

Chapter Four

The 'Federation' and its Aftermath

In 1980 with the Anguilla situation resolved and Nevis secession on ice it was open for St. Kitts and Nevis to move to independence following the other Associated States of Grenada in 1974, Dominica in 1978, St. Lucia and St. Vincent and the Grenadines in 1979 and Antigua and Barbuda in 1981. The most controversial issue in the debate on the independence constitution was the relationship between St. Kitts and Nevis. Leveraging the balance of power which NRP held, Nevis ensured that it got effective control of its own affairs and much more.

The system chosen by the Government of the day was that of a 'Federation' but a very unusual one. Nevis was to have its own government but St. Kitts was not to have its own government. There was to be a Federal Government with elected representatives from both islands. The Federal Government would administer St. Kitts. To borrow the terminology of the Phillips Commission, Nevis was to be federated with St. Kitts and Nevis. That arrangement would create the possibility (as happened in 1980, in 1993 and in 2015 and may well happen again) of Nevis holding the balance of power in the Federal Parliament while controlling its own affairs in Nevis.

The Nevisians went further. They insisted on a secession clause for Nevis. There was to be none for St. Kitts. And they insisted that any amendments to several key provisions of the Constitution would require a two thirds vote in St. Kitts and a separate two thirds vote in Nevis.

Nevis is given a Premier and Cabinet called the Nevis Island Administration and its own legislature called the Nevis Island Assembly. Assembly elections are held separately from Federal elections. The result is that with Federal elections called by the Prime Minister and Assembly elections called by the Premier, Nevis can be in constant election mode.

The Nevis Island Assembly is given exclusive powers to make laws with respect to several key matters.

The Nevis Island Administration (NIA) is, subject to the constraint mentioned below, given exclusive responsibility for the administration in Nevis of airports and seaports, education, extraction and processing of minerals, fisheries, health and welfare, labour, lands and buildings vested in the Crown, licensing of imports and exports. A constraint on the exercise of these powers is given to the Prime Minister who can notify the Premier in writing of matters of general policy or national concern. The NIA is not permitted then to take any action inconsistent with such policy without the prior concurrence of the Prime Minister. There are provisions for use of Government lands in Nevis by the Federal Government. The NIA is required to make available to the Federal Government suitable Government lands in Nevis required for its use. If the NIA has to acquire such lands compulsorily the Federal Government has to pay the compensation to any private person from whom the lands are acquired.

The Constitution provides for powers over public safety and order. The Premier can give general directions in this regard so long as they do not conflict with orders given by the Prime Minister.

Consultation is required between the Prime Minister and Premier on the staff of the NIA. There must be consultations between the Federal Government and the NIA on proposals by the NIA to borrow money. Borrowing limits may be set for the NIA by rules made by the Governor General on advice of the Prime Minister with concurrence of the Premier.

The financial arrangements in the constitution are different to the political ones. Taxation is a Federal matter. The Nevis Island Assembly has very limited power of taxation. It cannot tax profits or income or property or imports or exports. The revenue sharing arrangements are very simple. Taxation revenue is to be shared on a per capita basis and in

that accounting Nevis is to be assessed for its share of common services and debt. As simple as this arrangement may be it has never worked smoothly because of the politics. The major source of current contention is that Nevisians are not getting their fair share of the CBI money and are owed hundreds of millions (maybe billions who knows) of dollars by the Federal Government. Ironically the next big resource will be geothermal energy produced in Nevis. Let's hope that too does not stir mistrust.

As it is the national government, the Federal Government has control of external affairs and when the NIA borrows from abroad and a country guarantee is required only the Federal Government can give such guarantee on behalf of the country. Nevis also has to rely on the goodwill of the Federal Government to share in aid from foreign governments. Until 2015 when Mark Brantley became Minister of Foreign Affairs in the Federal Government while retaining the position of Deputy Premier of Nevis, Nevis had no formal direct contact with such governments. Nevisians also claimed that Nevisians were ignored in appointments for diplomatic and external representative positions. At times the Nevisian leaders were not included in teams representing the country at regional and international forums. Given the importance of direct foreign investment to development, the NIA regarded that as a deliberate attempt by the Federal government to stymie important opportunities for exposure of the NIA to sources of investment capital. St. Kitts and Nevis often competed for such capital.

So Nevis has the benefit of the political arrangements but St. Kitts controls the money and external relations. Some may say that is an ideal balance. It certainly reflects the balance of political power at the time of independence. But it is not a stable long-term arrangement.

Within the 1980s, skillfully led by Simeon Daniel and buttressed by the Federal arrangements, Nevis advanced beyond recognition. In the first post independence election in 1984, PAM won six of the eight seats on St. Kitts, giving them a majority of the eleven seats in the National Assembly. They did not therefore need the support of the NRP to run the

Federal Government. However, NRP remained in the Federal Government. Daniel gave up the Ministry of Finance and took a less important Ministry which freed him up to undertake his responsibilities as the first Premier of Nevis. Ivor Stevens, Daniel's NRP colleague, remained actively involved in the Federal Government as Minister responsible for Communications and Works, still a key Ministry as far as Nevis was concerned.

The Federal election of 1993 brought another PAM/NRP government but this time a minority one with PAM/NRP holding 5 seats, Labour 4 and CCM 2. Violence erupted and a state of emergency was briefly declared. Tensions continued until November 1994 when the Four Seasons Accord was made. That Accord required an election within 18 months which was the only part of the Accord seriously implemented.

The Labour Party won power with an overwhelming majority in the National Assembly in the general election of July 1995. The party had maintained its vehement opposition to the Federal arrangements but said in its manifesto for the election that it wanted '*unity among the people*' and pledged that within the first 100 days of forming the government a constitutional reform conference would be convened to serve as a springboard for the decision of substantial constitutional reform for St. Kitts and Nevis. Those pledges reflected the very clear position of the Labour Party pre and post independence that the current constitutional arrangements established on independence are unfair.

However Amory jumped the gun and in April 1996 the NIA appointed a Constitutional Advisory (Review) Committee. That committee was given the following terms of reference:

- a) *to hold public meetings throughout Nevis and invite all shades of public opinion on the Constitution;*
- b) *to examine and assess the Constitution as it relates to St. Kitts and Nevis;*

- c) *to advise the Administration of what changes (if any) should be made to the Constitution;*
- d) *to advise the Administration whether a new Constitution should be drafted to govern the relationship between St. Kitts and Nevis.*

The NIA appointed Constitutional Advisory (Review) Committee started its review and noted the following trends:

- (a) The current Constitution was originally intended to cover a three-year term. This has not (until now) been officially reviewed. It was therefore considered timely and appropriate to have the constitutional arrangements between St. Kitts and Nevis reviewed with the objective of correcting any obvious abnormalities;*
- (b) The majority of the persons interviewed felt that separate (local) governments for St. Kitts and Nevis should be considered with some type of “Treaty” arrangement put in place to govern areas of common interest like international trade, defence and foreign representation;*
- (c) It was considered important to maintain an amicable working relationship between both governments to facilitate free movement of nationals, goods and common services;*
- (d) As an alternative to the current constitutional arrangement a revised model was recommended which essentially advocates two separate Assemblies for St. Kitts and Nevis. This model would see all laws specifically affecting Nevis being passed in the Nevis House of Assembly, and laws specifically affecting St. Kitts being passed in the St. Kitts House of Assembly. The Assembly of one country (sic) would have no jurisdiction over the other. Elections to the first and subsequent local assembly (sic) under this arrangement (would) be held on a predetermined date every five years in both islands. A Federal Assembly (would) comprise an equal number of*

representatives from both local Assemblies. This Federal Assembly (would) “rubber stamp” laws passed in both Assemblies and (would) exercise jurisdiction over Federal matters like defence, foreign borrowing, foreign representation and the like. The Federal Assembly would be headed by a Prime Minister. This position would be rotated between the Premiers of St. Kitts and Nevis every five years. The Federal Assembly would be supported financially by both islands, using criteria other than population as the basis. Eventually, this would translate into some type of confederation between the two islands;

(e) A Federal Public Service Commission would comprise representatives of autonomous bodies in St. Kitts and Nevis, with the Chairman of the Nevis Public Service Commission serving as ex-officio and vice versa, to deal with transfers at the Federal level and other related matters;

(f) It was recommended that Clause 27 in the current Constitution be eliminated

The NIA Review committee was not however allowed to complete its work as, in June 1996, Amory announced that he was moving immediately for secession. In July 1996 he introduced a Separation Bill in the Nevis Assembly. The Assembly members from the Opposition NIA absented themselves from the sitting at which the second and third readings of the Separation Bill were tabled in November 1996. The Bill could not therefore receive the required two thirds majority of all elected members of the Nevis Assembly.

Amory decided to call an election. His CCM party campaigned on a secession platform. The election was held on February 24, 1997. CCM won three of the five seats with NRP winning the other two. In April 1997 Amory moved the Assembly again for secession. The Separation Bill was duly passed on October 13, 1997 with NRP deciding it would leave the matter for decision by the people of Nevis.

The next step required by the constitution was a referendum of Nevis voters. For secession to take effect a two thirds vote in favour was required, that is two thirds of all votes validly cast.

On December 15, 1997, with the referendum pending, the Federal Government appointed a Constitutional Commission headed by Sir Fred Phillips, the first Governor of the Associated State of St. Kitts-Nevis-Anguilla. By then Sir Fred had long left St. Kitts and returned to private practice of the law through which he had earned an excellent reputation as a regionalist and a constitutional lawyer. The terms of reference of the Phillips Commission were:

- (a) to consider whether the provisions of the 1983 Independence Constitution are such as to give expression to the normal relations between one unit of a federal entity and another;*
- (b) to review the existing constitutional arrangements in the country and to make recommendations as to the nature of any reforms deemed expedient; and*
- (c) in particular, to examine all practicable bases of future relations between St. Kitts and Nevis, including that of separation under section 113 of the Constitution.*

Between January and July 1998 the Phillips Commission held several public meetings in St. Kitts and one in Nevis. A second meeting scheduled for Nevis was (according to the Report) cancelled at the last moment by the Nevis organisers. The Phillips Commission also visited the Virgin Islands, the United Kingdom, The United States of America and Canada where they consulted with Kittitians and Nevisians and with government representatives and with national and international organisations.

Not surprisingly, the NIA, more concerned with their campaign for secession, refused to participate in the deliberations of the Commission. The Phillips Commission presented its report to the Governor General on July 31, 1998.

The referendum on secession was held in Nevis on August 10, 1998. 2,427 or 61.83 per cent of those who voted did so in favour of secession. 1,498 or 38.17 per cent of the voters voted against secession. The percentage of 61.83 per cent in favour fell just short of the two thirds required by the Constitution for the secession resolution to succeed.

With new breathing space from the unsuccessful referendum, the Federal Government decided to supplement the process of the Philips Commission and in January 1999 appointed a Task Force on Constitutional Reform again headed by Sir Fred Phillips. That Task Force had a wider composition than the Phillips Commission. The Commission comprised Sir Fred, Kenneth Rattray QC and J.R.P Dumas. Rattray and Dumas were distinguished Caribbean figures. The Task Force comprised Sir Fred plus Brynmor Pollard SC, Reginald Dumas, Cedric Harper and Professor Simon Jones-Hendrickson. The last two named are St. Kitts and Nevis nationals both distinguished in higher education, Harper at The University of The West Indies at Mona Campus, Jamaica and Jones-Hendrickson at the University of The Virgin Islands. Like the Commission, the Task Force consulted widely. It reported on July 25, 1999. The recommendations of the Commission and the Task Force on the future relations between St. Kitts and Nevis are almost identical.

Before giving the details of the recommendations I set out two extracts from the Report of the Phillips Task Force. The Task Force began the chapter of its report on the relationship between St. Kitts and Nevis with this statement:

We begin by saying that among the people we spoke to and heard from, publicly and privately, in St. Kitts and Nevis during the last four months, we found overwhelming support for the continuation of the two islands as one state. Various suggestions were made on the nature and governance of that state, but the principle of oneness was almost universally accepted and supported.

The second extract is from paragraph nine of the chapter referred to of the Task Force report:

It was represented to us that the official and institutional relationship between St. Kitts and Nevis left a great deal to be desired. We were told often that it was the politicians in both islands who were the problem, the implication being that that they were out of step with the rest of the community. One wonders, if that were indeed so, why has not the rest of the community which elects the politicians, imposed its wishes on them.

One would have hoped that with local representation on the Task Force Messrs Harper and Jones-Hendrickson would have answered the question but I certainly will. The answer is that too many in the rest of the community are inflicted with polarization, do not think for themselves and simply play *'follow the leader.'* The politicians have little fear therefore that the community will impose its will on them and merrily go along playing their games.

It is worthy of note at this point that the Task Force met with the leaders of the main political parties and held private and public meetings on both islands including five public meetings on Nevis and a call in discussion on VON Radio, a popular Nevis based radio station. They were received by Premier Amory and the Report quotes him as saying that it remained the views of the CCM (after the referendum) that the interest of the people of Nevis can only be best achieved by constitutional separation from St. Kitts but *'we are prepared to work within a framework of constitutional reform, provided only that that is indeed the will of the people of Nevis.'*

In the quarter century since the referendum there have been substantial improvements in business relations and in communication by travel and telecommunications between St. Kitts and Nevis and therefore much greater movement of people and contact between them.

Social media has created a greater bond between young people. One hardly hears talk of secession these days. One never knows what might happen with politicians but it does not appear to be a waste of time to look at a summary of the Phillips Commission and Task Force proposals.

They recommended that:

- St. Kitts should have its own legislature with power to legislate on all matters for St. Kitts other than those allocated to the Federal Parliament (see below for those powers).
- Nevis should retain its own legislature with power to legislate on all matters for Nevis other than those allocated to the Federal Parliament.
- St. Kitts should have its own executive branch in the form of a Cabinet headed by a Premier and four or five Ministers.
- Nevis should retain its Cabinet with a Premier and two or three Ministers.
- The Ministers in each Cabinet should be appointed by the Premier from within or outside the island legislature and be subject to confirmation by the island legislature.
- There should be a Federal Parliament comprising equal numbers of elected members from St. Kitts and Nevis and non-voting independent members appointed by the President after consultation.
- The Federal Parliament should have power to legislate on matters of national security (including defence), foreign affairs and the judiciary.
- A seventy per cent majority of all elected members should be required to pass legislation in the Federal Parliament.
- The Head of State should be a President responsible for national security (including defence), foreign affairs and the judiciary subject to parliamentary oversight via national security and foreign affairs committees.

- The President should also have power to make appointments to sensitive positions subject to confirmation by Parliament.
- The Presidency should be rotated between Nevis and St. Kitts beginning with St. Kitts. A person would be qualified to be the President from St. Kitts or Nevis if he were born on the island or one of his or her parents was born on the island.
- The term of office of the President should be five years
- When a President is to be elected the two island legislatures should consult and agree on the nomination of two qualified persons to be put before the electorate for election. The electorate on both islands should vote between the persons nominated to elect a President.
- There should be a Vice President. The Vice President should come from the other island to the President. The Vice President should be nominated and elected in the same manner as the President.
- The President and Vice President should be able to serve a second term although of course not consecutively.
- The President should appoint two Secretaries of State from outside the legislatures and Parliament who would function as his Cabinet.

The recommendations address the major issues of all the parties. They give St. Kitts a separate government and they give Nevis greater control over taxation in Nevis and a say in security and foreign affairs. They provide a fair and balanced basis for a resumption of the discussion. Some may think that they are complicated and that it would be costly for a small country such as ours to add a third tier of government to the two we already have. My view is that it would be worth the cost if it would create stability and end the underlying mistrust and lingering resentment.

The Phillips Commission also addressed the important matter of dispute resolution. Again, given human nature and the nature of politics and given the St. Kitts and Nevis experience, it would be wise to have a formal dispute resolution process with the courts as a last resort. The mechanisms recommended by the Task Force are firstly a Conciliation Committee of the Federal Parliament, then if not resolved to mediation by a permanent group of facilitators chosen from nationals of Caricom by the Federal Government and the island governments. The Conciliation Committee should then seek to resolve the dispute based on the recommendations of the mediation group. If they fail then the dispute should be resolved by decision on a vote of seventy per cent of the Conciliation Committee, that decision to be binding. The recommended composition of the Conciliation Committee was three members from Nevis and five from St. Kitts.

As to the famous secession clause 113 of the Constitution, the Commission and the Task Force recommended a '*sunset*' clause that is a fixed period of time after which the right to secession for Nevis would expire.

The wide differences over the constitutional arrangements between St. Kitts and Nevis remain unresolved and ripe for any politician, of any side, who wants to use them for political ends. This issue should be re-opened. It can with goodwill on all sides be resolved. St. Kitts and Nevis will then have one less factor contributing to our brooding democracy.

I am ever mindful that any change to the arrangements between St. Kitts and Nevis will require separate two thirds majorities in the Federal Assembly and in the Nevis Island Assembly and two thirds majorities in separate referenda in St. Kitts and Nevis. That is a tall order. It will require a complete change in political culture on both islands from tribal to issue based politics.

Long story short because the constitutional status of Nevis is so deeply entrenched in the constitution St. Kitts and Nevis are stuck with a quasi-Federation which will come back in

future to bite them and will deter the maturity of the nation.