HUMAN RIGHTS AND GOVERNANCE
IN THE CARIBBEAN

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Introduction

Although the philosophy which underpins human rights and governance is not of recent vintage, it is posited that it is ill advised to conclude that the concepts have remained unchanged since their articulation by philosophers such as Locke and Kant. It is submitted that the discourse on human rights and governance is essentially one of the changing power relationship between the state, on the one hand, and the individual and civil society, on the other. In the aftermath of the Peace of Westphalia, and indeed, for a long time afterwards, the power of the state within its borders was almost absolute (Gross 1948: 20). However, there was a gradual erosion of that power after attempts were made at the international level to preserve the language, culture and religion of minorities within European states which were formerly part of the Ottoman Empire.

In the Caribbean, the common law provided safeguards for basic rights and fundamental freedoms which were further strengthened by a Bill of Rights (Alexis 1997: 138) enshrined in the various independence constitutions. If the Bill of Rights in the Constitution of any Caribbean state is narrowly construed, it may be argued that its thrust is the protection of the individual, and not that of civil society. Such an interpretation would be unfortunate because it confines itself to the creation of the rights and ignores their effective exercise and enjoyment. Since rights such as the freedom of religion, the freedom of speech, the freedom of association and freedom of the press can only be meaningfully enjoyed by the individual in concert with others, it is contended that such rights are equally applicable to civil society.

This serves to explain why the protection of human rights is often regarded as being indispensable for the practice of good governance (Annan, cited in Weiss 2000: 795). However that may be, it should not be assumed that the two concepts are indistinguishable. Good governance stretches beyond the borders of civil liberties and basic rights and encompasses issues of accountability, transparency, participation on the part of civil society in the decision-making process and the rule of law (Griffith 1997: 156).

It is instructive that the International Financial Institution (IFIs) in their attempt to integrate good governance into the development process, provide funding for projects involving public sector reform and the enhancement of the administration of justice (de Senarcleus 1998: 155). The role
of these institutions in the promotion of human rights and good governance is significant for more than one reason. To a very large extent they are responsible for the currency which the concept of governance enjoys (Pagden 1998: 7). In addition, a satisfactory human rights record and good governance practice are conditions precedent for access to the financial resources of these institutions. It is worth noting, too, that some of the social movements are allowed direct access to officials of these institutions.

The various social movements which constitute important features of the political and social landscape of the Caribbean have a long history. However, in the present era, the recognition granted by the International Financial Institutions (IFIs) has placed on them the seal of legitimacy. It is posited that this has helped to enhance their capacity to perform their civic duties.

The discourse on governance often focuses on the relationship between the state and its organs and civil society. It is argued that in the Caribbean, the debate should be widened to include the relationship between the state organs themselves—the Executive, the Legislature and the Judiciary. One senses that the widely held view, albeit erroneous, that the Westminster Model (Carnegie 1996: 1), exists in the Caribbean is a source of complacency. Suffice it to say that in Britain where Parliament is able to exercise a greater degree of control over the Executive than is the case in the Caribbean, Richard Crossman, a Minister in the Harold Wilson Cabinet in the early 1970s, expressed concern about prime ministerial dictatorship. A generation later the President of the Republic of Trinidad and Tobago expressed similar fears with respect to his country. One thing which must be very clear is that dictatorship is anathema to the notion of good governance.

It is difficult to gainsay the important role that civil society must of necessity play in ensuring the practice of good governance (Hewitt 1998: 105) but it is suggested that the nature of the society as a whole is also highly relevant to the issue of governance because it would help in determining the manner in which power should be structured within the society. Some Caribbean countries have plural societies; some states comprise more than one island and in others the presence of indigenous peoples should be considered a special case.

The issues identified for discussion in this paper are determined by the wide construction placed on the concepts of human rights and governance. The main focus would be on the Caribbean, but issues specific to the region will be discussed against the background of international developments. An assessment of the role of civil society in the Caribbean would be useful because as the state retreats from areas in which it was once active, civil society will be called upon to fill the breach.

By any definition, Caribbean states must be characterised as being small. In the Caribbean, small size is often considered to be a serious constraint on the ability of the state to satisfy the basic needs of its population. The question, therefore, arises whether further erosion of the authority of the state could threaten peace and stability in the region. Although the state apparatus could be used as an instrument of repression, it is nevertheless true to say that the enjoyment of human rights and the effective functioning of civil society depend on the observance of the rule of law by the state. The experience in
places such as Rwanda, Bosnia and Liberia has shown that civil liberties cease to exist when the state machinery collapses (Hewitt 1998: 110).

Since the concepts of human rights and governance are not peculiar to the Caribbean but are important items on the international agenda, it would be useful to attempt to trace the genesis of state practice in these important areas of human development.

**International Developments**

If it is accepted that the modern state system came into being after the Peace of Westphalia, it may be argued that the principle underlying civil society is as old as that system. Not only did the Peace of Westphalia settle the issue of the sovereignty of the state within its border, but it also provided safeguards for the religious freedom of minorities (Gross 1948: 22). It is one of the pleasant ironies of history that a treaty whose principal focus was the supreme power of the state within a defined juridical border also sought to provide some measure of protection to minorities. Once this important principle of minority protection was established, it was always going to be difficult to abandon it. In his Fourteen Points Plan (Barkin and Cronin 1994: 107) after World War I, President Woodrow Wilson addressed the issue of linguistic minorities within the states which were previously part of the Ottoman Empire and he stressed the importance of a government being accountable to its people. Accountability (Williams 2000: 557) remains a salient feature of the discourse on governance.

Some of the issues raised by President Wilson were translated into the provisions of treaties concluded under the aegis of the League of Nations. World War I resulted in the disintegration of the Ottoman Empire and the consequential redrawing of boundaries. There are few examples to be found in history where the demarcation of boundaries is a neat exercise. More often than not, it is based on expediency and results in the dislocation of groups of people. The League of Nations recognised the problem and sought to create a special regime for groups who were minorities within their states. The primary objective was the protection of their language, religion and culture.

The treaty provisions did not merely stipulate non-discrimination on the basis of religion, language and culture, but established rights to ensure that members of minority groups could be instructed in their own language. In other words, they were patterned more on the teachings of the Sermon on the Mount than on those of the Ten Commandments. The former is positive in nature, while the latter are essentially rules of abstention. Among the principles of the Charter of the United Nations is the protection of human rights (Article 1 (3) of the Charter). This should be seen as one of the most salutary developments in International Law because the individual gained recognition as a person under the law. Heretofore, he was merely an object (Harris 1991: 18).

In light of this important development, examination of human rights abuses within a state could not be considered an interference in the internal affairs of the delinquent state. Of course, states still protest against such interventions, but the response must be that sovereignty, one of the fundamental principles of International Law, has lost its absolute character. In this context, the role of both the United Nations and the Organization of American States (OAS) in the conduct of
elections in Haiti should be considered. A strict interpretation of the constituent instruments of both organisations would have cautioned against involvement in electoral matters, but a more enlightened view would consider the action of the two organisations as one taken on behalf of civil society to restore internal peace and stability. The state could also be considered a beneficiary of the action because prolonged internal conflict could lead to the implosion of the state.

The involvement of the United Nations in human rights matters goes far beyond its Charter. In 1948 it passed the landmark resolution, the Universal Declaration of Human Rights (Brownlie 1992: 21). Such was the impact of this instrument that it could be validly argued that it has served as the inspirational basis of every human rights treaty concluded subsequent to 1948. In the years following the issuing of the Universal Declaration of Human Rights, the United Nations continued its work of developing human rights even further. Under its auspices the International Covenant on Civil and Political Rights (Brownlie 1976:114) and the International Covenant on Economic, Social and Cultural Rights (Brownlie 1976: 125) were concluded, thus strengthening the protection of human rights at the international level.

Unlike the situation with respect to the Covenant on Civil and Political Rights, it would be difficult to incorporate into municipal law the Covenant on Economic, Social and Cultural Rights, but this in no way diminishes its importance. The observation which should be made is that the conclusion of the latter instrument extends the scope of human rights as beyond that which was previously conceived. For the purpose of this paper, it is worthy of note that economic, social and cultural rights by their very nature put the focus on groups within the society since the individual can only exercise them in association with other members of his group. More recently, the United Nations has selected the more vulnerable groups in society for special attention. For example, treaties have been concluded for the protection of indigenous peoples, racial minorities, women and children. In the Caribbean a treaty does not automatically become part of municipal law (Anderson 1998: 75), but its performance may require the enactment of legislation or a change in government policy. In Trinidad and Tobago, legislation was recently passed abolishing corporal punishment in schools for the purpose of enabling the government to discharge its treaty obligation.

Over the past two decades, governance has permeated development issues. In 1989 the World Bank described the situation in Africa as a ‘crisis in governance’ and opined that the crisis could be resolved by improvement in the areas of “fairness, justice, liberty, efficient administration of justice, respect of human rights and a corruption-free bureaucracy” (World Bank 1989). These concerns touch on issues that do not fit neatly within the mandate of the World Bank but this does not mean that it is about to relent. The issues identified by the World Bank are important, but the real gravamen against its prescription, as is the case with its market reform policy, is that it is based on the false premise that there could be a universal policy for the entire world. Indeed, an enlightened view of governance would take into account cultural and religious differences.

The post-World War II era has witnessed a proliferation of non-governmental organizations on the international plane. They are active in such important areas as the
environment, human rights, gender development and the disbursement of aid. At times they work closely with governments, at other times they find themselves at loggerheads with them. For example, some governments use non-governmental organisations in the industrialized countries to channel aid to developing countries. On the other hand, Amnesty International sometimes has to bear the brunt of attacks by governments when it reports adversely on their human rights policy. Whatever the nature of the relationship between these organizations and governments, there is no doubt that they have emerged as actors on the international plane and are demanding participation in the making of decisions which have an impact on individuals and civil society.

The source of their empowerment may be traced to technological developments, particularly in the areas of information technology. Through this medium they are able to gain easy access to information and to disseminate same. This in turn facilitates the establishment of network systems, thereby shrinking distance considerably. Not infrequently, non-governmental organizations succeed in mobilising international public opinion around an important cause. This success may be attributed to a growing global consciousness which helps to sensitize individuals and social movements to issues such as protection of the environment, gross violation of human rights and human misery caused by natural disasters or armed conflicts.

**Caribbean Experience**

Given the past history of the Caribbean, it is a truism that it has not had a long tradition of good governance and human rights observance. On the contrary, the social landscape of the Caribbean was blighted by slavery and indentureship. Since the slave was regarded as chattel, it stands to reason that he could not be a subject of the law capable of having basic rights and freedoms. In short, he was deprived of his humanity and ironically he could not be the beneficiary of rights which were considered to be inalienable.

After the abolition of slavery, the indentureship system was introduced, but this is not considered to be a significant improvement on the practice of slavery because the indentured servant did not enjoy basic rights and fundamental freedoms. Therefore, the general non-observance of human rights with respect to the majority of the members of the society makes it otiose to speak of good governance in that era.

On the political front, colonial rule was inconsistent with the principle of the self-determination of peoples. The administration in the colony was ultimately responsible to the British Government. Consequently, important elements of good governance such as accountability and effective participation in the decision-making process were lacking. The very remoteness of government was a negation of good democratic practice.

Although it is readily conceded that the attainment of independence in the Caribbean is an important milestone in the constitutional history of the Caribbean, it should nevertheless be noted that good governance cannot be achieved in one fell swoop. In general, the human rights record has been good since independence, but a few areas of concern remain. Arguably, the most hotly debated human rights issue in the Caribbean is the right to life (McIntosh 1996: 63-68). The death penalty is compulsory for the crime
of murder but the Judicial Committee of the Privy Council which has final appellate jurisdiction for most Commonwealth Caribbean countries has been imposing constraints on the carrying out of the death sentence (Pratt and Morgan vs A.G. for Jamaica 1993).

According to the International Covenant on Civil and Political Rights there are rights from which no derogation can be made, but the right to life is not among them. This may appear to be somewhat strange because it can be argued that the right to life should be pre-eminent on the list of rights. Moreover, it seems to defy logic that torture amounts to inhumane treatment but what may turn out to be its most extreme form, deprivation of life, is not so classified. Be that as it may, the Covenant provides that the death penalty may be imposed if due process of law is followed. The Privy Council's attitude to the death penalty is largely determined by opinion in Britain and the rest of Europe. The practice among European states on the abolition of the death penalty, is almost uniform and their policy is to persuade other states to follow their practice. Caribbean opinion appears to be in support of the death penalty and in the context of governance it should be taken seriously.

Basic rights and fundamental freedoms are enshrined in Bills of Rights of Caribbean Constitutions (McIntosh 1996: 53). This provides additional safeguards, but in the final analysis, the most effective guarantee is the rule of law. Commenting on the rule of law Rawlins observes:

Fortunately, the true virtue of the rule of law was put into proper perspective in the Delhi Declaration, 1959. This document emphasizes, inter alia, the absence of arbitrary rule and the subjugation of government to law in order to promote human dignity. It also emphasizes the entitlement of the individual to the protection of fundamental rights, responsible government and the due process of law, guaranteed by an independent and impartial judiciary (Rawlins 1998: 116).

The independence and impartiality of the judiciary can hardly be over-emphasised in any discussion on human rights and governance. If there is a proclivity on the part of a government to rule in an arbitrary and capricious manner, recourse may be had to the court and redress will be obtained if the judiciary is capable of acting independently of the executive branch of government. On the other hand, if the line of demarcation between judicial authority and executive power is not clear, there will be a frightful decline into despotism. In spite of the small size of Caribbean societies, one hardly hears charges of the independence of the judiciary being compromised. Of course, the debate surrounding the establishment of the Caribbean Court of Justice does reveal a fear on the part of some that the judiciary will not function impartially if the Privy Council ceases to be the final Court of Appeal.

The issues raised so far, a written constitution, protection of basic rights and the rule of law, impose limits on executive authority, but the question arises whether they adequately provide for the representative nature of government and effective participation in the decision-making process. The significance of these issues lies in the fact that they force us to reflect on the structure of political power. Commenting on constitutional democracy, Professor McIntosh writes:
The searching question, then, for constitutional democracy is how best to structure political power through the institution of majority rule with universal suffrage in order to achieve the best possible situation where government by electorally accountable representative institutions is reconciled with the protection of individual rights. (McIntosh 1996: 53)

Although the specific issue raised by Professor McIntosh is constitutional democracy, it is submitted that it is equally apt with respect to governance because good governance requires that institutions of government should be fashioned in a way which ensures that ultimate political power resides in the people.

In the Caribbean, it can hardly be claimed that political power resides in the people because governments are not often required to account to the people or their representatives. Caribbean parliaments are ill-equipped to perform a watchdog function over the executive because they do not have ready access to information on governmental activities. They can neither summon public officials to explain decisions taken nor demand documents to ascertain what transpired in the process of decision-making. Question time does little more than provide an opportunity for ministers to engage in evasive tactics and for this reason results in mere chicanery.

At present in the Caribbean, membership of the Legislature is an essential prerequisite for cabinet membership. The time has come for the separation of powers to be reviewed. Owing to the small size of parliaments in the Caribbean it is not unusual for every parliamentarian of the ruling party to be a member of cabinet. This enables the cabinet to ride roughshod over the Legislature.

Unfortunately, this imbalance cannot be redressed by civil society in the Caribbean. In view of the amorphous nature of civil society, its power is diffuse, and as a result the central government is capable of playing off one section of civil society against another. This problem is compounded by the fact that some social movements rely to a large extent on government funding for conducting their activities.

In any event, there are some aspects of Caribbean political culture which militate against good governance. The concept of the ‘maximum leader’ has found congenial soil on the political landscape of the Caribbean to the detriment of the development of genuine democratic rule. This culture is complemented by a political system which vests the Prime Minister with considerable authority which can be exercised without screening by the Legislature.

The conduct of foreign affairs presents particular problems. In most Caribbean countries, the making of treaties lies within the exclusive preserve of the executive (Anderson 1998: 75). There is not even the requirement for the treaty to be laid before parliament. Treaty-making is too important a function to be left entirely up to the executive. Parliament ought to be made aware of the treaty obligations to be assumed by the state because of the wide implications that the conclusion and ratification of a treaty may have.

In Britain, under the Ponsonby Rule, the practice developed that a treaty must be laid before Parliament (Warbrick 2000: 944). This is eminently reasonable because in the absence
of such a rule, the possibility exists for treaties to be concluded without the knowledge of parliament or the nation as a whole. In the United States the power to make treaties is shared between the President and Congress. It is suggested that either model is worth considering in the region because accountability must be considered an important factor in the conduct of external relations.

Majority rule is one of the hallmarks of democracy, but it could lead to the alienation of minorities if the odds are so stacked against them that they are denied the opportunity to share power. In the Commonwealth Caribbean, general elections are organised on the basis of single-member constituencies, and the candidate who first passes the post, as it were, is elected. In homogeneous societies, the vagaries inherent in such a system may eventually sort themselves out, but in plural societies the inbuilt bias against minorities will be perpetuated. If the system is not seen to be fair and just by all groups in the society, there is the risk that peace and stability could be threatened. It should not go unnoticed that the United Nations is today more preoccupied with intra-state conflicts than with inter-state conflicts. For this reason, it has had to redefine its concept of peace and become involved in what it terms peacebuilding efforts.

It is accepted that an international organization can assist in attempts at good governance, but ultimately the onus must be on the state and its constituent parts to develop appropriate mechanisms to redress any power imbalance which exists within the society. A significant proportion of states in the Commonwealth Caribbean is comprised of more than one island and demands for devolution of power from the central government are often made. A feeling of powerlessness and marginalisation would suggest that there are improvements which could be made with respect to governance and it would be useful if reforms are made to address the concerns of the junior partners in the union or federation.

Conclusion

In the Commonwealth Caribbean, human rights issues involve constitutional matters because in every instance there is a Bill of Rights in which basic rights are enshrined. Human rights must be regarded as indispensable elements of good governance in the sense that they impose constraints on governmental authority. However, it would be a mistake to conclude that human rights and governance are indistinguishable. Governance involves not only human rights, but also encompasses accountability, transparency and participation in the decision-making process.

Human rights and the rule of law provide protection against the arbitrary exercise of authority, but issues regarding accountability, transparency and participation rely heavily on a high level of political consciousness and enlightened public opinion. The populace must understand that ultimate power resides in the people and not in a ‘maximum leader.’ Such an understanding will help to shape the kind of politics which is being practised.

It would be foolhardy for the Caribbean to attempt to insulate itself against international developments pertaining to governance. Nevertheless, it should be appreciated that the governance structure should emerge out of the historical experience and social circumstances of the Caribbean. Currently, it is fashionable to think that one political model can satisfy the needs of all
societies but this doctrine of universalism should be avoided.

In reviewing the governance structure, there is no doubt that the social movements have an important role to play, but the primary objective should not be to make the state redundant. If the state is allowed to wither and die, it is doubtful that civil society would be able to fill the void created. The focus of most of the social movements is often on one issue and the degree of coordination among them is almost non-existent.

Finally, the goal should be to forge an effective working relationship between the state and civil society so that the development needs of the society could be met. Such a relationship would make it easier to mobilise the resources of the society, including its human resources, and would help to ensure that the fruits of this mobilisation effort are fairly distributed.
References


