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# **THE CARIBBEAN AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM**

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The saga of the relations between the English-speaking Caribbean and the Inter-American human rights system is one fraught with ironies from the very start. In the first place, in the period of the mid-1960's, immediately after some of these states had become independent, there was considerable debate among the ruling elites in the area as to whether they should even join the Organization of American States, an institution which appeared to many leaders of the English-speaking countries as little more than a talking-shop for Latin-Americans.

In the end, as we know, the geographical facts of life, combined with realistic calculations about potential aid from the OAS and, particularly, the Inter-American Development Bank, prevailed over the cultural and political hesitancy. Even so, it should be noted that it took Trinidad and Tobago a good five years after Independence before it joined the OAS: Jamaica needed seven years to make up its mind.

It could be said with some justice that this hesitancy was founded on a mixture of downright ignorance, cultural distance, and a latent - if never overtly acknowledged sense of constitutional and political superiority. Ignorance and cultural alienation were, of course, part of the baggage left over from three centuries of mainly British colonialism. The language factor was also, and still is, alas, to an alarming degree, a substantial distancing element in relations between the anglophone Caribbean and its Ibero-American neighbours.

While it may surprise some to hear talk of a sense of superiority on the part of the extremely small, economically vulnerable states that make up what one writer has called "the cricket-playing Caribbean", the fact is that, almost without exception, the former British colonies entered upon Independence with a considerable - and largely justified - self-confidence about the stability and viability of their social and political institutions, and about the strength of the democratic culture which had evolved, in particular, in the thirty or so years immediately preceding Independence.

In general, the parliaments were representative; in general, they were the result of reasonably fair elections; and both electors and elected took it for granted that from time to time

the former would have no hesitation in throwing out the latter if they egregiously failed to live up to the commitments made at election time. This is not to say that the political system and culture were anything like perfect: as history shows, they were not and are not. They are not immune from abuse, particularly because the so-called Westminster model of government which these countries have inherited from Britain leaves open a wide margin for the accretion and exploitation of the considerable power of the Executive.

But there can be no denying that, at the moment of Independence, West Indian society and its leaders felt that they had little to learn from a turbulent and dictator-infested Latin America in the matter of governance. In addition, there was the substantial irritant of Article 8 of the OAS Charter then in force, which was deliberately designed to exclude Guyana and Belize, the former British Honduras, from ever obtaining membership of the Organization because of the existence of territorial disputes involving Venezuela's claim to five-eighths of Guyana and Guatemala's claim to the whole of Belize. This was seen by most West Indians as a particularly perverse and offensive form of neo-colonialism, and a very persuasive reason for newly-independent West Indian states to steer clear of any close formal association with Latin America.

It should be borne in mind that, by the time Trinidad and Tobago, Barbados, and Jamaica (in that order) had reconciled themselves to the inevitable and joined the OAS towards the end of the 1960's, the human rights situation in the hemisphere had palpably worsened. Bear in mind, too, that the Independence Constitutions of these three countries all included entrenched chapters on fundamental human rights borrowed, sometimes almost verbatim, from the Universal Declaration of Human Rights and the European Human Rights Convention. In the early days of Independence, many judges went on record complacently maintaining that these "Bills of Rights" did little more than restate the existing protections: indeed, the preambles to some Constitutions can be read as expressing that view, more or less explicitly.

The first irony, then, is that these newly independent countries, with arguably the most admirable human rights pedigrees in the hemisphere, displayed an almost complete indifference to the development of the human rights culture in the region, and to the instruments and practice of the Organization of American States. Thus, it took Barbados 11 years from the time of its entry into the OAS - and 12 years from the time of independence - to sign the American Convention on Human Rights, and another three years to ratify the treaty.

A second, striking irony is to be found in the fact that it was ratification by Grenada, in July 1978, that brought the American Convention into force. At the time of ratification Grenada was the victim of a *de facto* dictatorship, albeit one that took office by the electoral route. Less than a year later, Grenada became the first - and so far the only - West Indian state to succumb to a military coup. Further irony is to be found in the fact that Trinidad and Tobago, the only West Indian state to recognize and accept the compulsory jurisdiction of the Inter-American Court of Human Rights, last year became the first country ever to denounce a human rights treaty.

Trinidad and Tobago's denunciation of the American Convention has rightly caused shock and dismay throughout the region. This action, when taken together with threats by Jamaica to do the same, the failure by the four West Indian states party to the Convention to accept the compulsory jurisdiction of the Inter-American Court, the refusal by all but four of the English-speaking Caribbean states to ratify the American Convention, leaves it open to the observer to conclude that these states have no interest in the international regimes of protection of human rights. From there, it is but a short step to the assumption that the human rights situation in those states is in dire straits.

Nothing could be further than the truth although, as John Donaldson warns, there are some serious threats looming on the horizon. It is perhaps the greatest irony of all that the deterioration of relations between these states and the international human rights regimes springs, not from some general breakdown in the protection of the fundamental rights of the individual, but rather, almost exclusively, from the long-running dispute between the international community and two Caribbean states over a single issue: the issue of the death penalty.

This penalty, outlawed by neither the International Covenant on Civil and Political Rights nor the American Convention, remains on the law books in all independent Caribbean states. As is well known, in recent years actions by the Privy Council, the highest court of appeal for a number of Commonwealth countries, to redefine concepts of "cruel and unusual punishment", and "cruel and inhuman punishment or treatment" in the context of execution of the death penalty have convinced most West Indian lawmakers that the Privy Council as well as the Inter-American Commission on Human Rights and the United Nations Human Rights Committee all have what is described as "an abolitionist agenda". (I am being deliberately compendious, as the essential facts are well known, particularly in a forum like this.)

The basic argument of the governments is that, so long as capital punishment -in appropriate cases, such as those described in Article 4 of the American Convention- is not actually outlawed, back-door attempts to bring about *de facto* abolition by way of procedural delays at the international level amount to an unacceptable -even illegal- interference in their internal affairs. The withdrawal by Trinidad and Tobago, and the threat of withdrawal by Jamaica, from the American Convention, come against the background of a significant increase in violent crime, including murder, in those countries, and an overwhelming public mandate to maintain and to make use of the ultimate sanction of capital punishment.

The dispute carries with it a profound resonance throughout the English-speaking Caribbean, even in those countries where the crime situation may be less acute. While there is no firm indication that the other West Indian states party to the American Convention - Barbados, Dominica, and Grenada- are presently contemplating following the Trinidadian example, the Inter-American community would be wrong to under-estimate the depth of concern surrounding the issue. To judge by the radio call-in programmes and the correspondence columns in newspapers, there is a widely-held public perception that "foreigners" and "starry-eyed idealists" are trying to impose on the West Indian states standards which ignore or disre-

spect the realities of life in the area, standards which, they say, are not required of the United States, for example.

In the course of his speech at the inauguration of this seminar yesterday President Rodriguez struck an ominous note when he spoke of the prospect that the regional human rights system could become a Latin-American, as opposed to an Inter-American, system. The reticence of the United States and Canada, deplorable as it is, is not news. What is news is the emergence of what might be called single-issue abstentionism on the part of the Caribbean. It is a phenomenon that the regional human rights community should not take lightly.