Van kolonie tot koninkrijksdeel : de staatkundige geschiedenis van de Nederlandse Antillen en Aruba van 1634 tot 1994

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This study of the political and constitutional development of the former Dutch colonies in the Caribbean concerns its transformation from a colony into a parliamentary democracy.

An attempt has been made to show what actually happened in the ‘Netherlands Antilles’ and what lay underneath the words and actions of the Antillians and the Dutch who were most instrumental in determining the course of events. It has, therefore, been necessary throughout the entire study to relate the political and constitutional evolution to the economic, sociological and cultural development in the Antilles, while a historical survey supplies the perspective for understanding the significance of what took place between 1634 and 1994.

The first chapter provides an explanation of the scientific foundation and execution of this study, as well as a clarification on the framework for the historical perspective. The propositions to be answered by this study were formulated as follows:

1. To what extent did the Dutch colonial government and the constitutional development of the state of the Netherlands influence the existing constitutional order of the Netherlands Antilles and Aruba?
2. Which influences in the past caused the ‘Status Aparte’ of Aruba?
3. Is it possible to draw conclusions from the answers on the propositions 1 and 2 and to make and present scientifically sound recommendations for a future generally, acceptable constitutional order of the Kingdom of the Netherlands?

The constitutional history of the colonies Curaçao and dependencies and Sint Eustatius and dependencies - since 1845 Curaçao and dependencies, and since 1948 the Netherlands Antilles - is discussed mostly in chronological order.

A division is made according to important constitutional changes. For better reference the constitutional history of the colony is divided into certain time intervals which brought considerable constitutional
changes.

Period I deals with the time interval 1634-1792. In 1792 the government of the West India Company was terminated.

Period II covers the years 1792-1815, in this period the Netherlands were moreless under French rule.

Period III includes the years 1815-1828; period IV the years 1828-1845 and period V the years 1845-1865. In these periods the Dutch State governed the colony and tried to implement another form of government in order to decrease the amount of money the Netherlands had to pay in governing the upkeep of the colony. It was understood that colonies ought to yield a profit. In 1865 Government-regulations were introduced by law and no longer by a Sovereign decree.

Period VI covers the years 1865-1936. In 1865 the colony was granted a beginning of democracy, this became more evident in the first real constitution for the Netherlands Antilles in 1936.

Period VII discusses the years 1936-1950. In this period a parliamentary democracy slowly emerged. In 1951 the Netherlands Antilles possessed all the outward aspects of a modern democracy.

Period VIII covers the years 1950-1986, when Aruba became an autonomous territory within the Kingdom of the Netherlands and period IX deals with the years 1986-1993, when the remaining islands of the Netherlands Antilles were searching for a new constitutional constellation within the Kingdom. An analysis of every period will be executed according to the following criteria:

- the influence of the evolution of Dutch government on the colonial government;
- the evolution of the organs of the state in the Netherlands and its influence on the governmental institutions in the colony and the practice of the rule of law in the colony;
- the division of power within the state, the influence of the ‘Trias Politica’ on the government of the colony;
- the influence of the people on the legislature of the colony;
- the influence of human rights on the government of the colony, especially on the treatment of slaves;
- the distribution of the law in the colony;
- the impact of slavery, colour differences and class differences in granting political rights, obligations and privileges to the non-white inhabitants of the colony.
- the influence of the previous criteria on the present constitutional structure of the Kingdom.
After a historical outline an educated guess is presented on the future of the Kingdom of the Netherlands and the reasons for the expected development. In the colonial era the Dutch presence in the colonies was very significant. Until 1948 there existed hardly any influence of the population in the government of the colony. In the future Dutch influence might increase again. Not to colonize the former colonies anew, but to support the Netherlands Antilles and Aruba in becoming self-sufficient in governing their own territories.

1. The origin of overseas expansion, period I

Period I deals with the interval 1634-1792 when the West India Company ruled the colonies. Holland ventured to reach the tropical antipodes not only because their nemesis, Philip II of Spain, annexed Portugal and forbade the Dutch entry to Lisbon. The United Netherlands were a nation of merchants, a brokerage house for northern Europe, and it wanted to get to the source of tropical wealth itself. Dutch navigators and traders knew the location of the fabled Indies, they were well acquainted with Portuguese achievement at sea, and counted among their members individuals who had worked for the Portuguese. After 1585 the trade with the west coast of Africa developed. This was promoted by the fact that a great many business relations between Portuguese and Dutch traders existed, notably with regard to the Brazilian trade. The States-General of the Dutch Republic played an active part in supervising the African and American trade. Thus in 1614, they issued a 'General Charter', according to which those discovering new passages, ports, or countries were to be allowed to profit for from their discoveries for a certain period of time without competition from other Dutch traders.

During the seventeenth century the Dutch extended their influence in the Caribbean by means of superior naval strength, use of armed intervention which was often ruthless, by shrewd politicking and exploitation of local differences. It became apparent to the Dutch that all these separate ventures did little to promote welfare. So in 1621 a contract was concluded which in effect merged individual enterprises into one West India Company, better known under its Dutch acronym as the WIC.

The framework of the organization and the powers of this body were broadly analogous with those of the United East India Company (VOC) established in 1602. The WIC was not an unqualified success. From the very start the WIC had to respect all sorts of vested interests, while at the same time conducting a continuous struggle against
captains and merchants who tried to evade its monopoly.

The trade of the English, the French and the Dutch in the Caribbean area in the wake of the Spanish, had originally a commercial, but later on also a strategic purpose, namely the interception of the treasures with which Spain financed her wars against rising new nations. The Netherlands found a harbour in Curacao which offered an excellent refuge and which gave the island ideal opportunities for establishing an emporium for the traffic of slaves and goods. St. Eustatius was also favourably situated for this purpose. The hunt for salt, tobacco, and Spanish merchantmen formed the principal attraction of the islands in the Caribbean Sea. Salt and dyewood from the islands of the Leeward Group, off the Venezuelan coast, were in great demand.

The later so-called 'Netherlands Antilles' - consisting of the islands of Curacao, Aruba and Bonaire (Leeward Group), all lying off the South American mainland, and to the north the very small islands of St. Martin (partly French, the Dutch part called Sint Maarten), St. Eustatius (Statia) and Saba (Windward Group) - had a central Dutch administration for more than three centuries. Period I is discussed at the start of chapter II and continues with the periods II-V.

2. Colonization, periods II-V

Period II discusses the space of time 1792-1815, a time of revolution and restoration, when the colonies were directly governed by the Dutch State. The Netherlands endeavoured to reduce the costs of governing the colonies in this period, however to no avail. In period III, 1815-1828 the colonies were governed by the King. From 1828 till 1845 (period IV) the colonies, including Suriname were united under one Governor-General, representing the King, with a view to reducing the costs of governing them. As this did not work the colonies were divided again in 1845 and the six Caribbean islands were joined together in one colony. From the end of the Napoleonic period until the introduction of the Government-regulations of 1865 constitutional modifications were repeatedly made, among others those required first for the union of Suriname and the Antilles and in 1845 for their division. Period V concerns the time period 1845-1865.

The second chapter covers the years 1634-1793, 1792-1815, 1815-1828, 1828-1845 and 1825-1865. The government of the colony by means of a Company with limited liability, the West India Company (WIC) under the supervision of the Republic of the United Nether-
lands (1634-1792) is considered first. The WIC exercised governmental authority at the same time. In due course the government of the State of the Netherlands and the King in the colony is explored. One may freely state that the inhabitants of the colony did not have any influence on the government of the colony. The colony was autocratically ruled by the officers of the WIC and later on by the representative of the King. There existed no division in the power of the state officials. All main legislature was ordained by the Dutch government. In the colony the Council, de Raad van Politie, which made the local rules, also executed them. In that same capacity and composition the Council administered justice. Chapter II deals with the periods I-V.

3. Slavery and the slave trade

Slavery existed in the Dutch colonies from 1634 till 1863. As this institution did not very well fit in one period it was decided to consider slavery separately in chapter III. The implications of slavery for the colonial society are indeed penetrating. The influence on the structure of the colonial society was of a very definite nature, slavery left strong marks on the present society of the Caribbean islands. Although slavery was a subject regulated by civil law it had an enormous effect on class relations and therefore was eminent in structuring constitutional and political relations in the colony. So far all textbooks on Dutch state- and governmental law utterly ignore slavery and its aftermath in the former Dutch colonies. An omission not lightly to be excused, it seems.

Slavery and the slave trade were already well established when Europeans first called upon Africa to obtain labour necessary to come into possession of the treasures which the newly discovered land on the other side of the Atlantic promised to yield. Since then the African negro, brought over as a slave from his native country, or born in slavery in the colonies, has during three centuries supplied the manpower required for the economic development of the new world.

For the Dutch the slave traffic became a no longer generally despised business, but a very profitable and as soon as they had acquired important interests in tropical America and had driven the Portuguese from West-Africa, a very risky one. In the seventeenth century foreign colonies also depended on Dutch trade and capital for their supply of slaves and for the disposal of the products procured by the labour of the blacks.
Local colonial regulations nor metropolitan legislation could protect the slaves from harsh treatment and ruthless masters in times when violence and cruelty were deemed suitable means in maintaining order and discipline, and in administering criminal justice, also in free society. The Dutch were not known for their benevolent treatment of slaves.

In the Netherlands the question of slavery never met with a real and practical interest of large strata of society. The public at large was rather indifferent to the case of the slaves. Abolition of slavery had become necessary after the English had liberated their slaves in 1833 and the French in 1848, and so hardly anybody in Holland and even in Suriname dared to declare himself against the principle of emancipation.

The British and French example were very reluctantly followed. The Dutch government had made inquiries into the possibilities of emancipation without costs to the State but with a compensation to the proprietors of plantations. It took the Dutch government ten years to pass the bill for the emancipation of the slaves.

In the colonial society colour nearly always corresponded with class and status. This did not change much, although in the course of time the former colony became a member of the Kingdom of the Netherlands on equal footing with Holland. How prominent 'colour' still is, became evident in the riots on Curacao, on May, 30, 1969. It also became manifest in the struggle for Arubian independence ('autonomy') from Curacao. The Arubians generally mistrusted the inhabitants of Curacao, because their complexion is darker than most Arubians who pride themselves on their Indian ancestry. This colour division, often ignored and officially discarded still rules the relations between the races and classes to a large extent.

4. Stable colonial government, period VI

Period VI deals with the stabilization of the colonial government between 1865 and 1936. The Government-regulations of 1865 meant a modernization of the public institutions. Curacao and dependencies were granted a nominated Koloniale Raad (Colonial Council). The Government-regulations were revised several times, the most important revision being the adjustment in 1936 by which the influence of the population on the government proceedings was enhanced. Since 1865 the colonies had the right of budget which however was subject to certain restrictions. The most important of these restrictions
was that if the budget showed a deficit its approval should take place in the Netherlands.

There was hardly an affair in which the Crown or the Parliament would not have the last word.

An era of unprecedented prosperity and population growth resulted from the establishment of oil-refineries on Curacao (1915) and Aruba (1924). Within three decades after these industries were established, the population of Curacao doubled and the population of Aruba more than trebled mainly from the influx of foreign labour. The standard of living rose to a higher level than on any other West-Indian island; agriculture always small scale because of arid soil and poor transport, was mostly abandoned. Considerable modification of the Antilles social structure resulted from greater prosperity, increased population, improved educational facilities and social conditions. Aruba and Curacao became ‘boonmtown’ communities and part of the twentieth century industrialism, while the presence of great numbers of European Dutch and other foreigners disturbed the traditional set social patterns.

As a result of the introduction of limited suffrage in 1936 for two thirds of the fifteen seats in the Legislative Council, popular influence was increased. The Royal Governor retained a wide range of powers, however, so did the Dutch Crown and parliament, despite the fact that the Antilles became economically self-supporting in 1929. The emergence of political parties focussed on personalities rather than on principles.

Party organization, then as now, has been consistently characterized by its looseness. Almost every one of the many political parties depended for its action on one or a few personalities who appeal to the voters at election-time, but who are generally too overburdened with other work to maintain contacts with the electorate at other times. Chapter IV analyses period VI (1865-1936).

5. Decolonization, period VII

Period VII analyses the time between 1936 and 1950, when decolonization emerged and the former colonies slowly progressed to a status of equal membership with the Netherlands in the Kingdom. The influence of the Second World War, in which the West-Indies re-

mained the only unoccupied part of the Netherlands Kingdom, was very important for the start of decolonization. Politically, this period has been increasingly characterized by a widespread desire for change, partly due to economic factors such as the enormously increased costs of living, diminished trade because of shipping and dollarshortages, and the scarcity of labour. Political parties started agitating for ‘autonomy’: a wholly elected legislature, universal suffrage, responsible government and abolishment of the power of Dutch organs to intervene in internal Antillian affairs. They based their demands on the promise of Queen Wilhelmina in December 1942 that relations between Holland and its overseas territories would be altered to a basis of voluntary association and self-government in internal affairs.

After the Second World War the difficulties in Indonesia accounted for the fact that the introduction of the new jurisdictional order envisaged in the speech of H.M. the Queen had to be postponed. In 1948 several important modifications were introduced into Government-regulations. A semi-parliamentary responsibility of the people’s representation (Staten) to be elected by general suffrage was created. In the same year a revision of the Constitution of the Netherlands was effected which abrogated constitutional objections against further reforms.

Increased political rivalry between Curacao and Aruba, resulted in a redistribution of seats in the legislature giving these islands equal representation despite their disparity in population. The new division was mainly based on the consideration that both islands were financially self-supporting. Curacao-voters, however, soon started complaining about their small electoral value in relation to the inhabitants of the other islands. A round-table conference was held in 1948.

Aruba expressed the wish to be ‘independent’ of Curacao and to enter into a direct relation with the Netherlands. In order to meet this wish as far as might be considered reasonable, extensive and thorough negotiations took place resulting in a settlement for the Antilles in which a very large measure of independence within the whole of the Netherlands Antilles, was granted to each island or ‘island territory’. The three smaller islands of the Windward Group were considered to form one ‘island territory’. The underlying principle was that the islands would get:
1. their own organs for their internal affairs,
2. their own finances,
3. a competence of their own.

The reforms of 1948 did not prove to be very satisfactory in practice. As a result, a second series of reforms occurred in 1950/1951. Fully responsible government was introduced. Another redistribution of seats in the legislature followed, granting Curacao additional representation. The Dutch power to interfere in internal Antillian affairs was abolished. A foundation for future cooperation between Holland, the Antilles and Suriname and the provisional regulations of the relationship between these three territories was established. Complete autonomy in internal affairs was enforced by law in 1951. Island-regulations were introduced in 1951, granting the islands a territorial autonomy. Chapter V analyses period VII.

6. Responsible Government, period VIII

Period VIII (1950-1986) deals with the realization of the 1954 Kingdom Charter, incorporating the new structure of the Kingdom of the Netherlands. In 1952 a Round-Table Conference was necessary to discuss the final jurisdictional order for the Kingdom. The conference had to be adjourned because of differences of opinion for which a solution could not be found at that time. The reforms were completed with the realization of a Charter (Statuut) for the Realm, by which the new jurisdictional order was established in 1954. The Statuut served as a constitution for a Kingdom consisting at that time of three 'equal' partners, the Netherlands, Suriname and the Netherlands Antilles, each autonomous in internal affairs. Only defense, international relations and a mutual guarantee for democracy and 'decent government' were defined as Kingdom matters and as such were for all practical purposes to be dominated by the Dutch administration.

The Charter sets forth the procedure for the conduct of 'Kingdom-affairs' which are restrictively enumerated. It contains the basic rights and duties of each of the three autonomous territories and guarantees of good government, the rule of law and certain fundamental human rights and duties. Approved by a qualified majority of the parliaments of each of the three territories, this Charter was proclaimed the supreme law of the Kingdom on December 15, 1954.

Each territory, however has its own constitution and its own jurisdiction. The impression could be created that the Kingdom of the Netherlands is a federation. This however is not the case as the
Crown can suspend or nullify land or island ordinances and other resolutions and dispositions in case of contradiction with the international law or regulations, with a law or with a royal resolution or with the general interest of the Kingdom. Each territory has a Legislative Council, a Council of Ministers, a Judiciary and a Government Advisory Council. The Netherlands Antilles consist of five island territories. Each island has its own Island Council, Administrative Council and a Lt. Governor. The Netherlands Antilles and Aruba (since 1986) each have a Governor appointed by the Crown. The Governor is the head of state representing the Queen, he also acts as an organ of the Kingdom watching the general interests of the Kingdom in accordance with the provisions related to his activities and with due observance of the King’s instructions. The Netherlands Antilles and Aruba each have a Minister Plenipotentiary in the Netherlands representing their interests in the Dutch parliament and the Dutch government. Each territory is independent in looking after its own interests. Not one of the specific territories constituting the Kingdom of the Netherlands is the competent instance to maintain international relations, only the Kingdom has that competence. Chapter VI also looks into the consequences of responsible government. In this chapter period VIII is covered until 1969, the year general unrest on Curaçao changed the political relations within the Kingdom.

7. Independence granted, but not wanted, period VIII (continued)

Chapter VII relates the political causes and constitutional consequences of the events that occurred on May 30, 1969. Popular unrest in Willemstad on Curaçao unexpectedly led to rioting and looting. In accordance with the 1954 Statuut of the Kingdom Dutch marines were called to reestablish order. As they did, the world press documented a European military intervention in an ‘autonomous’ former colony. Nobody liked this. The Dutch had felt themselves obliged to intervene. Now they were denounced for neo-colonialism. For the next two decades, ‘May 1969’ was the main reason for the Netherlands to insist on independence for the Netherlands Antilles and so the Dutch were unwillingly reinforcing centrifugal tendencies that were leading to a breakup of the six-island state, which at all costs the Netherlands wanted to keep together. Mainly for ideological reasons

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2 For King can be read Crown, this is a modernized description more fitting in the present parliamentary system in Western Europe.
successive Dutch governments tried hard to shed the former Dutch Caribbean colonies, which should become independent long before the end of this millennium. Linked to this interpretation was the conviction that the Dutch would impose 'voluntary' independence on these islands, just as they had done on Suriname. Suriname became independent in 1975, the post-independence history of Suriname is not encouraging.

The government of the Netherlands Antilles had a different attitude. Self-determination according to the Antillians could very well signify the deliberate choice not to attain full independence. This means that the Kingdom relations as defined in the 1954 Statuut should be considered as enduring, unless all partners involved opted for a change of the status quo. Chapter VII analyses the Antillian and Dutch opinions on independence (period VIII till 1986).

8. Aruba's struggle for 'autonomy' within the Kingdom, period VIII (continued)

No matter how sound the formal construction of the Dutch Kingdom may have seemed at that time, it did not ameliorate the underlying insular animosities in the Netherlands Antilles, existing since the 1930s. On the contrary the issue of Aruba's place in the Kingdom reemerged at the outset of the 1970s with more vigor than before. Next to Curacao, Aruba is the most densely populated island. The Aruba issue essentially stemmed from the combination of a deep fear of political domination by Curacao and of the consequences emanating from the emancipation of the black proletariat in Curacao.

Since the 1930s the political elite of Aruba had strongly feared that any constitutional arrangement with Curacao would de facto entail political domination by Curacao, because of the latter's larger population. The frustrations stemming from the bureaucratic, centralized structure in Curacao, which was inherited from the direct government by the metropolis before 1954 bolstered this perception.

The economic development process in the Antilles, especially since the end of the 1960s, had highlighted the fierce competition between Aruba and Curacao, to the point that the existing conviction in Aruba still holds the progress of the islands to be mutually exclusive. Also the social tensions that erupted in Curacao, particularly after May 1969, had un unsettling effect in Aruba, causing fear that these tensions could have spillover effects adversely influencing its
moderately blossoming economy.\textsuperscript{3}

Since the early 1970s Aruba engaged in a struggle against the federal government which, after sixteen years, on the first of January 1986, resulted in the so called 'Status Aparte', which granted Aruba a modified independent status within the Kingdom of the Netherlands. This status stipulates that Aruba is no longer part of the Netherlands Antilles but is granted prerogatives within the Kingdom identical to those of the Antilles. This Status was achieved on the condition, imposed by the Netherlands, that Aruba would become independent in 1996. Since the 'Status Aparte' of Aruba, the three partners in the Kingdom are: the Netherlands, the Netherlands Antilles and Aruba. Chapter VIII deals with period VIII (1950-1986) till the 'Status Aparte' for Aruba was obtained. This chapter analyses the Arubian opinion on the subject of an autonomous status within the Antillian constitutional context.

9. Readjustment of the structure of the Kingdom after the 'Status Aparte', period IX

As a kind of penalty for their splitting the six-island state, the Arubians grudgingly had to accept another amendment to the Statuut: their full independence as of January 1, 1996. This package deal was resented by the Arubians and as soon as the separation of the Curaçao dominated Netherlands Antilles had materialized, Arubian politicians started to militate against the second phase of the convenant. Unlike the Netherlands Antillian juridical position, the Arubian position was disputable at best. The fact that in 1990 the Dutch administration declared its willingness to postpone Arubian independence for an indefinite time was a clear indication of the change in Dutch policy regarding its Caribbean legacy.

In the first few years after Aruba gained its separate status a certain amount of tension could be observed between that member-Country and the Antilles, in particular in the field of civil aviation policy. Mutual relations have improved since then. The judicial cooperation between the Antilles and Aruba is working well. The collaboration on the drafting of uniform legislation for the two countries has not procured any legislation so far.

It cannot be said that the federation of the Netherlands Antilles has become more balanced now that Aruba has left. Referring to their

\textsuperscript{3} Croes and Moenir Alam (1990).
right of self-determination confirmed at the 1983 Round Table Conference, various islands (mainly St. Maarten and Curacao) have since then considered it necessary to raise the question of their future constitutional structure. New constitutional arrangements between the islands seem to be urgently needed. Since Aruba left the Antillian constellation the remaining islands have proposed all kinds of mutual relations, but so far they could not agree on any of them. The islands did not want to become independent.

The Antilles, a self-determining partner within the Kingdom, still feels that full independence is not an attractive alternative to the present situation, at least not until the islands state has attained a higher level of viability. With regard to international law, in particular from the viewpoint of the right of self-determination, at present the conclusion can be drawn that independence is not the only option open to non-self governing and other dependent territories. Although the famous United Nations General Assembly Declaration on Decolonization in 1960 was based on the idea of independence as the obvious outcome, if not the only goal, of the right to self-determination, later resolutions have abandoned this idea. A dependent territory can also attain full self-government by means of free association or integration with an independent State. The emphasis is on the free choice of the peoples concerned.

Since the Dutch have yielded to the issues of independence and the fragmentation of the Netherlands Antilles, they claim a stronger say in Antillian and Arubian affairs. In his 1990 'Schets', minister Hirsch Ballin linked the (indefinite) postponement of independence to firm regulations which should impede further changes of the status quo within the Kingdom. Any partner should be either in or out. This 'take it or leave it' approach suggests that the Dutch are willing to make considerable concessions, but will not refrain from imposing restrictions. This will lead to a reduction of the Antillian and Arubian autonomy within the Kingdom. Considering the outcome of the first conference on the future of the Kingdom in March 1993 and the contents of the aide-memoire of June 1993 in preparation of the second conference, this regulations and restrictions on autonomy are mandatory conditions for a restruction of the Kingdom.

On the first conference all Antillian islands were granted a separate status, much to their surprise. However, it became clear that very specific restrictions would be imposed by the Dutch government before the desired new structure within the Kingdom could be obtained. The imposition of this restructuring of the former Netherlands Antilles would imply a rather authoritarian start of the new Statuut period. Such a start would clearly qualify the pious statement in the
Schets to ‘take the wishes and longings [of the Antillians] in consideration as far as possible.

In the last three years subsequent Dutch state papers and the minutes of parliamentary meetings elaborated on ways for the Netherlands Antilles and Aruba to enhance their autonomy and self-reliance. The need for ‘modernization’ and ‘professionalization’ of public management emerged as a recurring theme. One senses a growing Dutch irritation over past and present performance of the Dutch Caribbean public sector. The increase in quality of the public sector is to be contrived by structural and long-standing assistance of Dutch specialists. Implicitly, however, one could read in these proposals a devastating comment on the policy of ‘Antillianization’ which has been a guideline for all Antillian governments since the early 1970s. This policy aimed at substituting Antillians for Dutch professionals at all levels of both the public and the private sectors. Now, for the Dutch policy makers, the pendulum apparently must swing back.

The change in Dutch policy has not primarily been inspired by economic or strategic reasons. Where Antillian politicians perceived continued Dutch presence as crucial, Dutch politicians may have thought of these last remnants of empire as a nuisance, but at least a minor one. An annual quarter of a billion Dutch guilders of development aide is crucial from an Antillian perspective. It is not critical to the Dutch. And while the migration outlet to the Netherlands may be essential for Antillians, additional Antillian immigration for Dutch policy makers is no welcome prospect, but neither is it a nightmare. Thus Antillian politicians and the electorate, both firmly opposed to independence, have benefitted from the very smallness of their societies, which made it easier for the Dutch to stop pestering them with the menace of unsolicited independence. In addition, the disillusion in Suriname’s post-independence record did much to sober those who felt independence would provide the islands with a fresh impetus to attain economic and political viability and self-reliance. Ironically therefore, the Suriname debacle was a remote blessing for the Antilles. Finally, outside interests, particularly the US and Venezuela, may have put a mounting pressure on the Dutch not to relinquish these territories. The geopolitical risks of a power vacuum may have inspired such pressure; and more recently, problems associated with narcotrafficking and money-laundering have assumed major importance.

It is tempting to read ‘recolonization’ in these Dutch proposals. The persuasive long-term prospect offered is that professionalization will result in increased self-reliance and greater viability. Yet this prospect
seems to be indeed long-term. Meanwhile Dutch assistance could put mounting pressure on the Antillian and Arubian public sector. From the Dutch perspective, it is justifiable that their Caribbean partners pay for being ‘allowed’ to remain within the Kingdom by relinquishing some of their previous autonomy. Growing Dutch involvement will also extend to more ‘assistance’ in the legal system and the administration of justice.

The Dutch are discontented over the previous decades of autonomy in internal affairs. This growing discontent transpires in the proposed regulations and restrictions on the autonomy of the Netherlands Antilles and Aruba, as put forward on the conferences on the future of the Kingdom and the aide-memoire of Prime-minister Lubbers of June 1993. Telling is the strong connection the Dutch are making between ‘good government’ and a new Kingdomcharter. Likewise, occasional allusions to the political culture of the islands, the islands being on such a small-scale and therefore restricting the scope for policy making by local politicians, may be read as a suggestion that outside (Dutch) interference is needed to make things work. In this regard, persistent rumors and indications of public sector corruption, money-laundering and narcotrafficking in Sint Maarten have now facilitated a Dutch involvement.

Higher supervision was imposed on Sint Maarten in mid-1992. First based on an Interim Provision of the Council of Ministers of the Kingdom and afterwards through the ‘AMvRB’ (General Measure of the Kingdom Government) for the duration of one year. This Measure provided preventive supervision by the Governor on decrees by an island organ, in case these decrees had considerable administrative and financial implications. The Measure has been effective as an instrument to prevent serious forms of undesirable government acts, however it was not effective to improve the quality of administration permanently. Actually the Sint-Maarten Government is not considered capable of continuing the ongoing process of administrative improvement on its own. A different provision with far-reaching powers for a special Lieutenant Governor is contemplated for a period of two years.4

One could conclude that Dutch patience with its partners has run out. The Dutch and West-Indian political opinions on the issues of good government and the restructuring of the Kingdom differ to a large extent. But this does not mean that the Dutch wishes can be ignored

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much longer. This might have been a good strategy in the 1980s, but another mood is prevailing in Dutch government and parliament. A more successful strategy nowadays would be to negotiate the Dutch demands. It also is of no use any longer to threaten the Dutch by becoming independent, that is if the Netherlands Antilles and Aruba do not wish to become independent in the near future. The Dutch will gladly grant full independence if the Netherlands Antilles or Aruba so desire. In the past the Antillians could considerably influence the Dutch policy to their advantage by using the argument of three hundred years of colonial repression. That argument is now considered obsolete by the Dutch, as they do not want to accept that argument as an excuse for long-standing mismanagement of the public sector.

If the Antillians and Arubians do not wish to negotiate, the Dutch might very well impose unilateral restrictions on both West-Indian partners of the Kingdom. Dutch MP's declared to be willing to impose restrictions on the unlimited entrance of Antillians and Arubians to the Netherlands. They also consider a cut-down in development-aid to the Caribbean part of the Kingdom.

The question arises where this will place the former Netherlands Antilles in the next decade? An educated guess points to the following scenario:

- independence is off;
- the former Dutch Antilles will further disintegrate, on the modalities a hard battle will be fought, which might take more than ten years;
- the Dutch presence will be reconfirmed.

Government policies and decisions with far reaching implications for the Netherlands Antilles and Aruba must be made with the approval of the population of the Netherlands Antilles and Aruba. It is essential that the population approves of the policy of their representatives. The referendum held on Curaçao in November 1993 indicated a strong preference of the population for an Antillian federation of the five islands. This contradicted the political opinion on Curaçao, which was in favour of a separate status for the island. On the other islands a referendum will be held in the near future, giving the population of an island the possibility to voice their wishes on a new Antillian constitutional relation.

It is, however, conceivable that due to the outline of the Dutch government the former unitary state of six islands of the Netherlands Antilles will eventually split into at least three independent entities.
With independence postponed indefinitely and the formulation of a new constitution of the Kingdom on its way, orientation of the Dutch Caribbean islands to the metropolis is even more acute.5

A new Kingdom Charter is necessary as article 62 thereof stating Aruba will become independent per January 1, 1996, has to be eliminated, now that all parliaments concerned agreed to the amendment of article 62 to that effect. The new Kingdom Charter will certainly include heavy restrictions on financial mismanagement and will support and implement the rule of law within the Kingdom. But the islands will have every possibility to govern themselves. If they will not comply with the guarantees of good government specified in the Charter of the Kingdom the Kingdom itself will take over.

The conclusion of this study might be that constitutional problems rise anew but that their causes lie in the past and that a constitutional past casts long shadows. A lot can be learnt from that past so that costly and painful (constitutional) misunderstandings might be anticipated, as prevention is better than a powerless cure.

The motto of the weapon of the Kingdom reads: ‘Je maintien-drai’ (I will maintain). It applies to the Kingdom as a whole, nonetheless some caution is warranted or the motto might become: ‘I will abandon’.

Chapter IX analyses period IX (1986-1993) the present constitutional position of the Kingdom with its predicaments and divines from the past which political and constitutional dilemmas should be recognized, envisioned and settled. Chapter X presents suggestions for a new Kingdom Charter on these pressing issues. These suggestions mainly incorporate a different approach of the Kingdom Government in Kingdom-matters and the implementation of higher supervision by legislature of the Kingdom Government.

Whenever the Netherlands Antilles or Aruba neglects its responsibilities or do not comply with Dutch indications for ‘good government’ as stated in the Kingdom Charter, the higher organ will inform the lower organ and a conference might be immediately convened to discuss the matter. The higher organ will invite the lower organ to take certain necessary measures. If no agreement is reached on resolving the matter, any of the two parties can appeal to an independent Constitutional Court, which will have the right to issue binding and final rulings and/or non-binding recommendations, for instance

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a specially created branch of the Kingdom Government Advisory Council (Raad van State).

If after a specified period these conditions or the recommendations or rulings of the Court are not observed the higher authority will implement the required adjustments, resolutions or dispositions, eventually by a General Measure of the Kingdom Government.

It is clear that the existing serious economic and financial problems in the Dutch Caribbean will not correct themselves and that imaginative and creative actions in problem solving and crisis management - a field in which the Dutch Caribbean lacks the necessary experience - should be encouraged. Aruba and the Netherlands Antilles believe that in order for these actions to have a certain degree of success, clarity should exist on the future constitutional status of the Dutch Caribbean. They deem clarity on this matter indispensable in order to attain those instruments and conditions, such as investments and tranquility, to enable the construction of a solid foundation for the future. The Netherlands are of a different opinion, they first want structural adjustment reforms, before they are willing to contemplate a reform of the Kingdom Charter.

As the Netherlands only just began to realize that independence could not be forced upon the Dutch Caribbean they never paid much attention to supporting the Netherlands Antilles and Aruba in becoming self-sufficient in governing their own territories. The existing problems cannot be solved by imposing Dutch technical assistance without including domestic talent and management. It does not answer to substitute domestic management for expatriate management. The necessary skills must be obtained from training domestic civil servants and managers mainly in their own country, in order to achieve a real civil service reform. Otherwise expatriate help might turn out to be a destructive force instead of a constructive power. The challenge is to keep safeguarding principles and the right of initiative and autonomy of the Caribbean partners within the Kingdom at the same time, and to respond to new positive developments in 'good government' as well.6

When the new legal order for the Kingdom is conceived, the Dutch Caribbean ought to be granted a more effective participation and involvement in the government of the Kingdom. These adjustments seem essential to counterbalance the increasing Dutch influence in the Dutch Caribbean.

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In the long run even a federation between the islands might become possible again. The islands indeed have more in common which each other than they have with the Netherlands proper. If the islands will be able to perceive such a notion, they might see the profits of joining forces and living together. This certainly does not mean that there will suddenly be an ongoing honeymoon between the islands. But there are advantages as the small scaleness of the islands will not permit one island to survive on its own. So far an asymmetrical federal structure did not meet with the approval of Aruba. In the present Antillian constitutional system the smaller islands have a political influence far beyond their relative importance. For their own benefit the islands might learn to trust each other in the future, as it is impossible nowadays for any country to live in splendid isolation. The future seems hopeful as the referendum on Curaçao indicated a strong preference for an Antillian federation of the five islands.