

The Right to Self-Determination and Post-Colonial Governance — The Case of the Netherlands Antilles and Aruba. Steven Hillebrink. The Hague: T.M.C. Asser Press, 2008. Pp. xvii, 391. ISBN 978-90-6704-279-6. €5.00.

This book began its life as the author's dissertation at Leiden University's law faculty. It is a welcome addition to the literature of postcolonial studies, since it analyzes many different status arrangements around the world, from the South Pacific to the Arctic. That said, it is one of the few books in English to deal comprehensively with the politico-legal system of the Dutch Caribbean.

The Dutch Caribbean islands are the rump of a vast trading empire that once stretched from the Low Countries to Brazil, and the Cape of Good Hope to the Indonesian archipelago. These six islands — Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten¹ — have been associated with the Netherlands since the early 17th century. The first three lie off the coast of Venezuela, while the last three are at the northern end of the Lesser Antilles, near Puerto Rico. Willemstad, Curaçao, is the islands' largest city, and the capital of the Netherlands Antilles. Although Dutch is the official language in all the islands, the vernacular of Aruba, Bonaire and Curaçao is Papiamentu, a Portuguese creole.² English is the mother tongue of the residents of Saba, Sint Eustatius and Sint Maarten. Curaçao's population is the largest and approaches 190,000; Saba's, the smallest, is below 1500. Most of the people of all the islands are of African descent, with Curaçao's African-derived population the highest as a percentage of the total. In contrast, Aruba has a large *mestizo* population, and nearly half of Saba's is white.

The islands were first administered by a chartered trading company, and from 1813 by the Dutch state. In the 1922 Dutch constitution they were no longer referred to as *koloniën* (colonies), and in 1948 the islands' voters exercised universal suffrage for the first time. In 1954, the Dutch constitution underwent a revision that led to a charter creating the "Tripartite Kingdom." Under this arrangement, three constituents — the Netherlands, the Netherlands Antilles and Surinam — were supposedly coequal in matters relating to the kingdom as a whole, and autonomous locally. Surinam achieved

¹ Half the island is Dutch-administered. The other half is French-administered and called Saint-Martin.

² For a study of Afro-Portuguese elements in the Dutch Caribbean, see Ineke Phaf-Rheinberger's *The Air of Liberty — Narratives of the South Atlantic Past*. Amsterdam: Rodopi, 2008.

full independence in 1975, and Aruba left the Netherlands Antilles federation in 1986 but retained its status as a self-governing territory. In effect, Surinam withdrew from the kingdom and a decade later Aruba took its place.

Dr. Hillebrink's study begins with an assessment of Article 73 of the United Nations Charter. That article, which was later given authoritative interpretation by General Assembly Resolution 1541, addresses all manner of dependent polities, or in U.N. parlance Non-Self-Governing Territories. At the U.N.'s founding, four European states — the United Kingdom, France, Portugal and the Netherlands — were responsible for hundreds of millions of subject peoples, and Article 73 was drafted to provide guidance in the decolonization process. The General Assembly has set great store by the notion of national self-determination, which meant that other political arrangements could be established short of full independence provided the subject peoples had freely chosen their condition. At the same time, the G.A. has looked askance at attempts to incorporate erstwhile colonies into the mother country in a way that also severely prejudices the local populations. (The Portuguese, especially, were accused of this.) Ultimately, though, it became apparent to the U.N. Member States that not every N.S.G.T. would become fully independent. Indeed, it was feared that the smallness, remoteness and poverty of many of them would undermine the U.N.'s universal mission, which at the least required that members be solvent and have interests beyond their own borders.

Dr. Hillebrink's starting point for the Dutch Caribbean is the 1954 Kingdom Charter. He sees it as one mode among several that the colonial powers used to grant their peoples a right of self-determination in line with U.N. standards. The French had already given their Caribbean territories departmental status, and by the 1960s the British had turned most of their West Indian islands into autonomous Associated States. Dr. Hillebrink notes that the distinctions are worthy of study, since the French option was to give their possessions equal standing with the mainland, whereas successive British governments saw the granting of local autonomy as a way to speed independence. The Dutch model suggests a middle ground, since Dr. Hillebrink sees the Dutch islands as occupying a gray area in terms of constitutional character: not fully autonomous domestically because the Netherlands has reserved the right to interpose in enumerated

local matters; nor part of a Belgian-style *ensemble fédératif*, since the islands' ability to influence kingdom matters — from foreign affairs to the European Union's Common Agricultural Policy — has been found wanting. He tends to see the status of the Netherlands Antilles and Aruba as closer to Puerto Rico's status vis-à-vis the United States: a *sui generis* constitutional arrangement embracing free association, but precluding international legal personality. He thus questions whether in either case the territories can be seen as having the “full measure of self-government” that Resolution 1541 demands, but he also recognizes independence would be readily granted by the Netherlands and the U.S. if the Antilleans and Puerto Ricans expressed such a wish.³

Cracks in the Antillean federation were apparent from the late 1970s, when Aruba began lobbying for a separate status within the kingdom. The Arubans felt their political and economic situation would improve once they had circumvented an intransigent Antillean parliament and bureaucracy dominated by Curaçao.⁴ By 1986 the new status had been implemented, with the Netherlands seeing it as a transitional stage to full independence by 1996. The problem, however, was that the Arubans themselves expressed no desire for independence, and argued moreover that pushing full sovereignty on the island undermined the electorate's clearly stated status preference. This, in turn, set into motion a series of referenda on the other islands that only ended in 2009.⁵

Dr. Hillebrink notes the tension between the self-determination rights the U.N. requires and the reality that the metropole does not have to grant exactly what a dependent territory may want. For example, dependent territories may well be protected from a compelled independence, but a presumptive desire for integration with the mother country won't necessarily be conceded. As Puerto Rican advocates of integration with the U.S. have learned, Congress could still reject Puerto Rico as a 51st state even if a clear majority on the island votes for statehood.

Despite the six islands' statutory autonomy, the Netherlands has intervened locally. In May 1969, a labor dispute at Willemstad's Shell oil refinery spilled over into

³ The independence option polls under 5% in the Dutch Caribbean. Curaçao's pro-independence faction is a talking shop dominated by a few intellectuals. Sint Maarten's is associated with a single individual, poet Harold Lake. Despite his politics, he was knighted in 2004.

⁴ Premier Juancho Evertsz foresaw the demise of the Antillean federation using some creative arithmetic: *Zes min één is nul* (“six minus one equals zero”).

⁵ In May 2009, 52% of Curaçaoënaars voted for their own separate status, effectively ending the Netherlands Antilles. See e.g. “Verdeeld Curaçao stemt voor akkoord” in *De Telegraaf* of May 21, 2009.

the general population, resulting in rioting, looting and arson. Order was restored when 300 Dutch marines were flown in to secure the streets.⁶ Less dramatically, continual evidence of financial fraud and mismanagement in the Dutch Caribbean has led to increased metropolitan oversight and intercession. Most recently, authorities in the Netherlands acted on a request from Berlin-based Transparency International to assess corruption levels on Aruba, but they didn't coordinate sufficiently with the Aruban government, especially with the public prosecutor's office.⁷ Dr. Hillebrink points out that the Netherlands is constitutionally obliged to maintain public order in the realm, and the events of May 1969 had plainly proved too much for the local police force. He also notes that the Netherlands is a signatory to different instruments meant to combat money laundering and other corrupt practices, and international law is clear that a metropolitan country may not shirk its treaty responsibilities using the excuse of a dependent territory's autonomy in home affairs. Still, Dr. Hillebrink is astute enough to realize that such interventions by the Netherlands tend to undermine its claim that the Caribbean lands are completely self-governing. Indeed, when white military personnel point carbines at colored civilians, or when the institutions of an elected government are bypassed willy-nilly, the casual observer is apt to see only neocolonial meddling.

The Netherlands Antilles as a polity began in 1954 with great promise, as it was thought that local control would lead to engaged voters, good government and realistic development plans. However, the electorate was often more interested in a politician's personality than his program, as well as his ability to dole out favors; the outcome has been a half-century of patronage, cronyism and capriciousness.⁸ It is thus sometimes a mistake to assume that greater autonomy leads to greater democracy,⁹ and Dr. Hillebrink himself notes that the Netherlands has the residual power of guaranteeing human rights, good government and legal certainty throughout the kingdom. However, the Netherlands

⁶ See e.g. John Leerdam's fascinating 1995 documentary, *30 mei 1969 (Gritu di un pueblo)*.

⁷ See e.g. "Corruptieonderzoek was stap te ver" in the *Amigoe* of May 17, 2009.

⁸ Another Leiden doctoral conferee, Surinam-born Dennis Rosheuvel, addressed the style of governance suitable for the Dutch Caribbean, quite apart from its constitutional configuration. See "Bestuur op maat voor de Antillen" in the *Staatscourant* of June 6, 2005.

⁹ I'm indebted to Profs. Jacques Gourgue (Port-au-Prince) and Mark Kirton (Port of Spain) for this insight.

does not have the constitutional mandate to dismiss an Antillean or Aruban government, as the British plan to do in the Turks and Caicos Islands.¹⁰

Luckily, the Antilleans' dissatisfaction with their status, and a decade of referenda, gave various Dutch governments an opening: they could begin to influence the process, especially since the Netherlands Antilles had run up an astonishing public debt. By 2005, all the parties had agreed to unwind the federation. Sint Maartenaars voted for a separate status similar to Aruba's. Sint Eustatius, Saba and Bonaire, wanting closer integration with the mother country, opted for a status resembling a *gemeente* (municipality) in the Netherlands. Curaçao, the last to hold a referendum, also chose the Aruban option. With respect to all the islands, the Netherlands would exercise more oversight to ensure sounder local finances and better due process, as well as assume 70% of the approximately €2 billion in Antillean debt.¹¹ Many Antilleans rankled at the thought, seeing it as a step backward and a concession of sovereignty. In this they are probably right. However, when others pay the bills, they become part of the decision-making process. Or as we say in Dutch: *wie betaalt, bepaalt*.

Dr. Hillebrink is an advisor on constitutional matters in the Dutch Ministry of Home Affairs and Kingdom Relations, and he draws upon real-world experience to round out his scholarship.¹² Asser Press is an adjunct to the Asser Instituut, a leading academic research institution in international law. They publish books to the highest standards, both in terms of content and presentation. Asser Press's Dutch-language titles are sold directly, but titles in English are available through Cambridge University Press, which acts as Asser's general sales agent worldwide.

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¹⁰ London threatened this British Overseas Territory with direct rule in March 2009, owing to widespread evidence of administrative incompetence and official corruption. See e.g. Gov. Wetherell's press release. Grand Turk: Government House, March 16, 2009.

¹¹ Tweede Kamer der Staten-Generaal informational circular. The Hague: January 2009.

¹² For an overview of the constitutional history of the islands, see Dr. Alejandro Paula's article "Hoofdmomenten uit de staatkundige geschiedenis van de Nederlandse Antillen (1865–1986)" in *Lantèrnu* No. 9. Willemstad: Archivo Nashonal di Antiya Hulandes, 1989.

¹³ Mr. Rasmussen is a legal editor, and translator of Dutch and Spanish. He has traveled to nearly every independent country and dependent territory in the Caribbean Basin.