



CCJ's Tribute in Thanksgiving for the Life and Work of Simeon C. R. McIntosh

The Honourable Mr Justice Winston
Anderson, Judge of the Caribbean Court
of Justice

The Funeral of the Late Simeon C. R. McIntosh

St George's Roman Catholic Church, Grenada
5 April 2013

Simeon Charles Randolph McIntosh was born on the 14th July 1944 in the village of Mt Pleasant, Carriacou. In 1971 Mr. McIntosh obtained a Bachelor's degree in English Literature from York University in Toronto; 1974 Juris Doctor degree from Howard University in Washington; 1975 Master of Laws degree from Columbia University. The world of teaching at the University level, beginning in 1975 at the University of Oklahoma College of Law for one year; continuing in 1976 at the Howard University School of Law for 14 years; and crowning it all with his longest stint at our own University of the West Indies, Faculty of Law, for an impressive and stimulating 20 years. Randy has amassed over 35 years in full time teaching at the University level, during which his noted scholarship earned him the titles of Professor of Law Emeritus at Howard University in 1991 and Professor of Jurisprudence at the University of the West Indies in 1996. At UWI he was eventually elevated, in 2004, as the Dean of the Faculty of Law.

Remarks

By

The Honourable Mr Justice Winston Anderson, Judge of the Caribbean Court of Justice,

on the occasion of

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From Jamaica and The Bahamas in the north to Suriname and Guyana in the south, Professor Simeon C R McIntosh bestowed our Caribbean Archipelago like a Colossus.

His penetrating gaze searched out the altars of our laws and legal institutions; then, with regal force, he smote the false gods long revered in the innermost temples of our legal systems. We are the heirs and beneficiaries of that righteous and noble anger. For who now dares speak of Caribbean jurisprudence, the Monarchy and Republicanism, the Caribbean Community and the Caribbean Court of Justice without mention of his name and the benefit of his teaching?

He certainly convinced many a West Indian that they lived in a Republic, whatever their Constitutions may appear to say to the contrary. Indeed, his audacious claim that England was *itself* a Republic must have caused many Englishmen to rub their eyes in the streets overlooking Buckingham Palace and Windsor Castle.

Simeon spoke truth to power in a voice and by means that no academic lawyer before him ever had and none after him ever will. He was ardent as he was articulate, he was bold as he was brilliant, and he was compulsive as he was compassionate.

His was a voice without fear and without favour; a voice meant to waken us from complacent slumber. And if on occasions he schooled us with an urgency that trespassed on impatience, let us today, of all days, lay that to the passion of his ideas; to his clear panoramic view of matters that most of us only see through a glass darkly.

Simeon spoke his truth by every means at his disposal and then some: his three books; his university seminars and his public lectures; his telephone; the radio and television; the pages of learned journals and the pages of the newspapers. He was omnipresent in every corner of our Caribbean. He had a burning truth that he had to tell.

And so he became the peerless tutor to our Caribbean Community. His tutelage was on the subjects of his choice; and he chose as his subjects the large ideas at the heart of West Indian legal identity: Caribbean Jurisprudence; Constitutional Law; Fundamental Human Rights. Small wonder then that much of his life's work, and especially so following his retirement from the University, was devoted to Caribbean Constitutional Reform.

In no area was his voice more passionate or more eloquent than in putting the case for the Caribbean Court of Justice. For Simeon, the Court was an *idea* only palely reflected in the mortar of its edifice or the men on its Bench. It was an idea of the *idealized* judicial interpreter of a nation's constitution and laws; the jewel in the crown of his legal metaphysics.

Simeon worked his heart out to win a wider acceptance for the Court; and not only in his speeches and his writings, but also by his deeds. As Dean of the Faculty of Law he procured by all the means at his disposal the required finances and then, from March 2009 to April 2010, he journeyed the length and breadth of the region arguing and agitating for acceptance of the CCJ's appellate jurisdiction. Thus over that one-year period the gospel according to Simeon McIntosh came to:

Belize; Grenada; Antigua and Barbuda; Jamaica; St. Vincent and the Grenadines; Dominica; Suriname; St. Kitts and Nevis; St. Lucia; and Trinidad and Tobago.

During these visits Simeon met with a wide cross-section of the Caribbean public: presidents; governors-general; prime ministers; ministers; attorneys-general; leaders of opposition; chief justices and other members of the judiciary; presidents of bar associations; public sector employees; the labour movement; academics; students; the media; and the general public.

He did not despise the technicalities of the CCJ's architecture, or the technicalities of delinking from the Privy Council in preference for the CCJ. But he left the discussion of these mundane matters to others. He was much more eager for the larger ideas.

Listen to the words of a brilliant mind articulating what still remains the most compelling argument for the existence of the Court:

“The Caribbean Court of Justice, constituted as the highest appellate court of the Commonwealth Caribbean, would be that institution of singular importance for carrying forward in our name that unending task of construing, constructing, and completing our Fundamental Laws. For the Justices of the CCJ, in the discharge of the official duties of their office – interpreting, enforcing, implementing our Constitutions, our Treaties and our laws in the determination of cases, would be very much like their counterparts in the United States, Canada, France et al, engaged in acts of self-definition. They would be engaged in constructing and defining the Caribbean Polity, saying what it is like, what it is not. Thus, as I have stated in other places, the single most compelling justification for the Caribbean

Court of Justice is the argument from sovereignty: our right of self-definition; our right of authorship of our own Fundamental Laws....”

There is none who loves literature or law or learning but is compelled to love Simeon McIntosh. He himself loved poetry and was the first to properly link Caribbean law with the literary authors of Caribbean culture.

Nor was he content to explain the reason for CCJ’s being. He held a torch to illuminate the lines of judicial reasoning that should, in his view, have been taken by the Judicial Committee of the Privy Council in cases such as *Jaundoo v. Attorney General of Guyana*; *Ophelia King v. Attorney General of Barbados*; and *Neville Lewis v. Attorney General of Jamaica*. And he clearly awaited an opportune moment to engage the Caribbean public on whether the CCJ had taken his teaching on these decisions to heart.

Among his most recent forays was that into the most controversial of West Indian legal topics: homosexuality and the law. Last year, he wrote the following, published in several newspapers across the region:

“As I have stated on so many occasions before, for those of us who accept the teachings of our scriptural texts, homosexuality, like adultery, is a sin; and it shall remain a sin into eternity. However, in the State’s decision to criminalise any form of behaviour, the fact that that behaviour is sinful cannot be the sole moral predicate for criminalising it. For having regard to the fact that the criminal law regime in a democratic society is the most coercive area of the law, then the State has the political obligation to its citizens to advance a compelling moral justification for criminalising certain practices....”

However, I would hasten to add that the fact that the religious argument must fail as the sole moral ground for the criminalizing homosexuality.... does not mean that it is irrelevant. For the Church, the Temple, and the Mosque, as some of the most important institutions in civil society, protected by the fundamental right of freedom of speech and of religion claim a central place in the Public Square. Their teachings must school us to a more exacting temper of religious faith. They must be that agency by which we would preserve those values that we hold most dear; and by which we would allow the offices of our religious faiths to speak transcendent truth to worldly power....”

Here then, in two short paragraphs, stands the imposing figure of a true giant of Caribbean jurisprudence; articulating with consummate eloquence a principled consistency between his sacred religious convictions and his life’s secular work. And he did this on a topic that, in his words, “most vexes the souls of the West Indian people”.

In finding the middle path between law and morality he tutored us in that most important division for constitutional democracy: the division between Church and State. Another priceless gem left by a peerless jurist for the regional judiciary to find its way home.

Four years ago, in May 2009, Simeon and I were the UWI Team that came to his homeland of Grenada to argue for the CCJ. Today, we are here together again, but this time on the sad purpose for Grenada to say goodbye to her illustrious son.

The Bench of the Caribbean Court of Justice, headed by its President, Sir Dennis Byron, extends sincere condolences to all those who mourn the passing of Professor Simeon C. R. McIntosh: his

family; his friends; his colleagues; the people of Grenada, Carriacou, and Petite Martinique; and the people of the Caribbean Community. We are grateful for his life and work.

The Caribbean Court of Justice may have been constructed by others but it was first properly conceptualized by Simeon.

We shall inhabit a world created by his legal imagination for many years to come.

Goodnight Simeon; and thank you!

Rest in Peace.

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