

EASTERN CARIBBEAN CENTRAL BANK



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**JUSTICE, LAW AND ORDER:
*A PREREQUISITE FOR SOCIO-ECONOMIC
DEVELOPMENT IN THE ORGANISATION OF
EASTERN CARIBBEAN STATES (OECs)***

By

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*A PREREQUISITE FOR SOCIO-ECONOMIC DEVELOPMENT IN THE
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The countries of the OECS now find themselves at a crossroad as they are now confronted by challenges at three levels, the international, the regional and the national.

In order to confront and overcome these challenges they are turning once again to a strategy which has worked for them over the years, namely, closer integration and cooperation.

The OECS has historically assigned some of their critical state functions to sub regional institutions which have performed creditably over a number of years. Your institution, the Supreme Court, has been for the last forty years an exemplar of professionalism, the protector of our rights and guardian of our freedoms. My own institution, the Eastern Caribbean Central Bank, has had no option but to try to follow in your illustrious footsteps by maintaining the stability of the currency for the last thirty-one years.

Together we have provided the basic platform on which modern states must build, namely, a system of laws and a stable currency. We cannot, however, rest on our laurels as the challenges alluded to above in the international, regional and domestic arenas are of a magnitude that will test our ingenuity and our fortitude.

At the international level globalisation and trade liberalization have already had a negative impact on our major agricultural export commodities, sugar and bananas, leading to a certain level of economic regression and social deprivation in our rural communities.

The new trading regimes which purport to be creating a level playing field have created great uncertainty and structural shifts in the major economies of the world much less in our own micro economies. The attempt to find new areas of productive activity such as off shore finance are met by increased and disproportionate regulatory requirements making the cost of competing in these areas prohibitive. The situation is further compounded by the fact as in the case of Antigua and Barbuda that even when you win judgments at the WTO you are unable to get satisfaction from very large states. The rapid rise to prominence of such very large economies like China, India, Brazil and Russia, the so called BRICs, which have very large and skilled populations and an abundance of natural resources is causing some consternation to the traditional global economic leaders such as the United States, Europe and Japan.

The collapse of the Soviet Union and the demise of communism as a major alternative to free market capitalism has created a more inclusive and integrated international economy. This has resulted in a new brand of domestic and international competition unconstrained by geopolitical factors.

This type of economic competition has not been witnessed since the industrial revolution and the era of the Robber Barons in the United States. It is frightening to contemplate the outcome had a system of laws and regulatory

institutions not been carefully put together to protect the consumer and the society.

The movement of capital and commodities across borders has been tremendous both in terms of speed and volume. Conglomerates, private equity groups and Hedge Funds now have a tremendous influence on both the financial and real economies. This competitive drive has led to a frantic spate of Free Trade Agreements between countries at all levels of development to facilitate their own development as multi lateral negotiations have become bogged down.

At the firm and company levels mergers and acquisitions, and concentration in critical industries such as pharmaceuticals, oil, transportation, basic commodities and finance have changed the structure and nature of international trade.

Technology and efficient mass transportation of people and commodities have created a highly integrated knowledge and information led international economy in which countries of all sizes and with different resources have to compete. This is a very turbulent environment to be in without the kinds of economic and political structures that can provide flexibility and resilience as well as the capacity to compete.

States of our size are at a decided disadvantage unless they deliberately set about to create instruments and institutions to ensure their safe passage through these turbulent times and circumstances.

At the regional level the Caribbean Single Market and Economy will pose substantial challenges to OECS states again because of our size which is a constraining factor in manufacturing, and the disadvantage in the capacity of our tertiary institutions to provide the skilled manpower to engage effectively both domestically and regionally.

At the national level there is a significant mismatch between the resources available and the demands of the society for private and public goods and services. The capacity of the government to supply all the legitimate public goods required of a modern state is severely circumscribed and the result has been the high debt to GDP ratios that are now evident in the region.

The OECS countries find themselves in the situation that they are geographically in the backyard of the most highly developed country in the world and are exposed to the high consumption levels of that country. To compound the problem we live in functioning liberal democratic societies where there is vigorous multiparty political competition through the electoral system to form the government. These circumstances confront governments with major political and economic challenges.

The Caribbean solution to our socio-economic problems has been migration at the level of the individual, and integration and education at the general public policy level of the state. The historical evolution of these solutions have been manifested in the attempts at regional unity starting with the West Indian Federation of 1958 - 1961, and the CSME and OECS Economic Union in the current phase. In the educational sphere it has been significant expenditure on primary and secondary education and the establishment of The University of the West Indies in 1948.

The demise of the federation, which if it had succeeded would have been fifty years next year, led to a period of constitutional limbo for the OECS countries. The large countries in the meanwhile exercised their options to become independent on their own and the OECS entered a transition stage with the status of states in Association with Britain. In this stage a number of common services some of which existed before were shared among the member states. It was at this stage that in 1967 the Supreme Court was established.

The countries in this phase had responsibilities for their internal affairs while Britain had responsibility for foreign affairs and defense. This was a period of transition and training, so to speak, as the countries were prepared for their eventual independence. They were given two options either (a) they could declare their independence as a group and write their own constitutions, or (b) they could opt for independence as single states and negotiate their constitutions with the British.

The countries chose the second option and it would seem that the British in granting independence were very mindful of a powerful quotation by Sir Arthur Lewis in his polemic *“The Agony of the Eight”* –

“In a small island of 50,000 to 100,000 people, dominated by a single political party, it is very difficult to prevent political abuse.

Everybody depends on the government for something, however small, so most are reluctant to offend it. The civil servants live in fear; the police avoid unpleasantness; the trade unions are tied to the party; the newspapers depend on the government for advertisements, and so on”.

It could be assumed that this could be among the many reasons for the difficulty in amending the constitutions.

The period between the publication of the *Agony of the Eight* and the current time has been a watershed in the history of these islands and has severely tested their resilience both politically and economically. They have emerged from this period with their democratic traditions intact and with economies which have experienced moderate growth. This is in stark contrast to countries which are bigger and better endowed with natural resources both within and outside the region.

Where many countries have succumbed to authoritarian regimes and the retreat of the rule of law the OECS countries have performed at the highest levels. Losing an election poses no physical threat to the losers as they are neither shot or exiled. This period has witnessed events of great significance and consequences to the international community which have in many cases bordered on the catastrophic.

There have been world recessions, oil crises, debt and financial crises, 9/11 and the war in Iraq. Domestically, Grenada experienced the first coup in the English speaking Caribbean followed by the massacre of the leader of the government and his ministers and subsequently an American military invasion.

There has been an erosion of preferences for our major agricultural export commodities. In addition, the countries have experienced several devastating hurricanes, floods and volcanic eruptions.

Over the years the OECS countries have created pivotal institutions which have provided stability for the advancement of their socio-economic development. In the process they have constructed a sub regional integration arrangement which is based on compromise, pragmatism and the observance of fundamental rules based principles. A supranational arrangement has been built around the following:

- The West Indies Associated States Supreme Court (1967) which is enshrined in the Constitution of each state;
- The Treaty of Basseterre (1981) which is a comprehensive approach to economic integration and functional cooperation;
- The Agreement establishing the Eastern Caribbean Central Bank (1983) which created a single currency and a single central bank;
- The joint regulation of banking, securities, telecommunications and civil aviation;
- Joint procurement of pharmaceuticals;
- Joint diplomatic representation in Ottawa, Brussels and Geneva;
- Coordinated and cooperative approaches to policies in education, health, sports, agriculture, tourism, export, development, the environment and maritime matters.

The Treaty of Basseterre in Article 7 (2) identified seventeen (17) fields in which member states agreed to “*coordinate, harmonise and pursue joint policies*”.

These seventeen fields can be subsumed under five headings:

- Justice, Law and Order
- Foreign Affairs
- Public Administration
- Management of Human and Natural Resources
- Economic Cooperation and Coordination

If all of these had been implemented the result would have been something looking like a new state, at least a working confederation. These are all major state functions which would have been executed at the regional level exclusively or in close collaboration with national agencies.

While the OECS has established a very high level of cooperation among the member states two factors must be taken into consideration as we move forward. Firstly, the need to review the Treaty of Basseterre to improve its functioning in the light of changed and changing conditions. Secondly, and relatedly the need to fashion new modalities to respond to the new international and regional challenges. This has provided us with the opportunity to review and restructure our political and economic arrangements and in the process to create supranational government and governance arrangements of relevance to our current and future circumstances.

All sections of our OECS communities must participate in a monumental consultative process that can throw up new state forms and societal relationships which could benefit not only the OECS countries but also the wider Caribbean and other nations in the international community.

The intrinsic beauty of the islands and the decision to take the bold step of creating a single space through an economic union could excite the imagination of our citizens as well as the regional and international communities and allow the OECS to be branded as a unique space and a particularly inviting corner of the world.

The vision of this space would be *“an OECS supranational arrangement and single economic space which would be an area of peace, tranquility and harmony, where things function (utilities, infrastructures) and service (both in the public and private sectors) is excellent in a clean and pristine environment.”*

The overall goal to quote Prime Minister Gonsalves of St Vincent and the Grenadines would be *“the creation of a modern and dynamic post colonial economy which is closely integrated at both the national and OECS levels, and is flexible, adaptive and innovative in order to be regionally and internationally competitive.”*

The achievement of these goals and vision will necessitate the following prerequisites:

- Political vision, will and accountability
- Administrative competence
- Corporate governance

- Civic responsibility
- Citizen choice

The new treaty in order to realize these goals has identified the organs and institutions which are critical to the functioning of the new supranational arrangements. The organs are –

- OECS Authority of Heads of Government
- Economic Affairs Council
- Council of Ministers
- OECS Parliamentary Assembly
- OECS Commission

The institutions are –

- OECS Supreme Court
- Eastern Caribbean Central Bank
- Eastern Caribbean Civil Aviation Authority

The state functions as alluded to above are –

- Justice, Law and Order
- Foreign Affairs
- Public Administration
- Management of Human and Natural Resources
- Economic Cooperation and Coordination

We will now concentrate on the role of Justice, Law and Order in these new arrangements. Adam Smith, the first modern economist was very clear in his book *“The Wealth of Nations”* that the preservation of Law and Order was the first and fundamental function of the state. Hobbes, the English philosopher was emphatic that without the constraint of the laws of a society life would be *“nasty, brutish, and short.”*

The social contract between the state and the citizen gives to the former a monopoly of the forces of coercion in order that the latter could enjoy a peaceful and secure existence. As societies evolved beyond the stage of bare survival and the spate of both foreign and local wars abated, the state found itself involved in matters in the society which went beyond issuing the currency and ensuring the correctness of weights and measures.

The increasing complexities of societies, politics and economies gave rise to the need for an increasing number of rules and regulations as the existing norms and customs could not cope. As liberal democracy became entrenched in first western countries and through colonisation and empire in distant countries the elements of the state and critical state functions evolved. The legislature, executive and judiciary became distinct branches of the state. However, while in many cases the legislature and the executive became closer, the judiciary has remained separate and autonomous and in some notable cases independent. This is such a facet of modern government in the 20th and 21st century that we take it mostly for granted.

The OECS countries and the English speaking Caribbean coming from a history of British jurisprudence and the common law have internalised a system and culture of laws and their application which have had an indelible

impact and influence on our economic systems and naturally our economic development.

One very amusing element of this historical evolution only became apparent to me as a lecturer at the University of the West Indies where we were involved in an intensive study of the plantation economy. As a little boy when we were making the choice of which fruits to expropriate during our marauding trips to the country side during the long summer vacation we drew a clear distinction between the fruits which did not result in serious penalties if you were caught and those which would have you sent to SESSIONS. Sessions were serious things, you could be sent to jail. I discovered at UWI that these were plantation crops.

An exploration into law and economics further revealed that not only were products circumscribed by law but so also were the factors of production. There were land tenure laws, labour laws and laws which affected the financial system such as usury laws which had a significant impact on the economy as they constrained and in some cases distorted the market by assigning an advantage to one party as opposed to another.

Further, in order to facilitate economic development extensive laws were required to give incentives to foreign investors, which meant giving them an advantage and protecting their property and guaranteeing the sanctity of the contracts they signed with the government.

The constitutions also gave extensive protection to property rights. The nature of these laws which govern the society and the economy have been understood to represent the dominant forces in society be they political or otherwise. From the perspective of the legal scholars who labeled themselves as institutionalists the law is fundamentally a matter of “*rights creation and re-creation.*”

Institutionalists are concerned with the rights (re) creation process and the impact of this process on legal economic decision making and activity (*Mercurio and Medema*). Individuals in making decisions have alternatives which have explicit and implicit opportunity sets. These so called opportunity sets have limitations since they are constrained by the opportunity sets of other individuals.

Whose opportunity sets gets satisfied becomes a function of the power and influence of one individual vis-à-vis another. In a dynamic society opportunity sets are being constantly defined and redefined through the “*machination of power and mutual coercion in the face of conflicts.*” These require “*resolutions*” as opposed to “*solutions*”.

According to *Mercurio and Medema* “*the origins of rights in the resolution of conflicts brings to the fore the point that rights have a dual nature – the opportunity set enhancement of those who have rights and the opportunity set restriction of those who are exposed to them.*”

The government is the critical referee in this process according to the institutionalists. “*Rights are not rights because they are pre existing but rather are rights because they are protected by government.*”

The control of the government therefore becomes the critical factor in the process. The government will pass laws to redefine or recreate rights depending on whose interests they represent. A colonial government will pass laws which represent colonial interests and this will be reflected in, and be a reflection of a colonial type exploitative economy. The interests, for example, of both employers and employees will be reflected in who the law favours based on which of the two the government is partial to, either by way of ideology or political circumstances.

The logic underpinning law and economics would therefore imply that if the legal arrangements governing society changes then economic performance will be affected. The law can affect economic development through the effectiveness and clarity of its exposition and/or the efficiency of its administration.

In recent studies investigating the impact of law on development, the use of the common law was judged to be superior to civil law. An uncorrupt and efficient judiciary was also asserted to be a positive factor with respect to economic growth.

The countries of the OECS must now reflect on the role that Justice, Law and Order must play in their development. An institutional view in my humble opinion would be most appropriate as the driving force will be the governments and the development strategies which they intend to pursue. It will take an activist state to outline and facilitate the role that Justice, Law and Order will play in the development process and the institutional arrangements which will facilitate this process.

The case of Singapore is extremely relevant as over the past decade and a half it has radically transformed its judicial system from one which was viewed as being “*characterized by inefficiencies, delays and inadequate administration capacity to one widely seen as being among the more efficient and effective in the world.*” The authorities in Singapore took a management oriented approach which was consistent with the way they had carried out their general economic development strategy. That they took such a relatively long time to apply these principles to the judicial system could be attributed to the traditional approach to the justice system and the sensitivity to the independence of the judiciary. However, once it was perceived that judicial inefficiencies could constrain economic growth the authorities took quick and fundamental steps to reform the system.

It is instructive to note that many of the steps they took are now being taken by our Supreme Court in seeking to reform itself, namely, computerisation, case management, etc were utilized by the Singaporeans. However, they did not prevent the further accumulation of back logs in the case load. Their approach therefore became that of deliberately changing the institutional culture. This was against the background that in a rapidly advancing economy businesses had to wait long periods for the resolution of disputes, souring the commercial climate, and lags in the settlement of civil and family cases often deprived victims of needed protection for extended periods (World Bank 2007).

In fact, for September 1990 it was estimated that the Supreme Court would need five years to hear all of its pending matters. In 1991 the subordinate courts fresh workload included 30,000 criminal, 190,000 departmental, and 40,000 traffic. As a consequence, to quote the World Bank “*Singapore’s leaders became increasingly convinced that the courts’ shortcomings constituted a threat to the country’s future development and needed to be corrected.*”

I now quote in its entirety a section from the executive summary of the World Bank document entitled “*Judiciary–Led Reform in Singapore – Framework, Strategies and Lessons*” by Waleed Haider Malik.

“The authorities responded by promulgating the far sighted plan “Towards a Developed Nation”, which set the goal of making Singapore a first ranked country in the world.

Among other priorities, the plan stressed the importance of a modernised judiciary for both economic growth and social stability. The government began by changing the leadership of the judiciary. It appointed Judge Yong Pung How as Chief Justice of the Supreme Court in 1990 and later extended his term. Well qualified in the legal sector, the new Chief Justice also had extensive senior management experience in a wide range of private as well as public sector organizations. With this background, on taking office he began to press for reforms aimed at improving the administration of justice. He particularly emphasised raising the judiciary’s standards in order to enable Singapore to deal with the emerging challenges of globalisation, technological advances, and the impact of foreign cultures, knowledge and ideas.”

Let me give a quick summary of the critical steps taken to modernize the judiciary –

- A top team was set up to build a comprehensive framework for looking at how the judiciary operated and how its driving forces might be altered.
- Values were defined to govern the judiciaries' goals and these were spelled out in mission statements.
- One goal was to improve the systems efficiency and merit as a public good and its ability to deal with exogenous factors such as trade, culture and technology.
- They engaged in future planning examining the effects of changing demographics, economic developments and technological changes on the demand for judicial services.
- They identified factors in the court process which inhibited change – poor coordination across key functions and units; ineffective, unskilled top-down leadership; unclear strategies and conflicting priorities; absence of modern tools; and inadequate communications.
- Using participatory techniques they assessed the judicial systems institutional infrastructure, human resource endowment and links with clients and stakeholders.

- As a result of deep reflection and analysis as outlined above the judiciary, according to the World Bank, initially perceived its task as addressing case management. They then broadened their focus to overcoming productivity difficulties.
- The judiciary then imposed a wide array of creative measures, for example, court room discipline, simplification of work methods, improved conditions and enhanced incentives.
- Work plans and regular stocktaking were instituted.
- Publication of work plans and public relations efforts on the role of the judiciary, gave both the public and the judiciary insights into the judicial process resulting in the raising of the profile and respect for the judiciary.

To summarise, the modernisation strategy embraced eight elements –

1. Using leadership;
2. Refining models of justice and expanding alternatives;
3. Increasing access;
4. Improving court administrative capacity;
5. Improving human resource management;
6. Emphasising purpose and results;
7. Leveraging technology for proactivity;
8. Building bridges.

I must say to you that this is a very challenging, stimulating and exciting exercise for me and I want to thank you for inviting me to speak on this topic as it has caused me to think deeply on a particular aspect of our Economic Union. It has also whetted my appetite for further explorations into the area of Law and Economics, which I find very fascinating in my dual function as an Economist and Governor of a central bank.

Like Singapore we are now at a significant milestone in our history and development. The reality for us all is that different parts of our arrangement are in a sense reacting to the environment and coming up with their own particular solutions. This holds for countries as well as institutions.

However, we exist in a supranational environment and all of these parts must come together at both the OECS and national levels. The Economic Union project gives us the opportunity to link the whole together and to chart a clear and strategic path to the future.

We have the opportunity to define, redefine and recreate our constitutional, political, and judicial systems around an economic system that integrates us successfully into the regional and global economies.

I know that significant reform has taken place and further reforms are being contemplated by the judiciary and your presence and the activities which you are participating in are a striking manifestation of the support for reform. However, the background and context in which the reform is being undertaken has not been defined in the broader philosophical sense in a similar fashion to Singapore's document "*Towards a Developed Nation*".

This is very challenging because of the multiplicity of states in our arrangement and the absence of a complete understanding by some of the important players of the implications of our supra national arrangements. The economic union project we hope will do this and allow us to define the role of the judiciary as well as the critical function of Law and Order in our quest for sustained development.

By emphasising the importance of Justice, Law and Order we bring into consideration the police and prison services which are critical to the total picture. The argument for an integrated system of Justice, Law and Order across the OECS are in my view simple but powerful and go back to the first principles of the role of the state.

Let us first of all identify the reasons in our context and circumstances for those elements, Justice, Law and Order, to have such a high priority. Firstly, the wave of crime which we are currently experiencing must be summarily arrested, to coin a very felicitous phrase. Insecurity of person and property are not conducive to economic growth and social stability. In fact, one of the major current impediments to agricultural productivity is praedial larceny. In addition, our current leading foreign exchange earner tourism, could be seriously affected by a spate of assaults on tourists.

The speed or lack thereof with which civil, criminal and commercial cases are disposed of not only can deter investors but also ties up a lot of scarce manpower and lowers productivity as people have to practically live in the courts either as jurors or witnesses. An econometric study of the negative impact on productivity due to unnecessary time spent in the courts would be very revealing.

On the positive side, one can argue convincingly that in the newly emerging financial and knowledge economies cutting edge laws and a highly competent judiciary are major facilitators of economic growth. The proposed recommendations are for a highly integrated judiciary which completely incorporates the magistracy and is complemented by a division of labour into civil, criminal and commercial law.

The office of the Director of Public Prosecutions should also be regionalized. There would then emerge a distinct Regional Legal Public Service with a clear career path open to those who have such interests.

There would be the possibility of movement around the member states to gather experience and specialisation to build expertise.

Conditions of service could be set at the appropriate levels to attract good candidates and pensions could be dealt with in a modern and transparent way through the establishment of an appropriate pension scheme.

The independent financing of the judiciary could be funded from a proposal which is being currently canvassed and researched.

The police service poses a particular challenge to the system but here again I have very strong views on a regional police service.

Surveys and conversations with a wide range of people including many policemen and victims of crime support the creation of a regional police force.

The level of expertise and professionalism required to police modern societies cannot be found in any single island in the OECS. In all fairness to our existing police services they are doing a remarkable job in the current circumstances given the overwhelming challenges which they face and the resources of manpower, finance and technology which they have at their disposal. The avenues for promotion are restricted and the opportunities for specialization are extremely limited.

The fundamental question which must be posed to our governments and our people is "*Do we want to have control over our own police force or do we want to control crime?*" The prison services must also be integrated and a system of high security and low security facilities and rehabilitation arrangements set up to treat with the socio-economic aspects of incarceration.

One could envisage a maximum security facility for the really hardened criminals on an inhabited island. Antigua and Barbuda could be encouraged to volunteer Redonda for this purpose.

In conclusion, I feel very strongly that we are entering an era in which a constructive and strategic approach to our development could see us rise to levels which we did not dare to think was possible.

The attention being paid by the international community to our modest successes in areas such as the Court and the Central Bank convinces me that . concentration of critical human and intellectual resources in centralized institutions is one strategy that has paid dividends and should be pursued in other areas.

The outstanding work of the Court over the years has stood us in good stead and I look forward to working with you in this next and crucial phase of the development of our countries.

We need to step up the pace and set new goals lest we be left behind in the global race. I end with the following quotation:

*“It takes a lot of courage to release the familiar and seemingly secure,
to embrace the new,
But there is no real security in what is no longer meaningful.
There is more security in the adventurous and exciting, for in movement
there is life and change and achievement.”*

*K Dwight Venner
Governor*

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