

Confidential Filing

Capital Punishment in the Dependent Territories.

FOREIGN POLICY

AUGUST 1980

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
2.8.80							
15.12.80							
29.12.80							
14.4.81							
17.11.81							
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19.3.91							
27.3.91							
27.3.92							

PREM 19/3758

R2713



Foreign &
Commonwealth
Office

London SW1A 2AH

27 March 1992

file
NBSH
Prime Minister

Dear Stephen,

*The various appeals will go on beyond
9 April. I have told Catherine Swanfield
where matter stand.*

St Kitts and Nevis: Death Sentences

Proph

I wrote to you on 24 February about the cases of Richards and Browne, two local citizens who have been sentenced to death in St Kitts for murder. The Prime Minister expressed an interest in this case and wished to be kept in touch with developments. *3/p*

You should therefore know that we have just heard from our Resident Representative in Antigua, who is responsible for St Kitts and Nevis, that the East Caribbean Supreme Court have dismissed an application made on behalf of Richards and Browne for an extension of time to appeal against the original court judgements. The Supreme Court ruled that there was no provision for such extensions.

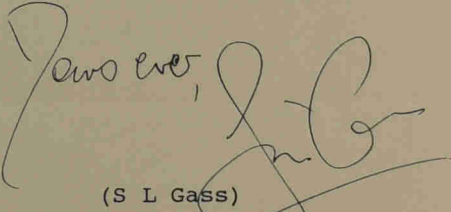
The Resident Representative also understands that, either today or tomorrow, the East Caribbean Supreme Court is likely to hear a separate appeal which has been lodged on behalf of these two men against an earlier dismissal of two constitutional motions arising from this case. These motions are based on the premise that the death penalty is unconstitutional and are unlikely to succeed.



We have passed this information to the London solicitors who have taken an interest in this case. They tell us that they are making moves to seek leave to appeal to the Judicial Committee of the Privy Council. If they do so, the Judicial Committee will need to rule on this application. Given that the St Kitts Government have said that they are willing for all legal procedures to be exhausted, it looks unlikely that the men will be executed soon.

The FCO Deputy Legal Adviser, who is visiting the region, called on the Attorney General at St Kitts with the Resident Representative on 25 March on other matters. He took the opportunity of reminding the Attorney General of the concern and interest being shown in this case in Britain. This reinforces earlier expressions of concern conveyed to the Prime Minister of St Kitts by the British High Commissioner at Bridgetown.

We will let you know as soon as we have any further news.


(S L Gass)
Private Secretary

J S Wall Esq
10 Downing Street



cc/c

CONFIDENTIAL

FCS/91/081

LORD PRESIDENT

Dependent Territories: Capital Punishment

1. Thank you for your letter of 26 March agreeing to the implementation of the abolition by Order in Council of Capital Punishment for murder in the Caribbean dependencies.

2. The issues are finely balanced but I can accept your suggestion that we should make an announcement by written answer in Parliament before the Order is made, and intend to do so today for answer tomorrow. I have amended the text of the draft answer to reflect your concern about the phrase "sentencing policy" but have not included the word "maximum" in the penultimate sentence. This keeps the answer in line with the Order which in turn reflects UK legislation. I attach a copy of the question and answer as it will be tabled.

3. I am copying this minute to the Prime Minister, the Home Secretary, the Lord Privy Seal, the Attorney General, the Parliamentary Secretary to the Treasury, the Captain of the Gentlemen At Arms and Sir Robin Butler.

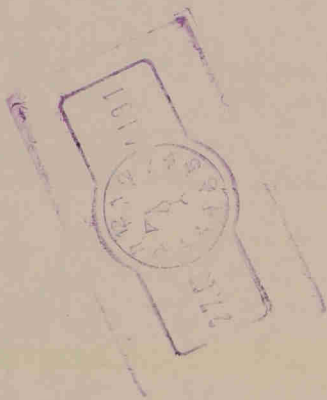
D.H.

(DOUGLAS HURD)

Foreign and Commonwealth Office
27 March 1991

CONFIDENTIAL

For Pol. Cap Punishment: Aug 80 -
in DT's



MP9ABC

Question

To ask the Secretary of State for Foreign and Commonwealth Affairs what steps Her Majesty's Government are taking to abolish capital punishment in the Caribbean Dependent Territories and Bermuda?

Answer

In order to be consistent with the position in the UK where Parliament has expressed a clear view, the British Government considers that the death penalty for murder should be abolished in those Dependent Territories which elect to remain under the Crown. Following consultations conducted by our Governors with their Dependent Territory Governments, we shall submit for the approval of HM The Queen at a forthcoming meeting of the Privy Council an Order under which the death penalty for murder in the Caribbean Dependent Territories will be abolished and a sentence for life imprisonment substituted. The British Government hopes that the Government of Bermuda will decide to follow this example as soon as possible.

PRIME MINISTER

Handwritten initials

Mr O'Donnell
✓ Good 4/31.3

DEPENDENT TERRITORIES: CAPITAL PUNISHMENT

You saw papers on this in December when David Waddington had some doubts about the Foreign Secretary's proposal to abolish capital punishment in the Caribbean Dependent Territories.

Since then, Ministers have met under the Chairmanship of John MacGregor and have agreed an announcement which the Foreign Secretary proposes to make by Written Answer tomorrow (see attached).

The effect would be to abolish the death penalty in Dependent Territories by Order in Council except for Bermuda (for whom primary legislation would have been required and who may enact their own legislation in due course) and for Hong Kong (where the death sentence is invariably commuted by the Governor). Treason will remain a capital offence, and the provisions will therefore exactly mirror UK legislation.

Although this decision is not popular in the Dependent Territories, it seems to have been accepted. I think it will prove less controversial to abolish the death penalty than to have Dependent Territories executing people when the death penalty has been abolished in the UK.

Stephe

SW

27 March 1991

jd c:\wpdocs\foreign\dependent

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CEC



TJS/AG

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

26 March 1991

Doc Douglas,

[Handwritten initials]
20/3

DEPENDENT TERRITORIES: CAPITAL PUNISHMENT

Thank you for your minute of 19 March. I am content that, in the light of the consultation process we agreed on at our meeting on 14 February, you should now proceed to implement the abolition of the death penalty for murder in the Caribbean dependent territories.

I note that you propose to announce this decision only after the Order has been made. While I can see that announcing the proposal in advance carries some risk, if there is a hostile reaction to it, I think there are even greater dangers associated with presenting it as a fait accompli. This could make it hard to defend asking The Queen to approve, without prior notice, what is certainly an unusual use of the powers, interfering as it does directly in the domestic law of the dependent territories. On balance, therefore, I think it would be preferable if the announcement were made in advance. I recognise that the timing of the Easter recess means that this would mean providing 3 weeks' notice, but I do not think that that is unreasonable.

On the detail of the proposed written answer I wonder whether it is right to refer to 'a sentencing policy for murder' which to me carries much wider implications than the single question of the availability of the death penalty. I suggest that the first sentence might be revised on the lines of:-

'The British Government expects those dependent territories which elect to remain under the Crown no longer to have the power to impose the death penalty for murder, which is consistent with the position in the UK where Parliament has expressed a clear view.'

Also, in the penultimate sentence I suggest that the reference should be to a 'maximum' sentence of life imprisonment.

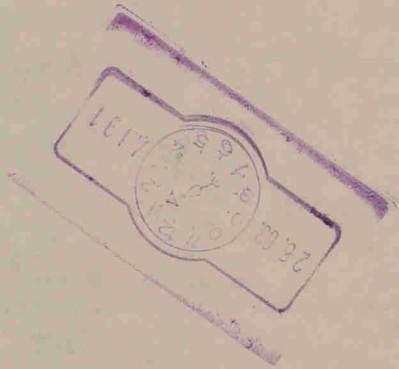
I am copying this letter to the Prime Minister, the Home Secretary, the Lord Privy Seal, the Attorney General, the Parliamentary Secretary to the Treasury, the Captain of the Gentlemen at Arms and Sir Robin Butler.

Yours ever,
JM

JOHN MACGREGOR

The Rt Hon Douglas Hurd CBE MP
Foreign and Commonwealth Secretary

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FCS/91/069

COB
19/3

LORD PRESIDENT

Dependent Territories: Capital Punishment

1. When we met on February 14 to discuss my proposal to abolish capital punishment for murder in the Caribbean dependent territories, we agreed that our Governors should consult their local Legislative Councils before I made a final recommendation for action to colleagues. It was also agreed that if my advice remained in favour of abolition this would be announced through a Parliamentary answer when an Order in Council was made.

2. Instructions were sent to the Governors to initiate consultations between 25 February and mid March. Some spoke not only to political leaders in their territory but also canvassed opinion outside the Legislative Councils eg among the Churches. The result was mixed. The strongest line against abolition was taken by the British Virgin Islands, but in their case Mark Lennox-Boyd had an opportunity of setting out our

/position.

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position to the Chief Minister when he visited London last week. In Anguilla where we had been faced with a difficult problem (a Grenadian sentenced to death for murdering a fellow Grenadian) the Governor, who was aware of my views, took a decision on 4 March, to commute the sentence to one of life imprisonment. Ministers there appear to have accepted his decision and will go along with abolition. The response from the Caymans, from Montserrat and the Turks and Caicos Islands, was broadly similar. Popular opinion divides between those who consider that retention on the statute book is a deterrent, those who believe, Caribbean style, in biblical retribution, and those who feel that the death penalty should no longer be part of a modern society. The majority probably prefer retention - it is what they are familiar with - and worry that abolition will increase the murder rate. They also seek assurance that life sentences would be given instead. If we abolish, some hot tempered speeches will be made but we do not believe it will spark any serious unrest.

3. In the case of Bermuda, which is not immediately affected by the Order in Council, the Premier, Sir J Swan, noted that the implementation of the Order would leave Bermuda as the only dependent territory which had not abandoned capital punishment.

4. The public controversy aroused in early March by Jamaica's decision (since retracted after international representations) to execute two prisoners who had been on

/Death

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Death Row since 1979, may bring home to independent governments in the region the need to re-examine their own policies towards capital punishment and to resolve the plight of dozens of prisoners spending years on Death Row awaiting the outcome of their appeals.

5. In the light of the soundings I have taken, I have no hesitation in confirming that the only satisfactory way for me to ensure that executions are not carried out in the Caribbean dependent territories is to proceed by Order in Council. I propose to submit the Order by 10 April in time for the Privy Council meeting on 16 April, and to lay the Order before the House on the day it is made. I attach the text of an arranged / Parliamentary Question and Answer which will inform the House on the same day of the action which we have taken.

6. I am copying this minute to the Prime Minister, the Home Secretary, Lord Privy Seal, Attorney-General, Parliamentary Secretary to the Treasury, Captain of Gentlemen-at-Arms, and Sir R Butler.

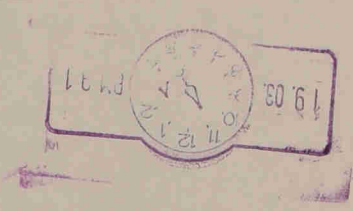
DH

(DOUGLAS HURD)

Foreign and Commonwealth Office

19 March 1991

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PQ

What steps have Her Majesty's Government taken to abolish capital punishment in the Caribbean dependent territories and Bermuda?

ANSWER

The British Government expects those dependent territories which elect to remain under the Crown to have a sentencing policy for murder consistent with that which applies in the UK where Parliament has expressed a clear view. Following consultations conducted by our Governors with their dependent territory governments, HM The Queen approved at a meeting of the Privy Council held on 16 April, an Order under which the death penalty for murder in the Caribbean dependent territories is abolished and a sentence of life imprisonment substituted. The British Government hopes that the Government of Bermuda will decide to follow this example as soon as possible.

060 -
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PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

15 February 1991

CP 15/91

Dear Simon,

DEPENDENT TERRITORIES: CAPITAL PUNISHMENT

The Lord President chaired a meeting on this subject at the House of Commons on Thursday 14 February. Those present were the Foreign Secretary, the Lord Privy Seal, the Home Secretary, the Attorney General, the Chief Whip (Lords), the Deputy Chief Whip (Commons) and Mr Lennox-Boyd. The Clerk of the Privy Council was in attendance. The papers before the meeting were the Foreign Secretary's minutes of 11 February and 13 December.

The Foreign Secretary said that it was now some 14 years since anyone had been executed for murder in a British dependent territory and, particularly in view of the recent clear majority in the House of Commons against the death penalty, it was essential that there should be no change in this position. Executions had been avoided by exercising influence on Governors, but it could not be guaranteed that this would continue to be successful, and it was necessary to regularise the position, where appropriate. There was a need for action in the Caribbean Dependent Territories which had self-governing constitutions, placing the Governor in the most difficult situation, and where it could not be guaranteed that the execution of those under sentence of death could be held off indefinitely. Consideration had been given to the possibility of simply giving some very positive guidance to Governors, for example through a Parliamentary Written Answer, as a basis on which they could continue to prevent executions, but the Attorney General had advised that this would be improper interference with the Territories' constitutions. The only alternative was therefore to legislate. The position was different in Hong Kong and Bermuda. In Hong Kong, because the Legislative Council was not autonomous, there was less difficulty about the Governor using his powers to prevent executions and, given the prospect of changes in the Colony's status, there seemed no purpose in changing the law now. In Bermuda, imposition of a change would require UK primary legislation, which seemed undesirable. In view of his hope that local legislation might be introduced, it seemed sensible to maintain a watching brief for the time being.

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The Lord Privy Seal said that the Government had in the past remained neutral on the question of the death penalty for murder, taking the line that this was a matter for the individual conscience of Members of Parliament and agreeing to accept the verdict of the House. But the procedure proposed in this case would require the Government to take the initiative and would not provide any opportunity for Parliamentary debate unless exceptional steps were taken to arrange this. There was likely to be criticism if action was taken to abolish the death penalty in the Caribbean but it was left in place in Hong Kong, which was to be handed over to the Chinese. There could be difficulties if the action taken did not properly distinguish between the death penalty for murder and for treason, an issue which had caused difficulty for the Government in the recent debates on the Criminal Justice Bill. The reasons for action to be given in any statement would require careful consideration: the terms of the draft attached to the Foreign Secretary's minute of 11 February were unsatisfactory in their references to human rights, given that the UK had argued in the past that its adherence to various human rights conventions did not prevent it from having capital punishment. Finally, it would be necessary to be sure that the proposed procedure by Order in Council under Section 5 of the West Indies Act 1962 was sound: the provision seemed to contemplate that action of the kind proposed would normally be taken only in relation to matters which had been explicitly reserved, which did not include the death penalty for murder. The proposed Order appeared to be within the power, but an unusual exercise of it. It might therefore run into trouble with the Joint Committee on Statutory Instruments. To sum up, his view was that it would be preferable not to take the action proposed by the Foreign Secretary but to continue to rely on the present administrative approach.

In discussion, the following main points were made:

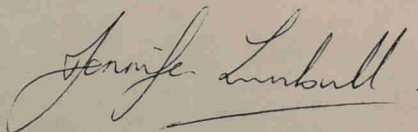
- a There was unlikely to be any significant opposition in Parliament to the proposal to abolish the death penalty in the Caribbean Dependent Territories: it would be hard to sustain the argument that it should be retained there when it had been abolished in the United Kingdom.
- b There was more likely to be Parliamentary difficulty over a decision not to abolish the death penalty in Hong Kong and there were some arguments of principle for doing so. In practice, however, this would make no difference since executions could be effectively prevented under the present arrangements. The difference of treatment could be defended on the grounds that the Hong Kong constitution was less advanced than that in the Caribbean Dependent Territories, in not having an autonomous locally elected legislature.
- c The death penalty for treason raised difficult issues. These would have to be considered in a wider context and, for the time being, it seemed right that any proposal for change in the Dependent Territories should mirror the position in the United Kingdom, not extending abolition to treason.

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- d Although use of an Order in Council under Section 5 of the 1962 Act to modify the internal law of dependent territories was an unusual use of the power, it was not ultra vires.
- e It would be undesirable for the Government to go out of its way to arrange a debate on proposals for abolition though this could be seen as a possible fall-back position if significant concern was expressed in Parliament. It was always possible that the JCSI might in any case recommend an Order for debate even though it did not require the formal approval of the House.
- f It was envisaged that the Governors of the five Caribbean Dependent Territories would be informed that the Government was considering abolition of the death penalty, and invited to consult their local Legislative Councils. The results of that consultation, which was not expected to be lengthy, would be communicated to the Foreign Secretary who would make recommendations to his colleagues. If the decision were in favour of abolition, this would be announced by way of a Parliamentary Answer and an Order in Council made. It seemed advisable to let Governors know that the mechanism envisaged for abolition was an Order in Council, to avoid raising the expectation in the Dependent Territories or the UK that there would be primary legislation. No need was seen for an announcement in the UK before the start of the consultation process.

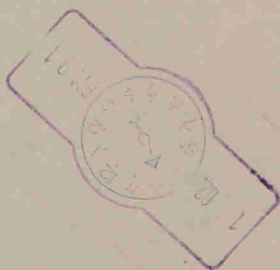
The Lord President, summing up the discussion, said that the meeting had agreed that the Foreign Secretary should proceed to consultation on the possibility of abolishing the death penalty for murder (but not at this stage for treason) in the five Caribbean Dependent Territories. He should return to colleagues in due course with firm proposals for decision in the light of this consultation. He should at that stage set out the proposed terms of an announcement, which should take account of the points made in discussion about references to human rights, and should consider the form of announcement and its timing in relation to the making of an Order in Council. Colleagues had agreed that no change should be made in the present position in respect to Hong Kong and Bermuda.

I am copying this letter to Charles Powell, Gillian Kirton, Colin Walters, Colin Pipe, Douglas Slater, Murdo Maclean, Martin Hatfull and to Geoffrey de Denev (Privy Council Office) and Sonia Phippard, Bill Reeves and Muir Russell (Cabinet Office).



JENNIFER TURNBULL
Private Secretary

Simon Gass Esq
PS/Foreign Secretary





cc/c

CONFIDENTIAL

FCS/91/027

em.

THE LORD PRESIDENT

Capital Punishment in The Dependent Territories

1. We meet to discuss this question on 14 February.
2. My minute of 13 December gives the background. In commenting on that minute, you and other colleagues raised a number of points. It may help if I respond to those and explain why I still believe that proceeding by Order in Council is the right way to tackle this problem.
3. I accept the points you made in your letter of 17 December (echoed by Kenneth Baker in his letter of the same date) about timing and the need to allow for proper consultation. I am, of course, happy to do this. There should be no risk of exposing The Queen to criticism on the grounds that we had bulldozed legislation through. But I would not want too long a gap between announcement and enactment, which would prolong discussion with the local governments to no great purpose. I am quite clear that, in the last analysis, we are entitled to use legislation in Britain to settle this question.
4. I have considered David Waddington's comments very carefully (his minute of 14 December). I have to say I am not convinced by his argument that the results of a

/free vote

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free vote in the House of Commons cannot be justification for abolishing capital punishment in the Dependent Territories. What we are trying to do is to bring DTs' law into line with UK law; and the legal position in the UK has recently been reaffirmed by a 2:1 majority. But we shall discuss this further at our meeting.

5. David and Kenneth also raised the discrepancy between the legal position in Hong Kong and our proposals to abolish in the Caribbean DTs. I see their point. But the existence of a difficulty in Hong Kong is not an argument for not tackling the problem in the Caribbean Dependent Territories. The different constitutional position in Hong Kong has meant that we have been able effectively to instruct the Governor always to commute. This option is not open to us in the other territories, as the law officers have recently re-confirmed. But I am confident that we can defend the decision on the basis

a) that we are proposing to legislate in respect of Territories who will, for the foreseeable future, remain under the Crown;

b) it would be wrong to insist that Hong Kong should be required to follow the United Kingdom lead in such a sensitive area when we were seeking to build up the territory's autonomy in the run-up to 1997.

c) formal abolition in Hong Kong would not prevent the post-1997 government there reintroducing the death penalty.



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6. The case for change remains as set out in my minute of 13 December. It is, if anything, stronger. A decision on the fate of the condemned man in Anguilla is overdue. The Governor is under strong local pressure to proceed. Yet in the capital punishment debate last December, the House voted 2:1 against restoration of the death penalty.

7. We have explored all other options for engineering change in the Caribbean DTs. Most were non-starters. However, I have looked carefully at the idea of announcing in Parliament that HMG hoped that local governments would introduce legislation to abolish; and that meanwhile we would not wish to see executions carried out. I thought it would be possible to use this as leverage on the Governors to ensure commutation. I had in mind the possibility of a question and answer on the lines of that in the attachment to this minute. But the Attorney has advised that this would be improper interference under the terms of the Territories' constitutions; and that abolition should be achieved by legislation in a straightforward manner.

8. I believe, therefore, that the right way forward is to proceed by Order in Council, which I am happy to announce in advance by means of an inspired question. I look forward to discussing this further.

/9.

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9. I am copying this minute to the Prime Minister, the Home Secretary, Lord Privy Seal, Attorney-General, Parliamentary Secretary to the Treasury, Captain of Gentlemen-at-Arms, and Sir R Butler.

DH

(DOUGLAS HURD)

Foreign and Commonwealth Office
11 February 1991

CONFIDENTIAL

Question: In the light of the decision by the House on 17 December to reject the clauses on capital punishment seeking to amend the Criminal Justice Bill, what is Her Majesty's Government's policy with regard to the retention of capital punishment in Bermuda and the Caribbean Dependent Territories?

Answer: The British Government expects the Dependent Territories which elect to remain under the Crown to uphold the same standards of good government and the protection of human rights as applied in the United Kingdom. We therefore look to Bermuda and the Caribbean Dependent Territories to introduce their own legislation to abolish the death penalty for murder. In the meantime, the Government would not wish to see executions carried out in these Territories for we expect our Governors to take note of the wishes expressed by the UK Parliament whenever they are called upon to exercise the prerogative of mercy.

For the Capital Branch
see dep. territories
Aug 80





PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

1 February 1991

Dear Simon,

DEPENDENT TERRITORIES : CAPITAL PUNISHMENT

Following our telephone conversations on this, I write to confirm that the Lord President will chair a meeting at 5 pm on Thursday 14 February in his room in the House of Commons (Room 4). In addition to the Foreign Secretary and Mr Lennox-Boyd, those attending will be the Home Secretary, the Lord Privy Seal, The Chief Whip (Commons) and the Chief Whip (Lords).

Earlier papers conclude with Charles Powell's letter to me of 17 December. You indicated that you would be circulating a further note, as a basis for discussion at our meeting.

I am copying this letter to Charles Powell, Colin Walters, Gillian Kirton, Murdo Maclean, Douglas Slater and Martin Hatfull, and to Sonia Phippard, Bill Reeves and Muir Russell in the Cabinet Office and Geoffrey de Deney in the Privy Council Office.

T J Sutton

T J SUTTON
Principal Private Secretary

Simon Gass Esq
PS/Secretary of State for Foreign
and Commonwealth Affairs

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cc/pc



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

1 February 1991

Dear Lord

COP 172

DEPENDENT TERRITORIES : CAPITAL PUNISHMENT

Following our telephone conversations on this, I write to confirm that the Lord President will chair a meeting at 5 pm on Thursday February in his room in the House of Commons (Room 4). In addition to the Foreign Secretary and Mr Lennox-Boyd, those attending will be the Home Secretary, the Lord Privy Seal, The Chief Whip (Commons) and the Chief Whip (Lords).

Earlier papers conclude with Charles Powell's letter to me of 17 December. You indicated that you would be circulating a further note, as a basis for discussion at our meeting. *at Play*

I am copying this letter to Charles Powell, Colin Walters, Gillian Kirton, Murdo Maclean, Douglas Slater and Martin Hatfull, and to Sonia Phippard, Bill Reeves and Muir Russell in the Cabinet Office and Geoffrey de Deney in the Privy Council Office.

T. J. Sutton

T J SUTTON
Principal Private Secretary

Simon Gass Esq
PS/Secretary of State for Foreign
and Commonwealth Affairs

CONFIDENTIAL

FOR Policy: Corp Punishment
on the DT's.

Aug 1980

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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

17 December 1990

Dear Tim,

DEPENDENT TERRITORIES: CAPITAL PUNISHMENT

The Prime Minister has seen the Foreign Secretary's minute of 13 December to the Lord President about capital punishment in the dependent territories as well as the Lord Privy Seal's minute of 14 December. In view of the clear difference of view, there will need to be a discussion between colleagues. Whether this should be in H Committee, OPD or an ad hoc meeting is a point on which the Prime Minister would no doubt welcome advice. Meanwhile, no action should be taken on the basis of the Foreign Secretary's minute.

I am copying this letter to the Private Secretaries to the Foreign Secretary, the Lord Privy Seal, other members of OPD, the Home Secretary, the Chief Whip and Sir Robin Butler.

Yours sincerely,

(C. D. POWELL)

Tim Sutton, Esq.,
Lord President's Office.

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CONFIDENTIAL



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

17 December 1990

EMM
(7ki)

Dear Douglas,

DEPENDENT TERRITORIES: CAPITAL PUNISHMENT

In your minute of ¹³ December you propose that capital punishment should be abolished in five Caribbean dependent territories by an Order in Council to be made on 19 December and the "fait accompli" announced by an Answer to a Written Question.

You will have seen David Waddington's minute to me of ¹⁴ December which raises more fundamental questions about whether we should proceed in the way you propose. Others may wish to comment, and I recommend that we have a discussion in OPD before detailed decisions are taken.

In advance of that, let me set out the two reservations I have about the procedure you propose.

The first concerns the timing. As I understand it the number of pending cases has dropped from thirteen, when you first raised this matter, to twelve, and five of these are in Bermuda to which the Order would not apply. Of the remainder, in only one case, in Anguilla, has sentence of death actually been passed, and the Order would not apply to this case. The Governor's justification for commuting would be the subsequent change in the law which would be a new element in reaching his decision. For that purpose, I should have thought that an announcement of a firm intention to make the change would be as much justification for the Governor as the change itself.

I say this because my second reservation concerns the questionability of using an Order in Council, in exercise of a power expressed in wholly general terms, to amend the domestic law of the five Caribbean dependent territories without any prior local consultation in those territories or any prior announcement allowing an opportunity for objections to be submitted and considered. I believe that to proceed in this way would expose the Privy Council, and The Queen, to criticism, and it seems a risk that it is unnecessary to run.

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In 1948, when an amendment which would have abolished the death penalty had been tabled to the Criminal Justice Bill, all death sentences were automatically commuted, even though the amendment was ultimately defeated. Similarly, an announcement of an intention to make the change (assuming we decide to do so), by an Answer to a Written Question, would seem a sufficient new factor to justify Governors commuting any outstanding sentences of death. The Order in Council could then be made at a later stage, without exposing the procedure to criticisms of secrecy, high-handedness and excessive speed.

All this leads to the conclusion that it will not be possible to take this item at Wednesday's Council. That may be just as well, since the BBC will be present at that Council, filming for The Queen's fortieth Jubilee. The risk of a premature disclosure would have been a very real one.

I am copying this letter to the recipients of yours.

Yours ever,

JM

JOHN MACGREGOR

Rt Hon Douglas Hurd CBE MP
Foreign Secretary

CONFIDENTIAL

folia : Capital Punishment
and Defendants Testimony

Aug 20



CONFIDENTIAL



cc pk.

(2)

col o/e.

Charles
Yes - and we
4 other show
pl. refer

Prime Minister
A different view

CBD 15/xii

LORD PRESIDENT OF THE COUNCIL

DEPENDENT TERRITORIES: CAPITAL PUNISHMENT

- with COP?

I have seen Douglas Hurd's minute of 13 December and I have the gravest doubts as to whether we should grasp this nettle. We have managed to muddle along so far. Why is it necessary to raise the matter now?

There may be a respectable argument for abolishing capital punishment in the Caribbean territories but not in Hong Kong, but I doubt whether the popular press will think there is one. Far more likely their line will be that we are prepared to hand over Hong Kong to the Chinese leaving British subjects exposed to the death penalty but are not prepared to keep capital punishment in territories where we can see that it is not used improperly.

A free vote in the House of Commons not to restore capital punishment in the United Kingdom can be no justification for a Government decision to abolish capital punishment in some but not all our Dependent Territories. The Government has always remained neutral on the issue of capital punishment in the United Kingdom not least because all members of the Government are not in agreement on the matter. I find it hard to believe that all members of the Government are in favour of abolition of capital punishment in the Dependent Territories, and I would have thought that in these circumstances the Foreign Secretary would wish to pause before taking the line that although the Government as a whole remains neutral on the issue of whether capital punishment should be restored here, the Government is prepared to be far from neutral on the issue of capital punishment in the Dependent Territories.

I am copying this minute to the Foreign Secretary, other members of OPD, the Home Secretary, the Chief Whip, and Sir Robin Butler.

WADDINGTON

14 December 1990



For Policy:
Corp Punishment
in the Dep' Terr'
Aug 80



safe
①

010
Charles/ what parliamentary procedure/debate?

A word please
15.12

CONFIDENTIAL

Eric Hinton

FCS/90/222

Center into the
proposed course
of action?

LORD PRESIDENT OF THE COUNCIL

Dependent Territories: Capital Punishment

CDJ
13/xii

Introduction

1. I have been reviewing the case for taking action to abolish capital punishment in those of our Dependent Territories where the death penalty for murder is still retained. This paper is written in anticipation of a vote against capital punishment in the United Kingdom on Monday, 17 December. Because the capital punishment debate has been brought forward we have to act fast. The Chief Whip recommends that action be taken on this matter as soon as possible after the debate, namely by Christmas.

2. The last execution in a Dependent Territory was in 1977, but there are twelve cases pending, any one of which could result in an execution. In Anguilla a decision by the Governor on an execution date is already overdue, and in the Caymans, where five cases are pending, a new gallows has just been completed, and graves have been dug.

3. I believe that we would face considerable criticism in Parliament and in the media if any execution did take place. We cannot simply rely upon the personal decision of the

/Governors

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Governors to commute as in the past. I have therefore considered in which territories we should abolish capital punishment and how best to achieve it with the minimum of controversy both in the territories and in the UK.

Background

4. Although we have abolished the death penalty for murder in the UK it remains on the statute books of seven of our Dependent Territories: the five Caribbean Dependent Territories, Bermuda and Hong Kong.

The Constitutional Position

5. In the Caribbean DTs and Bermuda, judicial appeals are made from the local Supreme Courts to the local Courts of Appeal, and ultimately to the Judicial Committee of the Privy Council. Thereafter, an appeal for clemency may be made to the Governor, advised by his Mercy Committee. (The Mercy Committee in Bermuda consists of local Ministers and representatives of public opinion. In most Caribbean DTs, the Mercy Committee is formed by the Executive Council, ie Ministers and senior officials). The Creech Jones doctrine, which dates from the 1940s, places the onus of the ultimate decision on the Governor. The Governor acts in loco majestatis; British Ministers would not advise The Queen to intervene except in the exceptional circumstances of a manifest miscarriage of justice. In practice, therefore, a Governor's decision on commutatioin can take little or no account of the will of the British Parliament regarding capital punishment, as expressed in successive free votes.

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The Case for Change

6. The present position is untenable because:
- a) In the Caribbean DTs especially, public opinion is invariably hostile to convicted murderers from off-island. This frequently weighs heavily (and unfairly) with Mercy Committees.
 - b) We regularly intervene on behalf of individuals sentenced to death in other jurisdictions. It would not be easy to explain publicly why a similar intervention in Bermuda or a Caribbean Dependent Territory would be regarded as unconstitutional, and might undermine the authority of the Governor.
 - c) The difference in arrangements for the UK and some of our Dependent Territories, on the one hand, and for the Caribbean Dependencies and Bermuda and Hong Kong, on the other, could expose us to criticism on racial grounds.
 - d) Leaving the decision whether or not to commute in the hands of Governors carries risks for public order and places an unreasonable burden upon them. In 1977 (because of a case in the British Virgin Islands) we were obliged to deploy the Armed Forces to control unrest.
 - e) As a result of a decision by the European Court of Human Rights (the Soering case), we may find it increasingly difficult to secure the extradition to a Dependent Territory of someone charged with a capital offence unless the British Government is able to give an assurance that the death penalty would not be carried out.

/Options

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Options for Action

7. We have examined three ways in which we could bring about change:

- i) administrative action;
- ii) local legislation in the six Dependent Territories;
- iii) legislation in the UK.

Administrative action has been sufficient to deal with the problem in Hong Kong because of the constitutional position. In 1973 (when abolition of the death penalty was being debated here), the then Foreign Secretary intervened to prevent an execution in Hong Kong and since then Governors have invariably commuted. In Hong Kong's case, the justification for commutation has been that in the absence of an elected legislature, special attention should be paid to the views of Parliament in the United Kingdom. Constitutionally the Caribbean Dependent Territories and Bermuda are more advanced: their Legislative Councils are fully elected. Overriding the views of a fully elected body on such an emotive issue would be politically more difficult, and would be constitutionally improper in view of the obligation imposed on Governors by the territories' Constitutions to consult those bodies in each individual case.

8. Local Legislation would require a programme of pressure and publicity in all six territories. Success could not be

/guaranteed

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guaranteed. Not all Governors have the power to propose and force through such legislation on their own account. Local politicians are notoriously reluctant to give a lead to public opinion. Even if we were to succeed in persuading one or two legislatures it is inconceivable that we would be able to deliver all six in time to avoid the risk of an execution.

9. The only practicable way forward is to introduce legislation in the UK. It would be possible, but highly undesirable, to introduce a Bill providing for abolition in all the Dependent Territories. A far more satisfactory alternative is available in the case of the five Caribbean territories. Capital punishment can be abolished in these territories by Order in Council, since Her Majesty has expressly reserved to Herself full power to legislate for those territories by Order in Council. However, there is no such reservation in respect to Bermuda. Primary legislation would therefore be required to achieve abolition in that territory, unless the Bermuda legislature itself took action.

The Caribbean Dependent Territories

10. As regards the five Caribbean territories, I propose a single Order applying to Anguilla, BVI, Cayman Islands, Montserrat and TCI. The Order would be made under section 1(2) of the Anguilla Act 1980 and section 5 of the West Indies Act 1962. In accordance with section 7(3) of the West Indies Act such an Order (or Orders) would simply require to be laid before Parliament after being made. It would not be subject to either the positive or negative resolution procedure.

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11. Whereas a Bill would necessarily involve debates in both Houses of Parliament, an Order in Council dealing with the five Caribbean territories would not. Although a member might seek an adjournment debate or move a private member's motion, I doubt that the chances of this are very high. The Order could not, in any case, be amended or annulled by a vote on such a debate.

12. If faced with questions in the Commons on why we had decided to take this course, I would emphasise that there has been only three executions in the Dependent Territories since the abolition of capital punishment in the UK for cases of murder, and none since 1977. I would point out that, as Foreign Secretary, I was ultimately answerable to Parliament for the good government of Dependent Territories and therefore responsible for ensuring that as far as possible Governors should follow UK legislation and practice, particularly in an area where the UK Parliament has expressed a clear and consistent view over many years. I would also point to the difficulties we would increasingly face if asked to secure an extradition to a Dependent Territory where capital punishment remained on the statute book.

13. In the meantime, I have made clear to Governors that I am actively considering legislation to abolish the death penalty and that in these circumstances it would be most improper for any executions to be carried out.

/Bermuda

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Bermuda

14. A referendum on capital punishment took place in Bermuda on 30 August. This resulted in a 4:1 majority in favour of retention, though the turnout of 33% was low. Despite this result it is possible that the Bermuda Government may decide in the light of the Caribbean Orders to introduce legislation of its own. The Cabinet contains abolitionists, the government majority is relatively slender, and the Opposition are committed to abolition. The narrowness of the Parliamentary majority in favour of capital punishment is a strong argument for the Governor not to implement any execution. But we cannot rely on this. If Bermuda decided not to take action we would be faced with a choice between relying on the Governor to commute, or introducing primary legislation in the UK.

15. The present Governor has commuted in two cases, (and has indicated to me that he intends always to do so). But we cannot be certain that his successor will be prepared to stand up to popular pressure for an execution some time in the future. In selecting a new Governor, we would stress the importance of the issue and the attitude of each candidate could be taken into consideration, but an element of uncertainty would remain.

16. All this argues for a watching brief on Bermuda in the hope that the Bermuda Government will decide to introduce its own legislation when it becomes clear that we propose to take action with regard to the Caribbean Dependent Territories. It should not, in any case, be necessary to contemplate legislation in the United Kingdom in this Parliament.

/Hong Kong

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Hong Kong

17. I am excluding Hong Kong from these proposals. Though public opinion there is generally in favour of the death penalty, its effective abolition has been accepted by most people. But the issue remains very sensitive, not least because of the transfer of sovereignty in 1997, and any United Kingdom action to end capital punishment in the Caribbean territories would be bound to stir up debate and controversy in Hong Kong. The Governor's strong preference is therefore not to raise the issue of Capital punishment in the Dependent Territories now, and he certainly would not wish anything to be done in regard to Hong Kong. But he agrees that abolition through Order in Council applying to the Caribbean Territories alone would be less damaging than any of the alternatives. If we were challenged as to why we had not taken the opportunity to legislate for Hong Kong, we would take the line that there is no immediate need for any action, and that it would be wrong to insist that Hong Kong should be required to follow the United Kingdom lead in such a sensitive area when we were seeking to build up the territory's autonomy in the run up to 1997.

Conclusion

18. I propose that the necessary Order for the Caribbean Dependent Territories be made at the meeting of the Privy Council on 19 December and be laid before Parliament on the same day. The fait accompli would be announced by a written PQ.

/19.

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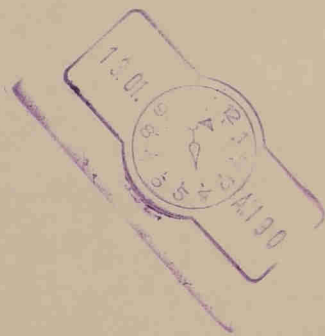
19. I am copying this minute to OPD colleagues, the Home Secretary, the Lord Privy Seal, the Chief Whip, and Sir Robin Butler. With my apologies for the short notice, I should be grateful for any comments by the afternoon of Monday, 17 December.

DH.

(DOUGLAS HURD)

Foreign and Commonwealth Office
13 December 1990

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EWB

Foreign Policy

14 April 1981

The Prime Minister has seen the Foreign and Commonwealth Secretary's minute of 13 April, on capital punishment in the Dependent Territories.

She is content to accept his recommendation.

I am sending copies of this letter to John Halliday (Home Office), Michael Collon (Lord Chancellor's Office), Brian Norbury (Ministry of Defence) and David Wright (Cabinet Office).

M. A. PATTISON

[Handwritten signature]

R.M.J. Lyne, Esq.,
Foreign and Commonwealth Office.

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PM/81/17

PRIME MINISTER

Capital Punishment in the Dependent Territories

1. In my minute PM/80/82 of 3 December, I explained that we could face problems over the question of the death penalty in certain of the Dependent Territories.
2. The Governor of Belize, on the advice of his Advisory Committee on the Prerogative of Mercy, has decided not to exercise the Prerogative of Mercy in the case of Seymour Thomas who was convicted of a double murder in Belize. (Details of the case are attached.)
Thomas will therefore be executed on 22 April.
3. The political situation in Belize is delicately poised and there is a possibility that the opposition will use the execution as an opportunity for criticising the Governor and indirectly, the ruling party, and will try to draw attention to the matter by lobbying MPs who are abolitionists. While a case could be made for asking the Governor to postpone the execution, I think we would run the greater danger of appearing to undermine his authority, or worse still, of being accused of interfering in the impartial administration of justice at a time when we are trying to bring Belize to speedy independence. Moreover, it would go against the view which I took last year that there should be no interference from London in those cases where a Dependent Territory has decided to retain the death penalty, providing the correct legal processes, including appeals, have been adhered to.
4. I am copying this minute to the recipients of my earlier one.

C

(CARRINGTON)

Foreign and Commonwealth Office

13 April 1981

SEYMOUR SAMUEL THOMAS

Seymour Samuel Thomas is a Jamaican national who was born at Delvey, Saint Thomas, Jamaica on 28 February 1949. Thomas arrived in Belize as a member of a ship's crew in June 1975.

On the morning of 10 October 1979, Thomas visited the home of Mr Roy Matthews who lived on a farm with his son and daughter. Thomas asked to see Roy Matthews with whom he claimed to have some personal business to discuss. He was told that Matthews had gone to Belmopan and would not be back until later that night. Thomas was given permission to stay at the house until Matthews returned.

Later in the afternoon, the son, Richard Matthews, said he was going to Belmopan to look for his father. Thomas agreed to accompany him. However, when the bus they had flagged down stopped only Richard Matthews got on. Thomas returned to the house and told the daughter, Jennifer Matthews that he intended to kill her father. He then produced a pistol. Richard Matthews returned to the farm about 3.30pm when Thomas again repeated his intention to kill their father when he returned. Richard and Jennifer Matthews tussled with Thomas for possession of the pistol but failed.

Roy Matthews returned to the farm about 6pm. Thomas told Matthews he was going to kill him and eventually shot him in the leg and then in the neck. He also shot the son Richard in the arm. Both collapsed and the father died shortly afterwards. Leaving the son lying bleeding on the floor, Thomas forced the daughter to assist him to dispose of her father's body. They then returned to the house where Thomas raped the daughter.

The following morning, 11 October, Thomas ransacked the house and stole items of jewellery and then left for Belize city. The daughter raised the alarm, the police were called and the wounded son, Richard, was taken to hospital, where he later died.

Thomas was arrested and charged with the double murder of Roy Matthews and son Richard. He was found guilty in the Supreme Court of Belize on 17 October 1980 and was sentenced to death. A subsequent appeal by Thomas was dismissed by the Court of Appeal.

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14 APR 1961



10 DOWNING STREET

~~MICHAEL~~

SO SOON THAT
THIS HAS TAKEN A
LONG TIME, BUT
VILDA GOODMAN HAS BEEN
ABROAD. I HAVE NOW
SEEN HIM AND EXPLAINED
THE POSITION TO HIM.

[Signature]

29/12/1980.

C.F.

na

MA 31/XII.

MOOBA

Foreign
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MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1
Telephone 01 5807022X 218 2111/3

MO 5

15th December 1980

h's Paul

Dear Paul,

CAPITAL PUNISHMENT IN THE DEPENDENT TERRITORIES

The Defence Secretary has seen Lord Carrington's minute of 3rd December 1980.

He notes that we may have to support the Governor of the British Virgin Islands with a show of force if he were to commute two death sentences there. He has asked me to say that, given in particular the uncertainties over Belize, he hopes your officials will give early warning to ours, if there is a prospect that a frigate or other reinforcements may be required.

I am copying this letter to Michael Alexander (No 10), Ian Maxwell (Lord Chancellor's Office), Stephen Boys Smith (Home Office) and to David Wright (Cabinet Office).

J D S Dawson

(J D S DAWSON)

Paul Lever Esq

CONFIDENTIAL

16 DEC 1980

16 DEC 1980



10 DOWNING STREET

M: ALEXANDER.

Am.

1. Thank you.
2. Will report to
Vivian Goodlow.

Am.

8/12/1960.

de laun Gas

C O N F I D E N T I A L



HOUSE OF LORDS,
SW1A 0PW

PRIME MINISTER

p/w Hs (with 26/82)

PM/80/82

*pps loose with 1 Gas,
for CF Hs.*

And

Capital Punishment in the Territories

I agree entirely with the views expressed in the Foreign and Commonwealth Secretary's minute to you of the 3rd December.

I do bear in mind that the retention of capital punishment in Dependent Territories can cause criticism in some quarters of the Judicial Committee of the Privy Council, where there is a right of appeal - the same is true of appeals from independent Commonwealth countries which retain capital punishment. I hope we shall resist pressure to abandon the right of appeal because of this factor: the right does at least give those convicted an additional chance, not that it is very often that an appeal succeeds.

Apart from that, I do not think we ought, by legislation at Westminster, to force Dependent Territories to adopt policies different from those adopted by independent Commonwealth countries.

I am sending copies of this minute to the Home Secretary, the Foreign and Commonwealth Secretary, the Secretary of State for Defence and the Secretary to the Cabinet.

H. of S. M

5 December 1980



How to see

Prime Minister

(2)

To note

PM/80/82

PRIME MINISTER

*I should like
to know to
see that note.
It is aware
of the Virgin
Islands court
note, but*

Capital Punishment in the Dependent Territories

1. You should know of problems which might arise within the next few months over the question of the death penalty in dependent territories.

2. The current position is as described in the attached note which was prepared for you in August when you saw MPs who had visited the British Virgin Islands. The issue of course arouses strong feelings, both in this country and in the dependencies themselves. There is a body of opinion here, with some support in Parliament, which maintains that HMG should bring dependent territories' practice into line with the metropolitan power and, if necessary, impose abolition. Such demands would obviously increase if executions were in prospect. On the other hand, local feeling in those territories which retain the death penalty is generally strongly in favour of its use. Commutations can lead to protests and even violence. In 1978 a frigate was sent to the British Virgin Islands in expectation of disturbances when the Governor decided to commute.

3. The position of the Governors is awkward. They have the same sort of responsibility as that previously exercised

/by



by Home Secretaries in the United Kingdom. They have to come to a decision in their own deliberate judgement, which may sometimes conflict with local opinion.

4. Cases where the Governor's decision will be necessary are likely to arise soon, in the Turks and Caicos Islands (where a murder case is to be heard shortly) and in the British Virgin Islands (where two people have recently been sentenced to death for murder). The Governor of the British Virgin Islands, in particular, is concerned at the responsibility involved since he personally has conscientious objections to the death penalty. If he decides to commute, we may have to support him with a show of force if necessary, as in 1978.

5. I shall keep you informed as events progress. I see no reason to alter the decision which I took in February of this year to continue our policy of not legislating on domestic matters for the dependencies against their wishes. But you and the recipients of this minute will wish to be aware that that decision carries difficulties and may cause political problems here and in the territories concerned. I am sure that those problems can be contained but they are likely to cause considerable strength of feeling while they last.

6. I am sending copies of this minute to Willie Whitelaw, Quintin Hailsham and Francis Pym; and to Sir Robert Armstrong.

C
/

(CARRINGTON)

Foreign and Commonwealth Office

3 December 1980

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23 DEC 1980


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CAPITAL PUNISHMENT IN THE DEPENDENT TERRITORIES

1. Following the abolition of capital punishment in the United Kingdom in 1969 the Governments of all Dependent Territories still retaining the penalty were invited to introduce similar legislation. The following 7 Territories have, however, kept the penalty on the statute books (the year of the last execution in each case is given in brackets):

Belize	(1974)
Bermuda	(1977)
British Virgin Islands	(1972)
Cayman Islands	(1928)
Hong Kong	(1966)
Montserrat	(1960)
Turks and Caicos'	(1946)


In the case of Bermuda, capital punishment is retained only for cases where premeditation has been proved.

2. The administration of justice in the Dependent Territories is a matter for local governments. Abolition by legislation in the United Kingdom would arouse strong opposition in the territories concerned.

3. On 13 February 1980 the Foreign and Commonwealth Secretary agreed that there should be no change in the system for dealing with capital punishment in the Dependent Territories. This, the 'Creech Jones' doctrine, delegates to Governors the exercise of the Crown's prerogative of mercy, without precluding the possibility of appeals to the Secretary of State or to The Queen. It is accepted policy, in dealing with such appeals, to advise

/that

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that the decision of the Governor should be upheld, the man on the spot being in the best position to consider all the circumstances of a case. A reversal would only occur if a miscarriage of justice appeared likely. (No such case is in fact on record).

4. The present position in the British Virgin Islands is that three men are at present held on murder charges - two have been committed for trial (probably in October) and the third is awaiting committal hearings. Any conviction for murder invokes an automatic sentence of death.

Foreign and Commonwealth Office
7 August 1980

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10 DOWNING STREET

MR GOW

I attach the papers on capital punishment in the Dependent Territories relevant to Victor Goodhew's meeting with the Prime Minister. Will you have an opportunity to have a word with him shortly?

MA

17 September 1980

Copy passed to Mr Gow ^{Foreign Office}

BF 15/1x

~~MAJ 11/8~~ MAJ 11/8

PRIME MINISTER

Here is a note about capital punishment and dependent territories following your discussion with Victor Goodhew.

Would you like Ian Gow to have a word with Mr. Goodhew, making it clear that the Governors' own advice, in the light of local circumstances, is a crucial element in the Government's attitude in any individual case, but that Ministers here could not begin to take a view about hypothetical cases.'

Yes - at a suitable moment
no

MAJ

8 August 1980

COVERING CONFIDENTIAL



Foreign and Commonwealth Office

London SW1A 2AH

8 August 1980

Dear Mike,

Capital Punishment in the
Dependent Territories

You asked about HMG's position on Capital Punishment in the Dependent Territories, following the Prime Minister's conversation with Mr Goodhew. A short note is attached.

Yours etc

Paul

(P Lever)
Private Secretary

M Pattison Esq
10 Downing Street
London

COVERING CONFIDENTIAL

- 8 AUG 1980

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