CONSTITUTIONAL AND LEGISLATIVE CHANGES IN CARIBBEAN LOCAL GOVERNMENT

Eris Schoburgh

Introduction
The Caribbean is a combination of small island states and continental land forms that have an unusual socio-political history of domination and colonialism, which in large measure have contributed to the ascribed status of developing countries. Though the economies of these countries vary in size, they generally are categorised as ‘small’, making their integration into the global economy quite tenuous. Importantly, the nomenclature ‘Caribbean’ masks critical geo-political divisions. For instance, the Anglophone Caribbean or Commonwealth Caribbean are English-speaking countries once ruled predominantly by Britain; the Francophone areas are French-speaking, the majority of which have remained departments of France with the exception of Haiti. The Hispanophone Caribbean islands are Spanish-speaking and as the description implies were colonies of Spain. Finally, the group of islands that are now autonomous countries, but which were once known as the Netherland Antilles, still maintain political and economic links with Holland. The history of the region has also been shaped by Portugal and the United States. The Anglophone Caribbean remains the largest grouping in the region with the majority being independent nations that have established intergovernmental arrangements to facilitate economic harmonisation and integration. The Caribbean Community (CARICOM) and the Caribbean Single Market and Economy (CSME), established under the Treaty of Chaguaramas 1973, and the Organisation of the Eastern Caribbean States (OECS) formed in 1981 are examples.

The Commonwealth Caribbean countries are relatively stable democracies due to a degree of political and administrative decentralisation that facilitated the political socialisation of local political elites in Westminster philosophy and values (Domínguez, Pastor and Worrill 1993; Ryan 1999; Sutton 1999; Anckar 2000). Political decentralisation denotes a form of power-sharing between levels of government in which local elected representatives are given a degree of power to facilitate democratic and accountable decision-making, and a closer fit between citizens’ preferences and service delivery. Political decentralisation is usually associated with some form of constitutional or statutory change to create the framework for devolution of power and authority. Administrative decentralisation is the transfer of authority and responsibility from central government to field agencies as well as other levels of government and may take the form...
of deconcentration – transfer of functional responsibility minus authority; delegation – transfer of responsibility with prescribed authority; and devolution – transfer of significant power and authority. Fiscal decentralisation, the assignment of tax-raising and discretionary spending powers, is usually categorised as the third type, and is a key consideration in devolution of powers to local government. Privatisation which describes a change in the structure of ownership of an economic unit, has emerged as a criterion of good governance in the contemporary period of decentralising reforms and is frequently associated with the empowerment of local government (UNDP 1999; Shah 2004; Schoburgh 2006; Lora 2007). The practice of decentralisation irrespective of the form, is not without controversy as outcomes have differed from those theorised (see e.g. Wolman 1990; Prud’homme 1995; Ter-Minassian 1997; Shah 2004). This chapter explores these various strands of change in the Commonwealth Caribbean, focusing in particular on three countries: Jamaica, Trinidad and Tobago, and Guyana.

During the colonial period, political and administrative decentralisation produced a prototype system of semi-autonomous local government that oversaw remote colonies. The hegemonic character and extended period of British rule did not inhibit indigenous political organising and competitive elections. Political administrative turnover occurred during the colonial period in these countries and although unusual, might have contributed to their resilience as democracies later on. The fidelity of the Anglophone Caribbean political structures to Westminster institutions and practices, that is, parliamentary government, majoritarian rule, and cabinet dominance after independence is notable. It also derives from the motivation of post-independence leaders operating albeit in a ‘controlled’ decentralised context. Political independence has meant the replacement of the prototype local government system with intra-jurisdictional structures that vary in geographic expanse but which are appropriately subnational in nature, exemplars of which are regional, municipal and city governments.

The socio-economic character of the Anglophone Caribbean is similarly complex. Population profiles signify a racial composition of varying levels of African, East Indian, Amerindian, Asian and European origins illustrated by the largest countries in terms of population size. Table 12.1 shows that the Anglophone Caribbean is ethnically heterogeneous but with a clear dominance of persons of African descent. However, unlike the political changes through which the region has transitioned relatively smoothly, economic development has been characterised by greater degrees of variability from one period to the next and among the different countries. The region remains important in geopolitical relations evidenced by the United States (US) Congress passing the United States–Caribbean Strategic Engagement Act 2016 aimed at strengthening partnership between the US and the region. Similarly, the US$197.9 million support of the United Nations Multi-country Sustainable Development Framework in the Caribbean in June 2016 represents a recent major investment in the region. The Caribbean faces existential threats in ‘new wicked problems’ not the least of which is terrorism. Because Bretton Woods Institutions such as the World Bank (WB) and the International Monetary Fund (IMF) have been active participants in shaping the economic futures of a few of these countries some commentators question whether notions of sovereignty or ‘independence’ apply in reality to these political systems.

Decentralisation figures prominently in new paradigms of governmental reorganisation. The new socio-economic and political order in which post-modern and neoliberal ideas contend has compelled an appreciation for re-definition and re-specification of roles of actors whether as institutions or as individuals. At various points reform practice must confront new perspectives on the shift from local government to local governance and finally to developmental local governance (Schoburgh, Martin and Gatchair 2016) which brings into focus the nature of the constitutional and legislative enactments associated with local government reform in the
<table>
<thead>
<tr>
<th>Country</th>
<th>Census year/population</th>
<th>Racial composition/ethnic groups</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>African/Black</td>
</tr>
<tr>
<td>Barbados</td>
<td>(2010) 277,821</td>
<td>92.4</td>
</tr>
<tr>
<td>Belize</td>
<td>(2010) 312,971</td>
<td>-</td>
</tr>
<tr>
<td>Guyana</td>
<td>(2012) 746,955</td>
<td>29.2</td>
</tr>
<tr>
<td>Jamaica</td>
<td>(2011) 2.7 mil.</td>
<td>90.9</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>(2011) 1.3 mil.</td>
<td>34.2</td>
</tr>
</tbody>
</table>
Caribbean. The questions of how, and to what extent have these enactments facilitated local government change inform this chapter that is divided into four sections: the nature of legislative and constitutional change; the vacillation between continuity and change in constituting and legislating local government; the outcomes of legislative change in specific case studies; a concluding analysis of the findings.

The logic of legislative and constitutional change

Public policies establish norms, values and principles that influence the behaviour of actors and agents in society. By that token public policies are behavioural in nature deriving their organisational relevance from being embedded in an institutional framework in order to effect social influence or achieve the conformity desired through implementation. Policy reform of any type or duration, has one fundamental goal in common, social transformation. Social transformation occurs wherever social interactions, whether in loosely coupled social systems like groups, or in more formal collectives like organisations do one of two things – make a complete break with the past or improve on what existed previously. Policy reform is therefore institutional reform, a perspective that is elaborated by Goodin and Klingemann (1996), Goodin (1996), Marsh and Stoker (2002) and Barzelay and Gallego (2006). Critical components of institutions are rules and laws, making legislative change the nucleus of public decision-making.

Seidman, Seidman and Abeyesekere (2001: 13) confirm the importance of legislative change in policy reform:

> government officials invariably must translate seriously-intended, publicly-avowed policies into laws: to promulgate the necessary rules to channel the manifold behaviours that comprise not only societies, but the way itself government works, and to maintain the government’s legitimacy.

Legislation has certain functions: laws allocate rights and duties, provide for the settlement of disputes; prescribe the values that are considered important for society; and determine perhaps figuratively what or who counts in society. In relation to policy reforms legislation compels new behaviours (Seidman, Seidman and Abeyesekere 2001: 15) and depending on the scope and depth of reforms, legislative change can be elevated to become constitutional change.

A constitution, as fundamental legislation evinces norms about the authority and legitimacy of government. Three theoretical perspectives have emerged as explanatory frames for constitutionalism. Initial conservatism, reflected a preference for strong and stable political systems at the core of which was governmental restraint. At an early period in the evolution of this perspective constitutionalism aimed at social harmony among three primary actors: monarchy, aristocracy and the church. Secular authority had a symbiotic relationship with religious authority and as a consequence the latter preceded the former in the influence on political life. Modern conservatism is more secular in nature and interpretation and application of the attendant core values vary between political systems given the emphasis on tradition and continuity that are contextually defined. Importantly the constitutional ideals of modern conservatism surround limited governmental intervention. Liberalism, the second perspective promotes ideals that are diametrically opposed to conservatism although early adherents such as Hobbes and Locke had opposing interpretations of constitutionalism. Liberalism advocates freedoms and rights and thus constitutionalism from this perspective is both a means to, and the end-state of these goals. Finally a Marxist theoretical perspective on constitutionalism is in opposition to liberal ideals. The central argument is that the constitution, rather than limiting the powers of government
should instead expand them, to facilitate the emergence of a new type of state that is proletarian in character. Constitutionalism in an era of neoliberalism values various forms of autonomy. Neoliberalism may have had its greatest impact on the constitutions of transitioning democracies mostly in Eastern Europe more so than Western democracies that appeared to have adopted the ideology of the supremacy of the markets with no major constitutional change.

**Constitutionalism in the Commonwealth**

The constitutions of the English-speaking Caribbean favour modern conservatism even though the values of neoliberalism have occasioned enactment of some new laws. More than anything constitutionalism in the English-speaking Caribbean conforms to the western hypothesis of a constitutional state whose political system adheres to the rule of law, ensures liberty and equality for all, freedom of the press and a plurality of interests. The three arms of government – legislature, executive, judiciary – are theorised to be independent, reflecting the ‘separation of powers’ principle. However there are marked differences in the degree to which there is separation of powers between the Westminster Parliamentary System to which the Commonwealth Caribbean is aligned and the Presidential system, argued to be closer to the ideal than the former. Importantly the principle of peaceful and orderly change is a feature of Western constitutionalism that is reinforced through a democratic process to reduce shocks and strains on the political system. Westminster influenced constitutional traditions in the English-speaking Caribbean are conservative in that their durability suggests that constitutional reform translates into revisions rather than outright change. Of the twelve countries that display this institutional heritage, nine are parliamentary democracies with the head of government being accountable to the legislature. The exceptions are the semi-presidential regimes of Dominica, Guyana, and Trinidad and Tobago, whose constitutions provide for a directly elected head of state. The indistinctiveness between parliamentary and presidential political practices in the region has led some commentators to think of the political systems as hybrids of the two. A Report of the Conflict Prevention and Peace Forum 2011 contends that constitutions in the English-speaking Caribbean depart from ‘the typical parliamentary model, if not the Westminster model’ (Constitutional Design Group 2011). With respect to ‘the powers as stipulated in the constitution’, political practice in actuality ‘deviates from these hard-wired provisions’ (p. 8). McIntosh (2002) provides a more expansive discussion of constitutionalism in the Commonwealth Caribbean.

**Traditionalism v. modernism**

Support for the proposition that constitutionalism in the Commonwealth Caribbean is conservative in orientation is best illustrated in the character of intergovernmental relations. The Westminster model of government to which the Commonwealth Caribbean subscribes is a transplant model but core values have been transferred in the process of adaptation. Features such as parliamentary sovereignty, majority party control of the executive, strong cabinet government, accountability through elections and institutionalised opposition are well established. And so too is the primacy of the national (central) government in shaping political and policy processes derived from the concept of the *unitary state*, which means that power resides in a single national authority (see e.g. Lijphart 1999). The act of governing in a unitary state is monolithic in orientation where government ‘speaks with one voice’. Parliamentary sovereignty is the guiding principle underpinning the Westminster model of government and in translation ‘there is no other higher authority than parliament . . . and no other national body can
question the legitimacy of its decisions’ (McAnulla 2006: 13). This is the institutional setting for intergovernmental relations, where relationships between spheres and tiers of government are structured.

The philosophy of government speaks with one voice plays out in local government operations that are the subject of central government coordination. Caribbean local governments in the majority of instances do not have constitutional status. Constitutional status gives local government its own identity and authority and can be seen as one precondition for local autonomy. Arguably the constitutional status of local government adds, in theory, an important veto point in any decision by central government to controvert the system, and thus reduces central government’s influence over local affairs. However, constitutional status for local government is neither compatible with the region’s institutional heritage nor modern political philosophy about intergovernmental relations which as demonstrated in practice in the Caribbean is antagonistic to power-sharing.

The foregoing argument finds support in Jamaica’s reform experience where intense debate ensued between reformers and elected representatives at the national level about the virtues of ordinary v. deep entrenchment of local government in the Jamaican Constitution. Finally, local government was entrenched in the Jamaican Constitution in 2015, twenty-two years after the commencement of local government reform, a complementary aspect of which was a programme of constitutional reform. Entrenchment in the Constitution of Jamaica is on the assumption that local government will be protected from adverse decisions on the part of central government. The website of the Ministry of Local Government and Community Development under whose portfolio local government falls in Jamaica published online what might be considered to be a rationale for the constitutional amendment. Accordingly:

It will no longer be the singular remit of the Minister to dissolve Local Government in whole or in part. It will demonstrate the commitment of the Administration to local government as a critical ingredient of the national governance process by providing it with constitutional protection.

(MLGCD undated)

The antecedent in this regard is Guyana, which, on a path to socialism, repealed its 1966 independence constitution and adopted in 1980 the Constitution of the Cooperative Republic of Guyana (amended in 1996). In that new constitution local government is accorded the fourth highest priority after ‘sovereignty of the people; the right to form political parties and their freedom to act; and the entitlement of cooperatives, trade unions and other socio-economic organisations to participate in policy management’ (Chapter 2).

The Constitution designates local government as ‘an integral part of the democratic organisation of the State’. It goes further in Chapter 7 to designate local government as, ‘a vital aspect of socialist democracy’ that ‘shall be organised . . . to involve as many people as possible in the task of managing and developing the communities in which they live’ (Paragraph 71(1)).

Local government in Guyana represents the third tier in a hierarchy of government at the apex of which is central government and immediately below is an intermediary level composed of ten administrative regions. Local government in Guyana is formed of regional democratic councils (RDCs), municipal councils (MCs) and neighbourhood democratic councils (NDCs). Chapter 7.72(1) of the Constitution empowers parliament to provide for ‘sub-regions and other subdivisions as it may deem for the purpose of organising local democratic organs’ and consequently there are over 70 Amerindian village councils (AVCs) with similar constitutional status as the NDCs. The Constitution further provides for role and responsibilities of
all local democratic organs but specified election procedures, revenue raising and utilisation authority and decision-making powers of the NDCs. The most far-reaching provision in the Constitution is the developmental orientation of local government and the direct linkage it made with national development.

Constitutional status for local government is one thing but the political willingness to translate this into devolution of power to, or on a lesser scale greater autonomy for local government, is another. In the fragile political environment of Guyana during the run-up to the 1992 parliamentary and presidential elections, the local government system was barely functional. Opposition parties accused the ruling People National Congress (PNC) of electoral fraud. Importantly the 1980 Constitution of the Cooperative Republic of Guyana enacted by the PNC concentrated significant powers in the Office of the Presidency emasculating the legislature on the one hand, and local government on the other. Municipal and local elections were held for the first time in 1994 after a twenty-four year suspension, on account of frequent protests and boycotts by opposition parties. Central government influence in local government was not lessened with the adoption of a socialist ideology; mayors and district councillors were appointed from the centre (central government); the system of district, village, country and rural government was non-functional. Local government institutions were unable to provide basic services unless dictated by the centre. Although defined in the 1980 Constitution as a critical dimension of local democracy, its treatment by central government has not substantiated this constitutional principle. Constitutional status has not improved local government’s position in intergovernmental relations which in practice is structured along lines similar to other countries in the region in which a central government ministry assumes policy oversight of local government and serves as the institutional linkage between local and central governments. Central government’s disregard for the constitutional status of local government in Guyana is evident in that from 1994 local elections were suspended until March 2016.

There are three other cases of constitutional mention of another typology of ‘local government’ in the region. These ‘local governments’ are considered distinct in that they are individual islands (non-contiguous) that each forms a part of separate countries. The first is, the Tobago House of Assembly (THA) created by Act 39 of 1996 to administer the island of Tobago, that forms one-half of the twin island Republic of Trinidad and Tobago. Chapter 11A of the Constitution of the Republic of Trinidad and Tobago is dedicated to outlining key features of the THA but has not attributed special powers to it; instead declaring in Chapter 11A.141B that ‘the Assembly shall have such powers and functions in relation to Tobago as may be prescribed’ implying that some other organ of the state, most likely Parliament has that discretion. The Constitution provides for the creation of the THA Fund to be financed from two sources – appropriations from Parliament and revenues earned by the THA (Chapter 11A.141D). Interestingly, the larger island of Trinidad has a system of local government which is not named in its Constitution.

The second is the Nevis Island Legislature and Assembly (NIL/A) described in the 1983 Constitution of the Federation of St Kitts and Nevis. Like Tobago, ‘local government’ merely describes the administration of the island of Nevis. The NIL/A has significant powers and authority for example to make laws and raise taxes, unlike the THA and therefore has conferred on it a degree of local autonomy. Importantly the Constitution includes a provision for secession of the island of Nevis from St. Kitts were Nevis’s independence to become a goal. The third is represented by Antigua and Barbuda where the Barbuda Council enacted by the Barbuda Local Government Act 1976 is assigned responsibility for the island of Barbuda, one half of the Republic of Antigua and Barbuda. The Constitution provides for no direct powers for the
Barbuda Council leaving the assignment of powers to Parliament (Chapter 10.2). Like Trinidad, local government on the Antigua half of the island-state has no constitutional provision.

Local government in the Commonwealth Caribbean is at different stages of development with respect to its embeddedness in the institutional framework that forms the superstructure of government as outlined in the constitution. Constitutional status signifies variations in the scope of local autonomy. Even where a modicum of local autonomy is granted to local government by the constitution this autonomy is derivative of parliamentary procedures and action. The instances in which local government, irrespective of its manifestation, whether as island-form (e.g. Tobago) or the traditional-form (e.g. Jamaica), has constitutional status one could hardly consider this status to be exceptional as the *de jure* position of local government in intergovernmental relations remains substantially unchanged. Reformers appear daunted by the idea of moving beyond the status of local government as a subordinate of central government, which action validates Chandler’s (1996: 89) position that ‘it is impossible to seriously consider local government as an entity autonomous from the centre’. The cautious approach to constitutional change is a factor. The Report of the Conflict Prevention and Peace Forum 2016 found that across the world constitutions last for nineteen years on an average before they are replaced with modern versions. Constitutions in the Commonwealth have longer life-span and since 1962 only four countries – Barbados, Guyana, Jamaica and Trinidad and Tobago – account for approximately seventy percent of all constitutional events. Constitutional longevity is touted as an indicator of democratic stability. That might be so but it does not augur well for the type of decentralisation that is required for local government to improve its prospects and assume its position as a significant actor in multi-level governance and ultimately as an enabler of local (economic) development (Schoburgh et al. 2016).

Reformers’ efforts to constitute local government as an unequivocal dimension of governing in the Commonwealth Caribbean have been at best exploratory. The conservative character of the institutional superstructure that shapes intergovernmental relations is a more significant determinant in this regard than a lack of political will to devolve power and authority to local government. Central government’s fear of power-sharing is a definitive variable in whether to entrench local government in the constitution, but might not be as influential as the compulsion felt by Caribbean constitutionalists to retain Westminster traditions that have contributed to relative political stability. The fact that the Commonwealth Caribbean has experienced long periods of economic volatility but which have not triggered fundamental constitutional change is evidence of the *resilience* of the institutional framework or the *adaptive* nature of it. The contradiction in all of this is that, in comparison to the constitutional reform agenda, the legislative agenda in general, and specific to local government operations demonstrates a higher level of activism in the region, and might offer other explanations for reformers’ acquiescence to the status quo.

**New paradigms – old practice**

After nearly two decades of implementation, local government reform in the Commonwealth Caribbean has entered a new era; one marked by new laws. The belief is that modernising laws and regulations will enable the multi-level governance framework desired. The abiding concern has been the value of local government to the political system and the role it should play in the political economy. Two countries, Jamaica and The Republic of Trinidad and Tobago, are furthest along this path of the modernisation and will be examined in the ensuing sections. Two questions that will guide the evaluation of legislative developments are: What are the underlying intentions of the new laws? What have been the outcomes?
Jamaica’s three strategic laws

The 2003 Report of the National Advisory Council (NAC) on local government reform saw a modern legal framework as an essential pre-requisite for successful implementation. New legislation is more likely, arguably, to incorporate and give expression to the concepts and principles of the paradigm of participatory local governance articulated in Ministry Paper 8/1993 and 7/2003 (p. 12). Local autonomy and local self-management; citizen participation; fiscal decentralisation; accountability, transparency and high ethical standards in the conduct of public affairs; and local sustainable development are values emphasised in the discourse on a modern local government.

There is an acknowledgment that adjustments to existing power relations are required to create ‘partnerships for change’, a crucial step in which is rationalisation and modernisation of local government legislation for greater responsiveness to the new context. The legislative infrastructure is composed historically of approximately eighty principal laws and several hundred subsidiary legislation that are archaic. Legislation considered to be strategic to the attainment of reform goals were reviewed leading to the promulgation in 2016 of three ‘strategic laws’: The Local Governance Act; The Local Government Financing and Financial Management Act; The Local Government (Unified Services and Employment Act). It must be noted that these laws were preceded by an amendment to the Parochial Rates and Finance Act to establish the Parochial Revenue Fund (PRF) in 1996.

The Local Governance Act 2016

The Local Governance Act 2016 is be the most expansive institutional infrastructure governing local government operations to date and results from a consolidation of The Parish Councils Act (1887), The Kingston and St. Andrew Corporation Act (1923), The Parochial Elections (Modifications) Act (1979) and The Municipalities Act (2003). The Local Governance Act 2016 is claimed to be a means to a political ethos in which local government’s value to the political economy, its role and responsibilities and the relationships in support of these are delineated. That political ethos according to the preamble to the Act are ‘local authorities having greater scope and autonomy in the management of local affairs, an expanded and a more holistic mandate for good governance, sustainable development and good civic order’ (p. 1).

Perhaps the most critical distinction between the 2016 Act and the legislation from which it is derived is that it signifies a new paradigm of governing at the local level, illustrated by the replacement of local government with local governance in the title. Local governance in both concept and practice emphasises relationships in the process of governing against the backdrop of a redefinition of the role of the state and government and a change in the behaviour of citizens. Deployment of the concept of local governance is the first stage in ensuring realisation of the vision of a multi-level governance framework in which local government is one actor among a complex array of actors participating in co-regulation and co-production of local services and local sustainable development. The 2016 Act is explicit in this regard:

A local authority . . . is responsible for encouraging and facilitating effective coordination and collaboration between bodies or entities that are within the public, private, and non-governmental sectors and that exist or operate within the area of its jurisdiction to ensure greater or better synergy, service delivery and responsiveness to the needs, concerns and priorities of inhabitants within the area of its jurisdiction.

(Local Governance Act 2016: Section 21[g])
Notably the political role signified in the past by a preoccupation with electoral procedures and structure of local authorities, now calls attention to a participatory ethos. Section 22.1 states:

Each local authority shall promote, establish and utilize appropriate mechanisms to facilitate participation of, and collaboration or networking with, all relevant stakeholders who exist or operate within the area of its jurisdiction.

The developmental role of local government forms part of its expanded mandate and thus ‘development’ irrespective of the kind, (e.g. community, local economic or sustainable) is deemed a functional responsibility of all local authorities as seen in Section 21.1:

[b] ... promoting, spearheading and coordinating local sustainable development

e] ... spearheading, fostering and promoting economic and social development, cultural advancement, alleviation of poverty and environmental protection . . .

Other sections of the 2016 Act stipulates the strategies that local authorities are to implement to give effect to the developmental role of local government, among which are: local sustainable development plans (LSDPs); urban renewal, rural and community development; poverty alleviation programmes. The most far-reaching stipulation debatably, is the link made between local and national development as local authorities are to contribute to, and coordinate national development plans. One inference from the developmental role of local government is its responsibility for the economic governance of local jurisdictions. Citizen participation is conjoined with a socio-economic role, establishing two important criteria for good local governance. Local actors with which the local authority must now interact for effective economic governance and which hitherto were not adequately integrated into the institutional framework of local governance are development committees (parish development committees, development area committees and community development committees), business improvement districts, and special improvement districts. Local economic governance will thus be an essential dimension of the functional scope of local governance in Jamaica.

The new Act is demand-driven as the evolving needs of each geographic space will be met via a rational framework that provides for different types of local authorities categorised as municipal corporations (first-tier structures that have replaced parish councils), city municipalities (second-tier structures) and town municipalities (third-tier structures). A layered system of local governance exhibiting degrees of fragmentation with jurisdictions of varying sizes in response to rapid urbanisation is one outcome of the Act. The criteria for establishing second- and third-tier structures, are outlined in Section 5 of the Act, three of which are: the area must be an urban centre or group of urban centres; population size cannot be less than 50,000; and, there should be income generating or revenue potential.

**What’s in a name?**

Many commentators question the rationale for the change from parish council to municipal corporation. Apart from the distinctive elements discussed previously one could argue that the change is symbolic; it is a marketing strategy to generate citizens’ interest in the operations of local authorities who will then demand that the provisions of the new law are enforced. With increased pressure from citizens the process of transformation can begin within the local authority thereby fulfilling reform goals. The change in name serves to silence the critics; it is a therapeutic
Caribbean local government

means to an instrumental end. The other side to this argument is that there is substantive difference between a council and a corporation. A council is a political and an administrative organisation while a corporation balances the political and administrative dimensions of the local authority with a business-orientation which then suggests a rejection of the existing organisational status quo for a new paradigm of local political and policy management. Municipal corporation is more in synchrony with the provisions of the new Act and the new name sends a message that it is not business as usual. In fact a Jamaica Gleaner columnist links the change in name to positive impact on political participation: ‘if the shiny new municipal corporations can break with the depressing history of their predecessor parish councils we may yet see more voters turning out next time’ (Martin Henry, Jamaica Gleaner, 11 December 2016).

All perspectives on the change in name are valid. If the change is to be significant however, much depends on the capacity endowments of the local authority. This perhaps is the worth of the two other supporting pieces of legislation.

The Local Government (Financing and Financial Management) Act 2016

Any new law that is dedicated to local government financing in Jamaica must be revolutionary. Or so it would appear in light of a direct correlation between effective decentralisation and the state of local government financing. Moreover, there is a history of public agitation for adequate and sustainable financing for local government in Jamaica hence the establishment of the PRF, but to which concern the new law is expected to be more responsive. The claim is that insufficiency in financial resources has slowed the pace of transformation of local authorities. The Report of the National Advisory Council (NAC) on Local Government Reform 2009 views local government financing the most influential aspect of reform:

A primary objective of local government reform is to ensure that local authorities have access to adequate and independent sources of revenues, and that these revenues are properly managed, so that municipalities are better able to undertake projects to improve the social and economic welfare of their constituents.

The NAC Report proposed fiscal decentralisation to achieve this objective. Fiscal decentralisation describes the devolution of taxing and spending powers to lower levels of government. Besides political decentralisation that sets the framework for the allocation of authority and responsibility between levels of government, fiscal decentralisation gives effect to devolution of powers. The pros and cons of fiscal decentralisation have been a source of ongoing debate but as an imperative of governance reforms it is an important part of local government reform.

For the NAC Report fiscal decentralisation requires: (a) intergovernmental transfers design that matches expenditure with responsibilities and that gives local authorities control over the Parish Revenue Fund; (b) measures to increase the revenue flow to local government that includes simplifying property tax rates and/or re-introduction of local/municipal rates for specified services or municipal improvement works; and (c) maintenance of databases on revenue and cost structure of all services and periodic cost-benefit analyses of such services. The extent to which the Local Government (Financing and Financial Management) Act 2016 reflects the building blocks of fiscal decentralisation or responds to the recommendations of the NAC Report are assessed in Table 12.2. Evidently the law has made provisions for more predictable sources of funding for local government services but stops short in the powers that it devolves. Overall the Act is strong on financial management and traditional sources of revenue but weak
|------------------------------------------|-------------------------------------------|-------------------------------------------------------------|-------------------|
| Assignment of expenditure responsibilities | Expenditure and responsibilities match | Provides for:  
1. Parochial Revenue Fund  
2. Equalisation Fund | Ambiguous about expenditure and responsibilities match |
| Allocation of revenue sources | Measures to increase the revenue flow:  
1. Simplify property tax  
2. Reintroduce municipal rates | Provides for:  
1. 90% of property tax revenue for local government  
2. 25% of motor vehicle licence revenue for local government  
3. Accrual of local rates, fees, charges and income from investments to local government | Level and proportion subject to approval from Minister with responsibility for finance |
| Design of intergovernmental transfers | Local authorities control Parish Revenue Fund | Provides for:  
1. Ministerial control of Parish Revenue Fund  
2. 90% property tax directly to local authorities; 10% property tax to Equalisation Fund  
3. 25% motor vehicle licence directly to local authorities; 75% to Equalisation Fund | 1. Permanent Secretary in Ministry and NOT Chief Executive Officer of Municipal Corporation is the Accountable Officer  
2. Minister allocates 10% on needs basis  
3. Minister allocates 75% on basis of mileage of parochial roads |
| Structuring subnational borrowing/debt | | Provides for local authority borrowing/debt with approval of, but not guaranteed by, Minister with responsibility for finance | Local authority’s status similar to a department in the Jamaican public service |
in devolution of powers for revenue generation or providing for innovative sources of local revenue, even with a provision for local investment. The boldest provision might be that which delegates responsibility for borrowing/debt to local government. Fiscal decentralisation is therefore not a priority of local government reform in Jamaica.

**The Local Government (Unified Service and Employment) Act 2016**

The ‘quality’ of the human resource is arguably the most indispensable dimension of complete transformation of local authorities in Jamaica. With an expanded mandate in reform come questions about the capacity of local government especially in light of a legacy of under-performance in local service provision and representation. Local government’s unsatisfactory performance is believed to be a function of low quality human resource, weak management and accountability systems and poor administrative and political leadership. Perception is not always reality; the truth is somewhere in the mix. A capacity audit (CAPAUD) of a sample of local authorities in Jamaica carried out by this researcher in 2010 revealed that administrative leaders in local authorities are equipped for their posts based on educational entry requirements and training (Schoburgh 2014: 16–17). However, local government systems are devoid of an effective human resource strategy in which performance- and results-orientation are at a premium. Educational qualifications and competencies are lesser factors in local government performance levels than the character of the system and organisational ethos that militate against efficiency and effectiveness. The CAPAUD 2010 found that: the extent to which educational qualifications and training are converted into leadership competencies was unclear; there was lack of will on the part of senior managers to institute measures that could lead to higher organisational performance; and innovation in local authorities was negligible evidenced by the absence of a clear organisational strategy in response to Ministry Papers 8 of 1993 and 7 of 2003 (Schoburgh 2014: 16–17). The CAPAUD 2010 described ‘the capacity of the local authority for self-renewal and sustainability in light of limited expressions in organisational operations of foresight, innovativeness and autonomy even with strong endowments of education and training’ (Schoburgh 2014: 17). These deficiencies are the remit of the new Act, which resolves to ‘provide a comprehensive framework for the employment, management and regulation of personnel employed by local government authorities’ (p. 1).

The Act espouses critical themes that align appropriately with its purpose. The constitution of a Services Commission is given ample coverage in Sections 3–6 and 9–11, implicitly responding to the existing human resource strategy gap in local government. The unified in title of the Act signals a break from the disjointed approach to conditions of employment. The immediate impact of Act 2016 is the repeal of the Municipal Service Commission Act; the Parish Council Unified Service Act; and the Poor Relief Officers Unified Service Act that provided for differential treatment of each of these staff establishments causing conundrum in the areas of setting and meeting performance and accountability standards; ensuring fairness; and dispensing discipline, with adverse effect on staff morale. What obtained previously could not fulfil the human resource capacity requirements of a modern developmental local government. The Commission is thus empowered to cultivate a workforce that, according to Section 5(1):

(a) possesses the requisite skills, competencies and outlook to achieve good governance and sustainable development at the local level; and

(b) is strongly oriented to innovation, problem solving and responsiveness to customer needs.
Among the list of functions of the Commission, the Act provides for the development of a human resource policy framework for local authorities; adoption of standards for recruitment, deployment and development of staff; manpower planning and human resource management information system (HRMIS).

Jamaica’s strategic laws are commendable efforts towards meeting long-held objectives of local government reform. They respond to institutional deficiencies that have the potential to stymie the transformation of local government into an agent of development.

**Trinidad and Tobago’s law and bill**

The Tobago House of Assembly (THA) Act 1980 precipitated a flow of structural changes to local government in the Republic of Trinidad and Tobago and importantly a recognition that local self-government is a necessary pathway to growth and development of a geographic area. The central concern has been to elevate local government to the position of partner in national development, which became the core theme of the draft policy paper on Community Development and Local Government Reform 1983. The plan was to establish Area and National Advisory Committees to foster citizen participation in local and national planning and development. Although, the ruling People’s National Movement (PNM) under whose portfolio these perspectives were advocated lost the 1986 national elections and the ideas in the draft policy paper never got to the stage of implementation, the new government, the National Alliance for Reconstruction (NAR) might have been convinced by the value of local government and proposed its own version of reform in a draft policy paper, titled *The Decentralization Process, Regional Administration and Regional Development Proposals for Reform 1989–1990*. How the debate unfolded is discussed here.


Local government reform in the twin-island republic was marked by the promotion of a policy of decentralisation and drafting of a municipal corporations bill. The Municipal Corporations Act 1990/1991 consolidated all existing pieces of legislation pertaining to local government in Trinidad. Its significance lies in (a) transformation of the structure of local government, creating thirteen regions (that were reduced to nine in 1992), two cities and three boroughs; and (b) expansion of the functional responsibilities of local government.

There was a disconnect between the 1983 vision of local government as a development partner and the Municipal Corporations Act 1990/1991 which focused on restructuring local government and consolidating laws. The constitution of Municipal Corporations was laid out, viz., internal structures and procedures, electoral matters and functional scope. It did not clarify the role of local government in the broader frame of governance. The 1990/91 Act intended to be catalytic, providing for greater local autonomy, financial self-sufficiency, efficiency and effectiveness in service delivery, and facilitating the emergence of high performing corporate entities that operate within a participatory ethos. However many of the provisions of the Act and subsequent amendments were not enforced.

**Local Government Bill 2009**

During the 2000s The Republic of Trinidad and Tobago entered another period of policy activism on local government reform that yielded: a Draft Green Paper on Local Government
Caribbean local government

Reform 2004; a Draft White Paper on Local Government Reform 2006; a Green Paper on Roles and Responsibilities of Local Government Bodies 2008; and a Draft White Paper on Local Government Reform 2009. The 2009 Draft White Paper was dubbed ‘an agenda for change’ as local government reform was attached to the auspicious goal of developed country status by 2020, referred to as Vision 2020. Among the measures identified for implementation are (a) legislation that introduces a new management system and provides for citizen engagement; (b) institutional restructuring and human resource development; and (c) monitoring and evaluation.


The 2009 Bill, when and if finally enacted, would further rationalise the number of municipalities. Each municipality is to be governed by a municipal corporation that is a body corporate. The municipal corporation will be governed internally by an executive council and externally, by a consortium of municipal corporations designated central administrative districts (CADs).

The Municipal Corporations Act 1990/1991 was narrowly focused; the Local Government Bill 2009 was more comprehensive. Local government reform in Trinidad started out on a mantra of decentralisation. Yet the 2009 Bill has proposed a degree of centralisation in the concept of CADs. And in practice there might be some ambiguity in the role of CADs vis-à-vis the Ministry with responsibility for local government, even though the responsibility of both is defined in the Bill. Perhaps the Draft Policy, Transitioning of Local Government 2016 will rectify these deficiencies. For among the impediments to effective functioning of local government bodies in Trinidad it listed: political interference and manipulation; inadequate funding; and inadequacy of the current legislation. The 2009 Bill has not been enacted so it is anticipated that a new law or at the least amendments to the 2009 Bill may emerge. Apart from new local governance arrangements there has been little fundamental change to the position of local government in Trinidad.

The bigger picture in the Caribbean

So what does new legislation on local government in some countries of the Commonwealth Caribbean say about the intentions of reformers? Clearly reformers desire change, even though there is sometimes another motivation, of political manipulation of the process. If the policy prescriptions for local government change are purely symbolic as in the view of some commentators, there needs to be serious accounting for the commitment of resources invested in designing instruments that are purported to be facilitators of change. Undoubtedly the discourse is populated by the ‘appropriate’ contemporary concepts suggesting a shift in policy perspective on the position and role of local government in Caribbean political systems.

The legislative changes enacted in the Caribbean promote values that lay the foundation for institutional change and social transformation. The ‘indicators of policy shift’ – local sustainable development, local autonomy, citizen/stakeholder participation – resonate with the normative principles of successful local government reform (Andrews and Shah 2005; Shah 2006; Dollery and Robotti 2008; Schoburgh et al. 2016). As it stands their interpretation in law might not be as radical as advocates of reform desired. Legislation in both Jamaica and Trinidad associates sustainable development with local government but its role in poverty reduction and the broader issue of social inequality needs to be more explicit (see e.g. Schoburgh et al. 2016).
Also in this period of technologically-driven solutions the legislation has not provided for the integration of information and communications technology (ICT) into local government operations. This represents a missed opportunity to demonstrate a strategic move towards business process reengineering in local government that would be in alignment with the new image that the name Municipal Corporation proclaims. Local government reform in these various Caribbean countries is thus incremental in nature.

Constitutional status and fiscal decentralisation are viewed as panaceas for effective local government reform. A degree of fiscal decentralisation has been granted but not fiscal empowerment which is activated through full tax-raising powers and discretionary spending. McIntosh’s (2002) interpretation of constitutional reform is enlightening:

Constitutional reform . . . is not a revolutionary act; it does not seek a radical transformation of the character of the constitution and of the political society. Neither does it seek ‘to deconstitute and reconstitute’ the constitutional order, or abandon its primary principles. . . . constitutional reform places itself in a continuity of the temporal development of the legal order. It is a process of better realizing the substantive values already present in the legal order.

(McIntosh 2002: 55)

Citizens of the Commonwealth Caribbean along with their political representatives must contemplate and answer one fundamental question: What is the value of local government to the society and the political economy? The response will be the basis for social transformation in the roles of actors and agents in the new spirit of multi-level governance that the legislation heralds.

Conclusion

Caribbean local government systems have been the object of reform for more than three decades. Although the process has been characteristically episodic, local government reform responds to domestic and international pressures imposed on the modern state to be productive and competitive. These pressures are embodied in the social forces of globalisation and technological developments which combined with citizens’ demand for greater responsiveness have occasioned questions about roles of actors in both the public and private spheres. Local government specifically, and the subnational sphere generally, have come into focus as the case for decentralisation gains traction despite the disparity between the positive outcomes theorised and actual practice of decentralising reforms. Irrespective of the motive, reform is an empirical matter and therefore reform processes and outcomes are shaped by contextual factors. Constitutional and legislative changes define this stage of local government reform in the Commonwealth Caribbean given the auspicious goal of institutionalisation of new norms and values in support of a multilevel governance framework. But the shift from local government to local governance and ultimately to developmental local governance although reflected in the provisions of legal enactments, is challenged in a fundamental way by the high degree of conservatism that defines the political systems. So, in as much as local government in the Commonwealth Caribbean is now assigned, through the different pieces of legislation a developmental role, there is no guarantee of a rapid transformation of this system of government. For once conservatism translates into incremental changes which further favour the political status quo in which national priorities retain dominance. Constitutional and legislative changes promote decentralisation, non-enforcement of the provisions suggests continued centralisation. This is the dilemma within the countries studied.
Caribbean local government

If there is a lesson here it is that, constitutional status for local government needs a strong dose of political capital found in citizens’ understanding and appreciation for the new value of local government. Otherwise the constitution of local government as a principal actor in governance and sustainable development in the Commonwealth Caribbean will remain at the stage of experimentation.

Notes

1 Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St, Lucia, St.Vincent and the Grenadines, Trinidad and Tobago, and Turks and Caicos.
2 Guadeloupe, Martinique, Saint-Barthélemy, Saint Martin and French Guiana.
3 Cuba, Dominican Republic and Puerto Rico.
4 Aruba, Bonaire, Curacao, Sint Eustatius, Saba and Sint Maarten.
5 The special improvement district is an association of residents, businesses or other interests constituted to benefit members within a particular jurisdiction.

References


179


