



Address to Parliament by
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President of the Commonwealth of Dominica
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First Meeting of the Fourth Session of the Seventh
Parliament
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Constitutional Change and Advancement

Madam Speaker, Honourable Members of the House of Assembly

I thank you for affording me the opportunity to address you at the commencement of this your First Meeting of the Fourth Session of the Seventh Parliament. My wife and I are extremely happy to be here with you today.

Madam Speaker, Honourable Members of the House of Assembly

We are now celebrating our 30th year as an independent nation. Perhaps Honourable Members will indulge me as I reminisce about the system of governance which has taken us thus far in this complex and interdependent world. I feel confident that the points which I address on this occasion will not fall on deaf ears, despite the fact that similar issues which have been raised on previous occasions always precede events of far greater significance. In the words of an anonymous writer

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"...the audience listened with rapt attention, but anxiously, eagerly and impatiently awaiting the delivery of the address to follow."

Madam Speaker, Honourable Members,

It is customary to divide the functions of government into three namely, the legislative, the executive and the judicial. Legislation is passed by Parliament or by bodies or persons who have been authorized to do so by Parliament; the executive (or Administrative) branch headed by the Cabinet is responsible for executing the laws passed, and the judicial branch has as one of its main functions the interpretation of those laws.

This three-fold division, or the doctrine of the separation of powers as it is properly called, may mean three different things. It implies in the first place that the same person should not form part of more than one of these three organs; also that one organ should not interfere with or control the other; and further that one organ should not exercise the functions of the other. In other words, each organ should act independently of the other. Where this doctrine exists to its fullest extent, the three branches act as checks and balances on each other. This tends to lead to good and democratic governance.

The doctrine holds true in a country like the United States of America where the President, as Head of the Executive branch of government does not form part of Congress (the legislative branch) or the Judiciary. He cannot interfere with or control either of the two other branches of government; and he certainly acts independently of them. The same may be said for the Congress and the Judiciary in their respective spheres of action.

In Dominica, however, as in all other countries under the Westminster model of government, it is only the Judiciary which fits strictly into that doctrine, because the Executive is part of the

legislature and in fact controls what the legislature does, except on the very rare occasion when the legislature dismisses the Executive.

An Executive President

It has been strongly argued that a strict adherence to this threefold division of the powers of government, is a necessary condition for the operation of the rule of law in modern society and therefore for democratic governance itself. Consequently if one were to consider the idea of establishing an Executive President in Dominica, these are among the considerations which would have to be borne in mind, and which should help to determine what type of Executive Presidency would be most suitable for our country.

The Constitution of the Commonwealth of Dominica provides for a Parliament that consists of the President and a House of Assembly. This may conveniently be described as a parliamentary system of Government or as a parliamentary republic with a President as Head of State.

A person is qualified to be nominated for election as President if he is a citizen of Dominica of the age of forty years or upwards who, at the date of his nomination has been resident in Dominica for a period of five years preceding the date of his nomination. But that a person is deemed to reside in Dominica if he is required to reside outside of Dominica for the purpose of discharging his functions as an employee of the government of Dominica, or of any inter-governmental organisation, or institution of the Commonwealth Caribbean, or of any international organisation of which Dominica is a member. It is not a requirement that the person should be born in Dominica. The President's term of office ends at the expiration of five years from the date on which he was declared to have been duly elected.

A person is not qualified to be elected as President if he has already held the office for two terms, (the two terms need not be consecutive) or if he is disqualified to be elected as a Representative of the House of Assembly or to be appointed or elected as a Senator.

Further a person is not qualified to hold the office of President if he holds any other office of emolument whether in the public service or otherwise, or if he is engaged in any other occupation for reward.

Our President is not the representative of Her Majesty the Queen. He is elected by the House of Assembly following the procedure laid down in the Constitution. However the Commonwealth of Dominica acknowledges Her Majesty the Queen as Head of the Commonwealth of Nations, of which Dominica is a member.

The Constitution provides that the Executive Authority of Dominica is vested in the President who may exercise this authority either directly, or through officers who are subordinate to him; but that Parliament may confer functions on persons or authorities other than the President.

The two main forms of democratic governance in the western world are generally described as either "Presidential" or "Parliamentary". In a Presidential type of government such as that which obtains in the United States of America, the President who is styled as an Executive President, is directly elected by the population and he holds office as Head of State as well as Head of the Government. He is popularly elected and is an active politician. In a parliamentary form of government the two positions are separate, and the role of the Head of State is largely, though not exclusively, ceremonial.

In Dominica and Trinidad and Tobago, in which a Parliamentary form of government is practised, the Head of State, though styled President, performs functions which are in fact not very different from those of the Governors-General in the other Commonwealth Caribbean States. In the parliamentary system, the Head of Government (the Prime Minister) is a Member of Parliament and derives his authority directly from that body. There are a number of variations from this basic theme, one being Guyana where Executive power is shared between the President and the Prime Minister.

Exercising the Functions of the President

In Dominica, in the exercise of his functions under the Constitution, the President must act in accordance with the advice of the Cabinet, or a Minister acting under the general authority of the Cabinet; except in cases where he is required by the Constitution or any other law to act on the advice of, or after consultation with, any other person or authority; or where he is authorized to act in his own deliberate judgment.

It is important to note, however, that where the President is required by the Constitution to perform any function after consultation with any person or authority, he is not obliged to exercise that function in accordance with the opinion of that person or authority. Further where the Constitution provides that the President is to perform any function in accordance with the advice of, or after consultation with, any person or authority, the question whether he has so exercised that function cannot be enquired into in any court of law.

When advice is given to the President he must consider it and act on that advice if it accords with the provisions of the Constitution or of any other law of the State; whereas if a process of consultation is initiated by the President he need only consider the opinion of the person who, or body which, has been consulted.

The Constitution confers on the President, in addition to his ceremonial functions, direct powers in respect of several critical areas of public life. The framers of our Constitution seem to have considered that there are special areas of public life, and many sensitive public offices, (some of which are mentioned later in this address) which should, as far as possible, be insulated from direct political control in the selection, appointment and disciplinary process.

Acting on the Advice of the Prime Minister

The President acts on the advice of the Prime Minister in most of the appointments that he is required to make. Some of the main ones are in the appointment of two members of the Constituency Boundaries Commission, two members of the Electoral Commission, members of the Advisory Committee on the Prerogative of Mercy, and in the appointment of the Chairmen and Deputy Chairmen of the Public and Police Service Commissions. He must also act on the advice of the Prime Minister in the appointment and removal of Ministers, Parliamentary Secretaries and Government Senators.

Acting on the Advice of the Prime Minister after the Prime Minister has Consulted with the Leader of the Opposition

There are two instances in which the President acts on the advice of the Prime Minister, but only after the Prime Minister has consulted with the Leader of the Opposition. These are, in the appointment of two ordinary members of the Public and Police Service Commissions; and in the appointment and removal of the Chief and Deputy Chief of Police, but in the latter case the Prime Minister must also consult with the Police Service Commission before tendering his advice to the President.

Acting on the Advice of both the Prime Minister and the Leader of the Opposition

The office of Parliamentary Commissioner (popularly referred to as the Ombudsman) and that of his Deputy have not yet been filled. But when the opportunity arises for appointments to be made to these offices, the President should act only after he has received the advice of both the Prime Minister and the Leader of the Opposition. If conflicting advice is received, the President may have to act in his own deliberate judgment.

Acting after Consultation with both the Prime Minister and the Leader of the Opposition

In the designation of an Acting President, both the Prime Minister and the Leader of the Opposition must be consulted.

Acting on the Advice of the Leader of the Opposition

The Leader of the Opposition advises the President on the appointment of the four Opposition Senators, two members of the Constituency Boundaries Commission and two members of the Electoral Commission.

Acting on the Advice of, or after Consultation with Others

Occasionally the President is enjoined to act on the advice of, or after consultation with, other persons or authorities. For example he acts on the advice of the Public Service Commission in making appointments to certain offices; of the Public Service Union in the appointment of one of

the members of the Public Service Board of Appeal, and of the Electoral Commission in the appointment of the Chief Elections Officer.

President Acting in His Own Deliberate Judgment

Madam Speaker, Honourable Members

In many instances the Constitution requires the President to act in his own deliberate judgment. In those cases the final decision is his and his alone. But in arriving at his decision the President consults as widely as possible, as there are many citizens who, though not necessarily at the forefront of political life in the State, nevertheless possess both the experience and maturity to render sound advice. It is to those persons to whom a President would turn in appropriate circumstances.

Constitutional Advancement

It may reasonably be asked whether constitutional changes are really necessary at this juncture of our political journey. The answer to this question lies in the fact that most countries review their constitutions periodically in the continuing search for the best method of governance in light of their past experiences. This will ensure that the institutions of government operate efficiently, and that they remain responsive to the changing needs of the community, so that they are better able to satisfy the wider interests of good governance.

It is not sufficient, however, to appoint a Constitution Review Commission and receive its report. One needs to go a step further to study the report and act on its recommendations where it is feasible to do so.

Since Dominica attained independence in 1978 two commissions have been appointed to review the Constitution. The first presented a report dated August 10, 1983 but no action was taken on the several recommendations which it made. In 1997 a second Review Commission (the Telford Georges Commission) was appointed. It reported in February 1999 and made extensive recommendations for reform. No action has been taken on any of its recommendations. This second report referred to the American model and stated –

"...there were a surprising number of proposals for a change to an Executive Presidency after the pattern of the Constitution of the United States of America".

However, it did not recommend the adoption of this model. The Report continued –

"It was obvious that many people felt that the experience and wisdom which the recent Presidents had acquired over their lifetimes of service had not been adequately tapped. Accepting this to be true...all that is needed is the establishment of a pattern of relationships which is indicative of respect and cooperation".

Reform in the Commonwealth

Madam Speaker, Honourable Members

In the meantime major constitutional reform has taken place, or is about to take place, in two of our Commonwealth Caribbean States since they attained independence. Guyana and Trinidad and Tobago, attained independence with Governors-General as Head of State, but both countries have since replaced that office with that of President; and in the case of Guyana there now exists a form of Executive Presidency, which, although it does not mirror that which obtains in the United States, alters the allocation of powers to the extent that it significantly increases those of the Head of State.

Generally our Caribbean citizens tend to fear the introduction of Republics. The reason was graphically stated by Dame Eugenia Charles to be –

"The old myth that a republic is synonymous with revolutions, licence without law, [and] arbitrary action by State authorities."

However our experience of the republics which now exist in Dominica, Guyana and Trinidad and Tobago have shown that this myth is not necessarily real.

A glimpse of the situation that exists in the Commonwealth generally, should provide us with some comfort. Since India became a republic in 1947, the balance of governance has tilted towards republics.

The Commonwealth comprises 53 member states, of these 30 are republics with their own Heads of State, 7 are monarchies with their own Queens or Kings, and 16 (including the United Kingdom) have the Queen of the United Kingdom as their Head of State. In 15 of these 16 countries Her Majesty is represented locally by a Governor-General. Of the 30 republics, 20 have Executive Presidents and 10 (including Dominica) are parliamentary republics which have Non-Executive Presidents.

Ghana

The example of Ghana in West Africa, is symbolic of the experiments which can become necessary before an acceptable type of governance can be established. In 1960 Ghana abandoned its classical Westminster system of government which it had inherited from the British at independence in 1957, and replaced it by an Executive President type of government, but all the Ministers had to be appointed from among members of Parliament.

In 1979 following years of military rule the Presidential system as practised in the United States of America was introduced. The President and his Ministers were not members of Parliament.

In 1992 a hybrid system was introduced to lessen the antagonism which previously existed between the Executive and the legislature. Under this system, which is still in force, the President

is elected on the basis of universal adult suffrage, and executive authority is vested solely in him; but he must appoint a majority of his Ministers from amongst members of Parliament, and their appointment is subject to the prior approval of Parliament.

This new arrangement would seem to support the view of the Telford Georges Commission that most candidates, who offer themselves for election in Dominica, would not do so, if success at the election and a seat in Parliament would disqualify them from Cabinet office.

Guyana

Guyana is another case in point. In that country, members of the National Assembly are elected on the basis of proportional representation, and the President is the person named on the list of candidates who receives the largest number of votes at the general elections. Executive Authority is vested in him but he is not a member of the National Assembly.

A Prime Minister is appointed by the President from amongst elected members of the National Assembly. He is in effect the President's Deputy and sits in the National Assembly. The President may appoint as many as four Ministers and two Parliamentary Secretaries from amongst persons whose names were not on the list of candidates for the elections. They are entitled to sit in the National Assembly as non-voting members.

Trinidad and Tobago

In its next step towards constitutional advancement Trinidad and Tobago is proposing to adopt the concept of the Executive President. Judging from what has been published so far it will not be an easy road to travel. Two draft constitutional proposals are currently in circulation. One was commissioned on behalf of the Government, and the other is a document that was commissioned by a private company (Principles of Fairness). It was prepared by a sub-committee of the company. Those drafts have been available for public discussion for some time.

The present structure of the Government of Trinidad and Tobago is similar to that of Dominica, but the proposed changes present a radical departure from this norm. Both drafts place the Executive authority of the State in the hands of the President with a Cabinet to aid and advise him. The office of Prime Minister is to be abolished. The President is to keep Parliament informed concerning the conduct of the Government by addressing a joint meeting of the House of Representatives and the Senate at least twice a year.

The drafts differ sharply, however, on the appointment of Ministers. The draft sponsored by the Government empowers the President to appoint Ministers from among persons who are qualified to be elected as members of the House of Representatives only, and further that the President may not appoint more than six Ministers from the House, and not more than three from the Senate.

In both drafts, the basic qualification to be a Senator is to be a citizen of Trinidad and Tobago over twenty-five (25) years of age; whereas to be elected a member of the House of Representatives, the citizen must be over eighteen (18) years of age, and must have resided in the country for two (2) years prior to the date of his nomination, or is domiciled and resident in the country at that date.

The draft presented by “Principles of Fairness” would allow the President to appoint Ministers from among persons who are qualified to be elected as members either of the House of Representatives or the Senate, but restricts ministerial appointments to persons who are not members of either House.

These two constitutional proposals give a glimpse into the type of situations which may arise for discussion if Dominica was to opt for an Executive President. But this should not deter us. Both drafts seem to agree on one thing – no one should be appointed a Minister unless he is qualified to be elected as a member of the House of Representatives.

Conclusion

Madam Speaker, Honourable Members

Every generation faces the challenge to seek, and discover, new ways of doing things, including the best way to govern.

Our leaders must respond to that challenge by initiating wide discussion on the recommendations which are contained in the reports of both Constitutional Commissions, with a view to our constitutional advancement and the possible introduction of an Executive Presidency.

In discussions with the citizens of this country it would seem that public knowledge of the provisions of the Constitution is severely limited. This lack of knowledge exists even among persons who it is assumed should normally be aware of its basic provisions.

I have therefore come to the conclusion that this situation could be rectified if the following steps are taken:

1. A study of the Constitution should be included in the curriculum of all schools as part of a course in civics;
2. Citizens should be informed that copies of the Constitution are available at a reasonable cost on an on-going basis;
3. The Government Information Service should routinely seek to inform the public (including through radio and television programming) about the provisions of the Constitution; and in particular how it affects their day to day lives;
4. The tertiary institutions particularly the UWI campus in Dominica and the State College should expand their teaching on the subject and, by use of modern technology, bring into the homes of our citizens, information concerning the supreme law of the land.

By these means the knowledge of our citizens would be expanded, national debate and informed suggestions on constitutional change will increase, thus leading to as possible improvement in the workings and performance of civil governance in this country.

Madam Speaker, Honourable Members

I pray for God's blessings and his peace for all Members of this Honourable House, on everyone else here today, and on all the inhabitants of this country, as I extend to you every good wish for a fruitful and successful session.