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Decolonizing Efforts in Cuba

Also Self-Governing Territories

Some Lessons Learned

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 decolonizing in the full sense, but rather activities geared to achieving some level of constitutional advancement. With respect to the United Kingdom Overseas Territories (UKOTs) to which this Paper pertains, it is this established term is 'constitutional modernisation'. The current efforts were set forth by the *White Paper on the Relationships of the United Kingdom with its Overseas Territories (1999)* which provided them with ideological underpinning. The British Virgin Islands (BVI) was the first to lead in that in 1992, the British Government introduced a constitutional reform with the stated aim of upgrading their Executive Council. The UKOTs were not given a blank constitutional canvas. The attitude of the United Kingdom Government (UKG) was at once liberal and limiting. Constitutional modernisation was to result had been contemplated to limit rather than expand its authority. The UKG wanted 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". This important founding document omitted the power relations between the governor and the elected representatives. The inference is that it was not subject to modernisation. On the contrary, and as is readily visible, 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 moreso than others. The Cayman Islands, for instance, lacking a history of an oppressive plantationocracy 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". However after a degree of enlightenment, the Territories desired some kind of redistribution of power, vaguely designated internal self-responsibilities between the Government of the BVI and Her Majesty's Government (HMG). This

document is available at: <http://www.bvi.gov.bm>

2003 that the UK was not bound by the UN General Resolution 1514 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 additive some plainly sensible and others

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 sections of codes of ethics complaints commissioners 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

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, longer status, eligibility to hold elected office, introduction of a sixth ministerial position, the incorporation of a human rights chapter

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. Unusually constituted also public councils and public councils can empower the populace and involve civil society.

the Ministers in the Governor's at the Governor's institution and that even when his power cannot be questioned his manner of exercising it can and should be

is in the hands of the people and it is the responsibility of the Government

It is worth observing too that there has been very little reference to independence except to say

the education, no serious attention has really been paid to alternatives to independence with
the possible exception of Mauritius which is really the least serious case 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 negotiation.

Before people can be properly consulted, they must be knowledgeable of the subject of
institutions, its structure and the various citizens on whom the institutions are based.
Individuals were ignorant of the terms of their constitutions. Education literature became a
prerequisite for consultation. Education has to be carefully targeted. Citizens need to have a

understanding of the general structure of the institutions and a comparative sense of how
they can appreciate the fundamental elements of colonial constitutions. They must also be
aware of the structure of key terms. With that background, citizens can be consulted on
as power, education and disposition are concerned. The difference in the authority exercised by
the Governor as Governor and as a Governor of a Territory is significant. It is not to be assumed
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
reactions that render education is necessary.

The Role of the UN Special Committee on Decolonization is juxtaposed with discussion on
Education because it fulfills important educative and illuminative functions. After Committee
Chairman, Mr. Hamilton said: "The main aim of the Committee is to bring about the independence of the Territories
and to assist the Governments of the Territories in the process of decolonization. The Committee
should effect an educational and advisory role, and in Guyana the most appropriate 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 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 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 arrangements. There is a strong impression 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 stages highlighted its role as a facilitator and its role in providing expertise in the field of constitutional reform and decolonisation. What is emerging and is demonstrably necessary is a field of

in 2006 Anguilla chaired consultation with a representative panel consisting of Mr. Corbin, BVI's Commission Chairman Mr. Farara QC and this author. A Caymanian, very active civil

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 sought to avoid the imposition of diktat in constitutional change. While consultations may not necessarily assume the form of a referendum, they must be comprehensive enough to ensure that the proposals are owned by the people. If they fail to attract wide public attention, they are not likely to be successful. In their institutional and civil society settings, trade unions, mothers unions, high schools, rotary clubs, chambers of commerce, church congregations, youth organisations, the media

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

determined in spite of the rhetoric of partnership. Successive Secretaries of State for the Colonies and Baroness Scotland insisted that the reserved powers of the Governor were sacrosanct and it

This became the main theme of the internal and external negotiations.

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 ~~reserved~~ powers were the only means of protecting good governance or safeguarding obligations for contingent liabilities. In his view, ~~proper~~ business planning locally, including investment risk assessment and insurance protection could render EGO's claim about contingent liabilities less compelling. And some of the gains in the PVL came position.

In the negotiations, new nomenclature must not be mistaken for devolved power. Even

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

get on with your business management, but this was not the time to trade in some...
...game and he has been shown that negotiating...
...teams with reserved cases buttressed by popular support...
...which to measure achievements. No one wishes to take issue with CM...

All of the UKITs 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 grouping towards internal self-government with Bermuda in mind, but Bermuda is itself ready to discard the Bermuda model. The British have secured 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 agrees with all her enemies

Sampson had not been blind for nothing. After an era of constitutional modernisation activities, some of the UKITs in the Caribbean is ready for delimiting the way still, whatever designation without a lead, head for independence, to use a metaphor. 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 autonomous independence, 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 1990 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 Aileyns, *Cuyamantú Compass* 11 April, 2005

⁵ Dr. George A. Aileyns, "The Second International Decade for the Eradication of Colonialism" Paper presented at Special Committee of 24 Caribbean Regional Seminar, Cayman, 17-19 May 2005 -

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