



**THE FOLLOWING ARTICLE BY C. ROY
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THE PRESENT CENTURY AND CONCERNS A
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It is almost uncanny how often issues arise and are debated with great heat but without reference to their true history. It is as if the past had never been. Thus the quarrel over the proposed Caribbean Court of Appeal to replace the arrangement with the British Privy Council is being seen as a completely new subject, when, in fact, it was raised at least 99 years ago.

On March 6, 1901 **The Gleaner's** lead editorial was titled: "**The Judicial Committee of the Privy Council**". According to the editorial, "considerable interest has been aroused in colonial legal circles by the announcement in the King's speech to Parliament that a measure is to be introduced providing for certain changes in the constitution of the court of final appeal, which are rendered necessary in consequence of the increased resort to it which has resulted from the expansion of the empire during the last two generations.

"What these changes are is not known and there is some doubt as to the significance of the circumstances. It is thought by some that the step is intended to be an indication of the interest taken by His Majesty's Government and a concession to imperialistic sentiment; while others believe that the changes are really necessary if the Judicial Committee

of the Privy Council is to continue to exist. This latter assumption gains credence from the fact that, in spite of the assurance in the message that there has been an increased resort to the court, the appeals have not been so frequent as formerly.

"It is only in Australia that there has been an increased resort to the court flow of business and it is well known that the feeling in the legal profession there is to discontinue the sending of appeals to England and to establish in the Commonwealth itself a final court of appeal".

The Gleaner went on to speculate that possibly the members of the Privy Council foresaw **"some restriction of the range and influence of the court....Thinking men are not adverse to a great final court of appeal for the empire, but they believe that the Judicial Committee has served its turn and it is now out of joint with the conditions of the times..."**

The Gleaner then went on to observe that "latterly the character of the appeals has varied very much and have involved questions of complex legal range and jurisprudence which are altogether different from the principles in force in England. The legal members of the Committee are the highest legal authorities in the land, yet it is impossible for them to transport

themselves completely into the circumstances and systems which rule in some of the colonies and dependencies... **And it has been frequently remarked that the decisions have been characterised by poverty of appreciation of the points raised and they have not given the satisfaction which the judgements of such a tribunal ought to impart**".

And while the newspaper conceded that things might be a little different as far as the West Indies are concerned it went on to say: **"It is not to be wondered at therefore, that colonial suitors and lawyers are beginning to question the expediency of the continuation of the Committee and this feeling is exaggerated by the cumbersome procedure in connection with the court, the delays that are occasioned, the expense incurred, and the manner of delivering judgements"**.

The Gleaner went on to observe that a number of suggestions had been made to improve the situation.

One was that proposed years before by a number of colonial Chief Justices that some of their numbers be included in the Privy Council committee. But this came upon the snag that such Chief Justices were obliged to "sit on their own bench".

The Gleaner also brought up an opinion which it attributed to a "Mr. Haldane", and said: "In an empire such as ours surely there is room for a great and final arbiter, chosen not from one locality but selected from the best brains of the various people and various localities which compose that empire, a tribunal to which appeals may be made in the last resort for the sake of uniformity in great and governing principles".

The Gleaner agreed with a position expressed by **The Times** of London which held that the House of Lords be widened to accommodate representatives from the various countries and regions as "certainly no solution will be satisfactory which does not provide representation from the best judicial elements in the empire. The chain binding together all parts of the empire is a moral tie. There can be no stronger link in that chain than the existence of general confidence in the wisdom of the Court of Imperial Justice. It would be a step forward, and serve to knit together the people of the empire. It would be a step towards imperial federation!"

Thus did the Privy Council's relevance exercise the minds of Jamaicans 99 years ago this past March.

And a merry go round to you all!

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QUOTES

"The argument based on the absence of cost to the country in relation to the services provided for by the Privy Council brings us back again to the general demands for independence and leads us to wonder whether independence becomes meaningless when we are offered dependence without charge".

...Sir Hugh Wooding (1974)

"The argument was recently advanced that the governments should place the issue of the Final Regional Court of Appeal on the back burner and concentrate on investing resources in the local courts to outfit them to work more effectively. As someone who has experienced the disadvantages of working in under-resourced local court systems I can appreciate the fact. But it would be naïve in my view to believe that there would be any connection between the two.

"For years money has been 'saved' by not being spent on a Court of Appeal and none of it has found its way into improving local systems. The fact is that retention of the Judicial Committee, because it is free, is just another manifestation of the low priority accorded to the administration of justice in the region. All other institutions of State had to be made independent and had to be liberated from the vestiges of the colonial past but not the administration of justice"

... Hon. Telford Georges (1998)

**National Preparatory Committee
Caribbean Court of Justice**

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