

# Citizenship as a Fundamental Right: How the Bahamian Constitution Mis-imagines the Nation

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## ABSTRACT

This article looks at the way the Constitution of the Commonwealth of The Bahamas in its chapter on citizenship combines elements of both *ius solis* as well as *ius sanguinis* but fails to apply either of these principles consistently. This can result in the *de iure* statelessness of children born to Bahamian parents overseas, and in the *de iure* and/or *de facto* statelessness of children born in The Bahamas to non-Bahamian parents. The article further analyses the proposals for amendments to the Constitution as presented by Prime Minister Perry Christie in 2014, demonstrating that some of these issues will be retained. It argues that the Constitution's exclusionary approach to citizenship creates an incompatibility between the state's expectation of loyalty of its citizens and the citizens' ability to identify with the nation.

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## INTRODUCTION

This article has evolved out of a contribution to a panel discussion on the subject of statelessness that was hosted by the School of English Studies and the School of Social Sciences at the College of The Bahamas in April 2014, in which I attempted to outline the incompatibility of our state's expectation of loyalty and identification from its people on the one hand, with its jealous guarding of the privilege of citizenship on the other hand, for the latter contributes to the dilemma of statelessness, in which many individuals in today's Bahamas find themselves. This discrepancy, enshrined in The Bahamas' Constitution and only partially addressed in the report submitted by the Constitutional Commission in July 2013, I argued, has the potential to alienate individuals, thus preventing them from becoming participating

or contributing citizens. The full title of the document was *Report of the Constitutional Commission into a Review of The Bahamas Constitution*. It will be referred to throughout this paper as the 2013 Report; the Commission itself, which was chaired by Sean McWeeney, will be referred to as the McWeeney Commission, to avoid any confusion with previous commissions.

In July 2014, Prime Minister Perry Christie announced a constitutional referendum, originally scheduled for November 2014. In September 2014, Bernard Nottage, Minister of National Security and Leader of Government Business in the House of Assembly, announced a postponement of this referendum to a date yet to be decided upon. Under the overarching theme of equality between men and women, the proposed amendments are

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addressing some of the issues regarding citizenship highlighted during our panel discussion, as three of the four proposed bills, if passed, would make changes to that particular chapter of the Constitution. It is important to note, however, that especially the first of these four bills presented to parliament falls far short of the McWeeney Commission's recommendation. Despite this, and despite the delay in the process, these four bills mark not only the Christie administration's first action taken as a result of the 2013 Report, they also directly address questions of citizenship. It is therefore imperative to include them in any discussion on statelessness, citizenship and the construction of the Bahamian nation.

The next chapter will examine the Bahamian Constitution's citizenship provisions and their inconsistent application of the principles of both *ius soli* and *ius sanguinis*. The 2013 Report spoke to this, and made explicit reference to the possibility of this resulting in persons being rendered stateless (p. 96.). Apparent challenges in the civil service seem to compound this problem, because not all cases are being processed equally or in a timely manner, and while the Bahamas Nationality Act (1973) could provide a practical solution, it only does so at the Minister's discretion.

Following that, I will discuss the proposed constitutional amendments in the context of statelessness. While being heralded as necessary to achieve equality between the sexes in The Bahamas, the first three bills are important also in terms of children's rights, immigration, and national identity, as they address Articles 8, 9, 10, and 14 of the Constitution, which are all part of the chapter on citizenship. However, as they fall short of the McWeeney Commission's recommendation, they may alleviate some of the problems, but they still enshrine scenarios that would result in children being born stateless.

Finally, because I argue that the citizenship provisions in our Constitution are a telling example of how our Founding Fathers imagined the nation, I will take a broader look at the discrepancy between our constitutional constructions of what (and who) is Bahamian, and the evolving identities of Bahamian peoples independent of the Constitution. Out of necessity, a one-size-fits-all model was developed at Independence, and it was built with tools that were perhaps not even post-colonial. Cognisant of the conflict potential rooted in a defective national identity, but seemingly unaware of the evolving and varying needs of especially the younger generations, the McWeeney Commission proposed a tightening of the post-colonial corset with the same old toolkit. Is the post-colonial model of the nation-state still a timely one for The Bahamas?

### **The Constitutional Construction of Citizenship**

After winning the 2012 general election, Christie appointed the McWeeney Commission, and mandated it to focus on, among other things, "the strengthening of the fundamental rights and freedoms of the individual, with a particular focus on citizenship provisions" (p. 5). The particular way in which the 2013 Report phrases this point suggests that the commissioners accept that citizenship is indeed a fundamental right of the individual. It would not be a far stretch to interpret that mandate as an uncomfortable admission that our Constitution effectively deprives certain individuals of this fundamental right, an admission that our Constitution may in fact generate statelessness.

A 1954 United Nation Convention Relating to the Status of Stateless Persons (2014) defines a stateless person as someone "who is not considered as a national by any State under operation of its law," and it "provides important minimum standards of treatment";

for instance, “it requires that stateless persons have the same right as citizens with respect to freedom of religion and education of their children,” and regarding other issues, “such as the right of association, the right to employment and ... housing, it provides that stateless persons are to enjoy, at a minimum, the same treatment as other non-nationals” (p. 3). This convention also makes provision for states to issue identity papers and travel documents for stateless persons present in them. The Bahamas is not a signatory state to this convention.

A 1961 UN Convention on the Reduction of Statelessness (2014) is based on the principle that statelessness should be avoided, that statelessness ought to be prevented at birth, “by requiring States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless” (p. 3). The Bahamas is not a signatory State to this convention either.

While the 1954 Convention was clearly still written bearing in mind the large number of Displaced Persons as a result of World War II, the 1961 Convention more clearly understands that statelessness in the modern world is often the result of worldwide migration, in particular where and when migrants’ countries of origin do not apply *ius sanguinis* consistently in their citizenship provisions, and destination countries do not subscribe to *ius solis*. In the case of The Bahamas, the incomplete application of either *ius solis* and/or *ius sanguinis* is further complicated by the Constitution’s different treatment of persons born before or after independence, its very traditional understanding of the institution of marriage, as well as the Constitution’s gender bias towards parents. The relevant articles of the Bahamian Constitution (1973) are Articles 3(2), 6, 7, 8, and 14(1).

Article 7, which addresses persons born to

non-citizen parents in the Bahamas after independence, is the one that long dominated the public discourse on the issue, because it is the provision that describes the “group that includes the numerically large native-born children of Haitian immigrants to The Bahamas” (2013 Report, p. 86). These children of immigrants—whether the parents are from Haiti or any other country—are not entitled to Bahamian citizenship at birth. In many cases, however, these children may well be entitled to their parents’ citizenship, though given the economic challenges of many immigrants in the Bahamas and the fact that only very few countries have effective diplomatic representation here, this may, in many cases, remain a purely theoretical entitlement. However, the Constitution also stipulates that such children of immigrants, “shall be entitled, upon making application on his attaining the age of eighteen years ..., to be registered as a citizen of The Bahamas” (Bahamas Independence Order, 1973, Ch. 2, Art. 7).

The McWeeny Commission recognises that this provision creates certain problems, primarily the uncertainty of such persons for the first eighteen years of their lives—plus whatever amount of time our government and civil service may need to process these applications once they are made. During this time, persons born in the Bahamas to two immigrant parents may well be stateless. Using the largest immigrant group, people of Haitian origin or descent, as an example, the McWeeny Commission observes that “the Haitian Constitution provides for persons to acquire nationality through descent but only if either of their parents is native born ...” (2013 Report, p. 96), concluding that in The Bahamas, third-generation immigrant children of Haitian descent are born stateless, and remain so for at least eighteen years of their lives.

This, however, is a misinterpretation of the

Haitian Constitution and the use of the term native born in its English translation. In its original language, the Haitian Constitution does not say native born or otherwise suggest a requirement to mean born on Haitian soil; instead, when it grants citizenship to children either of whose parents “sont nés Haïtiens” (were born Haitian, Haitian Constitution, Article 11), the phrase refers to an unconditional application of *ius sanguinis*, an entitlement to citizenship by birth through parental lineage, but regardless of birthplace. Thus, theoretically, no child of Haitian immigrants, no matter how many generations removed from Haitian soil, should be stateless. However, many immigrants are unable to properly document this entitlement, and as a result remain *de facto* stateless.

It is important to note that the McWeeney Commission acknowledged the urgency of the subject, advocating that “appropriate amendments should also be included to ensure that those persons born to Bahamians outside The Bahamas as well as persons born to non-Bahamians in The Bahamas would not be rendered stateless” (2013 Report, p. 35). Yet the McWeeney Commission shied away from recommending an unconditional implementation of *ius solis* and declared that it “does not recommend automatic citizenship by reason only of birth on Bahamian soil” (2013 Report, p. 22). In fact, it refused to address the matter in any meaningful way. Tasked with reviewing the Constitution in its entirety, the McWeeney Commission excluded Article 7 from its review, instead recommending “the appointment of a commission to consider further questions relating to nationality and the basis on which nationality should be acquired by children born in The Bahamas to non-Bahamian parents” (2013 Report, p. 35). No such commission has been appointed to date.

Given the general climate of the Bahamian discourse on immigration, it may be

instructive to look at citizenship and statelessness differently, and to illustrate how our Constitution can cause children of Bahamian descent to be rendered stateless. To this end, I will present a number of scenarios:

1. Every person born in The Bahamas after independence “shall become a citizen of The Bahamas at the date of his birth if at that date either of his parents is a citizen of The Bahamas” (Bahamas Constitution, Art. 6). While this seems clear cut, the McWeeney Commission observes that this Article “seems to have been susceptible to an interpretation that is discriminatory in its effects. This results from what the Commission considers ... to be the erroneous interpretation of the word ‘parents’ in this provision to include an unmarried Bahamian mother but not an unmarried Bahamian father” (2013 Report, p. 90). This interpretation stems from Article 14(1), “which erects the common law rule of *filius nullius*, (child of no father) ...” (2013 Report, p. 35). In terms of a plausible example, this could describe a child born in The Bahamas to a Bahamian father who is not married to the child’s mother—who is a citizen of a country that does not allow her to pass on her citizenship to her foreign-born children or who is stateless herself.

2. Article 8 entitles the overseas-born children of married Bahamian fathers and unmarried Bahamian mothers to Bahamian citizenship by birth—unless these parents are Bahamian citizens by virtue of either Article 3(2) or 8, that is. These disqualifiers describe people who were, despite being born outside of The Bahamas, entitled to citizenship by birth; the difference between 3(2) and 8 is merely that the former applies to persons born before independence, the latter to persons born after independence. This exclusionary definition of who is prevented from passing on citizenship to their children perhaps also explains the McWeeney Commission’s pivotal misinterpretation of the term native-born in

the English translation of the Haitian Constitution.

In terms of a real-world example, this describes my own son. I was born abroad, prior to Independence, because my father was temporarily working abroad. This makes me a citizen by virtue of Article 3(2) of the Constitution. My son was born while I was completing graduate studies which are still not available in The Bahamas. Unless our children are, by virtue of *ius solis* in their place of birth, or the citizenship laws of their mothers' countries, or a second citizenship of their fathers', eligible for a citizenship other than the Bahamian one, they could be rendered stateless—and while *ius solis* is quite common in the Americas, it is quite uncommon outside of our hemisphere.

3. Article 9 entitles children born abroad to married Bahamian mothers to be registered as Bahamian citizens upon reaching the age of eighteen. This could also, potentially, leave them stateless in the interim. Imagine the following scenario: a Bahamian man who was born abroad but was entitled to citizenship by birth through Articles 3(2) or 8 of the Constitution, and his Bahamian wife have a child abroad. Both parents are Bahamian citizens, but neither is able to pass on their citizenship to children born abroad. Such scenarios are not purely hypothetical. During discussions about the proposed constitutional amendments, I have personally met several Bahamian families in precisely this situation.

The examples above set out three scenarios that could leave children of Bahamian descent without any constitutional entitlement to Bahamian citizenship, even if their parents were only out of the country for a short period of time—for the singular moment of their child's birth. Such cases have often been resolved favourably through the power given to the Minister in the Bahamas Nationality Act. In effect, these amount to individual

cabinet decisions on a case-by-case basis. This approach introduces arbitrariness into the process, and undermines the principle of legal certainty.

Furthermore, from anecdotal evidence it appears that the application of citizenship provisions by both the Department of Immigration as well as the Passport Office is not always consistent. This may be the result of unfamiliarity on the part of individual civil servants with the fine details of the various articles in Chapter 2 of the Constitution, and the practical possibilities offered by the Bahamas Nationality Act. It may also be the result of profiling, affording different treatment to different petitioners depending on their background.

For example, I was told by a Bahamian woman who is married to a foreign man, and who gave birth in The Bahamas, that the Passport Office denied their child a passport. In this case, it is clear that our laws are not deficient, but that their consistent application has been hindered, which might be addressed by better training the officers in the relevant government agencies.

Or, for example, I was advised by the Department of Immigration that my own son would have to wait until he was 18 to apply for citizenship under Article 9 of the Constitution. This, however, would have only applied if I were the mother, not the father. In fact, my son obtained his citizenship through the Minister's discretion and the Bahamas Nationality Act, because as the overseas-born child of a married Bahamian man who is a citizen by virtue of Article 3(2), he had no constitutional claim to citizenship whatsoever. This case, again, highlights that some officers may require additional training, but such cases could also benefit from modernising our legislation and our Constitution.

The McWeeney Commission's recommendations would remove the gender bias from the

Constitution's chapter on citizenship, as had indeed been attempted by the Ingraham administration in 2002. Back then, the referendum required for constitutional change failed.

The McWeeney Commission further recommended that the disqualifiers contained in the second part of Article 8 be removed. These define the prevention of overseas-born married Bahamian men and unmarried Bahamian mothers, who obtained their citizenship through Articles 3(2) or 8, to pass on their nationality to their own overseas-born children, and currently reduce them to the status of lesser Bahamians-with-a-small-b.

This would have amounted to an unconditional adoption of the principle of *ius sanguinis*, and would have removed the legal possibility for children of Bahamian parents to be rendered stateless, regardless of their particular circumstances of birth. However, the refusal by both the McWeeney Commission as well as the Christie administration to tackle Article 7 at this time, can perpetuate constitutionally sanctioned statelessness for children born on Bahamian soil to non-Bahamian parents.

#### **Proposed Constitutional Amendments to Citizenship, 2014**

Towards the end of July 2014, Christie announced four separate bills to amend the Constitution, which have since been tabled and read in the House of Assembly. These bills propose to change Articles 8, 10, 14, and 26 of the Constitution, and propose to delete Article 9. With the exception of Article 26, which is part of Chapter 3, Protections of Fundamental Rights and Freedom of the Individual, the other articles are all part of the chapter on citizenship.

The constitutional referendum, which is required to change these provisions of the Constitution, was originally scheduled for November 6, 2014. However, Nottage

announced in September that the referendum would be delayed. There are a number of reasons for this delay. The official justification is that the commission tasked with a national education campaign on these four bills requires more time to fulfil its mandate; this commission is now recommending a date between April and June 2015. Christie is acutely aware of the careful balance he has to strike when championing an aspect of constitutional reform he himself helped defeat in 2002 when the Free National Movement administration, under Hubert Ingraham, put several proposals for constitutional change to the electorate in a referendum. He had no choice but to comply, because his main argument then was that

the Bahamian people were simply saying that if these proposals are to be advanced, they must be advanced properly and carefully. The people, by voting No, were saying that if you try to rush the process, you not only deny sufficient time for public education and discussion but you also end up with a great many errors and flaws which only serve to complicate matters even further (Christie, 2002, para. 7).

However, it must also be noted that the bills are still in committee stage in the House of Assembly, and therefore, most likely, have not been finalised yet. It is inherently difficult to accurately educate the public on four bills that are still subject to change. Furthermore, after the fiasco of the 2013 so-called referendum on web-shops and a national lottery, the government clearly wants to ensure either the support or at the very least the neutrality of the so-called Bahamas Christian Council and similar groups whose initial reaction to constitutional reform was not favourable. Many of the arguments brought forward against the proposed constitutional changes were of such an unfounded nature that they do not warrant

inclusion in the current context, though a closer examination of the level of the public discourse surrounding this issue would make for another interesting paper. Yet, there are some valid concerns about the bills, and these may be another reason for a delay, should the government decide to improve the bills to better meet their declared purpose. As no updates on the bills' evolving status have been shared with the public, they will be discussed as originally tabled in the House of Assembly, and as uploaded to the Government's website on July 30, 2014.

The first bill proposes to change Article 8 and also to delete Article 9. Article 8 currently entitles the overseas-born children of married Bahamian fathers as well as, because of the interplay with Article 14, unmarried Bahamian mothers to Bahamian citizenship, unless these parents are not themselves citizens by virtue of Articles 3(2) or 8, that is overseas-born citizens by descent and by birth. The proposed change would entitle the overseas-born children of all Bahamian mothers and fathers, except those who obtained their citizenship through Articles 3(2), 8 or 10, to Bahamian citizenship. These exceptions have prompted Christie to describe the change as follows in the House of Assembly: "It is important to emphasize, however, that ... the right to automatically pass on citizenship to one's child will continue to operate only where the Bahamian parent is himself, or herself, a native-born Bahamian" (Rolle-Brown, 2014). However, as both the current as well as the proposed new Article 8 only exclude a small number of Bahamians through a kind of negative list, the use of the term native-born is misleading; Article 8, for instance, does not exclude Bahamian parents who obtained their citizenship through registration or naturalisation. Also, the Passport Office does not use that term. Their application forms speak to only three categories of citizenship:

by birth, by registration, and by naturalisation. Citizens by virtue of Articles 3(2) or 8 are, in fact, citizens by birth, even though they were born abroad.

The proposed deletion of Article 9 could be seen as a logical consequence of the changes to Article 8. At first glance, Article 9 would become redundant—or perhaps confusing—as it would give the overseas-born children of married Bahamian mothers two different, contradictory paths to citizenship, because currently, Article 9 entitles the overseas-born children of all married Bahamian mothers to be registered as citizens upon making such an application between the ages of 18 and 21. However, as the proposal is not to apply the changes retroactively, the deletion of Article 9, without adding adequate protections into a new Article 8, would result in all such children born during the past 21 years losing their constitutional entitlement to citizenship. The government's initial suggestion to compensate for this problem was to promise all affected individuals favourable consideration under the Bahamas Nationality Act. However, this would mean trading a constitutional entitlement for a politician's promise of favourable treatment using the Minister's discretion. From an unofficial source I have seen a suggested second paragraph to the proposed new Article 8, which adds a provision that while the new entitlements are not retroactive, no old entitlements shall be lost either. It is unfortunate that this cannot be confirmed at this time, but it certainly would avert any problems arising out of simply deleting Article 9.

It is also worth noting that, while parents under the old Article 8 were disqualified from passing on citizenship to their overseas-born children if they themselves were citizens by virtue of Articles 3(2) or 8 of the Constitution, the proposed new Article 8 will add Article 10, that is registered citizens by virtue of

marriage to a Bahamian, to the list of disqualifiers. The old Article 9 did not contain any such disqualifiers, that is, the overseas-born children of all married Bahamian women were covered by it. The result of these changes would be that while the overseas-born children of most married Bahamian mothers would now be entitled to citizenship at birth, as opposed to the age of 18, the overall number of Bahamian women who can pass on citizenship to their overseas-born children in one way or another would actually decrease as a result of adding the new disqualifier of Article 10 and subjecting married mothers to the disqualifiers contained in Article 8 that were not contained in Article 9.

These confusing criteria—treating mothers and fathers, as well as married and unmarried persons differently, giving some citizenship by birth, and others only upon making application as adults, creating possible disqualifiers for some but not for others—have given us citizenship provisions in the Constitution that are discriminatory on a number of levels, not just based on gender, and not always favouring men over women. The third bill, which proposes changes to Article 14, therefore, must be seen as acting in combination with the first bill.

Article 14 erects the Common Law rule of *filius nullius* and explicitly refers to the entire chapter on citizenship. Its result has been that the children of unmarried Bahamian fathers and foreign mothers, whether born in the Bahamas or overseas, have been denied citizenship (2013 Report, p. 91). The proposed change will abolish *filius nullius* in our Constitution, but will demand that the paternity of unmarried Bahamian fathers be proven. However, as it is this rule that entitles the overseas-born children of unmarried Bahamian mothers to citizenship, presenting the changes to Articles 8 and 9 in one bill, and the change to Article 14 in another, creates the

risk of an unwanted outcome. If these changes are put to a referendum in two separate bills, it is theoretically possible for one bill to succeed and the other one to fail, and as constitutional referenda are binding, our legislators would not be able to alter that outcome, other than by putting yet another bill to the electorate in yet another referendum, and then hoping for its success. If the first bill were to fail, but the third one passed, the new constitutional reality would be that the overseas-born children of most Bahamian fathers would be entitled to citizenship, the overseas-born children of married Bahamian mothers would retain their entitlement to be registered upon making application as adults, but the overseas-born children of unmarried Bahamian mothers would lose any constitutional path to citizenship.

Such a scenario cannot possibly be what the government hopes to achieve when putting these bills to referendum, even if it were prepared for an otherwise unsuccessful outcome of this constitutional reform exercise. In a town hall meeting at the College of The Bahamas, Retired Justice Rubie Nottage has argued that the McWeeney Commission's interpretation of Article 54 of the Constitution is that one Constitutional Amendment Bill must not change more than one article of the Constitution, and that therefore the change to Article 14 must be presented in a separate bill. However, not only does Article 54 not make any such suggestion explicitly, but the first bill already sets a different precedent by combining the changes to Article 8 as well as the deletion of Article 9 in a single bill. Furthermore, because Article 14 begins with the words, "any reference in this chapter..." it practically implores legislators that any changes made to it, ought to be made together with other proposed changes on which it has impact in the chapter on citizenship.

The first and third constitutional amendment



bills are by far the most complex in their interplay and the details of the provisions. The second bill addresses Article 10, which currently allows foreign wives of Bahamian husbands to be registered as citizens. In line with the other constitutional provisions regarding citizenship, it phrases this as an entitlement. The proposed change would allow both foreign wives of Bahamian husbands as well as foreign husbands of Bahamian wives to be registered as citizens. Noteworthy are the newly added provisions supposed to guard against so-called marriages-of-convenience. While it might be argued that individuals in such marriages would primarily be interested in obtaining spousal permits or permanent residency with the right to work, many commentators expressed exaggerated concern about such scenarios.

Consequently, the suggestion by Greg Moss, Progressive Liberal Party (PLP) Member of Parliament for the Marco City constituency, that gender equality in the issue of spousal citizenship could also be obtained by deleting spousal citizenship from the Constitution altogether, did not receive any serious consideration. Rather, Moss was criticised as being overly concerned about a back door for immigration, if not labelled as being against gender equality altogether.

The McWeeney Commission emphasised that one reason to bring these first four bills forward is for The Bahamas to achieve compliance with two international agreements: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which The Bahamas acceded in 1993, and the International Covenant on Civil and Political Rights (ICCPR), which The Bahamas signed on to in 2009.

However, given the Christie administration's divergence from the McWeeney

Commission's recommendation regarding Article 8, it can be questioned whether this change would in fact make the Constitution compliant with ICCPR. The McWeeney Commission recommended the removal of all the disqualifiers, entitling any child of a Bahamian parent to citizenship (2013 Report, p. 104). Christie's proposal continues to discriminate against overseas-born Bahamians. Yet ICCPR not only addresses sex, but also birth in its long list of criteria to be protected against different treatment (Art. 2, 24, 26).

### **National Identity in The Bahamas: State vs. People**

Moving away from the citizenship provisions in the Bahamian Constitution, and the McWeeney Commission's recommendations regarding the same, another issue addressed in the 2013 Report also speaks to the imagining of the nation: the national symbols:

Although the national symbols are described in the Flag and Coat of Arms Act, the Commission is of the view that the foundational symbols—national flag, anthem and pledge—should be referred to in the Constitution and exhibited in a Schedule. This approach is commonly adopted in many of the world's constitutions, including many in the Caribbean. The Commission thinks the rationale for this recommendation is self-evident and really does not require further elucidation (p. 84).

However, while the motivation behind the recommendation may indeed be self-evident, it is considerably less self-evident whether these recommended actions would actually yield any beneficial results.

One of the commission members, Lester Mortimer, in a Dissenting Statement, called this recommendation "unnecessary verbiage" (2013 Report, p. 213). I would go a step further, because I do not just consider it

unnecessary but in fact hindering. Trying to construct national identity from the top down, through symbols that may well be perceived critically by some citizens, represents a thinking of the nation state as developed in 19th century, pre-democratic Europe. Eric Hobsbawm noted about the conscious invention of tradition, and this may be transferred to national symbols as he was talking about the invention of traditions as a conscious effort of generating identity, that this

succeeded mainly in proportion to its success in broadcasting on a wavelength to which the public was ready to tune in. Official new public holidays, ceremonies, heroes or symbols, which commanded the growing armies of the state's employees and the growing captive public of schoolchildren, might still fail to mobilize the citizen volunteers if they lacked genuine popular resonance (Hobsbawm, pp. 263-264).

Furthermore, Hobsbawm demonstrates how other multicultural immigrant societies capitalised on the absorption of immigrants' "collective rituals" into their national canon (p. 279).

However, in our post-colonial environment, such an identity cannot be prescribed from the top down; rather, the constitutional framework needs to invite and empower its citizens to build the still undefined nation which in turn needs to provide the space for a national identity to grow. Historically, both these necessities have been retarded through slavery and colonialism. Yet our official understanding of nation and citizenship has failed to address this birth defect. For instance, our constitution, though it requires the consent of the people to effect most constitutional change, was never consented to by the people in the first place, but came handed down from the coloniser instead.

Earlier, I have outlined the inconsistency of the logic behind the citizenship provisions in the Constitution. The granting of this fundamental right was imagined narrowly. These provisions, however, no longer serve us well in the 21st century. We must come to terms with migratory realities that the Bahamas alone cannot significantly influence by treating it exclusively as an immigration issue and failing to simultaneously understand it as an emigration issue in the countries of origin. We must also act on the realisation that legally codified gender bias is not only no longer acceptable, but that many of us have difficulties understanding how it ever was acceptable in the first place.

The 1973 Constitution paternalistically imagines a nation of—and assumes responsibility for—its subjects as centralised, without local government. It imagines that this nation accepts the various savings clauses and exemptions provided for in the Constitution, which enable old colonial laws to remain in effect even if they might violate what were recognised to be fundamental rights in 1973, and which give Parliament the authority to still pass new discriminatory laws, as has most recently been highlighted by the debate about the 2014 Gaming Bill, Gaming Regulations, and Gaming House Operator Regulations.

Contrary to statements made by Andre Rollins, PLP Member of Parliament for the Fort Charlotte constituency and former Chairman of the Gaming Board, the last Lotteries and Gaming Act did not originate with the colonial United Bahamian Party regime, but dates from 1969, when the PLP was preparing the nation for independence. However, the Founding Fathers could not yet imagine Bahamians as independent, participating citizens themselves responsible for their nation. In my view, the McWeeny Commission's recommendations also fall short of this vision; their approach is

patchwork only. In crucial points, the McWeeney Commission hides behind the regional averages; they do not dare to be the truly progressive vanguard of the region.

While some of the various constitutional injustices are addressed, these tend to be the ones expected not to be controversial. If opposition from vocal quarters is to be feared, however, the 2013 Report either denies the need for reform, or pushes the task down the road to future commissions yet to be appointed, as they did with Article 7. Instead, they prescribe to Bahamians the placebo of a ready-made identity by recommending the addition of the national symbols, such as the *Pledge of Allegiance*, to the Constitution:

I pledge my allegiance to the flag and to  
the Commonwealth of The Bahamas,  
For which it stands,  
one people united in love and service.

Asking how successful the black-gold-and-aquamarine flag, and all the pledges made to it have been thus far in inspiring the citizens of this country to be “united in love and service,” is a rhetorical question. In a nation that overprotects access to citizenship, thus excluding many potential Bahamians from participating but instead condemning them “to personal destinies of isolation and relative deprivation” (Marshall, 1979, cited in 2013 Report, p. 98), such pledges can sound contrived. If we do not understand the value that citizens can add to building the nation, we will cause damage to our democracy.

To illustrate this lack of understanding, I will use an experience I had with the Department of Immigration. My wife and I had to apply for citizenship for our overseas-born son through the Bahamas Nationality Act, that is, we were at the mercy of the Minister’s discretion, because I myself am a citizen by virtue of Article 3(2) of the Constitution. The Immigration Officer asked us why we wanted him to have Bahamian citizenship; he then

continued to give the answer himself: “To enjoy the rights and privileges of a Bahamian citizen.” Instead, I offered, that I wanted my son to feel a sense of stewardship for the land in which he lives and, as he grows up, to feel motivated to contribute towards its progress. However, that notion deviating from the civil service’s understanding of the relationship between the state and its citizens, the officer nonetheless wrote on the form, “to enjoy the rights and privileges of a Bahamian citizen.”

Furthermore, indications that our democracy is in a more fragile state than we like to admit are also visible. After general elections, we often cite the high percentage of the official voter turnout as proof of a strong democracy. For 2012, that number was 90.4%. However, this is measured only against the number of registered voters. If that number were measured against the 2010 census, taking into consideration the average rate of population growth to adjust for figures for the year of these last elections, we see that the registration rate amongst adult Bahamians is approximately 82%, meaning that only 74% of eligible voters cast a ballot. This also means that the PLP, which holds 79% of the seats in the House of Assembly, thanks to the first-past-the-post system, despite only receiving 49% of the popular vote, was really only elected by 36% of the adult Bahamian population. If we, for a moment, look at the overall adult population residing in The Bahamas, regardless of citizenship, we have a political system in which only 61% of adults participate in elections, and where we are governed by a party that was voted in by only 30% of the adult population. Yet the McWeeney Commission, showing its nature as a politically appointed body, endorses the system which skews results as dramatically as demonstrated, denying that proportional representation would render “democratic dividends over the first-past-the-post system” (2013 Report, p. 40).

These examples demonstrate that we do not see the value of citizens as potential contributors to the Bahamas. Rather we fear the risks of having to be responsible for their welfare as dependents or liabilities to the commonwealth. However, our nation is not a finished project, and I dare say a finished project cannot even be the goal. Rather, each generation's journey is that generation's reward and legacy, the foundation for the next generation. We must therefore invite all potential Bahamians to take part in imagining a better Bahamas, to take part in building it brick by brick. This invitation can only take the form of extending fundamental rights to everyone, to ensure that every person can feel safe in the Bahamas, regardless of their genealogy or other characteristics.

The suspicion with which dual nationals are viewed also highlights this fundamental flaw in our thinking about citizens as potential contributors. It has surfaced at several town hall meetings conducted by the McWeeney Commission as part of its educational effort about the referendum. One hypothetical problem frequently brought up, both by the commissioners as well as by members of the audience, is the question of a dual national's loyalty in the event of a war. Despite the 2013 Report's recommendation to relax the rules regarding dual citizenship, the creation of a government register of dual nationals was one of the included recommendations (p. 105).

A forced unification of national identity from the top down may therefore not only be not desirable, it may in fact be doomed to fail. As Nicolette Bethel observed, in the case of The Bahamas, the "geographical archipelago is paralleled by a cognitive archipelago; Bahamian 'identity' is one which consists - and always has consisted—of multiple identities" (2000, p. 121). Nonetheless, Bethel asserts that a "strong sense of 'Bahamian-ness' exists..." (p. 35). If for 41 years of Bahamian independence, and arguably for

some time before that, the people have found pragmatic ways to shape their own identities, often in stark contrast to the central government, any politically motivated attempt at moulding the official Bahamian is bound to be rejected by the people and will result in a hollow shell.

The mixed success of our national symbols may be symbolic of this. For the creation of our national symbols, the government utilised a populist process "by holding nation-wide competitions for their design" (Bethel, 2000, p. 17). Nonetheless they remained "by and large meaningless to the general populace, and had to be invested with significance in the years to come" (p. 17). Bahamians have grown fonder of some of these symbols than of others. The flag and its colours have become widely used to display Bahamian national pride during sanctioned events; the flag is easily reproduced, and everybody has an interpretation as to what the different elements mean. As an expression of national pride, however, the marlin and the flamingo in the coat of arms have been far less successful than their counterparts in many other countries; most Bahamians have never seen a marlin or flamingo in the wild.

Of course, the coat of arms suffers from another handicap. During independence, it was decided to replace the Royal Navy ships depicted on the colonial coat of arms and flag, for Columbus' flagship in the new one. In 1973, this change represented a necessary break with our immediate British colonial past, and could rhetorically be justified by the historical significance of Columbus' journey to world history in general, and, because of the coincidence of his landfall in this archipelago, to Bahamian history in particular. Yet, removing the images of Royal Navy vessels from the nation's symbols only to replace them with another, even older symbol of European colonialism, speaks volumes of how ill-defined nation and nationalism were

at independence, and how ill equipped our founders were to rectify it. Anibal Quijano's description of the coloniality of power (2000) is a useful model to describe the economic and political structures of the post-independent Bahamas, but I posit that, in addition to Quijano's model, a cultivated attitude I call "coloniority" perpetuates these patterns semi-consciously in today's post-colonial Bahamas: post-colonial elites celebrate colonial legacies through pomp and circumstance, titles and rituals, but these remain hollow, for the same elites that celebrate them yearn for the grandeur of the empire while subconsciously suffering from an inferiority complex that they are not—and never will be—equal to the metropolitan elites of old (Aranha, 2012). The inclusion of the Santa Maria was therefore as much a recognition of historical coincidence as it was a quiet nod to what many have accepted as the so-called civilising influences of colonialism.

The elites' coloniority, which causes them to cling to colonial forms, stands in stark contrast to the officially proclaimed self-image that has been prescribed for the masses since independence:

There were three main elements which went into the formation of a collective self-image: a sense of place, a sense of history, and a heightened awareness of the African origins of the nation's black majority. ... In the process of self-definition, the most important element was the racial identity which the nation increasingly assumed. The emphasis placed on a black racial identity was a rejection of the white counter-identity of the recently ended period of white supremacy, in which the black majority has (in the society, economy, and in the history books) been marginalized. This new orientation was a reflection not only of black political power within the Bahamas but also of the influence of

Black Power ideas from the United States (Johnson, 2000, p. 13).

The discrepancy between the masses' reality and the elites' withdrawal to a parallel Orwellian farm where some animals are more equal than others is thus far mostly met with a sense of comical bewilderment, but it has also created an increased reluctance to accept the officially offered narratives. While during the Quincentennial in 1992, Bahamians were happy to exploit this history and its symbols for touristic-commercial purposes, the image of Columbus has suffered severely ever since. As could be seen during the decade-long debate about renaming the public holiday on 12th October from Discovery Day to National Heroes Day, in the minds of many, Columbus personifies the evils of colonialism. However, National Heroes Day has yet to be filled with meaning, and the government's proposal to establish a National Heroes Park at Clifton will ensure that for the majority of Bahamians, even those on New Providence, it will remain as remote an idea as its location.

Ironically, one of the strongest symbols used for the purpose of national identification, especially by the younger generation, is not even an official national symbol: the area code for The Bahamas, 242, which only replaced the old 809, then shared by most of the Caribbean, in 1996. The success of these three numbers, aided no doubt by an online and mobile communications culture that favours brevity, shows that four decades after independence Bahamians are no longer buying into the prefabricated ideas of the nation prescribed by a generation of leaders closer in age to the Founding Fathers than to the median age of the population.

Arguably, since the Constitution and the newly minted national identity were handed to the people at independence, the latter has developed separately while the former remained stagnant. They are no longer in

sync. The state would like to rein in the citizens' independent modifications to their national identity and only makes timid proposals for constitutional change. These, as has been discussed, will not adequately provide for inclusion and participation.

The Constitution demands the electorate's approval in a referendum to effect constitutional change, but the electorate was never asked if it approved of the Constitution in the first place. Instead, the Constitution was the result of negotiations and deliberations in imperial London, with the British sitting at the table. This paradoxical genesis was discussed

in the McWeeney Commission's report, too, but any genuine solution to this “only symbolic” p. 68) matter was dismissed as fraught with too many “practical difficulties” (p. 68).

The conservative 2013 Report highlighted many issues with this product of colonialism, despite regularly shying away from recommending truly progressive reforms. Perhaps, rather than trying to fix a colonial constitution to better meet the needs of an independent Bahamas, it is time to imagine a new, autochthonous Bahamian constitution.

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