

Thoughts on a Caribbean Court of Justice

by

[William W. Watty](#)

I express these random thoughts in response to the Prime Minister's request for more public discussions on the proposal to establish a Caribbean Court of Justice to replace the Privy Council as the final court of appeal. Let me therefore, in the first place, commend the Government of Dominica for its maturity in not rushing to jump on the regional bandwagon and adding its hasty signature to a proposal which, if implemented, is bound to carry serious consequences that we are unable, at present, to envisage; but to encourage maximum public discussion first, so that some consensus, or at least clearer understanding of all that is at stake, might emerge.

I have had occasion in the recent past to express my own reservations in an impromptu radio interview, in a setting that did not allow for calm reflection. I did not, at the time, have the opportunity to elaborate, and therefore I seize this moment, made possible by the Prime Minister's appeal, not only to add my objection to the proposal, but to indicate reasons why such a development is of concern to me.

The rule of law is the bedrock of civilized society, and respect for the verdicts, judgements and sanctions that emanate from constituted legal authority is the basis for resolution of social conflict, for personal security, public stability and tranquility. At the heart of such judgements are the paramount claims of justice and the guarantee of strict impartiality to which every citizen is entitled; and whenever it becomes apparent that such basic rights cannot be guaranteed social unrest, anarchical tendencies, chaos and brutal repression are likely to be the dire result.

Not even the most ardent protagonists for a Caribbean Court of Justice will dispute that the Privy Council, with both the advantages and the limitations of distance, has guaranteed strict impartiality in the administration of justice. The respect it enjoys as the ultimate recourse is a respect that it has earned. It is nothing to do with colonialism any more than our legal system itself is embedded in the colonial inheritance. Whether the Privy Council ratified, returned or overturned verdicts given in the lower jurisdictions, it has always given reasons, which have been of such weight, profundity, and yet lucidity as the wayfaring man might understand and even applaud. Its decisions have not only won acclaim throughout the English-speaking world, but have been cited as precedents for later cases.

It is not for me to ask whether errors, due to remoteness or misunderstanding, may have arisen from time to time even in that august body. That is a debate for the specialists. However, even such lapses as might have occurred have not been sufficient to cast doubt on the competence of the Privy Council to adjudicate as the final court of appeal for the English-speaking Caribbean. That being the case, it seems to me that arguments for dispensing with the Privy Council should do nothing short of overwhelming in order to succeed. Far from being so, the arguments, to date, have been quite feeble, as I hope presently to show.

In passing, it does seem strange to me, that what I would regard as the unassailable argument for the replacement of the Privy Council with a Caribbean Court of Justice has never been

advanced, viz. that all or the majority of the appeals to the Privy Council had been turned down, or conversely, that where the judgements or procedures of the lower courts had been questioned in a reversal, it could be shown wherein the Privy Council erred. This I find to be a most curious oversight. This would be sufficient proof that we were ready for this next stage of development in our legal history, and would certainly be enough to persuade me that the constitution of a Caribbean Court of Justice was not only meet and right but our bounden duty. However, in none of the debates has an argument of the kind ever surfaced, and that omission alone gives me reasonable comfort in the status quo, and not a few jitters as I contemplate the new dispensation.

ARGUMENT

The financial argument is, therefore, not the most compelling, for if it could be demonstrated that the claims of justice could be better served by a Caribbean Court as the final court of appeal, I would be in the vanguard for the change whatever the costs. Since, however, this is precisely the question, the costs involved in setting up and operating another bureaucracy, that seems, at best, to be superfluous, becomes a weighty argument against it. We are all poor countries, some much poorer than others, all with struggling economies, and some teetering on the edge of collapse. To siphon off the millions involved in the establishment and maintenance of an institution that we can do without, and that has no obvious economic value, when social services are in a shambles, infrastructures are crumbling, young people are in hopelessness and despair is not just irresponsible. It is insane. It is a kind of corruption which should not be encouraged.

Nor is the political argument any more persuasive than the economic. No one who knows me well will dismiss me as backward-looking colonialist. My record speaks for itself; but to advertize a Caribbean Court of Justice as some kind of keystone that will complete the arch of Caribbean nationhood must be rejected as manifestly specious. Indeed, that is sufficient to destroy the case. What business has a final court of appeal with nationalism? Whoever asked for any other keystone but economic reform, uniform, all-round, sustainable development of all the people and a glimmer of hope for the young? All we want from all our courts is justice ... justice, nothing else, nothing less, justice that "rolls down like the waters", justice that is not just done, but done visibly, patently and palpably to the satisfaction and relief of all right-thinking citizens. The moment our courts become symbols of anything else, or involved in political currents, cross-currents and under-currents, that moment justice becomes compromised, and the courts lose their shine, and more than the shine.

Which, (I may as well get off my chest), is precisely the fear I have about the replacement of the Privy Council by a Caribbean Court of Justice. It is a politician's dream, and such is our political culture at the present time that extreme caution is advised. Contemporary Caribbean politics stops at nothing. It is ruthless, voracious and all consuming. Everyone knows about and believes in the independence of the judiciary, but in our political culture that is easier said than done. Such idealism is modified (to put it mildly) by the pragmatism that proclaims, "He who pays the piper calls the tune". Courts have not been immune to political interference and influence, and some (I do not say all) of our jurists have had to wrestle with and resist political pressure at some cost. None need marvel, therefore, that a Caribbean Court of Justice is high on the political agenda. The Privy Council is beyond the reach of political or any other such directorates. They dare not cajole, or even murmur, when those eminent jurists meet to adjudicate and must sometimes castigate. That is the "problem" of the Privy Council and that is my nightmare about a Caribbean Court of Justice beyond which there can be no appeal - political interference, political influence.

All that I have written so far could be dismissed as mere suspicion and hypothesis that had no basis in fact. That, I am afraid, is not so. I know from direct recent experience what I am talking about. I can cite an actual case involving the Methodist Church in one of the CARICOM States in which justice prevailed, and relief was secured only in the Privy Council. The case was against the Government and an Act of Parliament.

The Government of Dominica is right. Hasten slowly on this delicate matter. I would go further. I would urge the other CARICOM leaders to revisit the question calmly, seriously, dispassionately and solemnly. It is fascinating to discover how differently issues appear when you are no longer in power but are, like the rest of us, at the mercy of someone else, except for the justice meted out in the courts. None of you (except perhaps one) will be where you now are forever. Ten years, five years, from now, your sun will have set and all of you will be put out again to pasture. Try to visualize a Caribbean Court of Justice, beyond which there can be no appeal, but is still exposed to political interference - not yours. My advice is let us cling for dear life to the Privy Council until they chase us away.

P.S. But if we must, come hell or high water, have this Caribbean Court of Justice, I would urge that in all cases involving any of the Governments of CARICOM, or any government supported institutions at national or regional levels, appellants be allowed the right of appeal to the Privy Council, either instead of the Caribbean Court of Justice or beyond it.

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