecuniary circumstances.

We have an appellate process with the obvious and irrefutable legal oxymoron that, for several Member Countries, our Final Appellate Court is still not of our own making.

The Privy Council is not a Court that makes judicial orders. It tenders advice to the Monarch. How can we contemplate the acceptance or rejection of that advice when the Monarch is no longer our Head of State?

Our legal scholars and political scientists have said it repeatedly:

- i. "Independence can only be fully located within our sovereignty when our Constitution and Laws are interpreted according to our realities."
- ii. The Judges who sanctimoniously proclaimed the perpetuity of the Rule of Law in "the purity of the English air" still managed to regard slavery as legal because we were classified as property rather than human beings.

Our Caribbean jurists rightly insist that the "savings clause" in our Independence Constitutions must be interpreted to

underpin the true meaning of human dignity and freedom rather than to perpetuate the malignant categorisation of the colonial past.

“The Law must not be the shackle to enslave. It must be a tool for justice and liberation.”

Advancement of the “Rule of Law cannot occur until the Caribbean Court of Justice (CCJ) is fully embraced in our region.”

iii. Despite the dangers of terrorism, narco-trafficking and gang violence, the Rule of Law must nevertheless prevail.

6. The Fate of International Law

In my 2011 Norman Manley Lecture, I pointed to the inconsistencies and vast differences between the application and enforcement of domestic law as compared to international law. The gulf has become even wider.

We are engulfed by the turbulent waves within our Caribbean Sea by the exercise of military might and proclamations which violate the tenets of international law.

There is a sitting President who has repudiated any respect for international law and, pledged to govern "solely according to his own morality." Who can predict whether his successor will have the same standard of morality?

The United States does not subscribe to the provisions of the International Criminal Court of Justice (ICC). Yet it has the effrontery to impose visa sanctions on Prosecutors for daring to

prepare a writ of arrest on the Israeli Prime Minister for criminal charges against Palestinians in Gaza!!

How can we countenance silence – when persons on vessels in our Caribbean Sea are summarily executed without ever seeing a shred of evidence?

When/How do we respond?

Our Constitutions that provide each citizen with a right to life and prohibition against arbitrary arrests or detention.

But it takes courage to care.

THE EMERGENCE OF COMMUNITY

The Chairman of the 20th Meeting of Heads of the Commonwealth Caribbean was none other than the incomparable scholar, Dr Eric Williams. He chose deliberately Chaguaramas as the venue as its repossession from the United States was a driving motive for his transition from academia to the political arena.

The leaders of the 4 Independent Nations; Williams, Burnham, Barrow, and Manley, recognized that sovereign independence would be a mere illusion if they failed to exert their collective power to exercise the sovereign right to enter diplomatic relations with Cuba, then in hemispheric isolation.

No one paused to calculate the substantial benefits which that momentous decision would yield without Cuba ever asking for any reciprocal return.

With the departure of Ministers Sonny Ramphal, Kamaluddin Mohammed, Branford Taitt and Secretary General William Demas. No one knows the torment and agony I feel as the sole surviving witness in that historic caucus.

THE FUEL TORNIQUET

“The protection of civilian life is a basic humanitarian obligation under international law.” So, the fuel blockade is cruel and a violation of the universal right to life.

We missed a golden opportunity in St. Kitts. If Rubio was coming, we should have insisted on the participation of his equivalent on the Cuban side rather than a back door meeting on the side with someone else, whatever the name.

That would have been an act of solidarity and also enhance our leverage to facilitate dialogue between two neighbours, Cuba and the USA.

Meanwhile, amid the cruel suffocation of the Caribbean people and worsening dehumanizing condition, we hear the contemptuous admission of “not knowing whether to take it or what to do with it.”

Why don't they just follow what all but 5 Nations of the World resolve at the General Assembly from year to year?

"Remove the illicit embargo and leave Cuba alone!"

We have followed the orders on the medical programme with Cuba.

What's next?

Has Jamaica entered any agreements to accept incarcerated migrants in the USA from 3rd Party countries, allegedly deported for criminal convictions?

One of ours had to be brought back from Eswatini?

If so, under what law will they be detained and where?

Is there not an obvious incongruity when so soon as Haitians land in Jamaica, they are sent back before the hearing of their request for political asylum?

Is it a convenient lapse of memory or is it just sheer ignorance of history? Haiti was the first country to declare that any slave who entered that nation which won its independence by defeating Napoleon's army was immediately declared a citizen and a free man?

What will be our position when we are told that China who has invested in our development can no longer be permitted to have any stake or share in the ownership of our ports?

The differences of ideology and political systems do not prevent the Great and Mighty from dealing with each other for their mutual benefit. China holds a huge share of US Treasury Bills - The USA allows them to buy sensitive AI technology.

Are we a lesser sovereign?

Peter Tosh sang it: Equal Rights and Justice.

FOREIGN POLICY

The provisions of Article 18 in the Treaty of Chaguaramas created, a Council of Foreign Ministers charged with the specific responsibility of “enhanced co-ordination of the foreign policies of Member States.” Admittedly, there have been a number of differences –

Recognition of China vs. Taiwan

Japan – whaling – some supporting and others opposing

Candidatures – few departures from unanimous endorsement of an agreed Nominee.

Our greatest value as 14 nations is when we find the voice to speak and be heard in external fora and then vote as one solid block; not in our divergence.

We do best when together we exercise the tremendous power and intellectual mastery of the entire Community to confront the common obstacles and challenges which we face in the post-colonial world.

Nowhere was that more convincingly proven than when we built a single engine to negotiate Lomé. That success makes Europe our biggest Donor partner today.

It was the precursor for conducting all our external economic negotiations, chaired by Jamaica and operated through the Regional Negotiating Machinery (RNM).

Let me cite another example of what we can achieve by acting together as a community of sovereign states.

No other geographic area has greater interest than our nations in eliminating narco-trafficking and gun smuggling. When the United States presented the Ship Rider's Agreement, we didn't reject it out of hand nor bow in abject surrender but we refused to sign on the dotted line.

Instead, we met in Barbados where Jamaica was chosen to prepare a model agreement, consistent with our sovereignty for negotiations with the USA.

In the end everyone won – the USA and the Caribbean.

There can only be one verdict: A culture of regionalism is always superior to insular diplomacy.

STRATEGIC ALLIANCES

“Our structures of unity must not constitute a prism. They must have windows on the wider world and pathways that look outwards.

“Time For Action” (1992)

And so, we must build strategic alliances.

It is time to revisit the relationships between our Caribbean archipelago and Latin America.

We must make CELAC a meaningful force to withstand any attack in our sovereign domain. I strongly urge that we take an active role, starting immediately with Mexico and Brazil, to strengthen economic relations and foster meaningful technical collaboration.

My belief and current work to make Global Africa a reality, impels me to regard the economic, social and cultural relationship with Africa as pivotal. On the issues of climate

justice, debt restructuring, and multilateral reform, our interests completely converge.

We have proven our capacity. The Community must be prepared to lead with diplomatic sagacity, buttressed by technical expertise and not simply to follow every demand in our quest for survival.

A united front - through the African Union, CARICOM, the ACP (now OACPS), and the G77+China – can exert meaningful pressure in the global architecture.

The Global South can no longer be content to react to agendas set by others. We must set our own priorities. Our unity amplifies our moral authority. It is about reshaping an archaic global order, to make it inclusive, fair, and sustainable for all our people.

The Commonwealth, next only to the United Nations, comprises of the largest conglomeration of Nations. In a crumbling global order, the Caribbean has the numbers to persuade Canada, Australia, India, and the United Kingdom that the unification of the international system should not be confined to beneficial relations among themselves alone but ought to be extended for their fellow members in Africa, Caribbean and the Pacific.

The Caribbean has the intellectual power, as was proven at Lomé 1, to play a leading role in the unfolding of the response to the seeds of narcissistic hegemonism which endanger the rest of us.

We cannot afford recklessness or confrontation. We must provide the leadership as we did for the ACP, in steering a course which enhances our full sovereign interests.

We are no longer pawns of European conflicts nor tenants at will in anyone's backyard.

GOVERNANCE

In St. Kitts, as after RoseHall in 2002, yet another Prime Ministerial Committee has been established on Governance and Finance for the Community.

There have been more studies than Books in the New Testament.

We cannot Keep kicking the can down the road.

We cannot forever remain blind to the palpable truth:

Time has run out.

"Time to integrate or perish."

Caricom will flounder unless there is an effective machine and binding mechanisms to implement and enforce the solemn decisions of Heads and Ministerial organs.

A re-ignited Caricom must become a catalyst for change.

We need a seismic shift to be more cohesive – not more divided and supine.

We have to formulate our own roadmap for resilience, prosperity and self-determination in a world that too often marginalises our interests.

CHARTING THE NEXT CHAPTER

A WIDER AMBITION

Norman Manley once spoke of building “A Community that provides a wider field for individual ambition.”

The next Chapter of our Community must achieve that wider ambition, centred on the Caribbean people.

Caricom must make a difference in the daily quality of life to our workers, our professionals in health and education to operate regionally through a final protocol on the Contingent Rights.

To our entrepreneurs - who can operate in a fully functional Single Market.

To litigants - who can attend their cases in their Final Court of Justice, without having to obtain a visa.

Caricom will not matter to the average citizen who has little or no information as to what is available through the Community without an Information Arm, adequately staffed and equipped to disseminate the work and achievements of Caricom in an age where social media predominates.

How the new chapter unfolds will depend on the pillars already in the ground and require both steel and zeal for a sturdy Caribbean architecture on sound foundations already laid.

We need a sustained campaign for Caricom to be ignited as a vital instrument for the overall development for our people through concerted activity.

We need to begin with a reminder of George Lamming's call:

"The time is overdue for the Caribbean to be at the centre on the curriculum at all levels of the region's education system – not simply as a matter of geography, but as an organic path in

understanding who we are as one people.”

CLIMATE CHANGE AND SUSTAINABLE DEVELOPMENT

Global warming constitutes an existential threat to the entire Caribbean. Our vulnerability to the hazards of volcanoes, earthquakes, rising sea levels, droughts and floods has been aggravated by human behaviour. The strength and capacity of CEDEMA to protect our delicate ecological and geological balance is a vital cog wheel for regional integration.

We should update the Caribbean Uniform Building Code established by CARICOM in 1985 to design standards to build back resilience on all fronts.

The Climate Change Centre, in Belmopan, Belize must be equipped to develop mitigation and climate adaptation strategies.

Critically, we have to redress the colonial legacy of inequitable land tenure which has entrenched socioeconomic vulnerability in order to reduce marginalisation and mitigate disasters.

This should tap into the Caricom 10-point Reparations Strategy, to help fulfil the UN Sustainable Development Goal No. 17, to “Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development”.

This is an area pregnant for legal innovation. This application of “the polluter pays” rules form the base of the ICJ’s advisory opinion that states have an obligation to protect our climate.

Realising its high importance, our President of the CCJ has now made the bold proposal for states, such as ours adversely affected by excessive emission, to obtain compensation by the establishment of International Climate Adjustment Compensation Fund – yet another illustration of the wide span of the law and the value of the emerging Caribbean jurisprudence.

Mention of the Caricom 10-point Reparation Strategy draws our attention to the decision of the UN General Assembly to identify slavery as “the greatest crime against humanity”. It is conclusive proof of our weight when the scholarship and political will of Africa and the Caribbean combine to secure justice. We triumphed because of our belief and persistent campaign to renounce racism and colonial exploitation, spawned to generate wealth and fund massive development in metropolitan states, should secure full compensation for the legacy of social alienation and deprivation we have suffered.

We cannot fail to take notice of those who refused to support our clamour for true justice at last!!

AGRICULTURE AND FOOD SECURITY

The World Food Programme assessed that in 2022, 1.3 million persons within the CARICOM region were impacted by food insecurity. That means approximately 7% of our people are food insecure.

This makes us the more vulnerable to the shocks of geopolitical instability and natural hazards.

The work undertaken in the region on climate risk assessments, crop soil adaptation, climate resilient crop varieties and improving water management dictates that we must now ensure that the knowledge gained from research reaches our farmers, to cultivate climate resilient crop varieties.

ENERGY AND SECURITY

The garrot to strangle the lives of the Cuban people establishes how essential energy is to life, limb and human survival.

We cannot ignore the call to reduce the impact of fossil fuel on the local, neighbouring, and global environment of excessive reliance on fossil fuels as the quality of the environment is so critical to our people, and development of our economy.

As tropical countries located in a relatively large sea, the region is rich in renewable resources. These include (1) the sun for solar energy, (ii) wind, on land and at sea, (iii) the sea for tidal, ocean thermal, and wave energy, and (iv) biomass of the woody and grassy types for products such as ethanol, biogas, biochar, and bio-oil.

We should deploy the new technologies which exist in the

region and internationally to convert these resources and widen the range of energy products in the Caribbean.

THE KNOWLEDGE ECONOMY CREATIVE INDUSTRY AND AI

Our survival and prospects for individual prosperity demand a paradigm shift from reliance on commodity exports and mineral resources, to a knowledge economy.

Despite the fiscal rectitude and the statistical indices, Latin America and the Caribbean suffer the lowest levels of growth. We must reshape our economies to problem solving and value action in order to retain our productive base.

The emphasis has to be on the development and accumulation of our Human Capital to convert our resources into assets.

At Nassau in 2011, Caricom Heads accepted my presentation that this niche should be anchored in our cultural heritage, our creativity, innovation and our superb talents which span the range of arts, music, sports, animation, food, festivals, wellness and the hospitality trade.

Since then, UNESCO, The Caricom Secretariat and UWI have partnered to complete: “An Ecosystem of P.L.A.Y for the growth and development of the Creative Caribbean” embracing the Dominican Republic as well. It has already funded 78 projects. It’s expansion and sustainability now require a regional management and coordination centre, dedicated to the development, protection and promotion of our strategic knowledge assets.

This game changing sector poses new questions for the law – who owns the idea, who captures the value and whose law govern the disputes that arise?

I have pleaded for the Caribbean to fashion a Knowledge Management Centre for the development and execution of a strategy to manage knowledge as a strategic asset across the Region.

I am proud to report tonight that the P. J. Patterson Institute,

with grant funding from Afreximbank and technical scholarship from Lafayette University, has been able to embarked on the reference....

The project study financed by Afreximbank, seeks to develop a working design concept that integrates Africa and the Caribbean into a new, mutually beneficial logistic partnership to awaken synergies and build synthesis in economic and business collaboration.

The proposed hub will bridge this gap by uniting Africa and the Caribbean, catalysing economic partnerships, and fostering innovation in AI.

Moreover, as global demand for AI: grows, the need for ethically sourced natural resources and inclusive policy frameworks become critical. Through this initiative, Africa and the Caribbean will ensure that our economic interests are protected and that we have a say in the advancement of AI

technologies, particularly our issues like data governance, resource sustainability and the socio-economic impacts of automation.

AI, at its core is about knowledge and imagination that creates new value – civic, social, cultural and economic.

The first phase of our study, reveals a new approach to knowledge creation. The knowledge economy, must necessarily include all things where resources are united to engage in exploring new synthesis and synergies beyond their traditional limits. We refuse to “be hewers of wood and drawers of water” in perpetuity.

“Business as usual” will not solve the systemic decline of growth in our economies.

If our young people doubt that somehow things will change for the better and they lose hope, they will migrate in search of a better life. An exodus to greener pastures will be detrimental to wealth creation.

We have a duty to be co-curators of a different experience, a different aspiration. We have to find a way to create a new sense of optimism and opportunity.

To achieve that wider ambition of which Norman Manley dreamed, we need a new synthesis, a new synergy, a new coherence. We have to forge a new calculation between our aspirations and our actual living experience – one based on human ability – not handouts. One that spurs productive pursuits and ultimately guarantees dignity and justice.

THE UNIVERSITY OF THE WEST INDIES

Norman Manley led the resistance to its establishment years ago and advocated as “a centre of learning and training, where we can do our own research and pool our intellectual efforts and resources to tackle our own problems, overcome our prevailing difficulties by strengthening the ties that bind us together.”

If ever our Region needs a compass to weather the global turbulence and tempest, it is now.

The decision by Heads to replace the Royal Charter with one grounded by Regional Treaty signals a vital stage in the age of Caribbean sovereignty. It should not be regarded as merely a legal change to end a legacy of colonial institutional design, but reflect the maturation of Caribbean regionalism.

Let it be a shining light to illuminate our path to intellectual self-definition, to advance learning, create knowledge and

foster innovation for the positive transformation of the Caribbean.

It must be the fulcrum in shaping and sustaining Caribbean civilisation with a clear mission as the intellectual centre of Caribbean development, identity formation and regional integration.

In this new chapter of Caribbean Integration, it has to develop a symbiotic relationship with the Universities of Guyana and Suriname, in research and programme activities to confront the complex challenges we face of economic vulnerability, environmental hazards and social inequality.

To foster that sense of regional belonging within its multi-campus structure and diverse student body, the University has to deepen Caribbean scholarship on our history, governance and cultural heritage.

Given the awesome power and catalytic force of the law, the Faculties and Law Schools must cultivate the learning and propensity in rendering justice for all.

We who are the legatees of pernicious slavery, an obscene plantation system, the plunder of indigenous rights, the victims of racial or gender discrimination deserve prosperity, peace and full justice at last long.

UNITY: ESSENTIAL

- i. To many of my vintage, each passing day appears to be the worst of times, the epoch of incredulity, the season of darkness, and the winter of despair.
- ii. Yet we remain undaunted because we believe that it is within the grasp of your generation to be the catalytic force for the best of times, the age of wisdom, the season of light and the spring of hope as the paradigms of a new, exciting and fulfilling chapter appear.
- iii. Two weeks ago, I heard a welcome voice of the new generation "Strengthening Caricom, deepening regional cooperation and supporting each other in moments of difficulty are no longer aspirations. They are necessary strategies for survival and self-determination."
- iv. A discharge of our collective responsibility for governments, private sector and civil societies to

transform Caricom and become a strong, coherent and cohesive integer is essential to fulfil our destiny.

- v. No matter how formidable the odds, we will triumph as it falls within our own sovereign competence to spread the remarkable genius of the Caribbean men and women throughout our region to permeate the corridors of international power.
- vi. Nearly 80 years ago, Norman Manley asserted that our future depended on “whether we choose to swim together or sink separately!”
- vii. Caricom as the lifeboat for our Community of sovereign states, requires unity of vision and resolve in the quest to build our own civilization to bring dignity and pride for all mankind.

Now is the time to realise that wider ambition for this and succeeding generations.