

Getting away from the Westminster model: the Kiribati independence constitution.

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In March 1957, I joined a small crowd outside the new High Commission in London to applaud the raising of Ghana's flag on the first morning of independence. Twenty two years later I was in Westminster Abbey to celebrate the independence of Kiribati. In between times the prime function of my career was preparation for independence: in Nigeria, in the Solomon Islands, and in the Gilbert and Ellice Islands. 44 territories formerly administered by the Colonial Office have gained independence since the Gold Coast became Ghana. Not all have fulfilled their initial promise. Some qualify as failed states. Some have suffered military coups and civil war. Some have radically changed their constitutions. Many remain dependent on foreign aid. Twenty five years after achieving independence, Kiribati, albeit still a poor country in global terms stands out. The independence constitution remains intact. The government has been changed six times constitutionally. There has been neither revolution nor civil commotion. The population is socially cohesive and well nourished, and although aid is significant in terms of development, the annual budget is balanced.

There are, of course, huge differences in geography, demography and culture which make most comparisons between Britain's former dependencies pointless but, historically, all shared for some sixty to a hundred or more years a similar experience of political subjection to colonial rule implemented by administrators of similar background and education. Despite the then paucity of communications, the values of colonial administration from one territory to another were as constant as the one short and simple common rulebook, Colonial Regulations. How has Kiribati avoided the usual colonial legacy of mayhem and regression?

Four factors stand out: geographic isolation, cultural homogeneity, the Revenue Equalisation Reserve Fund and a constitution which paid more attention to Kiribati custom than to the Westminster model. This paper is about the last of these factors but the first three require brief explanation. Kiribati is exceptionally remote and isolated not only as a nation in relation to its neighbours but internally between its twenty island communities. I-Kiribati have adapted supremely well to their environment and are little affected economically, socially or politically by their neighbours, none of whom is immediate. Pre-independence, as prosperity grew and the goods of

the wider world became more available, it was noticeable how people opted for those most relevant and practical to their island lifestyle: bicycles, motor bikes and outboard motors certainly but not cars; radios and sewing machines but not metal beds, tables or chairs.

Kiribati's population is small but culturally homogeneous, an enormous advantage to administration and development. It could have been otherwise. We might, indeed, to-day be discussing about another failed state, because initially the British lumped all the smaller Pacific peoples together into the Western Pacific High Commission. Even when that began to be broken down it was touch and go within a few years of independence whether the Gilbert and Ellice Islands, despite their differences in race, culture, language and to some extent in religion, would remain together. My first task as governor was to put the seal on separation. With few exceptions the Ellice wanted out. In the 1974 referendum 3,799 votes were cast in favour and 293 against separation. The I-Kiribati were happy to see the Ellice go. That was the right answer at the time. Kiribati and Tuvalu now enjoy good relationships without the many niggling irritations, inevitable between peoples of different race and culture and separated by huge distances, which would have soured any attempt at a unitary or federal state in the absence of an independent referee.

Phosphate derived from Banaba, Ocean Island, was important to the economy throughout most of the colonial regime. It provided employment as well as both direct and indirect government revenue. Much of my task and that of my predecessors was concerned with securing an increasing share of phosphate wealth for the local economy. This resulted in conflict with the Banaban landowners but that is another story. In terms of post-independence stability the establishment of the Revenue Equalisation Reserve Fund utilising phosphate royalties was to prove crucial. As much of the direct revenue as possible was deposited in a reserve fund account which was invested by the Crown Agents. Decisions taken during my tenure moved the funds from inactive and passive investment management to proactive and dynamic management by James Capel. Taking advantage of the markets of the time this resulted in a substantial increase in funds. The independence constitution contained provisions which ensured that the RERF has remained what it was intended to be: a revenue equalisation reserve fund. In years when income has not matched expenditure, interest from the fund has been used to balance the budget. Interest not required to balance the budget has always been re-invested to swell the capital. The RERF has provided Kiribati with a budgetary independence which has reduced many of the stresses and tensions common in other newly independent nations.

The standard practice as dependencies headed towards independence was constitutional development along the lines of the Westminster model, retaining the British monarchy and the procedures of the mother of parliaments. There were exceptions, notably Ceylon and for a brief period the Solomon Islands, but it is fair comment that in the Gold Coast where the independence trail for colonial dependencies, which so many others were to follow, was first blazed anything less than the Westminster model, complete with mace of office and horsehair wig for the Speaker, would have been viewed by Ghanaians as opting for second best. It was also what the British knew.

To argue for anything else required courage as well as imagination, even for example dispensing with a bewigged Speaker as was done in Northern Nigeria in 1959. In the absence of a written British constitution, the Ghana independence constitution of 1957 is, perhaps, as complete and concise an account as can be found. At the time few of us, imbued with the history of the past, were, however, fully aware how much the British constitution continues to evolve and how substantially it would do so in our lifetimes. We were also much less aware than we ought to have been that colonial government was not a satisfactory training for the Westminster model with its executive responsible to an elected legislature and an opposition providing a government in waiting. Much the greater part of the colonial experience was an inevitable, if unintentional, preparation for a Tudor rather than a constitutional monarchy.

Initially the Gilbert Islands followed the traditional path towards independence, one with which I was familiar because for the ten years prior to Nigerian independence I had been involved at various levels in its preparation. But I had also remained in Nigeria for ten years after independence and had been a participant in events surrounding the change from dominion status to republic, the failure of the independence constitution, coups d'état, public disorder and civil war. As Financial Secretary in the Solomon Islands I had had a key role in the Governing Council system, much favoured for small islands states in the 1970s after the poor performance of the Westminster model in some of the new African nations, but already being rejected by Solomon Islanders. A historian by training, that direct involvement in constitution making and operation in Nigeria and the Solomons determined me to try and seek an independence constitution for Kiribati which suited the scale of the country and the culture of the people and stood a better chance of survival than had been the experience elsewhere.

We were planning an independence constitution for the equivalent of the population of a small English town scattered in hamlets between twenty remote islands, with very limited resources, set in an immense ocean. The culture was homogeneous and egalitarian with a premium placed on diffidence. There were no political parties. You were expected to take your turn at exercising community responsibility when chosen but never to demand privilege and reward. Soon after my arrival, finding the then Leader of Government Business at home the day before a general election I asked him why he was not out campaigning. He replied scornfully, 'Do you want me to lose my seat?'

It would have been interesting to theorise about the structure of government which might have emerged by trial and error, and without foreign interference, to suit the unusual environment to which the I-Kiribati had adapted so well but we had to begin from where we were. Under the guidance of Professor David Murray of the University of the South Pacific seminars were arranged to provide local leadership an opportunity to appreciate the variety of constitutional options which existed and how they operated with the aim of achieving a better understanding of possible solutions which might better suit local aspirations and circumstances than Westminster. Every week-day for four weeks I made a five minute broadcast explaining in simple terms what

independence would mean, why a constitution was necessary and what matters a constitution needed to cover.

The interest aroused by Professor Murray's seminars led me to propose a constitutional convention. The usual de-colonisation route was, step by step, report of a select committee to the legislature, debate by the legislature leading to negotiation between colonial government and Whitehall leading to proposals which legal draftsmen turned into the necessary order-in-council. Prior to internal self-government and independence, the British government required general elections to be held and these were regarded as referenda in favour of the major constitutional steps being taken. The whole process could, however, take place without much effective public debate. Even in larger dependencies with a lively nationalist press the majority of the population would have been little aware of what was afoot other than what was conveyed by slogans such as 'freedom' and 'whiteman go'. While I did not want, and had no right, to impose my views on the I-Kiribati I was anxious that there should be an effective airing of views before decisions were reached.

As far as I was aware in no dependency had there ever been a formal constitutional convention. [i] The Chief Minister was not enthusiastic about departing from the usual routine. Potentially it could be difficult for him and, understandably, he was more concerned with the immediate than the longer term future. Some expatriate civil servants were also uneasy, worried about the unknown and unsure about where their loyalty lay. But I managed to command support in the executive council which appreciated that without greater involvement of everyone of influence it was unlikely that the country would achieve an independence constitution which drew upon the great strengths of their traditional way of life. For example, it was important that the legislature be seen as a national extension of the *maneaba*, the meeting house in every community in which the elders met, always in public, to discuss mutual concerns, where everyone's opinion was respected, where there were no parties and in which it was the custom always to achieve consensus.

The Convention, some 160 in all, met for four weeks in April and May 1977. It included all the elected members of the House of Assembly, Presidents of Island and Town Councils, representatives from Island and *Unimane* Associations (the elders), Co-operative Societies, the Churches, Unions and Staff Associations, Women's Clubs, local senior civil servants and local managers of the Development Authority. I welcomed them but took no further part. The Speaker of the House of Assembly presided, assisted by Reuben Uatiao, a former Leader of Government Business and President of the local council in whose *maneaba* the convention was held. The only expatriate present was Professor Murray. [ii] He was on hand throughout to answer questions and explain issues but not to make recommendations. The Convention met in public. No specific matters were put to the Convention for discussion but it was guided by a list of questions which had been widely circulated for several months. There were 52 of these, some basic such as whether membership of the Commonwealth should be sought, others reflecting matters about which concerns had been expressed in recent years, such as whether both political and civil service heads of ministries were necessary and should ministers be appointed or elected. In practice the list of questions became an agenda.

The Convention produced a short and simple report to assist in drafting constitutional proposals. 30 paragraphs covered the name of the country, citizenship, the legislature, the executive, the public service, the police, the judiciary, the control and audit of public finance, fundamental human rights and membership of the United Nations. The convention has been criticised in Kiribati for being 'benevolent manipulation', a complaint being that I had provided the list of questions including such matters as whether to retain the British monarchy or become a republic. [iii] It has also been argued that 'the procedure employed was essentially as laid down by Britain' and that the Kiribati constitution had many characteristics of the Westminster model.^{[iv]1} Inevitably the constitution took into account the form of governance already in place which was undoubtedly British in style and its final form was an order-in-council following British legal forms and, in terms of some detail, the drafting precedents of the many other constitutions which, in law, had been conferred by the United Kingdom.

Many of the Convention's key recommendations, however, ignored the Westminster model. A single chamber legislature was favoured, election to which would require the support of more than half of the voters with a system of alternative voting used when a majority was not obtained. The life of the house was set at four years. The decision to reject the first past the post ballot was significant as was the introduction of a member's recall if a majority of voters in a constituency so petitioned. The Westminster model of a Speaker who remained a member representing constituents was rejected in favour of a Speaker elected by members but who would not be a member.

To meet the exceptional logistical problems of Kiribati the Convention proposed that the timing of bills and policy proposals should provide for an opportunity for members to return to their islands to discuss issues with constituents before final decisions were made. This was typical of the issues which bothered the population on outer islands but was unwelcome to those in office or their civil service advisers who were anxious to be free to despatch business quickly.

Among neighbouring Commonwealth states, Nauru had an executive presidency while Fiji had retained the monarchy. Nauruans were fellow Micronesians and many I-Kiribati worked in Nauru. Micronesia does not have the well-developed chiefly systems of Polynesia and a colonial governor is a better model for an executive president than for a figure-head governor-general. The convention recommended that the chief executive combine the functions of head of state and head of government. While some expatriates were aggrieved at the loss of the monarchy I came across no evidence that it was an issue of much concern to the I-Kiribati. It was, indeed, unreasonable to expect people without a chiefly tradition of their own to sustain loyalty to a monarchy thousands of miles away on the other side of the world however great the pleasure shown when they had been able to host the Prince of Wales on a visit in 1970. It was understood that the Queen's role as head of the Commonwealth provided some continuing attachment.

The Convention recommended that the chief executive, to be called President, be elected nationally from among members of the legislature immediately after a general election. Again, some of those in office would have preferred the easy option of election from within the legislature but the feeling was strong that the nation as a whole should have the opportunity to choose its leader. The legislature would be required to put forward not less than three and not more than four candidates. There were no political parties but there were two main churches, which to some extent reflected geography with Catholic islands in the North and Protestant islands in the South. The provision was a prudent endeavour both to avoid there being one candidate from each religious group and there being too many candidates. Once elected, if the President came from a single member constituency, the Convention, following the same lines as it did with the Speaker, proposed an immediate bye election to replace him or her so that constituents felt they had a member who could represent them effectively, if necessary by criticising the government. The President was, accordingly, exempt from the recall provision but could be removed from office by a vote of no confidence in the legislature, a provision which has subsequently been used. The Westminster model was followed in respect of the President forming the government by the appointment of ministers with departmental responsibilities from among members of the legislature.

After the Convention had met the usual procedure was followed with the Convention's recommendations forming the basis of the report made by a select committee of the House of Assembly. Political reaction to the Convention had been so favourable that the government appreciated that it would be imprudent to try to go counter to the recommendations made. The independence constitution was finally drafted in London in the form of an order-in-council, the British government accepting the provisions for Kiribati to become a republic, for national elections for the President, for alternative voting systems and for the principle of recall. The independence constitution survives. More important than its content, the people of Kiribati felt that they had been involved effectively in its drafting. They owned it and they have cherished it.

[i] There had been a nationwide consultation in Nigeria about the Richards constitution.

[ii] Professor Murray has written about the Convention. See 'Constitutional Instruments in Kiribati and Tuvalu: a Case Study of Impact and Influence' in *European Impact and Pacific Influence* ed. Hiery and Mackenzie, I.B. Tauris 1997.

[iii] Naboua Ratieta, 'The First I-Kiribati Government' in *Politics in Kiribati*, University of the South Pacific, Suva 1980.

[iv] C.J. Lynch, 'Three Pacific Island Constitutions: Comparisons' in *The Parliamentarian* Vol LXI No 3, July 1980.