

Ben Gardner & Jeremias Prassl

CURAÇAO, THE NETHERLANDS ANTILLES,  
AND THE KINGDOM:

# A LOOK THROUGH THE CONSTITUTIONAL PRISM



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## INTRODUCTION

*“Ben Gardner and Jeremias Prassl (Harvard Law School LL.M. Class of 2009) have spent the past three weeks travelling all over our island to discuss the upcoming constitutional changes with representatives of key stakeholder groups. Rather than relying on the aggregate data available to date, their work tries to tease out the reason behind each constituency’s preference. The results of this study highlight surprising differences in seemingly consolidated positions, and find agreement between supposedly polar standpoints. As Curaçao gears up for the referendum of 2009, it is the authors’ hope that their study will contribute to public debate by clearing up misconceptions, suggesting potential compromises and shedding a new light on old questions.”*

Amidst all discussions with respect to the upcoming constitutional changes in the Kingdom of the Netherlands and the Netherlands Antilles, it is impossible to find a person that can observe what happens on our island with an unbiased and objective view. Ben Gardner and Jeremias Prassl are two exceptions. Like two intelligent, kind and proactive aliens from Mars, they landed in the Caribbean Sea, on the island of Curaçao and within a remarkable short time they had many interviews and discussions with a remarkable number of people.

With the results of their research they do not merely present a mirror to people of Curaçao and everybody that is engaged in the process of unraveling the Netherlands Antilles and forming new countries. They present a picture that enables us to have a better view of ourselves as to our own failures, threats and above all challenges. Last but not least Ben and Jeremias show that it should be possible to overcome the threats and to meet these challenges in order to provide a better future for the generations to come on this beautiful island. The title of their project is **“Curaçao, the Netherlands Antilles and the Kingdom: a look through the constitutional prism”**. Often views are presented as independent, while basically being biased some way or another. This case is different. Therefore I would like to express our gratitude to Ben Gardner and Jeremias Prassl, who have put great efforts and achieved very interesting results that I am sure will be inspiring and promising for everyone that hopes for a bright future for Curaçao!

**Frank Kunneman**  
29 January 2009

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# CURAÇAO, THE NETHERLANDS ANTILLES, AND THE KINGDOM: A LOOK THROUGH THE CONSTITUTIONAL PRISM

The small Caribbean island of Curaçao has seen a very colourful political history. At the beginning of 2009, its citizens are yet again faced with an important choice for their constitutional future. Through their study, Ben Gardner and Jeremias Prassl seek to present and analyse the preferences for constitutional reform of the island territory held by different interest groups across the island's society. To this end, they have interviewed a wide variety of stakeholders, whose opinions and concerns we consider below. The constitutional direction for the island at the time of writing appears relatively certain, and so it is not the aim of this paper to suggest a different approach. Instead, the authors hope to contribute to the debate on how to progress with the reforms which must occur with the dissolution of the Netherlands Antilles. By examining the concerns of interest groups on Curaçao, they hope to deepen the understanding of certain resistances to and perceptions of the new constitutional order negotiated by the present coalition government.

Their work is a valuable contribution to current debate, because as of yet only aggregate preferences have been ascertained through national referenda and elections.

The paper begins with a discussion of the background to the present constitutional turmoil on Curaçao; the following Section II outlines the methodology for the investigation. Sections III (The Legal Situation) and IV (A constitutional perspective) set out their findings and analysis, followed by Section V on political communication in the current process. Section VI concludes the report with suggestions as to how this can be as inclusive and responsive as possible. In a society as diverse and cosmopolitan as we have experienced on Curaçao, it is the authors' hope that their report will ignite further discussion, fuelled with an understanding of other parties' arguments, and eventually leading to a long-lasting constitutional settlement.

## CHAPTER I CURAÇAO: A BRIEF INTRODUCTION

Curaçao is one of the five constituent islands of the Netherlands Antilles<sup>1</sup>, which together with Aruba and the European country of the Netherlands form the Kingdom of the Netherlands. Curaçao first came under Dutch rule in 1634, when it was taken from the Spanish. For almost two hundred years, control of Curaçao was contested by the French, the English and the Spanish before sovereignty was regained permanently by the Dutch in 1815. Until the abolition of slavery in 1863, the main economic activity on the island was slave trading. After a period of relative inactivity, the economy was revived when Shell built an oil refinery on the island in 1915. This refinery still functions, though it is now leased to the Venezuelan national oil company. At the turn of the twenty-first century, the only other important economic factors are tourism, offshore commerce and shipping.

The population of the island is roughly 140,000, almost half the total for the Caribbean part of the Kingdom. The cultural variety on the island is striking, with the major groups being Afro-Caribbean, ‘Protestant’ European, Latin American and Jewish. As noted by the senior statistician at the Central Statistics Bureau, objective profiling of these groups is extremely challenging because of the diversity and lack of a public perception of ethnicity. Despite these complications, it is uncontested to observe that Afro-Curaçaoans constitute the majority of the population. As a relatively prosperous Caribbean island, Curaçao has seen a consistent flow of immigrants, legal and illegal, from the Caribbean and Latin America. Furthermore, there is a tradition of Dutch migration to Curaçao which keeps the number of Europeans in the country comparatively high. Such diversity explains an oft-repeated saying – “*everyone is a Yu di Kòrsou*”, a child of Curaçao. No group can really claim to be indigenous, save the Arawak Indians who have long since vanished into multi-ethnicity. This does not mean that there are no such claims of ethnic entitlement – indeed, there has been at least one racial attack in the recent past which gave the term *Yu di Kòrsou* a prejudicial overtone which the inclusive aphorism no doubt seeks to counter. An appreciation of this cultural and ethnic complexity is thus essential to our project of analysing the constitutional preferences of Curaçaoans.

1 The other four being Bonaire, Saba, Sint Eustatius and Sint Maarten.

## CHAPTER II METHODOLOGY

The constitutional changes under discussion are, by definition, not only of considerable importance for each and every citizen of Curaçao, but also for a range of other entities and nations dealing with the island. With this in mind, our methodology hopes to address key issues without losing sight of their broader context.

### THE RESEARCH QUESTION

Our preliminary academic research yielded few results on the topic of constitutional settlement in the Netherlands Antilles. Little, if anything has been written in English on the actual constitutional workings; this is mostly due to the fact that there has been a bewildering number of changes and (re-)negotiations over the past years. Similarly, when looking at the referenda on constitutional change of 1993 and 2005 as well as the election results of 2007, analysis has focused on aggregate preferences, rather than looking into the reasons behind various constituency's choices. It is our hope that this report will address this double challenge; firstly in presenting a clear picture of the current legal situation as well as the different options in going forward, and secondly by looking beyond aggregate choice and analysing the various concerns that motivate different constituents' preferences. Finally, we will discuss the different communication strategies of each constituency, from coordinated community action to individual behind-the-scenes opinion making, before ending with a sample list of policy recommendations.

### RELEVANCE

Early 2009 has become a key period for Curaçao's political future: after the passing of an original settlement deadline on December 15<sup>th</sup>, 2008 and with a referendum looming in late spring / early summer political parties and private interest groups alike are gearing up for several months of intense public debate. The Dutch government has expressed its explicit 'make-or-break' attitude. By presenting a survey and analysis of a full range of opinions and feelings we hope to contribute to a more

comprehensive understanding for both decision makers and the public alike. In doing so, we plan to set out the – sometimes rather surprising – differences amongst those in seeming agreement, as well as similarities and points of accord between groups advocating radically diametrical outcomes.

### METHODOLOGY

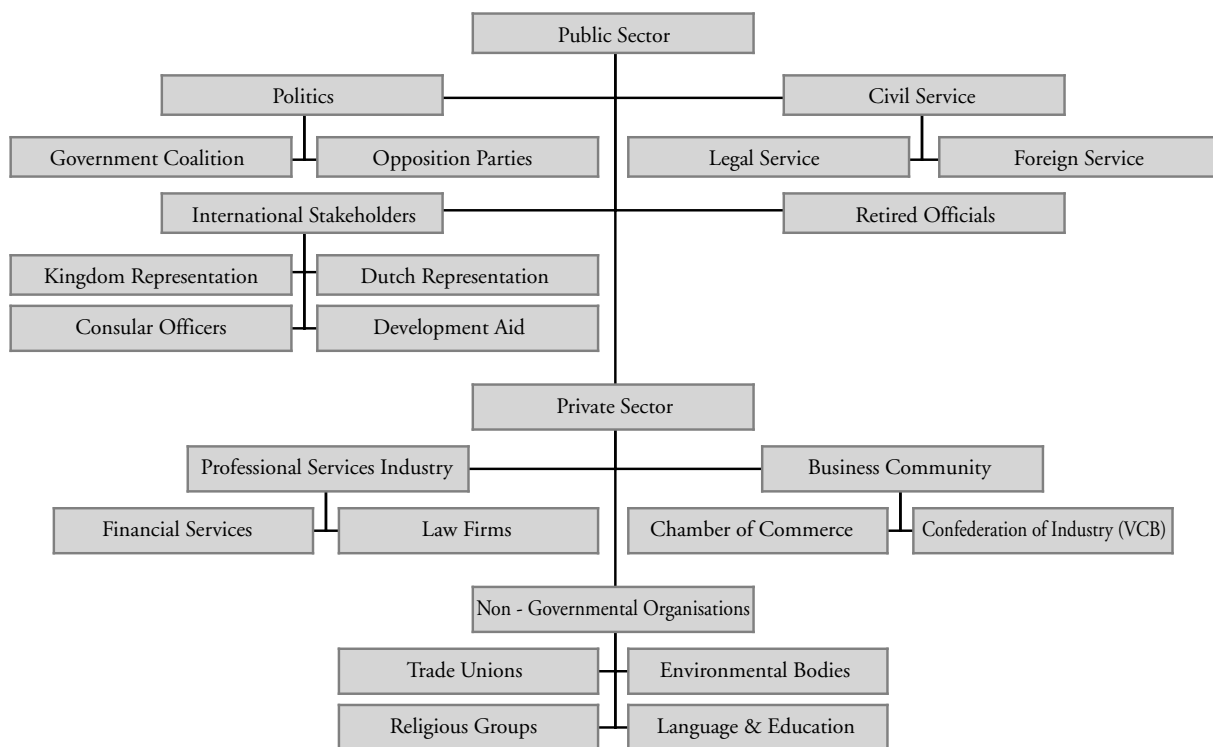
In line with these objectives, our interview findings are divided into three major subsections: a legal explanation of the constitutional arrangement, followed by a constitutional analysis based on the different opinions elicited from stakeholder groups, and a discussion of the different forms of communication currently in play.

Given the scarcity of English-speaking academic work on the constitutional situation, a considerable amount of primary research was necessary. For Part I (constitutional arrangements), we first spoke to senior civil servants drawn from the National Bureau of Statistics and the Government Legal Services in order to piece together the workings of the *Statuut*, financial control laws, and other key provisions<sup>2</sup>. This was then consolidated in discussions with University of the Netherlands Antilles (UNA) faculty from the Department of Social Sciences and the Faculty of Law as well as private sector advocates.

The policy aspect proved considerably more challenging: in order to present a balanced final report, we had to reach out to as many different stakeholder groups as possible. Building on the traditional tripartite classification of public sector, private sector, and non-governmental organisations (NGOs), we set out to work with representatives of the groups indicated in the Diagram.

<sup>2</sup> A list with interviewed stakeholder details can be found in Appendix A.

STAKEHOLDER GROUPS - OVERVIEW



**INTERVIEW TECHNIQUE**

After some initial deliberation, we quickly decided not to approach our respondents with a standard set of questions. This was, on the one hand, due to the fact that not all interviews were strictly policy based, and, on the other, to ensure that we were able to react flexibly to each interviewee’s individual background and considerations. All interviews were recorded to ensure proper transcription in this report; all respondents but five, who provided considerable insights off the record, agreed to have their names published in connection with their views. In general, we first sought to understand each stakeholder’s personal and professional background, before moving on to his or her constituency’s views, focussing especially on any changes that might have taken place between the referenda of 1993, 2005 and the

upcoming one in 2009. Two broad categories emerged from our twin goals of fact-finding and teasing out competing policy perspectives: discussions on various forms of autonomy, and the importance of a particularly paradox situation in European Union law: all citizens of the Netherlands Antilles enjoy full Dutch (and thus European Community) citizenship by virtue of their territorial connection with the islands; yet no EU legislation currently applies to any parts of the Netherlands Antilles.<sup>3</sup>

<sup>3</sup> This paradox is subject of a separate article by the authors (forthcoming).

## RESEARCH LIMITATIONS

Undertaking the policy research for Part II over the course of only 2 weeks placed several restrictions on our work: firstly, instead of surveying each group thoroughly, we had to rely on a somewhat ‘top down’ approach, seeking out representatives of assorted constituencies. We believe that this was remedied successfully by relying on representatives chosen by each group themselves (e.g. political party leader, elected head of industry representation, ...) whenever possible. Going through these institutionalised channels further ensured that nearly all opinions given are representative of their underlying constituency, rather than the respondent him or herself.

Language was the second major limitation. Whilst English is one of the official languages in the Netherlands Antilles, the majority of the population on Curaçao communicate in Papiamentu, a Creole combining Spanish, Portuguese, Dutch and English dialects. Not being able to speak either of these languages didn’t prove particularly problematic *per se*, as nearly all interview partners were perfectly fluent in English. We are nevertheless aware of the fact that by conducting interviews exclusively in English a considerable cross-section of citizens not educated in that language were more or less excluded. The same response as above applies: being aware of the limitation, we ensured that our selection of representative stakeholders addressed it as far as possible.

The final issue relates to classifying different groups, more particularly the highly contentious question as to whether race could or should be a factor. The Central Bureau of Statistics of the Netherlands Antilles (CBS) has repeatedly decided not to include this information in its work; place of birth and citizenship are used instead. Following the advice of a senior statistician at CBS, we elected to follow this official policy. Whilst mentioned by respondents on several occasions, the concept of *Yu di Kòrsou* is far

too contentious and wide a term to be of classificatory assistance: nearly everyone we encountered claimed that he or she, as well as their entire constituency, were *Yu di Kòrsou*.

## NEUTRAL OUTSIDERS

These issues were counterbalanced by a major advantage we brought to this study: being European, currently based in the United States, and without any past, present or future connection with the Antillean islands or the Kingdom of the Netherlands, we could offer each and every respondent a neutral ear; whilst many a probing question may have been challenging an interviewee’s perception, we strived to maintain strict neutrality whilst gathering data in order not to prejudice our findings. Finally, the timing of our stay during a moment of relative calm before the referendum storm proved very fortuitous: key stakeholders were still available for interviews, and many policy and strategic questions are still being evaluated within various circles. As Curaçao’s (traditional and political) Carnival is about to start, it is our hope that this paper will sketch, and wherever possible, bring closer together as many of the different voices as possible by looking underneath the costumes disguised in which they often appear.

## CHAPTER III THE LEGAL SITUATION

### THE STATUUT

The Kingdom of the Netherlands is governed by a constitutional settlement – the *Statuut*. Signed by the Netherlands, the Netherlands Antilles and Suriname on October 28, 1954, this ‘Charter for the Kingdom of the Netherlands’ regulates the relationship between the countries. The *Statuut* currently applies to the Netherlands, the Netherlands Antilles and Aruba, since Suriname gained independence in 1975 and Aruba acquired *status aparte* from the Netherlands Antilles in 1986. The charter grants a large degree of autonomy to the previous colonial holdings, caveated in Art.3 by the reservation of ‘Kingdom affairs’ including defence, foreign relations and nationality. Consequently, all Antilleans have Dutch passports and European citizenship, as determined by the Kingdom government. In most other respects, the new countries were granted the right to “conduct their internal affairs autonomously” (Art.40). Nevertheless, the Kingdom retains jurisdiction under Art.43(2) to safeguard human rights, legal certainty and good governance. This provision is interpreted to permit the Kingdom Council to directly intervene should there be a complete failure of government in the Netherlands Antilles.

The Kingdom is governed by a Council of Ministers, in accordance with Art.7 of the *Statuut*. This Council consists of the Dutch Cabinet augmented by Ministers Plenipotentiary representing the Netherlands Antilles and Aruban governments. This Kingdom government is thus in reality dominated by the Netherlands, which leads to a perception of the higher authority not as Kingdom, but the Netherlands. As a result, the United Nations treats Aruba and the Antilles as falling within the scope of Resolution 1514, granting the right of self-determination to colonial peoples. Thus there is a presumed international law duty to conduct referenda to determine the constitutional preference of the peoples of the Netherlands Antilles, explaining the three referenda on the constitutional future of the Netherlands Antilles organised between 1993 and 2009 in Curaçao alone.

### THE 1993 REFERENDUM

Pursuant to these international law obligations, a referendum was organised in 1993 to determine the popular constitutional preference. Seven years earlier, following a similar referendum held in 1977, Aruba had been granted *status aparte* within the Kingdom, and there was anticipation that Curaçao would choose a similar fate. Under Kingdom law, there is no provision for binding referenda, so that regardless of political reality, in legal terms all referenda are consultative. The choices presented by the Referendum Committee were those prescribed in UN Resolution 1514, namely continuation of the *status quo* Netherlands Antilles settlement, full integration within the Netherlands, autonomy within the Kingdom, or complete independence. The government supported autonomy within the Kingdom (sometimes referred to as *status aparte*)<sup>4</sup> and independence from the Netherlands Antilles, but the popular vote (55%) favoured the *status quo* solution maintaining the integrity of the Netherlands Antilles<sup>5</sup>. The second choice of the electorate was autonomy within the Kingdom, winning 33.1% of the vote. Independence and integration within the Netherlands were not popular, each gaining achieving 5%. At the time, Miguel Pourier formed a political group which supported the Netherlands Antilles option. Following the success in the referendum, the group became a political party – the PAR – which campaigned successfully in the 1994 elections for reform within the current structure. The aftermath of the 1993 referendum, then, was anticipated to be a period of restructuring of

4 The term *status aparte* can connote an intermediary step toward independence, as was initially envisaged when Aruba was granted it. Therefore it is less ambiguous, though more long-winded, to refer to the option as autonomy within the Kingdom, as this was what appeared on the ballot. Voters could have chosen this either as a permanent or transition status – it would be erroneous to attach one or other meaning as a result.

5 Found on the official Referendum Website - <http://referendum.cura.net>

the Netherlands Antilles. Unfortunately, this effort stalled; Pourier found great resistance to his cause which, as we shall see below, impacted on the decision taken in the next referendum.

## 2005 REFERENDUM

The people of Curaçao were asked to determine their governmental structure in 2005; the Referendum Committee posing the same question as twelve years previously. In the intervening period, perceptions of the Netherlands had changed considerably, prosperity had taken root in Aruba, and tensions rose between the remaining constituents of the Netherlands Antilles. It is widely presumed that these factors caused the shift from a preference for staying within the Netherlands Antilles to autonomy within the Kingdom, the choice of 68% of the population. The *status quo* garnered 24% and the other options, as in 1993, collected approximately 5% each. The government again favoured autonomy within the Kingdom, this time in accord with the voters of Curaçao.

Antipathy toward the Netherlands had grown between 1993 and 2005, partially explaining the move to greater autonomy. Two major events caused this change. Firstly, the Dutch (though officially Kingdom) intervention in the offshore corporate business developing in the region caused consternation in Curaçao, which many of our respondents noted. The feeling commonly expressed is that the Dutch were preventing Curaçao from developing a strong economy of its own (this was often accompanied by the observation that this was a deliberate attempt to maintain dependence). Secondly, the Netherlands had pledged Nafl. 100m<sup>6</sup> as a 'Social Net' for the Netherlands Antilles. This came not only with a series of IMF conditions, which were met, but also some additional Dutch conditions, which were perceived to be unfair by

many of our respondents. Only Nafl. 10,000,000 was ever received. The anti-Dutch feeling was evidently not strong enough to compel an independence vote, but may have fostered a desire to take more direct control over island affairs.

Aruba's successful transition from the Antilles to autonomy within the Kingdom also seems to have played its part. This occurred in two distinct ways. Firstly and straightforwardly there was a presumption that Curaçao could emulate Aruba's achievements if it took the same course. Secondly and more subtly there is the consideration mentioned several times during our interviews of an unbalanced Netherlands Antilles without Aruba. Curaçao and Aruba were the two large islands in the confederation so that once Aruba departed, people started to detect an imbalance between Curaçao and the other islands in terms of control and scale.

The departure of Aruba also seems to have brought tensions between Curaçao and the other islands to the fore. As the seat of Antillean government, there is a perception among people on the other islands that not enough attention or money was leaving Curaçao for its neighbours. This was a regular theme in the debates in Aruba leading up to secession. A referendum held on St Maarten in 2000 also demonstrated this concern, with voters choosing autonomy within the Kingdom. These factors weakened the ties between the islands, which thus ended up being democratically governed in common for only sixty years. The Netherlands Antilles were increasingly seen as an outdated colonial construct, hence the dramatic shift from *status quo* to autonomy within the Kingdom.

These are three primary reasons to explain the shift from 1993 to 2005, but such brief comments cannot adequately capture the complexity of the choices made. One lasting ambiguity is how many voters chose

autonomy as a lasting settlement and how many chose it as a step toward independence. The referendum did not ask such a question and so cannot yield any answers, but our investigations clearly revealed that some people voted for autonomy within the Kingdom intending quite different long term resolution to the constitutional problems facing Curaçao.

It is important to note that the other islands of the Netherlands Antilles were also asked to exercise their right self-determination in 2005. St Maarten chose autonomy within the Kingdom along with Curaçao, as they had five years previously; Saba and Bonaire chose to integrate within the Netherlands and St Eustatius preferred the *status quo*, though once it was clear that this country was to be dissolved, the decision was made to integrate along with Bonaire and Saba. The overwhelming majority of voters, then, disliked both the *status quo* and full independence. This seems to demonstrate a stronger antipathy toward the Netherlands Antilles than to the Kingdom.

### 2007 ELECTIONS

Island Council elections were held in Curaçao on 20<sup>th</sup> April 2007, the results of which are relevant to our discussion because “the campaign of the political parties created the atmosphere of a referendum on the issue of constitutional reform”<sup>7</sup>, as Miguel Goede, Chairman of the 2005 Referendum Committee, put it. An agreement on the new constitutional order, negotiated by the PAR and PNP parties, had been signed on 6<sup>th</sup> November 2006, but rejected by a majority of the Curaçao Island Council. This set the context for an electoral battle focussed on how to progress from the self-determinative expression of 2005 to political reality. The PAR and PNP supported the agreement, whilst the other political

parties (MAN, PLKP, FOL, MSL, PS, NPA, Forsa Kòrsou)<sup>8</sup> campaigned on a platform of opposition to the agreement. Unfortunately, the results gave no clear answers – the PAR and PNP combined achieved 9 seats, short of the 11 necessary to ratify the agreement, but the opposition did not fare better. In fact, “interpreting the election results as the outcome of a referendum is an impossible task”<sup>9</sup>, not least because after the election, a coalition government was formed between the pro-agreement PAR and PNP and the anti-agreement FOL.

### 2009 REFERENDUM

Following the 2007 election, the new PAR-led coalition set about renegotiating autonomy within the Kingdom. The Prime Minister, Emily de Jongh-Elhage, PAR Commissioner Zeta Jesus-Leito, ex-PAR Prime Minister Etienne Ys and PNP’s former Prime Minister Suzy Romer were key players in thrashing out the agreement which is subject to referendum this year. Another referendum is necessary because the 21-member Island Council pledged to consult the people again once the negotiations were complete. Under Kingdom law, this is a consultative referendum. However, it is rather difficult to envisage a deal going ahead despite a ‘no’ vote, particularly given Dutch Prime Minister Balkenende’s well-publicised comment in late 2008 that the deal had by now become the citizens’ to ‘take-it-or-leave-it’.

Officially, the question(s) to be asked in the referendum have not been decided yet, with the Referendum Commission only announced at the time of writing. However, our respondents seem almost unanimous in their agreement that the question put to the people will be a ‘yes/no’ on the negotiated settlement.

<sup>7</sup> *The Island Council Elections in Curaçao, April 2007: Electoral Notes*, Miguel Goede, UNA Yearbook (2007), 49.

<sup>8</sup> The other major political party, DP, had no stance on the issue.

<sup>9</sup> See n.7 *supra* at 59

This settlement involves creating an autonomous country within the Kingdom, but does so on a number of contentious conditions. The legal mechanism for this is set out in Art.38 of the *Statuut*, which permits the countries within the Kingdom to enter into agreements, akin to bilateral treaties, with each other. Under the proposed mutual agreement, the Netherlands will absorb a large portion of Curaçao's debt<sup>10</sup> in return for financial and judicial controls over the new government.

## FINANCIAL CONTROLS

Using their bilateral agreement powers under Article 38 of the *Statuut*, Curaçao and the Netherlands have signed a series of treaties in recent years, culminating in the financial controls law of 2008. In force since December 9, 2008, the legislation imposes a series of obligations on both high contracting parties. The financial control law covers a range of controls for various islands; below exposition will focus especially on the situation in place on Curaçao since December 2008. An analysis of the legislation's broader political context will follow below.

### *Curaçao's Rights and Obligations*

In return for a substantive debt transfer, the government of Curaçao agrees to two fundamental substantive limitations on its budgetary discretion: firstly, it can no longer take on new debt in excess of 5% of annual government income, averaged over 3 years. Secondly, future budgets have to be balanced within these possibilities (i.e. government expenditure is capped at 105% of net government income).

Compliance with these obligations is monitored by an independent, non-governmental supervising committee made up of six members, two of whom come from the Netherlands, with the rest from the Antillean Islands.

Article 22 of the law equips this commission with the necessary powers to exercise their powers, especially as regards the right to detailed information about budget accounts and government cashflows.

In case of non-compliance, the advisory body has to follow a carefully designed escalation procedure. Initially, there is nothing but an obligation to signal to and advise the Curaçao (island) government on how to remedy any transgressions. Only in the case of non-engagement of the island executive can the commission proceed to the next level, informing the *Rijksministerraad* of potential non-compliance, and advising remedial approaches. It is only the Kingdom council, and not the advisory body itself, which may eventually intervene in the case of persisting infractions.

This controlling function of the advisory council is not perpetual. A so-called horizon clause mandates an independent review after 5 years. The law sets out clear *ex ante* criteria for this: compliance with all substantive provisions for at least three of the past five years. The overall evaluation is the task of a commission different from the original advisory body, constituted by agreement between the original contracting parties. Based on their report, it is then for the Kingdom government to formally decide on whether the controls are to be lifted, or whether they will be renewed for a further period of three years.

Finally, it is important to note that all controls are directly linked to the ongoing transfer of sovereign debt obligations to the Netherlands; the moment these obligations are no longer honoured, all control provisions cease to be effective.

<sup>10</sup> This debt is a proportion of the debt accrued by the Netherlands Antilles – approximately Nafl. 3,500,000,000.

## ***Holland's Rights and Obligations***

The key reciprocal obligation undertaken by the Netherlands is the payment of approximately Nafl. 3.5 billion over the course of 6-8 years. This is equivalent to nearly 70% of an autonomous Curaçao's projected debt, and will drastically reduce the island's loan servicing cost; on some estimates by up to Nafl. 300 million. In addition, the Netherlands will fund an Economic Stimulus Package for Curaçao, to the tune of Nafl. 60 million.

The financial control law also regulates certain key aspects of debt procurement. Firstly, it binds Holland to become a *de facto* underwriter of Curaçao's sovereign debt issues: going well beyond an investment bank's traditional 'best effort' terms and conditions, Holland guarantees to buy up any bonds not sold on the open market, thus ensuring guaranteed liquidity for the island within the preset 5% debt boundary. The flipside of this obligation is a right of first refusal for each and every sovereign bond issue to take place while the control mechanisms are in place; this is primarily designed to ensure that costs of issue are kept down in the current climate of highly illiquid international high-yield markets.

## ***Political Aspects***

Having considered the legal arrangements in some detail, we consider it equally important to rehearse a number of political considerations that drive the deal as it stands. Firstly, the impending division of the Netherlands Antilles into two autonomous states of the Kingdom and three overseas municipalities within the Netherlands will necessitate the division of the considerable current debt of the Netherlands Antilles (often referred to as 'federal debt') amongst the Antilles' constituent countries. The largest proportion of this federal debt will be added to Curaçao's existing considerable debt burden. Secondly, it is likely that an autonomous Curaçao without any financial backing from the Netherlands would only be

able to issue high-yield debt, referred to more commonly as junk bonds. It appears that the Netherlands' *de facto* underwriting services will align the government of Curaçao's debt rating with that of Holland. This will also address past liquidity issues (Antillean bonds not selling at the rate needed to finance government expenditure). A third political issue is the inter-island comparison of controls: Aruba's 1986 autonomy was not accompanied by any Kingdom-imposed controls (there was, however, also no debt assistance or relief offered by the Netherlands). The BES islands, on the other hand, have been placed under considerably stricter controls since 2007: there, the advisory council can have direct control over the budgetary process in both substance and form. It was a key goal of Curaçao's special negotiation team to bargain out of this arrangement initially favoured by the Netherlands; ensuring thus that no unelected body (such as the financial oversight committee) would be able to control a democratically agreed budget.

Finally, there are past and present political experiences that matter in selling the deal to voters in both Curaçao and Holland: from a Dutch perspective, there are increasing amounts of political capital to be had from attacking expenditure in the Antilles – the control mechanisms go a long way towards allaying these fears. For Curaçao, the social security debacle following IMF economic adjustments, when the Netherlands only transferred 10% of subsidies pledged, has led to considerable mistrust of Holland's commitment to financial undertakings; the direct link between ongoing debt relief and compliance with budgetary controls is designed to avoid precisely this.

### **Judicial Controls**

Further to these financial restrictions, the settlement deal also stipulates some judicial controls over the newly created country of Curaçao. There will be a joint court for all the islands, as there is now, ruled by Kingdom law, which is an uncontroversial modification of the *status quo*. In addition supervisory bodies, including Dutch and Antillean members, are to monitor law enforcement on the islands – this body will only have monitoring powers and again appears to have caused minimal concern. The same cannot be said of the role of the *procureur general*<sup>11</sup>, which has proven troubling to many Curaçaoans. The first issue is whether each island will have their own *procureur*, as lobbied by the Antilleans, or whether Curaçao, Bonaire, Saba, St Eustatius and St Maarten must share a single person as *procureur*, albeit under different legal hats. The Netherlands strongly insisted on this, apparently fearing a loss of the synergy pertaining under the current constitutional settlement, whereas the islands complained that “one man cannot worship two gods”, a Papiamentu axiom articulating a concern about conflict of interests. Under the present deal, the Dutch approach prevails – there will be one *procureur general*, but each island is to have a deputy to direct prosecutions on a day-to-day basis.

The second issue related to the *procureur general* concerns the amount of control exercisable from Holland. Initially the Dutch sought the power, vested in the Dutch (Kingdom) Justice Minister, to direct the work of the *procureur general* at the Minister’s discretion, but this was unacceptable to the coalition negotiators. The Dutch explained that such controls were only to be used in the circumstance of total and systemic juridical failure on the island. The final agreement recognises this by allowing the exercise of these controls only in the event

of such a failure. The Minister can act on a total juridical failure, but must notarise this within twenty-four hours and seek Kingdom Council approval within sixty days. Nevertheless, the prospect of the Dutch Justice Minister intervening has caused great controversy, and gives rise to a democratic deficit problem insofar as the Dutch minister has no accountability in Curaçao. Given the acrimony, it is interesting to note that the powers envisaged by the agreement are arguably already conferred on the Dutch Justice Minister, *qua* Kingdom Justice Minister, under Art.43(2) of the Statut, given the good governance and legal certainty specifications. There are two key differences between the directions available under the proposed agreement and Art.43, however. Firstly, Art.43 requires agreement of the whole Kingdom Council, not just the Justice Minister acting on the Council’s behalf. Secondly, the Art.43 power is wider in that anyone in government, rather than just the *procureur general*, can be directed to act or forbear. Thus the Art.43 power is both wider in scope and narrower in that authority must be sought from the whole Council. Our respondents suggested that the Netherlands preferred the idea of a clear and modern agreement as the source of such intervention, rather than the *Statuut* with its colonial overtones. Such controls furthermore pander to a popular Dutch caricature of Antillean corruption which could help to placate a Dutch electorate concerned by the debt assumption. Nevertheless, these judicial controls do seem to reinvent the wheel to some extent in so far as Art.43 would grant similar powers under similar circumstances. Those in opposition to the controls rarely seem to acknowledge this aspect of the complex judicial scheme.

There is a broader concern voiced by opposition leaders about the propriety of judicial controls of any sort. They argue that it is a *detournement des pouvoirs* to institute juridical controls as the *quid pro quo* for debt payments. It could even be argued, though not strongly, that the deal contravenes the right of self-determination under

<sup>11</sup> The best translation of this appears to be ‘Director of Public Prosecutions’.

the UN Charter, which forbids a colonial power from the use of conditions to stall self-determination<sup>12</sup>. Those who negotiated the deal for Curaçao, however, contend that this is part of a bilateral arrangement to facilitate the new settlement, and does not affect the core competency of the people of Curaçao to determine their fate, simply their capacity to shift their debt to the Netherlands. Nevertheless, it is not entirely clear why judicial controls should be a condition of debt relief – a situation not aided by the *travaux préparatoires* which fail to explain the rationale of the judicial controls. At best, the necessity of such controls requires further explanation by the Netherlands. At worst, it is a poorly calculated attempt by the Dutch government to appease its own constituency at the expense of the Rule of Law in the Antilles.

<sup>12</sup> Frank Martinus is considering a challenge under international law to the current settlement on this basis.

## CHAPTER IV THE OPTIONS FOR CONSTITUTIONAL SETTLEMENT

In both the referendum of 1993 and 2005, four options were presented to the people of Curaçao: complete independence from the Kingdom, political integration into the continental territory of the Netherlands, remaining in a Netherlands Antilles of Five, or becoming an autonomous country within the Kingdom (sometimes referred colloquially as the *status aparte* option). In this part of our report, we hope to set out our respondent's views on each option, summarizing the central arguments in favour and against each. Where there is a broad spectrum of opinion, we have organized it in line with the tree diagram depicted, above, to counter any impression of hierarchy or valuation.

### ***Respect for Democracy***

A single theme ran as a red string throughout each and every one of our conversations: respect for democracy in Curaçao is admirable. Even the most ardent supporters of different positions made it clear that they have in the past, and will continue in the future, to respect the majority's choice.

This commitment to democracy translates in our report, in line what we perceive to be the two key tenets of modern political democracy: obedience to majority choice, combined with respect for plurality. On a concrete level this means that the focus of our discussions was always on autonomy within the Kingdom, discussing each aspect of the overall package (debt relief, financial supervision, judicial controls) in turn. Many an interviewee, however, personally (or indeed officially) favoured another one of the three possibilities. We have decided to include these arguments at this point of our report, albeit more briefly than our discussion of *status aparte*, in order to provide a full background of the current discussions, and rehearse several constitutional arguments in their original setting.

### ***The Choice of the other Islands***

A final preliminary point remains to be made: all six island which originally constituted the Netherlands Antilles have been asked on several occasions to express their settlement preferences. In both 2000 and 2005, Sint Maarten opted for autonomy within the Kingdom; Bonaire and Saba chose to become Dutch municipalities in 2005; with St. Eustatius alone electing to remain in the Netherlands Antilles<sup>13</sup>. Comparative politics have always played a central role in Antillean history; and it is important to remember that Curaçao's options are to some extent affected by its neighbours' choices: maintaining the Netherlands Antilles with only Curaçao as constituent islands, for example, is somewhat of a constitutional non-starter<sup>14</sup>. With these considerations in mind, we turn to examine the four options in return; starting with independence and moving towards autonomy within the Kingdom via integration into the continental Netherlands and maintaining the Netherlands Antilles.

13 It has since been decided that all three so-called BES islands (Bonaire, St. Eustatius, and Saba) will join the continental Netherlands.

14 Though NB that at least one respondent disagreed with this view off the record; suggesting that in case of a negative outcome in the 2009 referendum, St Maarten and Curaçao may well have to stay united in the Netherlands Antilles.

## A: INDEPENDENCE

The number of those arguing explicitly in favour of this solution is small. In terms of votes, less than one in 25 Curaçaoans expressed a preference for independence in 2005. One factor slightly skews this perspective: several interviews saw the attraction of an independent Curaçao in the mid- to long-term future, but preferred autonomous status for the time being.

### *Autonomy, Dignity, and Self-Determination*

The recurring key theme of the independence camp was dignity: dignity on both an individual and communal level. The fact of having one's own nationality was thus valued above any other consideration; putting it on a plane beyond political and economic arguments. We agree with dignity's singular importance, and will return to the discussion towards the end of this section. Suffice it to say for the moment that a conceptualization that necessarily links independence and dignity is untenable.

On a concrete level, a host of arguments was presented in favour of independence: some sources suggested that there was no real advantage to be gained from owning a Dutch passport as immigration lines, for example at Miami International airport, appear to be the same for all non-American citizens. Turning to the majority of Curaçaoan youth who would no longer be allowed to enter the Netherlands for university or other higher education, it was suggested that their staying on the island would be a clear advantage for society overall, as the current brain-drain towards continental Europe would be halted.

Turning to the Netherlands Antilles option, which several independence respondents had advocated in 1993, but argued fiercely against in 2005, it was derided for having failed to keep out Dutch manipulation of Island affairs. Several economic problems of the 1993 to 2005 era

were cited as evidence here, including unfavourable changes to the local offshore and tax regime, as well as the Netherlands' failure to honour financial undertakings in connection with the International Monetary Fund's (IMF) structural adjustment plans, when only 10% of funds pledged towards the creation of a new Social Security net were ever transferred. This general, and to some extent possibly justified, mistrust of Dutch politics comes out even clearer in a related argument, *viz*, that the Kingdom structure is nothing more than a cloak for the Netherlands' political stranglehold over the Antillean islands. Various opposition parties, in particular, draw the above arguments together into a single conclusion: that the current government negotiations invited back colonialism instead of pursuing a true autonomy within the Kingdom, thus leading to their call for a 'No' vote in the referendum of 2009.

### *Independence: unviable from a political, economic, and practical perspective*

In setting out the manifold arguments against independence we have come across, it will be useful to first address the arguments in favour made thus far, before moving on to suggest additional problems that may lie in complete independence. In short, it is an impossible solution regardless of the perspective considered.

Turning first to the fact of Dutch citizenship, which is granted to all Kingdom citizens under Article 3 of the *Statuut*, this appears to be a key consideration to nearly all citizens. On many an occasion we were proudly shown the ruby passport. From expatriate publishers to local businessmen, everyone listed the advantages of being a citizen of Europe. One rather curious example of this is the Middle Eastern crisis in the summer of 2006, when Israeli troops went deep into Lebanese territory in pursuit of Hezbollah. The evacuation of European Citizens by naval vessels from all Member States, without further regard to individual citizenship, meant

that several members of the Lebanese community in the Netherlands Antilles could escape what was quickly becoming a dangerous war zone.

Amongst different constituencies, it is Curaçao's youth that would lose out most under any independence scenario. Whereas business and political elites may still be able to obtain travel visas relatively simply, the nearly 95% of upper-level high school graduates who head to the Netherlands for their university education each year<sup>15</sup> would find their future options severely curtailed. The brain drain argument, whilst not to be dismissed out of hand, founders on both conceptual and practical grounds. The former, because communal dignity can never be served by denying individuals' freedom of choice (the most fundamental aspect of dignity); the latter because provisions such as the Student Finance Institute continue to ensure that returning to Curaçao is financially feasible.

Moving on to an economic perspective, the two most regularly cited counter-arguments are firmly grounded in empiric reality – first and foremost, the fact that Curaçao in and of itself is not a viable economic unit. As an island lacking both natural resources and the opportunity to cultivate food, without major industry save an ailing refinery, the independent country would have to rely heavily on tourism and offshore financial services for revenues; two sectors of the service industry that are notoriously prone to regular, severe global downturns. Our correspondents in legal and business circles regularly stressed the fact that international investors were particularly attracted by the Netherlands Antilles' connection to the Netherlands and, by extension, the European Union. These guarantees of stability and control implicit in being a country that has managed to remain a constituent entity of a major European

Kingdom are a considerable advantage when it comes to business climate and investor confidence.

Political considerations, finally, are well aligned with what has been seen so far. Both foreign policy and national defence fall under the *Statuut's* Article 3 (Kingdom affairs). The extent of and expenditure for these operations are considerable: from running the Coast Guard and several Naval bases to embassies and consulates all around the world, it is rather hard to imagine how a community of 140,000 people could sustain even vaguely similar levels of service and protection for its citizens. An independent Curaçao may have received several tickets of its own for the inauguration of President Barack Obama (on the occasion, they all seem to have gone no further than the government of the Netherlands, much to the dismay of at least one interviewee); yet it would lose its impact globally gained through its Netherlands association.

To the best of our knowledge, there isn't a single country in this world that is entirely without obligations and duties toward other entities. While the fear of an actual Venezuelan invasion, voiced on a few occasions, might not be well-founded it does appear fair to say that a comparatively small island such as Curaçao would always be subject to considerable foreign meddling.

Last, but not least, it remains to address the idea of the Kingdom government as a "Dutch puppet": to some extent, the Netherlands' control is an empirical fact – in the *Rijksministerraad*, only two ministers represent Aruba and the Netherlands Antilles – yet to quite some extent that is proportionally justified in a democratic kingdom. Without wishing to overstate the arguments, for the differences are manifold, an individual town in continental Holland cannot have veto power over the whole country. Considering the considerable delaying rights enjoyed by the Ministers Plenipotentiary in the Kingdom Council, it is in fact arguable that the

<sup>15</sup> A rough estimate provided by the Student Finance Institute Director.

Antillean islands enjoy executive powers well above their proportional democratic weight.

***Dignity and Independence: powerful concepts, tenuous links***

We agree that dignity, both individual and communitarian, is one of, if not the, most important concern in any constitutional settlement; even to the extent that it deserves being addressed *sui generis*. Nevertheless, we are of the firm conviction that any conceptualisation of dignity that includes independence as a condition *sine qua non* is deeply flawed and politically inoperative.

Autonomy does not equate to autarchy. Actually giving parts of one's sovereignty away in well-negotiated, mutually beneficial tradeoffs is the supreme exercise of dignity, both individually and as a community. Being respected as an equal partner around a negotiating table, whose assertions and binding future commitments are a powerful currency in extracting valuable benefits feeds respect and dignity, rather than decimating it. The European Union is a prime example of the day-to-day benefits of such arrangements: by transferring considerable power from national governments to the European institutions in Brussels, member states have improved their bargaining position amongst each other and enjoy heightened respect from the outside world, ultimately to the benefit of each and every citizen.

Independence at this point in time, alas, would be problematic even from the very key perspective all parties agree on: that dignity, both individually and as a community, must be the most fundamental measurement unit of any agreement.

**B: INTEGRATION INTO THE NETHERLANDS**

At the other extreme of the constitutional spectrum from independence is full integration in the country of the Netherlands. This option proved no more popular to Curaçaoans than independence in either referendum, though it was chosen by the BES islands in 2005<sup>16</sup>. Integration means becoming an overseas municipality of the Netherlands, legally indistinguishable from mainland provinces and similarly governed by a mayor. The result is that Dutch and thus European law would apply more or less in full, as will happen in the BES islands come 2010. Such a preference demonstrates a desire to pass control from the Netherlands Antilles government to the Netherlands government, as very little autonomy is kept under the integration option. The BES islanders will vote in Dutch elections, receive Dutch social and economic support, and become subject to all rules, including penal and taxation regimes, applicable in the Netherlands.

***Advantages – public finances, private benefit***

Though few in Curaçao opted for this solution, several of our respondents saw advantages in it, and one business leader even expressed a preference for full integration. Several reasons can be discerned. Firstly, it was presumed that more money would flow into Curaçao if it were a Dutch municipality. This would be through greater investment from the government and Dutch business. The assumption seems reasonable: application of Dutch law would boost confidence and the government would need to improve infrastructure to European levels as part of their Member State obligations. Furthermore, Dutch social security would be available, reducing poverty issues, and national debt would be a Dutch rather

<sup>16</sup> As noted earlier, Statians initially chose the Netherlands Antilles option, only later opting for integration when it became clear that their preference was not viable.

than island problem. Beyond the financial advantages, integration would provide much greater supervision of local politicians. Mistrust of the Curaçaoan political system was a common, though not universal, theme amongst private sector respondents – if one has this outlook then transferring authority to the Netherlands has obvious advantages: the Dutch would not only supervise governance, but direct it. Finally, respondents who enjoy the Dutch cultural influence in the Antilles would have reason to support greater Dutch involvement in society. Therefore economic and institutional advantages can be discerned in full integration into the Netherlands explaining why it was chosen by the BES islands, and considered by a few of our respondents on Curaçao.

#### ***Disadvantages – autonomy vs. dependence***

These factors persuaded very few in Curaçao. Why? The principal reason we detected for the usual response of dismissing integration out of hand is that watchword of Curaçaoan politics – autonomy. Many people we spoke to were uncomfortable with the degree of supervision granted to the Netherlands in the deal currently on the table, let alone integration. The idea of handing control of island affairs back to The Hague entirely seems very unattractive to the vast majority who enjoy the autonomy granted by the *Statuut*. The notion of ‘neo-colonialism’ was mentioned often in response to questions about this option for constitutional reform. It seems to the authors that an independent streak running through society in Curaçao makes the attractions listed above completely unpalatable because of the *quid pro quo* – dependence.

There are other potential problems with full integration. At present, Curaçao has relatively closed borders, even to Dutch citizens resident in the Netherlands. If integration were realised, then presumably the Dutch and all other EU citizens would be free to establish themselves on the island. Some respondents we interviewed explained that the restrictions on Dutch movement into the Antilles were sensible to stop migration of workers liable to destabilise

the Curaçaoan economy through its cyclical nature. No such controls would be *prima facie* permissible if Curaçao (or the BES, for that matter) became a fully integrated part of the Netherlands. Furthermore, the application of EU law, even if only in part, was viewed as undesirable by many respondents in the private sector because of the restrictions and demands inherent in membership of the EU. The beneficial tax regime would be restricted and the oil refinery would need to be modernised to meet European standards, for example. There are detractions, then, even for those who are not concerned about a loss of autonomy.

#### ***Conclusions***

Though some of our respondents in the private sector noted that things may be better in Bonaire than Curaçao in ten years time because of the different referendum choices made, only one respondent actually voted in 2005 for full integration. The lack of popularity amongst voters and our own respondents seems to derive from a simple calculation: the economic and institutional advantages to becoming a Dutch municipality are outweighed by the loss of autonomy and the application in full of Dutch regulation. That this option can be the most popular in Bonaire and Saba, and the second choice in Sint Eustatius, yet barely register any support in Sint Maarten or Curaçao, demonstrates the danger of analysing the Netherlands Antilles as a whole. Unlike the BES islands, the ‘Big Two’ value self-governance too highly to be tempted by integration. For many of our respondents, choosing integration would be like stepping back 55 years to before the passing of the *Statuut* – such retrograde action could never win over an island so protective of its autonomy.

## C: REMAINING WITHIN THE NETHERLANDS ANTILLES

There is something counter-intuitive about discussing this option in hindsight – the *status quo* cannot remain with the departure of the other four islands and so autonomy and maintaining the Netherlands Antilles is a distinction without a difference. In 2005, it was a different matter, and a sizeable number of our respondents, and the electorate more widely, preferred the current constitutional arrangement, in place since the departure of Aruba in 1986, to any of the changes proposed. There is naturally an inherent bias in the *status quo* rather than the unknown, but other advantages to the Antilles option can be identified from discussion with our respondents. This is unsurprising – a large majority preferred the *status quo* in 1993 despite unanimity among the political parties that *status aparte* was better. However, the intervening years appear to have soured perceptions of the Netherlands Antilles as a federation – these disadvantages will also be considered here.

### *Advantages – Caribbean Unity and Economies of Scale*

We have already mentioned the institutional bias against change. This is not an irrational bias, and feeds into the mistrust of politicians amongst private sector elites to which we have alluded. If politicians are not trusted, one will not give them the power to renegotiate the constitutional settlement, providing that the *status quo* is not too unsatisfactory. Respondents not close to the political process, in civil society and business, often expressed this concern about the capacity of the political establishment on Curaçao to properly steer the island from the current federal arrangement

to autonomy within the Kingdom<sup>17</sup>. This is part of a broader delineation of Curaçaoan society that the authors observed – the linkages between the private and public sectors that are common in Europe and America seem far less pronounced on the island. The Netherlands Antilles option therefore found some favour with private sector respondents because of their lack of faith in the political system. Even amongst respondents less sceptical of the capacity of the politicians, the prospect of negotiating a new constitutional settlement would give pause for thought – the problems we now see in finance, administrative reallocation<sup>18</sup> and juridical affairs demonstrate the dangers faced by those who seek such fundamental change.

Another advantage noted by those we interviewed, the majority of whom preferred this option in 1993, but not in 2005, was the two levels of oversight provided by the federated system. There are Netherlands Antilles Ministers and Island Commissioners who have overlapping areas of responsibility, providing checks and balances. Again, those who do not place great trust in politicians found this to be a good reason to favour the *status quo*. Another political advantage observed was that collaboration allowed a strong bargaining position with other countries, notably Holland – where Curaçao alone would not have sufficient political weight, the Netherlands Antilles could bargain more effectively. A final, less tangible political reason for maintaining the *status quo* is a sense of solidarity. Several of our

17 This concern is only really prevalent amongst those who would otherwise have chosen autonomy within the Kingdom because integration involves stripping power from the local political elite and independence suggests a strong faith in their capacity to run the country without interference.

18 Several respondents in charge of administrative appointments expressed apprehension at the need to be representative of all the islands rather than simply Aruba and the Netherlands Antilles.

respondents explained their prior or current preference for keeping the Netherlands Antilles in terms of a belief in Caribbean unity and a shared history. We have dwelt on the differences between the islands already, but it is important to note that the islands of the Netherlands Antilles have many things in common too. In an age of globalisation and federalisation<sup>19</sup>, some respondents felt that the social similarities found in the Antilles should be used to continue this federated relationship.

The other key reason for keeping the Netherlands Antilles, which Etienne Ys explained as the primary motivation for forming the PAR, is the economic advantage of the federation. The argument is that free movement of capital and persons within the country of the Netherlands Antilles promotes efficiency, flexibility and specialisation. These desiderata are arguably hampered by the dissolution of the Antilles into autonomous island states. As with any economic analysis, of course, the costs of maintaining the *status quo* would need to be calculated against these putative advantages. Our interviews suggest that the business community assessed in 1993 that the free movement advantages of the federation outweighed the economic disadvantages, discussed below, but that by 2005, the majority considered that argument to go the other way.

### ***Disadvantages – insurmountable political and financial obstacles***

This shift from viewing the Netherlands Antilles as economically advantageous to burdensome is a theme amongst our respondents, corresponding to the referendum results in 1993 and 2005 moving from *pro* to *contra* the *status quo*. There are several strands to the burden argument. Firstly, the layers of oversight which could be portrayed as a regulatory boon are equally susceptible to arguments of fiscal inefficiency – paying two people to

do the same job. This idea of wasteful public spending was highlighted by the IMF investigations leading to Miguel Pourrier’s controversial order to streamline the civil service in 2001. Not only is it expensive to employ two layers of government, leading to higher taxation, but our respondents noted that there also exist two layers of red tape – permits need to be approved at the island and federal level leading to expense and delay. By freeing itself of the federal oversight, the argument runs, Curaçao could reduce its public spending and promote efficiency through regulatory streamlining.

A second strand is the tension, present since the creation of the Netherlands Antilles in 1954, between Curaçao and the smaller islands concerning the distribution of wealth between the islands. This not only explains the enthusiasm with which the other islands sought to disband the federation, but also the preference of Curaçaoans to excuse itself from the distributive task. Many of our interviewees expressed frustration at the acrimony between the islands stemming from the fact that foreign money came into Curaçao and was shared, or not, afterwards. They noted an increase in this tension in recent years, leading to a desire to end the allocative confrontations. The third strand is a belief that Curaçao was ‘carrying’ the smaller islands, and could do better without them. Curaçao’s economy is approximately three times larger than that of Sint Maarten, the second biggest island<sup>20</sup>. The proportion of waste inherent in the federal system which is borne by Curaçao is therefore far larger than that of the other islands, compounding the other economic factors weighing against the Netherlands Antilles settlement.

19 The EU is perhaps the most striking example.

20 An approximation was provided by Constitutional Affairs Minister Roland Duncan.

These fiscal advantages and disadvantages were all relevant in 1993 and 2005, and so they cannot *in abstractu* explain the move away from the constitutional *status quo*. However, in light of the economic downturn experienced over these years, the change in our respondents' perceptions of the benefits of the Netherlands Antilles is understandable: it is difficult to rely on the theoretical advantages of a free market during an economic slowdown. As a result, the finely balanced arguments were firmly tilted toward dissolution of the federation with the financial problems of the turn of the century.

Our interviewees were not persuaded solely on economic grounds, though. After Aruba seceded, it was said that “6 – 1 = 0”, encapsulating the idea that the Netherlands Antilles could not work without the island. This may have influenced voting in 1993, but once Sint Maarten voted in its 2000 referendum for autonomy within the Kingdom, the matter was decided for many. Even if six minus one was not zero, six minus two would be sure, or so the argument went. Presuming that the Netherlands Antilles were about to collapse whatever they did, several of our respondents indicated that they did not want to find themselves on a sinking ship. This no doubt influenced the broader electorate in 2005 too.

The economic efficiency of two overlapping tiers of government also has political drawbacks – private and public sector respondents complained of the paralysis and lack of duty delineation in the system. This could be countered by the argument that almost all governmental systems, including the famously unitary British Parliament, have at least two layers, but it seems from the consensus amongst our interviewees that the Antillean system did not function effectively. Therefore the oversight lost by reform would seem better addressed by the creation of more effective checks and balances within Curaçaoan government than modification of

the *status quo*. Such modifications, on which the PAR campaigned in its successful elections in the decade following the 1993 referendum (PAR stands for ‘Party for a Restructured Antilles’), proved impossible to pass, adding to the frustration of the electorate.

Another political problem with the *status quo* is the nature of party politics at the Antillean level. Those we spoke to working at the federal level bemoaned the fragility of coalitions formed from parties across the islands – the lack of Antilles-wide political movements seemed to frustrate political progress. However, the island level system is also fraught with instability. This can be seen in uneasy coalition between PAR and PNP on one hand and FOL on the other – the pro-agreement parties needed the assistance of an unlikely bedfellow in order to form a government. There is no reason to think that fragile coalitions will be disposed of with autonomy, but the talking at cross-purposes between politicians concerned about island-specific issues seen at the level of federal politics will be no more. This is a major incentive we have heard from politicians, though also in the private sector, for dismantling the current constitutional artifice.

## **Conclusions**

There are numerous arguments in favour of the *status quo* and numerous others which show autonomy within the Kingdom to be preferable. Ultimately this discussion passed into history when the people of Curaçao voted, by a wide margin, for the latter option. Self-determination must trump any rational arguments to the contrary, and all of our respondents, of every stripe, have respected the will of the people to choose autonomy within the Kingdom. The arguments set forth above are nevertheless worth rehearsing because the authors believe that understanding the reasons for the shift in support from the *status quo* to autonomy within the Kingdom can better facilitate that transition.

## D: AUTONOMY WITHIN THE KINGDOM

The final option to be discussed is the popular choice in the 2005 referendum – autonomy within the Kingdom. It is this option that the government has sought to negotiate in the intervening years, and which will be subject to another referendum later this year. In our analysis, we shall firstly evaluate the autonomy choice in the abstract, as we have done with the other options, before examining the settlement negotiated following the democratic mandate of 2005.

### *Autonomy in the abstract: Why leave?*

The reasons for selecting to withdraw from the Netherlands Antilles have already been considered, as disadvantages to that option in the 2005 referendum, and so can be dealt with relatively briefly here. Economically, freeing Curaçao from the other islands, reducing the layers of government and moving on from the financially turbulent *status quo* propelled people to seek autonomy over remaining within the Netherlands Antilles. Politically, refining the political process and abandoning the failed state of the Netherlands Antilles were factors. These issues have already been raised. Another reason for voting for autonomy within the Kingdom, which respondents across the spectrum noted, was as a development toward independence. A sizeable number of interviewees saw autonomy within the Kingdom as a necessary stepping-stone *en route* to independence; they believed that Curaçao was not ready to leave the Kingdom yet, but that a new stage in the evolution of the island toward total autonomy was necessary. The authors do not wish to comment on whether independence should be an absolute goal for Curaçao, but it certainly seems logical to seek autonomy within the Kingdom first if that is to be the ultimate goal.

Another section of respondents saw autonomy within the Kingdom as sufficient in itself, demonstrating the ambiguity inherent in any analysis of this option for

reform – it is impossible to establish what proportion of the 68% who voted for autonomy saw this as facilitating independence and what proportion had no intention of challenging their membership of the Kingdom. From our own experience, roughly half the voters perceived autonomy as part of the independence process, though the extent to which our interviews can be extrapolated to broader trends is unclear. Certainly a belief in the eventual independence of Curaçao encouraged many voters to choose autonomy within the Kingdom.

Several things are lost in the choice to leave the Netherlands Antilles, however. These, again, have already been considered under the section on advantages of keeping the *status quo* and need not be rehearsed here. Needless to say, the risks of negotiating a deal with Holland, the loss of economic flexibility and the potential lack of political oversight in the autonomous settlement put a number of respondents off the idea of autonomy within the Kingdom. These concerns were not particularly compelling to the majority, though. This seems to the authors to result from the political and economic failures of the last decade, which detract from the arguments for the *status quo* dramatically. The people of Curaçao therefore opted for autonomy within the Kingdom, creating a democratic mandate for the island and federal governments to negotiate an end to the Netherlands Antilles as a federated country. It is to this negotiation that we must now turn.

### *Autonomy in fact: the negotiated agreement*

We have already discussed the agreement hammered out between the delegations of the Netherlands and the Antillean islands. We must now turn to how this agreement has been received by the people of Curaçao. The negotiation we shall discuss here is the latest at the time of writing – signed at the Round Table Conference of December 2008. The proposition put to the public in the referendum later in the year may be subtly different

from that considered herein; the Kingdom Advisory Council is expected to report in March and may suggest changes to the judicial control aspects of the deal on the table. With this caveat in mind, let us examine the deal and our respondents' views on it.

The core of the agreement is that Curaçao will be governed autonomously save those Kingdom affairs stipulated in the *Statuut*, much as Aruba is now. The relationship with the Kingdom will not therefore change significantly; the difference will be that there will be no federal government between the island leadership and the Kingdom Council. This aspect of the deal is relatively settled and accepted by those we interviewed – it encapsulates the democratic mandate of 2005 in that the Kingdom layer remains unchanged whilst the Netherlands Antilles is removed from the constitutional picture.

The financial and judicial controls we discussed in the '2009 Referendum' section of this paper have given the starkest contrast in views – some government officials view the deal as surprisingly good whilst opposition leaders consider it an indecent proposal and tantamount to re-colonisation. We shall begin with the sceptics.

## **E: OPPOSITION TO THE AGREEMENT**

There were three types of opposition to the agreement. Firstly, there were those who believed that Curaçao needed independence and therefore any involvement of the Dutch or Kingdom governments in the process was wholly inappropriate. Secondly, there were those who believed in autonomy within the Kingdom, but found the agreement negotiated by the coalition wholly unsatisfactory to the extent that they would vote 'no' – this is the MAN position. The final position, held by a large number of our respondents beyond the coalition negotiators, is one of genuinely felt dissatisfaction with individual aspects of the deal struck but not sufficient

to prevent them from voting 'yes'. There was much common ground between these apparently disparate groups in the opposition to terms of the agreement.

### ***The Independence Movement***

The first position, held by some Opposition politicians and prominent figures within Curaçaoan society such as the Jesuit priest Amado Römer and the author Frank Martinus, is ideologically consistent – though our respondents were adamant in their respect for the choice made in the referendum, the judicial and financial oversight negotiated by the government in return for the bailout would be inherently unacceptable as condoning Dutch involvement in Curaçaoan affairs. For respondents in this camp, autonomy within the Kingdom should be interpreted as everything short of complete independence so that the Dutch should either give aid unconditionally or not give any aid at all; the financial assistance provided by the Netherlands government was not necessary and so it would be better to have no money than to have the bailout and Dutch interference. This position, and nuances of it, have an internal consistency because the concept of autonomy itself there carries a premium sufficient to outweigh the economic stimulus that the Nafl. 3.5 billion would provide. There are two aspects to opposition from this camp beyond simply wanting greater autonomy.

Firstly, there is the belief that the use of a weak financial position to dictate terms for constitutional resettlement is completely inappropriate. The respondents in this camp told us that it was the duty of the Dutch, having severely damaged the island through colonialism, to assist financially in its recovery – to use this assistance as a means of retaining influence was argued to be wholly inappropriate. They believe that the economic problems in the '90s and early part of this decade were largely due to Dutch intervention in the off-shore industry, a drastic cull of civil service jobs, and tax regime changes, so that

the debt was caused by the Netherlands anyway. With this world view, it is obvious that the conditionality of the bailout is unacceptable.

Secondly, the Dutch belief in the need for judicial and financial supervision, for interviewees who believe in independence, illustrates the patronising and colonialist attitudes which they find so unacceptable. These respondents felt that there was a lack of self-confidence and identity in Curaçao which was maintained through the dependency on Dutch oversight and intervention – only by ending this could Curaçao prosper. As one interviewee put it, “the Dutch make themselves indispensable”.

Therefore a deep distrust of the Netherlands and a strong belief in the independence of Curaçao combine to make any judicial or financial controls unacceptable to our interviewees who believed in independence, now, for the island. Though they believe that autonomy within the Kingdom is a necessary step, because the people voted for it, they do not want to see any interference with this autonomy. The authors suspect that any deal involving financial assistance from the Netherlands would prove equally unacceptable. As a practical matter, then, this group are not compelling if one believes, as the authors do, that some economic assistance is necessary to the newly formed state of Curaçao.

### ***The pragmatic ‘no’ position***

The second group who have concerns about the deal are those who do not think Curaçao is ready for independence, yet consider the proposed agreement unacceptable on its terms. Unlike the independence movement, the opposition here is mostly on a technical rather than ideological level – a deal struck with the Dutch to facilitate autonomy within the Kingdom is not conceptually troubling, but what has been negotiated is. Nevertheless, mistrust of the Dutch is the focus of the concerns.

The financial controls are unacceptable to, most notably, the Opposition parties, because they go too far. MAN politicians made comparisons with Aruba, where no financial oversight was negotiated as part of the *status aparte* settlement. To have Dutch supervision of Curaçao would therefore be unfair because of an irrational lack of parity – Aruba did not have a better financial track record than Curaçao, and so Curaçao should be treated in the same way. There are two issues with this argument. Firstly, the oversight is not precisely termed ‘Dutch’. We noted above that an independent commission, consisting of two Dutch and four Antillean members, would supervise the Curaçao budget and advise on potential improvements. Only if there is consistently no action on this advice, the Kingdom Council can step in to amend the budget. This may be too legalistic as a reponse – the Kingdom Council is dominated by the Netherlands government, after all – but the Antilleans are nevertheless represented at both stages of supervision and in the majority at the initial stage. The second problem with this argument is that Aruba was not given the financial assistance and guarantees which Curaçao has. It is therefore a poor analogy – the better one would be the BES islands, who are in fact under much greater scrutiny in return for the bailout because they accepted the deal before it was renegotiated by the governments of Curaçao and Sint Maarten.

However, the financial supervision is subject to a second, more powerful, attack. The budget is drafted by politicians elected by the island’s electorate whereas the commission is appointed and the Kingdom Council consists of appointed Ministers Plenipotentiary to represent the Antillean islands and ministers elected by the Dutch. The result, observed by respondents of all stripes, is a democratic deficit. The budget can, theoretically, be dictated by people entirely unaccountable to the Curaçaoan electorate. This is problematic not only to the ‘pragmatic no’s’, but also many who are in favour of the deal on balance. There are two answers to this criticism – firstly that this is a matter of final

resort only relevant where the elected officials are failing in their fiscal duties. To this extent, the rules are no more troubling than judicial review or impeachment proceedings. The second answer is that the Dutch electorate have no say over how the money they are paying in Curaçaoan debt is otherwise being expended. If their investment is being mishandled, they have a right to have their ministers intervene in return for footing the bill.

Both these arguments in response rely on the controls being objectively rational, but we contend that 5% controls and a balanced budget are sensible aspirations for a government, and so the democratic deficit problem is not as grand as it at first appears. The agreement seems to us to be balanced – Curaçao gets financial assistance and the Dutch get some guarantees that their aid was not in vain. On the ideological level, we do not feel qualified to comment, but as a matter of practicality, the financial deal is good. Even for those who do not trust the Dutch, the objectivity and Antillean involvement in the controls are important safeguards.

A final economic reason for voting ‘no’ suggested to us during our interviews, again by opposition politicians, was to get a better deal on the financial package. There is a belief that, as often happens in the EU, rejection leads to conciliation so that the Dutch would ask for less control for their money. This is a common and rational negotiation technique, but only when one is satisfied that the other side has what is technically referred to as a ‘poor BATNA (Best Alternative To Negotiated Agreement)’, and so will renegotiate. Our government respondents were adamant that a ‘no’ vote would *not* lead to a better deal. The political spectrum in Holland has shifted right since the negotiations started, hardening views on the Netherlands Antilles. Together with Prime Minister Balkenende’s remark that there will be no new agreement, it seems unlikely that a negative outcome will result in a better financial package.

The financial package, therefore, is relatively balanced. Despite concerns about a democratic deficit and Dutch misuse of the powers under the settlement, it seems to the authors that the financial controls are proportionate to a Nafl. 3.5 billion bailout. The deficit is minimal, and gives some acknowledgement to the Dutch democracy, whilst the possibility of abuse is limited on all sides by the widely accepted and objective controls agreed.

The judicial controls are less clearly reasonable, causing more widespread consternation than the financial controls. Several high profile figures are in this ‘no’ section rather than the one below because they consider the judicial controls inappropriate. The first argument is that it is unacceptable to seek juridical oversight as *quid pro quo* for financial assistance. Whilst seeking guarantees of financial propriety are logically consequent from financial assistance, judicial guarantees are less so. The counter-argument to this is that a functioning legal system is a necessary part of financial stability, but this is not the argument made by the Dutch government – in fact the *travaux préparatoires* do not, unusually, explain the judicial paragraph. This does not assist in the justification of the controls. The judicial controls therefore seem tangential to the financial *quid pro quo* of Nafl. 3.5 billion.

Another problem we detected is that idea that the Dutch are perpetuating a caricature of incapacity has greater resonance and therefore stirs up greater opposition in the judicial sphere. Many of our respondents noted that Curaçao has never experienced legal collapse of the sort envisaged by the judicial controls, and so resented the inference that such collapse was a credible danger. This is in contrast to the financial crisis, howsoever caused, which led to the bailout. The reply here would be that the Antilles have seen such juridical crisis, in Sint Maarten, and so that creates a credible threat, and furthermore that there is no harm in the controls if

there is no chance that they would be used. The former argument flies in the face of the autonomy settlement which distinguishes the islands federated under the *Statuut*, whilst the latter exculpates at best but certainly cannot justify the controls.

The Aruba comparison appears in the judicial controls row too. When granted *status aparte*, Aruba was not subject to any direct judicial supervision, and was given its own *procureur general*, leading to the complaint of double standards. Again, this could be rationalised as part of the *quid pro quo* for investing so much in Curaçaoan society, but the logic is more strained here – the financial fears of the Dutch and so Kingdom government should be allayed by the *financial* safeguards acquired in the negotiations. The Arubans had no better or worse judicial record than Curaçao, and so the comparison seems harmful to the ‘yes’ vote. This comparison is not just made by those who plan to vote ‘no’, but it is only they who consider the comparison sufficiently troubling to reject the whole deal.

Finally, some respondents in the political sphere have voiced concerns about the danger of having a single *procureur general* for all five islands of the Netherlands Antilles following the new settlement because these roles will pull him in different directions – “a man cannot serve two gods” as several put it. This seems to be of some concern, but because the normal proceedings will not require intervention from this essentially political figure, the conflict of interests worry seems marginal at best.

Despite all of these difficulties with the judicial aspect of the agreement, the authors do not agree with the proponents of a ‘no’ on practical grounds. This is because the *status quo ante* provides for more far-ranging judicial intervention under the *Statuut*. Article 43, read with Article 51, permit the Kingdom Council to direct the government of the Netherlands Antilles or Aruba when good governance or the Rule of Law have completely degenerated. The same

threshold of complete local incapability applies to the new power of the Kingdom Justice Minister, on behalf of the Council, to direct the *procureur general*, but no other organ of state, to commence or cease proceedings. There are, however, procedural safeguards in the new agreement of writing within 24 hours, the possibility of judicial review of the order and the need for Council ratification within 60 days, which circumvent this power. Although the Minister can, initially, act independently, it is to a much more limited degree. Therefore, as a pragmatic matter it seems inappropriate to reject the deal on the basis of these judicial controls, however poorly rationalised, because they offer no threat to Curaçaoan autonomy not already present.

So there are a number of technical objections to the financial and judicial provisions of the new agreement which, in toto or independently, suggest to the respondents in this camp that they should not support the deal. The authors do not see the financial controls as problematic; they seem the reasonable bargain for the financial support provided. The judicial aspects are more troubling, and we contend, not justified. They are not related to the bailout, promulgate caricatures about Caribbean justice and lack proper justification. However, they do very little in effect, and so the cost of a principled stand against them is too great. There is no good reason to vote ‘no’ on the basis that a better deal should have been reached. Only if one is ideologically bound to independence should these terms amount to an unacceptable agreement.

## ***The Concerned 'Yes' Position***

This is a very large group indeed. Almost everyone we spoke to had some criticism of the deal, including those who had had a hand in the negotiations. The Netherlands government had sought considerable guarantees in return for their investment, and their superior bargaining position meant that compromises needed to be made on the Curaçaoan side. The concerns considered in the section above were also raised by respondents who will vote 'yes'. Two principal factors can explain the divergent conclusions of these two groups. Firstly, the 'yes' voters were generally less distrustful of the Dutch, having had more dealings with them through education, business and politics than the 'no' groups. Secondly, they had more faith in the capacity of the coalition to drive a good bargain, because they were part of the process or supported the coalition parties. Therefore the judicial and financial controls seemed more reasonable – the Dutch could be trusted not to abuse their power and the deal must have been good because of all the tough negotiating done by the coalition. Nevertheless, the same worries were prevalent amongst those in civil society, politics and business who voted 'yes' as who voted 'no'. To equate the quality of difference that we see between the independence movement and the coalition with the quantitative differences that exist between the pragmatic 'no's and the pragmatic yes's would be an error. Opponents of the deal add up the same advantages and disadvantages with subtly different biases to its proponents – there is nothing as dramatic as many people have been led to believe.

## ***Advantages to the agreement – sufficient to tilt the scales***

The agreement has one key advantage – a 'yes' vote would realise the ambitions of the majority of Curaçaoans to become autonomous within the Kingdom, whilst 'no' vote would frustrate this process by adding delay to an already lengthy process. To say 'no' then requires good reason. Those who support the deal do not do

so unreservedly, but point out that, in the words of one respondent, “seven out of ten is good enough”, or in the words of another, “a bird in hand is better than two in the bush”. We have assessed the agreement to be relatively fair, and where it lacks this quality, it is at least not harmful. The main advantage of the agreement, then, is to facilitate the mandated change.

There are other advantages to the deal. Firstly, the degree of economic guarantee and underwriting puts Curaçao in a strong position as it becomes a new country – its bonds will be highly rated and its debt minimal. Furthermore, it will have the guarantee to foreign investors that it is being monitored by an independent commission, and ultimately an EU Member State government. The package also contains a Nafl. 60 million economic stimulus fund, which is sizeable in conjunction with the amount of interest saved by Nafl. 3.5 billion debt being wiped. The same guarantee function operates in the judicial side – citizens, visitors and investors can rest assured that even in the event of crisis, the Rule of Law will be maintained. Whatever its problems, the judicial law does this.

Finally, to invert the comparisons made with Aruba, the deal could have been a lot worse. Had the government not bargained hard, they would have accepted the deal given to the BES islands, with its much stricter controls. Thus, things could have been much less favourable to Curaçao. Our respondents seem relatively sure that things would again be unfavourable if there is a 'no' followed by more negotiating. So an advantage to the agreement is that it is timely – the optimum arrangement is probably on the table.

The authors therefore believe that the agreement is sound, and deserves the support of the people in the upcoming referendum. The independence movement cannot accept the deal, but for anyone who wishes to see autonomy within the Kingdom, we would recommend

voting in favour of the deal – it is far from perfect, but it is acceptable, necessary and the last chance.

## **Conclusions**

We have reviewed the four options open to Curaçaoans in 2005 in the hope of articulating some of the reasons behind the positions taken in the run-up to the 2009 referendum. Independence was considered, but rejected on a practical and theoretical level, though we consider that only by rehearsing the independence arguments can the opposition of its prominent proponents be understood. Integration within the Netherlands was never seriously discussed for Curaçao, but to appreciate what autonomy within the Kingdom means, one must look to the alternative, chosen by the BES islands. Those who resisted this option despite seeking to remain within the Kingdom thus demonstrated affection for and wariness of the Netherlands – a complex relationship that is often misunderstood and misrepresented. The Netherlands Antilles option was reviewed for the purpose that its failings must be remedied in the deal struck by the government; the shift was from federation to autonomy so an appreciation of what did not work in the *status quo* is necessary to understand how to formulate the future constitutional settlement.

What can we conclude from this description of the views of our respondents toward the four options? Firstly, whilst independence was concluded to be unrealistic at this point, and not mandated for dignity as some of its proponents claim, the movement have real ideological concerns with the agreement that cannot be batted away lightly. If one values autonomy more highly than any pragmatic consideration, then you must conclude that the deal was bad, even if you are committed in theory to autonomy within the Kingdom as the democratic mandate. Therefore, the opposition of this group is inevitable, but also rationale if their world view is accepted.

For the majority, this is not their world view – a stable political and economic system within a relatively autonomous state suffices on the constitutional level. For these respondents, we found that their concerns were remarkably similar. Whether coalition negotiator or opposition MP, the democratic deficit and the futility of the judicial controls are problematic. We also found that when the deal was fully explicated, there is no practical reason to vote ‘No’. If autonomy within the Kingdom, the *status quo* or even integration within the Kingdom is one’s preferred option, the vote should still be ‘Yes’ because that is what must follow the 2005 referendum and, furthermore, it is a good deal on the whole. The financial controls belie a tough but reasonable deal in return for a bailout, whilst the judicial controls are at most unnecessary but not harmful and so should not jeopardise the progress represented by the agreement on the table. Only a belief in the importance of absolute autonomy at the expense of every other consideration, though not a belief in dignity as we have shown, allows for an ideologically consistent rejection of the deal. Whichever other views expressed herein that are held, the agreement gets closest to that view, given the reality of the situation. Much of the resistance we have encountered relies upon caricatures of the settlement and confusion as to its consequences. We believe that the deal could be improved by the scaling back of judicial controls, not because of any impact they might have, but because it feeds the conception of recolonialisation which is inaccurate but pervasive. Nevertheless, none of the arguments we have discussed, save a strict devotion to self-rule under any circumstances, should conflict with the belief that the deal should be accepted. The question then becomes how to communicate this conclusion to the public.

## CHAPTER V COMMUNICATING THE OPTIONS

n the process of re-arranging the constitutional setting of a democracy, details of legal and political substance will only go so far – the other key part is public dialogue: questions of how information reaches society at large, which discourses are held amongst those who disagree, and how opinions are communicated. In the course of our interviews we quickly became aware of the stark differences between different groups, in terms of communications on both a substantive and formal level.

### *Well-rounded information as a basis for public debate*

Building on our substantive conclusion, this section sets out the various aspects of communications we have come across, focussing on who communicates with whom, how this dialogue is conducted, and to which ends. For ease of analysis, we have subdivided our observations as follows: communication on specific issues, conciliatory / management discussions behind the scenes, and attempts at shaping public opinion. We will evaluate each in turn, looking at advantages and disadvantages of various strategies in order to lay the foundations for the final section of this report: our policy recommendations.

### *Issue-based, targeted communications: limited purpose, isolated occurrences*

This form of communication appears best suited for a reasonably well-defined and structured group wishing to express its stance on a focussed issue. We have come across it reasonably rarely in the context of the constitutional debate; presumably due to its inbuilt limitations. One striking example was a letter written by the Jewish Community in response to a public demonstration on in December 2008. Some of the participants had taken to wearing a yellow Star of David with the word ‘No’ written across it; the Jewish Community of Curaçao objected to this by pointing out the very specific context of this symbol during World War II.

A somewhat related form, which ought to be mentioned at this stage, is the open letters to the editor written on

a surprisingly regular basis by former office holders. A mix of constitutional analysis and political commentary, these articles appear in the major local newspapers and shine light on particular issues from the author’s personal perspective. They are a valuable contribution to pluralistic public debate, insofar as they often seem to ignite discussions on a comparatively narrow, well-defined issue. In terms of policy work, however, their utility is somewhat limited; firstly, because comparatively few individuals on the island enjoy the status of elder statesmen respected by friend and foe alike<sup>21</sup>; and secondly, because the flipside of their strength (narrow focus) is also their shortfall, *viz* an inability to cover all areas and questions.

### *Communications behind closed doors: advice and dialogue*

One of the advantages of drawing one’s whole political apparatus from little over 140,000 citizens is that nearly all politicians *emeriti* are very familiar with each other, as well as senior business figures; often regardless of political or other opinions. With the exception of certain circles, such as the more radical members of opposition parties, this means that many an issue or growing conflict can often be sorted out with a brief phone call or discreet conversation.

One area where the *hommes de l’etat* provide a particularly useful conduit is any sort of political communication with the Netherlands. Be it details surrounding round table conferences, emotionally charged questions in negotiations, or the explanation of future developments in Dutch politics that could not be discussed on the record – this form of dialogue ensures that things can progress on a reasonably smooth basis, and ensures that negotiations can take place with all parties possessing the

21 Limited further by the fact that these individuals often engage in the behind-the-scenes communications discussed immediately below.

maximum amount of background information.

Whilst thus immensely helpful, the *per definitionem* limited circle of information recipients means that certain key considerations go unnoticed by a large proportion of the population. One such example is current shifts in Dutch politics; summarised in broadest of terms as a general shift towards the right on the political spectrum. A number of Dutch political leaders are thus understood to look towards stepping up both rhetoric and political pressure against the Antilles in the near future – an important factor to point out to those who consider their ‘no’ vote as a bargaining chip for an improved deal; whereas no such deal may be available from future Dutch governments.

### ***Communicating with the electorate***

In addressing Curaçaoans as a whole, two main categories of information are usually conveyed: substantive, technical information such as the explanations in Chapter II of this report; and different constituencies’ opinion and comment on this. As regards the referendum of 2009, the organising commission (a neutral arbiter, funded with public money, but not subject to any control by either government or the opposition) is also tasked with informing the general public about the different aspects of the referendum package. This information includes not only communications regarding the substantive terms of the negotiated outcome (e.g. debt relief, or the various Kingdom supervision and control provisions), but also on the nuts and bolts of the actual voting, such as poll booth locations and registration procedures.

The meat of the political process, however, lies elsewhere: in the run-up to the early summer referendum, two camps have formed – ‘yes’ and ‘no’.

## **POLITICAL PERSPECTIVES I – NO: THE OPPOSITION’S COMMUNICATIONS**

Looking first at those who are opposed to the constitutional settlement package, three key features of their communications strategy stand out: coordination, message tailoring, and delivery. Having set out details on each point, we will then turn to show how they combine to a very effective communications strategy.

### ***Coordination: different opinions, united behind the cause***

The spectrum of different opinions even amongst those who soundly reject the settlement package has already been rehearsed extensively: some merely hope for a better package to be negotiated following a first rejection, whereas others reject any Kingdom meddling outright. Yet, in terms of communications strategy these differences in argument seem to have been buried for the time being. Having formed a central body, the *Allianca Patriotico*, different camps actively coordinate their public objection.

Not all respondents were explicit about their coordinative efforts; another measure we consider very effective (even if, from an interviewer’s perspective, rather frustrating). By being somewhat cagey about their structures and subsequent steps, it becomes a lot more difficult for the deal’s supporter to pre-empt opposition arguments or to control the daily cycle of news and public argument. Covering the broadest possible spectrum of ideas, and avoiding any unnecessary doubling up, is the third major advantage of central coordination. Rather than having to pick at the package topic by topic, this allows the opposition to attack the settlement on different fronts simultaneously; in the end leading to a single, clear message emerging from the cacophony of voices: voting ‘yes’ is bad for Curaçao.

## ***Message Tailoring: the political laws of supply and demand***

One complaint emerged time after time: many interviewees were unsatisfied with the kind of information available, as well as the level at which it was pitched. Opposition to the settlement, on the other hand, is rarely if ever couched in technical terms or abstract conceptual discussions.

Emotional arguments are used instead. Drawing on historical wrongs such as slavery and colonial imagery, selected aspects of the deal – usually at the extreme end of the spectrum of possibilities, and without any mention of the threshold conditions to be met before the power can be exercised – are portrayed as nothing less than re-colonisation of the island through a cooperation of the Dutch government and the local coalition.

The latent anti-Dutch climate in a substantial sector of society is used as a basis for whipping up an ‘us-against-them’ feeling *a la* David and Goliath – helped no doubt by the generous addition of irrelevant and potentially even wrong arguments. Two such examples that have only recently come to the authors’ attention are the idea that beach access would be banned for locals in order to allow Dutch tourists full enjoyment of the island, and the impeding moral degradation of island youth due to a more liberal stance in the continental Netherlands on issues ranging from marriage to substance abuse.

## ***Information Delivery: reaching your audience***

Having thus conceived of what to say, it finally remains to be actually communicated. Here, the key to success in our eyes is focussed targeting: the smaller the unit, the more effective the delivery. By sending representatives drawn from all membership layers out to local bars and pubs the opposition manages to motivate precisely those voters whose voice will count on referendum day. Discussions that take place in small groups over a drink

at the end of many a voter’s workday have the potential to harness the day’s energy and frustration, channelling them into support for the opposition’s views about Curaçao’s political future.

## ***Conclusion***

Drawing together the above points into an evaluation of the ‘no’ camp’s communication strategy, two things are very noticeable: the substance communicated is certainly not ideal from an objective point of view, for example due to its lack of grounding in substantive information, the potential abuse of stereotypes and the creation of a political climate that may permanently harm cooperation with the Netherlands. Nevertheless, it is a strategy perfectly tailored towards a clear goal – to have the settlement pack rejected by a majority of voters on referendum day.

## POLITICAL PERSPECTIVES II: COMMUNICATION IN FAVOUR OF A SETTLEMENT

In this section, it is no longer possible to speak simply of the island executive coalition's opinion: in the course of interviewing we identified a range of stakeholders whose constituencies are strongly in favour of voting in affirmation of the negotiated package as it stands. In line with the first perspective discussion, and in order to allow for an objective comparison, we will yet again look at three central aspects of communication: how is coordinated, what is communicated, and how is this information meant to reach its recipients?

### *Coordination: different sets, reluctant to come together*

There are two potential lines of fissure in the yes camp: one between the public and private sectors, and another within the governing coalition itself. As regards the former, for example, the authors are aware of the recent initiation of a series of coordination meetings in each sector; yet there are still no signs of cross-sector coordination or least communication.

Similarly, several actors at various levels of the governing coalition still see some issues with the deal as negotiated, and may therefore be tempted to withhold wholehearted support. This may well provide more room to manoeuvre for arguments on the day after the referendum; but it considerably weakens the impression of those who negotiated the package standing behind it as a united block.

### *Message tailoring: technicalities and duplication*

The opposition's strength, the coalition's weakness: we understand from a wide range of conversations that much of the information currently provided in favour of the arrangement is comparatively technical. One exasperated interviewee with strong positive leanings went as far as suggesting that it may well end up as the

worst and driest political campaign they had ever come across. Even as the tone has started to shift towards the more emotional recently, the danger that arguments themselves continue to be too technical remains.

Technicality in itself is to be greeted – all information possible needs to be in the public domain to enable voters' free choice. Yet one source of information is easily sufficient – a role already played successfully by the referendum commission. Any doubling up through government channels will thus not only be redundant, but harmful by diverting resources and attention from the central yes message.

### *Delivery: the danger of missing your key audience*

Again, delivery was a point of contention for nearly all pro-agreement interviewees. The two main criticisms can quickly be summarised: information needs to be provided actively, not simply be available on demand. Finally, there is no time left to waste energy on constituent groups who are already firmly convinced either way.

One example of not being anywhere near hands-on enough is the delivery of information through a somewhat modified 'town hall' system; in essence requiring a group of citizens to sign up for a weekly meeting, in which a senior government official will seek to explain the pro-agreement position. In comparison with the opposition's proactive efforts at reaching large parts of the population in traditional discussion places such as local bars, it becomes easy to understand why most respondents were critical of the government's still limited efforts.

Such an effort will, of course, require more resources – but they may well already be available, if not applied in a targeted enough fashion. Here, a Jewish Curaçaoan pointed out that to the best of his knowledge members of his community stood firmly in support of the new constitutional settlement – and were very surprised

to find themselves approached regarding referendum information sessions.

## ***Conclusion***

It should not be forgotten that most aspects of communication covered in this section are very current issues; developing, changing and being re-shaped even as this is written. There are nevertheless a series of key points to be taken away, on a general level as well as in the specific context of the Curaçao referendum campaign. Political communication, firstly, requires coordination: especially in a yes/no referendum, all those campaigning for one option must unite – which does not mean speaking as a single voice, but requires all efforts to be focussed on the common goal. Furthermore, the message to be delivered has to be tailored to the audience, and must suit the body it emanates from: technical information from the neutral referendum commission; opinion and commentary for each option from the opposing camps. Any doubling up of information is not only confusing, but also an unnecessary waste of resources. Finally, the message actually has to reach its audience: getting it there involves proactive efforts, on a community level, and at the right time: as soon as possible.

## CHAPTER VI POLICY RECOMMENDATIONS: COMMUNICATING THE YES

At the inception of this report, and indeed our entire research project, nothing was further from our minds than coming up with our own policy suggestions. As lawyers, it was our task to record the local constitutional situation, analyse it, and gather different opinions on the various options. Yet we now find ourselves in a different position – some would say more interesting, others, more challenging.

Having approached the task as neutral outsiders, knowing next to nothing about Curaçao, the Antilles or indeed the Kingdom, our position has changed. On the basis of both our legal analysis and the overwhelming majority of opinion throughout our interviews, we have become firm believers that a vote in support of the proposed constitutional settlement is the only way forward for Curaçao. From a legal perspective, very little work remains to be done; what is left is in more than competent hands. The current battle is fought on an entirely different front: communications.

It is for this reason that our report contains its last two sections: having outlined and analysed our observations on the status quo of political communication, we now hope to be able to set out some concrete suggestions as to how elements of the pro-settlement communication could be reshaped to ensure constructive engagement with the opposition. In doing so, we are fully aware of our own limitations, and should like to repeat them here for good measure: however well informed, we remain outsiders to Curaçao's political microcosm. We are lawyers, not communications experts. Some of Curaçao's sharpest minds are in the process of designing, or commenting on, communications strategies. Yet, all things considered, we hope that our attempt will at least ignite some discussion as to how things may be shaped up over coming months.

For there is one thing we feel uncomfortably certain about: if the referendum were held around now, *viz* the last week of January 2009, a vote in favour of the overall package seems likely. If the communication strategy of the 'yes' camp does not change very quickly, however, Curaçaoans are very likely to make a choice in early summer that will have long-lasting negative effects on their country, and quite likely at least some of its neighbouring islands.

### **EMOTION AND COMPARISON: KEY ELEMENTS OF A SUCCESSFUL POLITICAL MESSAGE**

In the course of many interviews, we observed two factors underpinning nearly all arguments surrounding politics in the Antilles: positions were often stated in an emotionally charged way, and they were always comparative. Based on this, we are convinced that any successful communication strategy in the referendum context should play to both elements.

#### *Emotive comparisons: selected examples*

Rather than theorising at length about this point, we have come up with several examples that 'spin' individual aspects of the constitutional change package in a way that we would expect to be considerably more attractive to Curaçao's electorate.

#### **(A) The financial controls law: substantive provisions**

*"The 5% debt ceiling imposed on the Curaçao budget is considerably more generous than the conditions the Dutch government themselves are subject to. And if they break them, sanctions will be a lot harsher."*

Under Article 120(1) of the Treaty of the European Community, The Hague's annual budget must not exceed three per cent in deficits – far stricter than

Curaçao's five per cent. The European Commission's reaction to excessive debt may include, but is not limited to, infringement proceedings before the Court of Justice, and severe financial penalties for coming years. In comparing this situation with the current deal, it could be emphasised how hard bargaining from the island's side resulted in a better deal in terms of substantive provisions, as well as ensuring that the un-democratic higher instance never ends up with direct control over a democratically sanctioned budget.

*“Other countries, including even the United States and Europe, struggle to raise money for public debt in the current financial crisis. We have achieved a full liquidity guarantee from the Netherlands, who themselves have no-one granting such generous underwriting terms.”*

Again, a relatively straightforward comparison between the Netherlands and Curaçao, which highlights an often under-estimated benefit of the overall deal by showing how what the island has secured for itself in comparison with the Dutch themselves.

*“3.5bn Nafl. debt is an incredible amount for an island of Curaçao's socio-economic dimensions. At the moment, we spend [nnn] Nafl., or [n] % of our entire budget simply on interest payments, and it would take us [nn] years to pay everything of. With the same amount of money, we could resurface [n] kilometres of roads, as well as [nn] new schools.”*

By scaling the current debt down to intelligible numbers, and comparing it with concrete units each citizen is familiar with (years, road kilometres, school buildings, etc), the importance of the bailout can be fully appreciated.

## **(B) The financial controls law: procedural**

*“The deal offered to Curaçao initially was the same as that offered to the BES islands – sweeping financial intervention powers without the advisory stage and recourse to the Kingdom Council. We have fought hard to negotiate a much better deal in return for a much bigger bailout.”*

As we have already discussed, comparative assessments seem very successful in island politics. Rather than dwelling on Aruba, which is a poor analogy because there was no bailout, focussing on the deal offering much less ground than was given by the BES governments strikes a simple and effective chord.

*“This is not Dutch oversight, it is neutral oversight. The Financial Committee will consist of technical experts, the majority of which will be our people, who will advise, rather than dictate.”*

Emphasising three factors about the commission that are not well-publicised. Firstly, that four of the six members are Antilleans rather than Dutch. Secondly, that they are not politicians but technocrats. Finally, that the Commission has no jurisdiction to order budgetary changes itself, this being a Kingdom matter. These factors neutralise some of the rhetoric surrounding re-colonisation perpetuated by opponents to the deal.

## **(C) The Judicial Controls**

*“The judicial controls restrict powers that have always existed over the Netherlands Antilles. Where there is a total failure of legal and governmental order, the Kingdom Justice Minister will have the power to direct the attorney general - but this is now subject to judicial review and must be in writing. The oversight is limited by the agreement.”*

We believe that the judicial controls have become an unfortunate distraction from the real debate. By informing people that the situation is set to improve, with autonomy expanded, the debate can move on from hypotheticals about what interference is theoretically possible.

*“The controls act as a guarantee. Only if your government completely fails you in its duty to sustain the Rule of Law will they become relevant. At that point, Kingdom assistance will be necessary and vital. The watchword is guarantee, not interference.”*

Phrasing the controls as an emergency guarantee rather than meddling may help people to understand their purpose. Suggesting that controls are there for the people’s benefit against their government may assist in this.

#### **(D) A competitive package**

*“Negotiations involve concessions from both sides. Neither the Dutch nor the Curaçaoan governments are entirely pleased with the deal, but that is the nature of the process. The negotiators fought hard and succeeded in bringing home a deal tilted clearly in our favour.”*

Without patronising, it may be worth reminding people that negotiations are not easy and rarely satisfactory. The government tried hard and succeeded in gaining concessions from the Dutch. The idea that this was not the case should be forcefully countered.

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### **Jeremias Prassl**

Jeremias is currently studying for the LL.M. degree at Harvard Law School. Before this, he read law at the University of Oxford and the Université de Paris II. When he finishes at Harvard, he intends to return to Oxford to write a doctorate at the intersection of Employment and Corporate Law. Jeremias too has greatly enjoyed his time on the island, particularly relishing the opportunity to take to the roads in dodgy cars without speedometer and with exploding tires.

### **Ben Gardner**

Ben is also currently studying for an LL.M. degree at Harvard Law School. He has previously read law at the University of Cambridge, where he obtained a B.A. and an LL.M. in law. Upon completion of his studies in America, Ben plans to take the English Bar Exam and practice law in London. Ben had a great time on Curaçao, particularly underwater where the mosquitoes could not reach him.

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*VanEps Kunneman VanDoorne is the leading, full service law firm in the Netherlands Antilles and Aruba, with offices in Curaçao, Aruba, and through its association with Van Doorne, in Amsterdam and London. The firm is the largest in Curaçao and one of the largest firms in the Netherlands Antilles and Aruba.*

*The firm assists its clients, varying from legal entities to governmental bodies, with all their legal needs in the commercial and administrative practice and has a well established reputation for expertise on complicated local and international corporate acquisitions. In (corporate) litigation, maritime law, intellectual property, labour law and banking and finance, the lawyers of VanEps Kunneman VanDoorne have established themselves as market leaders in the Netherlands Antilles and Aruba.*

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