

Published Opinion Article by Prof. Paul Golding: 'Constitutional Reform...the Questions'

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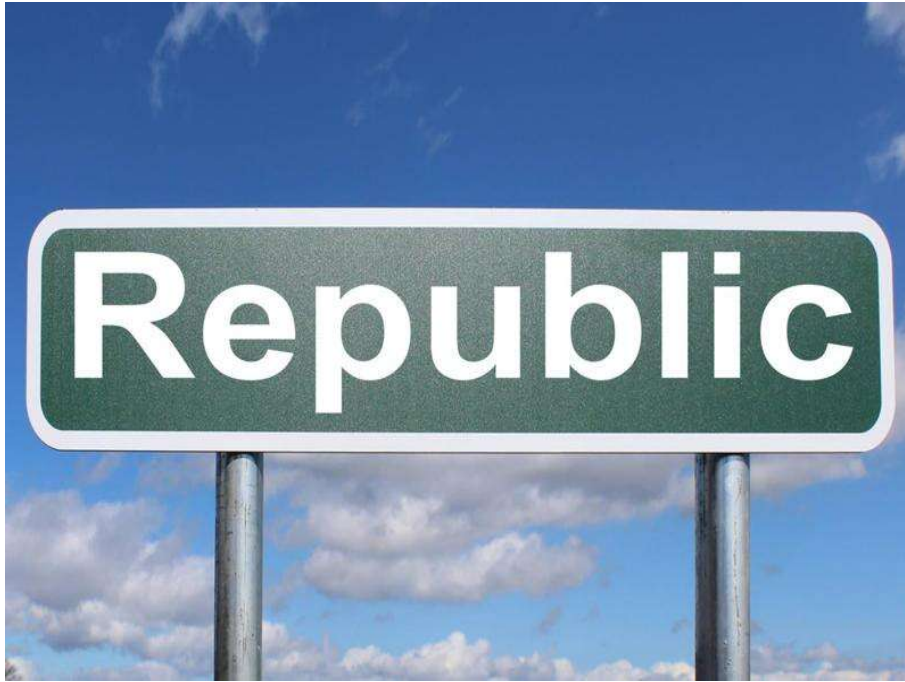


The University Community is invited to read the article below published in The Jamaica Observer on Sunday, June 4, 2023, titled, 'Constitutional Reform...the Questions,' by Professor Paul Golding, Professor of Management and Information Systems, COBAM.



Constitutional reform

...the questions



The road to republican status for Jamaica has many questions along the path..

While England settles in after the coronation of Charles III and Camilla, Jamaicans debates the process on which to ditch them.

On Sunday April 30, 2023, the Jamaica Coalition for a Healthy Society (JCHS) took out full page advertisement in both Sunday papers cacophonously asking "Why the rush?" The JCHS strongly recommended that the time to be allowed for public education should be at least six months to a year, instead of the five-week deadline for a Bill to be placed in Parliament as a prelude to a referendum.

The JCHS asked some critical and relevant questions that are worthy of public discussion and are in the interest of transparency:

- Whilst the monarchy might not be relevant to Jamaica, what are the alternate structures of Government being contemplated, and what are the implications of each alternative?
- Would it not be a good idea, for example, for a new constitution to guarantee a separation of powers such that the legislature and the judiciary serve as a check on the authority of the executive?
- What are the details of the budget for this exercise and what is the source of funding? Is this a sovereign act that is independent of external influences that might have negative implications for future freedoms?

Of the questions, the third is the most ominous. People may be wondering who JCHS is, not that it should matter. However, when I checked on its website the information about them was sparse — deliberately so.

The information that I gleamed, for what it is worth, is that they were formed in January 2012 and at its core they are a group of Christians who envision a Jamaican society in which Judeo-Christian values nourish and enrich the social, spiritual, physical, emotional, and

mental health of the society. So, they are conservative advocates for traditional Christian norms and values.

This road towards becoming a Republic was first raised 46 years ago by then Prime Minister Michael Manley in 1977. This was after Trinidad and Tobago became a Republic in 1976 and before Dominica did in 1978. The most recent is Barbados which became a republic in 2021.

The new iteration of Jamaica's attempt to become a republic falls under the auspices of the Ministry for Legal and Constitutional Affairs (MLCA) — a new ministry — which has established a Constitutional Reform Committee (CRC).

On March 22, 2023, Prime Minister Andrew Holness announced the 14-member committee's composition, which was increased to 15. The main criticism of the committee is that it lacks diversity, with a high concentration of lawyers. There is another criticism which I will address later.

The minister in the MLCA, Marlene Malahoo Forte, has indicated that the CRC's work will be done in phases, with phase one involving the abolition of the constitutional monarchy and the establishment of the Republic of Jamaica and related matters. This assumes that the governor general will be replaced by a president. This is what is called a parliamentary republic, here the head of State is separate from the head of Government and plays a symbolic role. This is like what we currently have. The other option is a presidential republic, in which the president elected as both the head of Government and the head of State. Several individuals have raised the question: Why not go with the second option and dispense with the ceremonial president?

The JCHS, in its first question, alludes to this without asking the question directly. It is critical for citizens to understand the differences between these two systems of government for us to make an informed decision. Malahoo Forte and her team has not done an effective job in communicating these options and have assumed a parliamentary republic. This is an important issue that the JCHS has raised.

In my view the Government has chosen to take parliamentary republic route because it is less complicated, requires less changes to the constitution, less possibilities for misinformation, and history suggest that incremental change has an increased chance of success than a big bang method.

In 2009 St Vincent and the Grenadines republican referendum failed in part because of more sweeping changes. In other words, the Government is taking a cautious approach and is the experience of others, among other things, to guide its decisions.

History is also presenting a guide on how the president should be selected. In 1999 the republican referendum in Australia failed because of disputes on how a president should be chosen. Malahoo Forte has indicated that there is consensus that the appointment of president will be on the nomination of the prime minister, after consultation with the leader of the Opposition, to be confirmed in the Parliament. She also outlined that the intention is to legislate that the Senate and House of Representatives will sit together to make this determination on a special vote. The Opposition People's National Party (PNP) disagrees with this voting procedure and have said publicly: "...that the vote should be taken in a manner which reflects the present constitutional arrangements, that is, two-thirds of the Members of the House of Representatives and two-thirds of the members of the Senate".

It appears that Minister Malahoo Forte is attempting to decouple the vote on the referendum from how the president will be chosen. What has been proffered is that, after the referendum, the two political parties will make a final decision on the process of choosing a president. It is left to be seen what position the PNP takes.

The second question raised by the JCHS, "...for a new constitution to guarantee a separation of powers such that the legislature and the judiciary serve as a check on the authority of the executive", would be addressed in the decision on parliamentary system versus presidential system.

The third question raised by the JCHS asked not only about budget but about intervention and influence by other sovereign states. The issue that really irks the JCHS and similar faith-based groups is the appointment and influence of Professor Richard Albert, who is a Canadian and has a distinct pro-LGBTQ+ and pro-abortion bias. Quoting a colleague who is also a deacon: "There is an abiding suspicion that the Canadian professor was invited to shift the new constitution towards same sex stuff." The JCHS raised no issue about his technical expertise. The argument proffered by the JCHS on the face of it is xenophobia and un-Christian. There should be no concern about Richard Albert's nationality or his view on abortion or LGBTQ++. Should we start hiring people based on their sexual |views?

These committees make decisions by consensus and there are many other erudite people on the committee, including my pastor, who are unlikely to be swayed.

The Jamaican people will make the final decision based on popular vote in a referendum. Based on the three-phase process mentioned earlier, will there be three referendums? This is too important an issue not to keep the consultation and discussions going.

Professor Paul Golding is Professor of Management and Information Systems, and former dean of College of Business and Management, at University of Technology, Jamaica. Send comments to the Jamaica Observer or pgolding@utech.edu.jm.

Article Link: <https://www.jamaicaobserver.com/columns/constitutional-reform/>



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