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**Decolonizing Efforts in Caribbean
Non-Self Governing Territories:
Some Lessons Learned**

DISCUSSION PAPER

DECOLONIZING EFFORTS IN CARIBBEAN NON-SELF GOVERNING TERRITORIES: SOME LESSONS LEARNED

The Context

It is arguable that the efforts to which this topic alludes were not decolonising ones at all, but rather activities geared to achieving some level of constitutional advancement. With respect to the United Kingdom Overseas Territories (UKOTs) to which this Paper confines itself, the established term is 'constitutional modernisation'. The current efforts were triggered by the famous White Paper *Partnerships for Progress and Prosperity: Britain and the Overseas Territories* (1999) which provided them with ideological underpinning. The British Virgin Islands (BVI) were somewhat ahead in that in 1992, the Lavity Stoutt Government called for constitutional reform with the avowed aim of upgrading their Executive Council to cabinet status presided over by a premier. Bermuda's 1969 'pre-independence' constitution was the model. That the BVI's was a local initiative seems to me important.

The UKOTs were not given a blank constitutional cheque. The attitude of the United Kingdom Government (UKG) was at once liberal and limiting. Constitutional commissions were to consult widely and make recommendations "compatible with the present aspirations of the people"; and each territory was to effect reform that was consonant with its culture and circumstances¹. On the other hand, the Foreign and Commonwealth Office (FCO) framed the constitutional discussion somewhat by providing a Modernisation Check-List. In its own words it "indicated standards which the Overseas Territories should seek to achieve, obligations which they should strive to meet and expectations of Her Majesty's Government in key areas of constitutional modernisation."² This innocent-sounding document omitted the power relationship between the governor and the elected representatives. The inference is that it was not subject to modernisation. On the contrary; and as incredible as it may seem, the possibility of enhancing the governor's powers was implicit in the Check-List.

All of the territories were conservative in constitutional politics, with a couple more so than others. The Cayman Islands, for instance, lacking a history of an oppressive plantocracy were void of a tradition of agitation for democratic participation. Besides, Caymanians regarded colonial dependency as an infrastructure for economic growth. Petty observed a similar phenomenon in his native Anguilla: "Anguillian politicians had come to relate stability with colonialism and instability with independence"³. However after a degree of enlightenment, the Territories desired some kind of redistribution of power, vaguely designated internal self-government. The goal as Dr. Orlando Smith of the BVI saw it was the rebalancing of rights and responsibilities between the Government of the BVI and Her Majesty's Government (HMG). This had the potential, however, to lead to conflict given the tough position of HMG conveyed by someone like Secretary of State Bill Rammell who told the UKOTs' ministers categorically in

2003 that the UK was not bound by the UN General Resolution 1541 of 1960 on independence, integration and free association.

A Digest of Achievements

It cannot be denied that the UKOTs have achieved or on the verge of achieving constitutional changes, some of which are progressive, some adjustive, some plainly sensible and others merely cosmetic. (An obvious lesson is that we need to be aware of the difference). I offer here some of these developments prior to identifying lessons that might be learnt from the efforts.

As a result of some six years of feverish activities, cabinets and premiers have replaced executive councils and Chief Ministers (CMs), there are deputy governors of local origin, fundamental rights sections, codes of ethics, national complaints commissioners, national security councils, provisions for separation of powers with respect to the Attorney General as chief legal adviser and public prosecutor, and in some cases governors are obliged to consult premier/cabinet in exercising some of their reserved powers and the impressive list goes on.

It is not evident in every case though that a combination of any of these provisions amounts to a coherent vision on constitutional advancement let alone decolonisation. One is sometimes left with the impression of a shopping list or a smorgasbord to use a more savoury metaphor. The BVI government gave specific guidelines and stipulated six areas for the attention: the separation of the duties of the Attorney General, belonger status, eligibility to hold elected office, introduction of a sixth ministerial position, the incorporation of a human rights chapter, reserve powers of the Governor and the Cabinet system of government.³ One wonders whether these were items for change or a programme for fundamental and overarching reform.

And yet the significance of some of these changes must not be underestimated. Innovations such as codes of ethics and complaints commissioners can function as checks on the powers of elected leaders, (Constitutional reform is not confined to the powers of the Governor). Increased numbers in legislatures suitably structured can allow assemblies more effective supervision of cabinet. Properly constituted also, public service commissions and national security councils can empower the populace and involve civil society in governance. And cabinets do help to give a more modern countenance to constitutions. Finally the contention by the Montserratian commissioners that the Governor is a creature of the Constitution and that even when his power cannot be questioned, his manner of exercising it can and should be open to review, is instructive. In other words acts done by the representative of the Crown can be held to be *ultra vires* by the courts.

It is worth observing too that there has been very little reference to independence except to say as in BVI that there was no significant call for it; or a flirtatious free association episode in the Turks and Caicos (TCI) involving Canada, or vacuous threats in the Cayman Islands. With all the education, no serious attention has really been paid to alternatives to independence with the possible exception of Montserrat which ironically is the least economically well endowed of them all.

Some Possible Lessons

Out of the flurry of constitutional activities lessons can be learned about process, achievements and perceptions of achievements. For convenience I categorise the lessons under the sub-headings: education, the role of the Special Committee on De-colonization, the role of experts, consultation and negotiations.

Before people can be properly consulted, they must be knowledgeable of the subject of consultations. It soon became evident that the citizens in general including some practising politicians were ignorant of the details of their constitution. Education therefore became a pre-requisite for consultation. Education has to be carefully targeted. Citizens need to have a grasp of constitution in general so that they can see theirs in a comparative context. This way they can appreciate the undemocratic elements of colonial constitutions. They must also be educated in the meaning of key terms which seem superficially innocent but are critical as far as power equation and disposition are concerned. The difference in the authority exercised by a Governor as governor and as Governor-in-Council is an example. It needs to be appreciated too that a requirement of the Governor to consult does not automatically obligate him or her to comply with the advice received. A provision for mere consultation is often a compromise in favour of the administering power.

With the need for education highlighted, one needs to avoid relapse into the state of constitutional ignorance. Education should be ongoing to include the youth to the extent of writing constitution in education curricula. It is evident from some of the self-congratulatory reactions that further education is necessary.

The Role of the UN Special Committee on Decolonization is juxtaposed with discussion on education because it fulfilled important educative and illuminative functions. After Committee Chairman, Earl Huntley made a presentation on alternatives to independence in the Cayman Islands in April 2003, for instance, some Caymanians expressed a desire for independence while others wanted more power ceded to Caymanians.⁴ Through an agent, the Committee played effective educative and advocacy roles – and in Cayman the most conservative Territory, this was evident.

These functions were also demonstrated to good effect at the landmark 2003 Anguilla seminar. There, the representatives of various territories received a crash course on alternatives to independence. There has been no consequential rush to alternatives but the general knowledge informed subsequent negotiations. Of course UKG attitude to these UN-backed arrangements helped to neutralise the enthusiasm generated by the enlightenment. Corbin was perhaps correct in observing that the interest which the 2003 Anguilla seminar generated was subsequent deflated when the Territories were told that integration and free association were not on offer as far as the UKG was concerned.⁵

One lesson which the Territories grasped was that of the availability of the Special Committee to enlighten on a continuing basis. Equally important, its involvement has served to internationalise the national constitutional advancement efforts. There is a global dimension to constitutional reform and there is a sense that none is truly liberated until all are free. Colonisation is unacceptable as a permanent condition. It is not evident that this lesson has been grasped.

The Special Committee's indirect intervention in these reform process highlighted a role for experts – a corps of persons of the ilk of Dr. Carlyle Corbin with expert knowledge on constitutions and decolonisation. What is emerging and is demonstrably necessary is a field of knowledge and its creators. Some of this knowledge now appears in learned journals. This outcome should not be underestimated.

In 2006, Anguilla relaunched consultation with a presentation panel consisting of Dr. Corbin, BVI's Commission Chairman Mr. Farara QC and this author. A Caymanian very active civil society group led by Rev. Al Ebanks *et. al.* exposed that Territory to the thinking and experience of University of the West Indies academics Neville Duncan and the present writer and others. This is about knowledge interjection and cross-fertilisation of ideas. Indeed some sovereign states are benefiting from expertise developed in the service of overseas Territories. I lectured on voting-at-large and other voting systems in St. Kitts and Nevis in 2006 while they were engaged in an electoral reform process.

By stipulating that the Territories pursue wide consultation, the UKG has abandoned the policy of diktat in constitutional change. While consultations may not necessarily assume the form of scientific survey they must be comprehensive enough to ensure that the proposals are owned by the people. If they fail to attend mass public meetings the commissioners must go to them in their institutional and civil society settings – trade unions, mothers unions, high schools, rotary clubs, chambers of commerce, church congregations, youth organisations the media – the gamut.

Governments should not be allowed to dominate the consultation. They and opposition factions are admittedly special publics and their position papers are welcome but their views cannot automatically be ascribed superior space and importance in the reform process. It is the views of the generality that should prevail and constitute the basis for negotiations.

Negotiations are critical and should involve multiple interests including civil society. While the UKG advocated wide consultations, it made no commitment to the democratic outcome of those consultations. Indeed the consultations were to proceed within parameters partly pre-determined in spite of the rhetoric of partnership. Successive Secretaries of State beginning with Baroness Scotland insisted that the reserved powers of the Governor were sacrosanct and it was all rationalised on the felt need of the UKG to retain sufficient powers, checks and balances to enable it to fulfill responsibilities for good governance and certain international obligations. This became the mantra of constitutional modernisation.

However, even when these pronouncements are made with near pontifical authority, they need to be questioned in the crucible of negotiations. Indeed TCI's CM Missick never quite accepted that the Governor's over-mighty powers were the only means of guaranteeing good governance or safeguarding obligations for contingent liabilities. In his view, proper business planning locally, including investment risk assessment and insurance protection could render FCO's claim about contingent liabilities less compelling. And some of the gains in the BVI came as a result of resolute negotiations which took account of that Territory's strong economic position.

In the negotiations, new nomenclature must not be mistaken for devolved power. Every Territory is getting premier and cabinet but all of them may not mean the same thing. Anguilla and the BVI have sought to ensure that the Governor acts on the advice of cabinet in some instances and where he/she does not, that the matter be referred to the Secretary of State. Interestingly premiers do not preside over these new cabinets even when the Governor is absent. A deputy Governor does or a Financial Secretary. An Anguillian cabinet will not bear much resemblance to the one in Antigua even under Statehood in Association. One can understand the BVI CM's euphoria over the fact that the premier shares with the Governor the power to set the agenda of cabinet without fear of a veto "thus allowing your elected leaders to get on with your business unhindered" but this was not that new in practice in some Territories. Obviously there have been valuable gains and it has been shown that negotiating teams with reasoned cases buttressed by popular support can bring concessions. We have to be careful, however, not to have the administering power tweak and titivate without substantially reducing the democratic deficit in the constitution. Goals have to be set against which to measure achievements. No one wishes to take issue with CM Smith that the BVI negotiating team "achieved 95% of the proposals for a modern constitution for the people of the BVI"⁶. It is up to each Territory to define for itself what a modern constitution is.

Conclusion

All of the UKOTs in the Caribbean have achieved or will achieve significant constitutional changes. What the developments arguably lack is coherence, and the items do not appear to be rooted in any identifiable vision of society and sovereignty. In a vague way, Territories are grouping towards internal self-government with Bermuda in mind, but Bermuda itself seems ready to discard the Bermuda model. The British have scored a victory in steering the Territories away from any alternative to independence. After the blind Sampson had returned to strength and wreaked some havoc on the Philistines, he himself died. John Milton in his poem *Sampson Agoniste* offered this telling line:

Yet Israel still serves with all her sons.

Sampson had not delivered Israel from bondage. After all the constitutional modernising activities, none of the UKOTs in the Caribbean is ready for delisting: they are still colonies by whatever designation without a 'road map' for independence, to use a contemporary cliché. Substance does not necessarily accord with form and nomenclature. A second round of modernisation will be needed; and it is hoped that the stop at this new plateau of comfort will not dull the desire to move forward to the promised land of autonomy. Independence must not be allowed to become a holy grail.

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¹ *Partnership for Progress and Prosperity, Britain and the Overseas Territories*, London March 1999. CM 4264

² Constitutional Modernisation Check-List, Overseas Territories Department FCO August 1991, p.1

³ *BVI News Online* Monday, March 12 p.1

⁴ George Alleyne, *Caymanian Compass* 11 April, 2003

⁵ Dr. Carlyle G. Corbin, "Mid-Term Assessment of the Level of Implementation of the Plan of Action of the Second International Decade for the Eradication of Colonialism" Paper presented at Special Committee of 24, Caribbean Regional Seminar, Canouan, 17-19 May 2005

⁶ Deputy Governor's Office, *Newsroom* March, 2007 p.1