



Coming of Age in the Caribbean

The Right Honourable Sir Dennis Byron,
President of the Caribbean Court of Justice

**Norman Manley Lecture 2012 at the Faculty of Law
University of the West Indies**

Mona Campus, Jamaica
12 April 2012

The Norman Manley Law School is named after the famed politician and lawyer, the late Hon. Norman Washington Manley Q.C. The Norman Manley Law School opened its doors to its first students in September 1973. Like its sibling schools, the Hugh Wooding Law School in Trinidad and Tobago which was also established in 1973, and the Eugene Dupuch Law School - the third law school of the Council of Legal Education established in 1998 - it prepares students for admission to practice in the Commonwealth Caribbean territories. Ms. O. A. Carol Aina was appointed as Principal on November 1, 2012.

Distinguished Lecture

By

The Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice,

on the occasion of

The Norman Manley Lecture 2012

12 April 2012

Protocols

Protocols and appreciation for the invitation to deliver the lecture.

Norman Manley

Norman Washington Manley was a symbol of Caribbean integration. He had ancestry that was a mixture of Britain and Africa, yet he identified himself with the black masses from which he claimed his heritage. After a brilliant career, in which he distinguished himself as a scholar, soldier, athlete, lawyer and politician, he is quoted in his last public address to an annual conference of the PNP:

"I say that the mission of my generation was to win self-government for Jamaica. To win political power which is the final power for the black masses of my country from which I spring. I am proud to stand here today and say to you who fought that fight with me, say it with gladness and pride: Mission accomplished for my generation".

At the same time, he was a committed Federalist. He fought for Caribbean integration through the West Indies Federation. He demonstrated the integrity for which he was well known when

he risked and lost much in the pursuit of this commitment. He is remembered for his search for and attainment of excellence. Today his legacy to his beloved Jamaica and the Caribbean region is vividly enshrined in the Norman Manley Law School. A premier institution which is making a tremendous contribution to the development of Caribbean Jurisprudence in the fine lawyers it has developed over the years and is continuing to develop. I have said and continue to think that the performance of the Norman Manley Law School in mooting and other competitions across the world confirms its excellent quality. As the learning of law expands in his name, it is a fitting tribute to an outstanding son and father. I feel deeply honoured to have been invited to deliver this lecture in his memory.

The Caribbean a Mixture of Peoples, cultures and laws

I thought that tonight we could reflect on who we are as Caribbean people, by looking at where we came from. Our history is well known, we are mostly immigrants who came here either willingly or unwillingly. But today our divergent roots are knotted and intertwined.

The Amerindians

The history of the Commonwealth Caribbean did not begin with Columbus. While history speaks of the native Indians succumbing to the impact of conquest, they never became totally extinct. There are surviving indigenous peoples in all parts of the Caribbean.

The European

The advent of Columbus in 1492 introduced the European to the Caribbean and they came and acquired territory by force. The British entered the arena as settlers in 1624 beginning the history of the Commonwealth Caribbean.

The African

The Europeans took the decision that African slaves were a viable source of labour and organized the massive and inhuman importation of blacks from the coastal villages of Africa for the economic benefit of the European Colonialist. In the British colonies, emancipation or freedom of the slaves came in 1838. In Jamaica, we must remember the Maroons who still occupy a special social space.

The East Indian

After emancipation, the planters imported labourers from India in their search for controllable, cheap workforce already used to agricultural labour. British Guiana was the first Caribbean territory to receive indentured Indians in 1838. Between 1838 and 1917 nearly half a million Indians were introduced into British Guiana, Trinidad, Jamaica, St. Lucia, St. Vincent and Grenada.

The Portuguese

Then Jamaican planters began to import white Europeans. In 1835 the Jamaican Assembly set up a scheme to recruit immigrants from Ireland. British Guiana and Trinidad also experimented with white immigrants. They were usually from Madeira.

The Chinese

Chinese immigrants were first authorised at the beginning of the 19th Century.

Middle Eastern - Jews and Arabs

The Jewish and Arab population in the Commonwealth Caribbean did not arise from conquest or importation as slaves or indentured labour. They came as traders and have contributed most visibly in the commercial sectors.

These groups mixed in more ways than one, is evidenced by the Kaleidoscope of complexions that enliven the Caribbean landscape. Naturally, out of a mixture of people emerged a mixture of culture, exhibiting itself in music, dance, art forms, lifestyles, beliefs and values. I can borrow the imagery of George Lamming who has been credited through his writings with the identification of the unique Caribbean identity. Sir Hugh Wooding, another icon and legal luminary from the same generation as Norman Manley, expressed the same idea. He said that the Caribbean man is different in his thinking and attitudes from any of the people who were his ancestors, although he bears many resemblances to some of them. His environment too is different since his is a multi-racial society, though with its communities only partly integrated... At the end of the day we must work out for ourselves and hereafter rely on a social philosophy of

our own...Our young men and women must capture and distill the mood of the day and give to it an expression which is identifiably West Indian.

That was from a former generation some 50 years or so ago. Are we still in the process of working out our social philosophy? Or have we been able to distill the mood of our times and give it an identifiably West Indian expression? I don't attempt an answer but will move on to consider where we have come from in the sense of the mixture of laws that have become synthesized into our legal system.

The mixture of Laws

The great legal philosopher Friedman, supports the idea that Law is culturally specific. Taken a step further this means that the historical, cultural, social and political processes which helped shape the Commonwealth Caribbean have also, to a large extent, contributed to the identity of its legal system. The Caribbean has been notably influenced by the legal traditions of the ancient Roman law which, through various contortions has reached us through the Civil law, Roman Dutch law and the Common law. The Common law tradition has been and is the most influential in Commonwealth Caribbean societies. Its origins are linked to the development and extension of royal power in England. The domination of the British Empire has seen this common law become the tradition in the Commonwealth Caribbean. But the power to subjugate was tempered by a policy of assimilation because in the territories acquired by the British in the case of conquered or ceded colonies, the general rule was that the laws of the conquered country continue in force until they are altered by the conqueror. Therefore, by way of example, the territories of Trinidad, Guyana and St. Lucia were acquired by conquest and the English common law met Spanish civil law in Trinidad, Roman-Dutch law in Guyana and French civil law in St. Lucia.

Subjugation, however, included assimilation and the current legal systems are still influenced by the mixture of laws. In the examples I mentioned, one would note that it was the Roman Dutch law in Guyana that was most resilient and particularly in its land laws was more assimilated than altered. I could also note that in St. Lucia the Civil Code that is currently the law, is a version of the Civil Code of Quebec, modified and modernized by lawyers from the Common law tradition.

The Commonwealth Caribbean's legal systems were shaped by a colonial power, initially in the context of slavery and later in the context of a post-slavery society riddled by divisions of race, class and colour. The legal system responded to a variety of interests - the economic interests of the planters, the aspirations of the newly freed black population and other immigrants, the desire of the colonial power to implant the common law and to establish hegemony over the newly acquired societies, the legal interests of the remaining French, Spanish and Dutch colonists bequeathed by conquest but anxious to protect their respective legal traditions.

The adoption of the common law was accompanied by the Anglicization of the society. This has had a profound impact on fundamental beliefs and values within society and to some extent is responsible for the strange adherence to positions which used to be characteristic of British positions, but which Britain has abandoned as being anachronistic. By way of example, I would refer to the fact that Britain has abolished the House of Lords, the judicial chamber, which was formerly twinned with the Privy Council, and replaced it with a Supreme Court. They have also responded to the implications of the European Community and its common market and joined the European Court. The most senior British Jurists have been calling for an end to the Privy Council and the cessation of its use by the few remaining commonwealth countries that still have it as a final court of appeal. At the same time there is a body of opinion in the Caribbean that remains attached to the idea of preserving the Privy Council.

A great development occurred in the move towards building a more Caribbean legal tradition in the acquisition of independence. This development introduced an independent legislature with the power to modify and modernize the laws of the colonial era and to create the new distinctly West Indian laws distilled from the mood of the day.

This power included in our independence constitutions is associated with bills of rights creating entrenched guarantees for the human rights of our citizens. In our Caribbean world, I would suggest that these constitutions have introduced another legal theme which is becoming part of our tradition – that is to say, international law, standards and norms. These norms have aligned our legal systems with the international movement to guarantee to our Caribbean citizens the rights associated with human equality and dignity.

I have to return to a former generation, because I was born during the Second World War. In that era, the Caribbean Human Being, not free, still a colonized person fought together with the colonial power against Nazism which had threatened the freedom of Britain in the name of ethnic superiority, thereby helping to explode the myths of ethnic superiority. Immediately after that war, at the United Nations, the nations of the world joined together and proclaimed the Universal Declaration of Human Rights. The ideas that this released has changed the world. They caused the end of colonialism and developed the concept of human equality and dignity in profound ways. Today my tiny nation State of St. Kitts-Nevis can sit in the General Assembly of the United Nations and contribute to making decisions that influence world affairs with the same voting power as the biggest nations in the world.

I would like to recall a few excerpts from the Preamble:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,”

I doubt that there could be any opposition to the statement that the declaration had a profound impact on world history. It was during the same year of the declaration in 1948, that the great nation of India won its independence.

In 1960 the UN again pronounced on human equality and dignity in its Declaration on the Granting of Independence to Colonial Countries and Peoples. Again, I think it is worth reminding ourselves of some excerpts of the preamble and the resolution:

“Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom, Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace, Solemnly proclaims the necessity of bringing to speedy and unconditional end colonialism in all its forms and manifestations; And to this end declares that:

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”

It was just two years afterwards, and fifty years ago in 1962 that Jamaica and Trinidad became independent nations. These two leading Caribbean countries were among the leaders of a large group of British Colonies in Africa and the rest of the Caribbean to become independent. However, the independent status reflected itself in an independent executive, although in some cases with ceremonial links to the British Monarchy, and an independent legislature. With regard to the judicial arm of government, the progress has been much slower.

However there came a time when the Commonwealth Caribbean states took mature and serious steps for the removal of the colonial vestige of the Privy Council and its replacement with a Caribbean Court. And I emphasize the point that all member states participated fully and made commitments.

In 2001, the Heads of Government of the Caribbean Community, signed the Revised Treaty of Chaguaramas. An important feature was to create the CARICOM Single Market and Economy (CSME). In the same year The Caribbean Court of Justice (CCJ) was established by the Agreement Establishing the Caribbean Court of Justice. The Agreement came into force on 23rd July, 2003 and the CCJ was inaugurated on 16th April, 2005 in Port of Spain, Trinidad & Tobago, the Seat of the Court.

The independence of the CCJ and its fitness to replace the Privy Council should not be a matter in which there is any doubt. In assessing the independence of a court, one looks at the quality and the character of the judges of the court, the institutional arrangements for the selection of judges, focusing particularly on the absence of political involvement, as well as the independence

and sustainability of the financial arrangements for the operation of the court. The CCJ meets these standards. In a book by renowned law professors examining how judges are chosen for international courts, Professor Kate Malleson held up the Caribbean Court of Justice as a model of how to choose judges for international courts and for identifying independent and high-quality candidates.

In the few years of its operation, the Court has already established a record of performance. Forty-six (46) appeals and forty (40) applications have already been dealt with at the CCJ between August 2005 and October 2011. I would therefore suggest that the groundwork has been satisfactorily laid for completing the journey of ending the manifestations of colonialism in the judicial arm of our governments.

As I come to the conclusion of my address, I must formally note the leadership of the Hon Prime Minister of Jamaica Portia Simpson- Miller, and her government who declared the intention to have Jamaica join the final appellate jurisdiction of the CCJ.

I think that in the countries that have already joined, there was an obvious demonstration of Caribbean political maturity of the community evidenced by the ability of the major political parties to dismiss the temptations of playing party politics and to join together in the national interest. After all, our constitutions require that the government does not act without evidence of the support of the masses, support which can be determined by the requisite majority in the parliament, a majority which in most states would need the cooperation of the parliamentary opposition.

I am therefore delighted to be here in Jamaica at a time when the leaderships of both the ruling and opposition parties have indicated that they are willing to combine for Jamaica to join the final appellate jurisdiction of the CCJ. This is a tribute to the coming of age in the Caribbean and is a fitting gift to the masses of the population for the 50th Anniversary of independence and a culmination to the evolution which began with the universal declaration of Human Rights in 1948 and the attainment of political power in 1962 which was achieved by an earlier generation.

In conclusion, I would like to simply recall that the Caribbean Court of Justice is fully operational. Next week, commencing on 16th April 2012, the Court will make its first sitting away from its seat in Trinidad. It will sit in Barbados and hear four matters, all of which involve litigants who are not ordinarily resident in Trinidad, but come from Guyana, Belize, Jamaica and Barbados.

I am indeed honoured to have been chosen to deliver this Norman Manley Lecture. I hope Jamaica will embrace his legacy through accession to the highest appellate jurisdiction of the Court as we capture the mood of the times and give it an expression which is distinctly West Indian.

Thank you and good evening.