THE YIN AND YANG OF THE COMMONWEALTH CONSTITUTIONAL SOCIAL DEMOCRACY: STABILITY, CHANGE, PROGRESS

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First, let me say how honoured I am to be asked to be the speaker at the fourth Annual Distinguished Jurist Lecture of the Judicial Education Institute of the Judiciary of Trinidad and Tobago. I am anything but. I note however, as a matter of serendipity that two of the speakers who presented in previous years were actually my classmates at the Faculty of Law at Cave Hill: Sir Marston Gibson, Chief Justice of Barbados and Justice Adrian Saunders, Judge of the Caribbean Court of Justice and a former Chief Justice. Of course they qualify as being distinguished jurists and I am still wondering why I am here. I tried to extricate myself from the task, as I think that there are more eminent persons than myself who fit the bill, but without success. I have always preferred to remain in the background because I have a tendency to speak strongly that does not find favour with my Caribbean people, may say something that I should not.

I am not guaranteeing that will not happen but then whether I should or should not say it is a verdict which each of you illustrious persons is entitled to come to and I stand chastened to accept the sentence that may be imposed.

I recall the note under my photograph in my high school yearbook, written by my not so admiring fellow students, observed: “He confuses class discussions with statements which begins, “Well, I think…” I hope not to subject you to the same reflection.

Prologue: Speaking Out

Ten years ago, almost to the day, I wrote to the then Vice Chancellor, the late Professor Nettleford, expressing to him that I had come to the view that I was not an academic and that I really do not belong in the University. I had arrived at that conclusion because I thought that academia in itself demanded a dispassionate engagement with knowledge and ideas, but I have always seen the world through the lens of emotions – passion, sentiments and feelings. Professor Nettleford responded:

I do not agree with you that you are not an “academic”. In fact it is precisely because you are why the academic institution that the UWI is supposed to be, deserves to have in black and white and through your teaching and research the vision of the teaching of Law and the preparation of the region’s jurists. I, for one, would hate for the Faculty and the University to be deprived of that vision.

I have kept that letter on every desk that I have occupied for the last 10 years, hoping that it would serve as inspiration to do its bidding. I have seen much, thought much, but have not had the courage to write much because I want to write something that is read. Too many academics write what no one, except their captive students read. Henry Louis Gates, Jr. writing an essay at
the beginning of the Penguin re-publication of Solomon Northup, *12 Years a Slave*, remarks: “Let me state bluntly what should be obvious: writers are read for how they write, not for what they write about.” This gives me comfort that my passion will make up for any lack of substance in my lecture.

Nettleford is right, our societies deserve to have our thoughts in a form in which they can be reflected on and analysed because it is a critical part of the social and political discourse to which our societies are entitled as we search for, in his words, “the protracted quest, for not only self but also for the central, positive and constructive role of that self in shaping a civilized and habitable society.”¹

We were denoted the “New World”, albeit by persons of the “Old World” but the designation is an appropriate challenge to demonstrate that we can achieve radical change from the dysfunctional social and political arrangements that we inherited to promote progress and yet achieve stability. This is no easy task for our young democracies which are, in a sense still emerging like hatchlings freeing themselves from the colonial and imperial egg of internment with all the emotional psychoses and dependencies which come with such imprisonment.

Note well that these old world societies which now boast of stability did not have easy passages and their histories are marked by catastrophic confrontation built on the power model of feudal societies which governed by fear, fighting and killing and devouring each other, a legacy that we have been left. Indeed, today even in conservative traditional societies far older than ours there seem to be political cataclysm which have set back social, economic, and democratic progress and cause so much human and social destruction, we see Syria, Iraq, Egypt, some the states of the African continent.

How does the Commonwealth Caribbean avoid this harsh road to progress, if indeed that is the destination of these societies? How do we become the “New World”?

The Power Model

Power defines all relationships, whether it is social, political, intimate, family, or friends. Weber defines power in terms of those who are able “to realise their own will even against the resistance of others.” Another writer goes further and includes the ability to prevent oppositional agendas from even being raised. The Power Model of society believes in polarities and does not aim to give voice to all. Thus the ‘tolerance’ in the Trinidad and Tobago motto and the “out of many one” in the Jamaican, speak to a cosmopolitan view but are in reality mere shams. What those in power or who seek to be in power forget is that every being, including the natural forces of the geographic environment and without which we cannot survive as a nation is a focal point of power and every such focal point creates its own world.

Worlds and sub-worlds become the hallmark of our society. Look around and count them. You see them as you drive through the streets of the city and the byways of the country. From the vagrants and mentally ill in the streets and, very sadly in Jamaica, the children who live on the streets and in general, people whose lives we cannot even begin to comprehend from our own places of comfort. Even more dangerous to national society is when they form themselves into collective groups as in the garrison communities in Jamaica. Thus the “War of the Worlds” becomes the reality of our societies that adherence to the Power Model finds expression via increased crime and violence, poverty, economic set back and disillusioned youth as demonstrated in the increasing and overwhelmingly negative and pessimistic news which has become the grist for the mass media.

We must not be fooled by trappings of civilization. Democratic elections, constitutions, Bills of Rights and a free press, but when each of these is guided by a perception of power not as a shared value and felt oneness but as ego and separation, the society becomes a threatening place and a habitation of despair to those not in power and society as a whole does not progress. It becomes an unending cycle of point and counter point – a battle to identify differences rather than to expand similarities. Compassion is not a common commodity.

No one has ever been able to use ego perception of power to achieve stability and real progress. Ego perception of power is a false sense of self-importance above all others and all else – *primus inter pares* - first among equals – that phrase that is so reminiscent of George Orwell’s dystopian novel published in 1945, recalling the Stalinist Ego Power revolution which devoured so many lives – “All are equal, but some are more equal than others”. Our national motto must not so deceive us.

We must move from the Power Model of society to creating the real New World based on a unified consciousness, and human relationships in which human beings communicate rather than egos interacting with each other – being in communion, with compassion – the awareness of the deep bond between yourself and others in society. The caution is that one must not take the burden of creating that new world by oneself. History, even in our small space of the world, is littered with the bodies that were destroyed by that well-intentioned singular effort creating more chaos than resolution. It must be cooperate healing – like Nelson Mandela showed us.

**The Yin and Yang: Balancing Power**

Development economics and people-centred polices will only succeed if the citizens of our states subjectively experience improvement in their human well-being and are contributors to the effort. Objective economic and social indices, the language of economic and international agencies which has become the linguistic trappings of our rulers, may measure change and indicate progress of a kind but will not ensure stability. Only a subjective assessment by the people whose lives are affected will ensure social and political stability and real progress.

The key to the solution is constitutional empowerment and human rights. Constitutional empowerment and not merely a document outlining the field on which the battle for power is
waged. Not just individual human rights, but human rights that find context in a society to which the citizen subjectively identifies his or her human destiny as being capable of being fulfilled. In this sense, while working at the Caribbean Court of Justice, I developed the expression, “empowered dignity”. People want to make a difference. In making a difference they feel empowered. Human rights are worthless without human dignity and human dignity is an empty phrase without empowerment. It is through empowered dignity that we feel that we have some worth which gives us the inclination to forgo insisting on our rights every time which is a necessary mechanism for the smooth operation of a rights based culture. An example of such an empowerment is a driver with the right of way, yielding to a driver who does not have the right of way. The decision not to insist on your right is empowering because it demonstrates a commitment to a higher ideal and it gives a sense that your action has importance.

The challenge is to develop a legal formula that can give full measure to rights as dignity – rights in the Kantian sense that are justified by their own moral energy and not from the approval of others. This is based on nothing other than the right to be – I AM, which the only qualification to be human, and which is connected to the whole – the community and State which protects and support that right to be.

The *Yin* and *Yang*, fundamental opposing concepts in Chinese Medicine going back 700 years BC, signifies the balance of polarities that are relative, which is that they cannot be separated or even spoken of except together but are in constant dialogue to form the whole. Their interdependence ensures that although one may be out of sync, the other moves to compensate. This is a metaphor for our constitutional inclusiveness, not merely on paper or in court action, but in an on-going discourse to and for resolution.

**Education for Participation**

Sir Hugh Wooding once said, “What we need (and, as I think, most urgently) is a Commission to inquire into the whole matter from the grassroots up. We need change, radical, almost revolutionary change, if we are to have a juridical system to meet the needs of our social order.” This new way of seeing rights as a way of living rather than a field of battle, a connectedness with each other and an affirmation of our humanity, is the revolution but it has to be grounded in education.

Education that enables us to understand the dynamics of our power, to engage in the dialogue necessary for the balancing the yin and the yang of that power in the shared space and the shared resources. This education draws out the ‘I AM’ into community. We live from the inside out, rather than from the outside in. Too many of us live totally consumed with the old world style of what is out there and pay precious little to what is ‘in here’ – what we can contribute to the balance. This brings us back to the Power Model, where everyone vies for control over the perceived limited materials and opportunities that exist and strive for imbalance of more rather than balance.
The education I am advocating is a new spirituality where expression comes from the creative intellect – the I AM human, rather than being something on the outside. Thus increased materialism is not the solution. We have to be stable within to stabilise the without. We must change within through reflection on self so that we can change the without. This is the absolute formula for success. Success is handmaiden of progress. No progress can happen from without. It is when the Yin and Yang of the within is balanced that the Yin and Yan in the society will find its exquisite balance and ensure that through change, there is not only stability but progress.

As a teacher at the University for over 35 years, I am increasingly seeing the devaluation of what passes for an education. Recently, I had the occasion to review a student transcript, and it read as follows:

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In my view, this is not the kind of education I believe will prepare a citizen for the kind of participation in the discourse concerning balance in society. The student may well graduate with the skills to execute a job but, isn’t that bringing back to the prediction that we are merely hewers of wood and drawers of water? What prepares this student for reflection on the issues in society?

We also know that power opposes education. Women know that history and still today there are places where education of girls is violently opposed. In Solomon Northop’s chronicle, *12 Years a Slave*, he could not let his White masters know that he could read or write. Education is empowering and remember we are talking about empowered dignity as the route to the right working of a human rights culture.

**Leadership and Governance**

I should also say something about leadership as it bears a critical role in this matrix. Leadership is an essential component of realising our human rights and human dignity because we live in community and it is relative to each other that we become conscious of our dignity. Leadership of community, whether in the workplace, family, or in political governance, preserves our relationship with each other. Leadership is given power not for its own self but for the end then of human dignity. The role of leadership is to empower, not to put down.
‘Good Governance’, is the complement of leadership. A remarkable area of law that has bourgeoned over the years is Administrative Law in which good governance is the hallmark. And enforced by the courts by judicial review. Judicial review was described by Sir John Donaldson MR as “a relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration.”2 The components of good governance are:

1. Participation
2. Transparency
3. Accountability

In this regard, it can readily be seen how the citizen is critical to good governance.

Conclusion

The irreverent Oscar Wilde in his 1889 Essay “The Decay of Lying” said, “I am afraid that we are beginning to be over-educated; at least everybody who is incapable of learning has taken to teaching.” I hope this is not so, because education is critical to the realisation of the spirit of our constitutional democratic societies that is more than what is written on paper and passes for a constitution or our default or conscious avoidance of participation the discourse in balancing the powers of yin and yang in our societies. The responsibility of education is not to create conformity because to ‘Tolerance’ in the motto of this great state is not equal to conformity. It is instead a continuous discourse which utilises the creative intellect to change, but with progress and progress with stability. That’s what it means.

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2 R v Lancashire County Council, ex p Huddleston [1986] 2 All ER 941, 945c