



Constitutional Modernization Initiative

*Verbatim Transcript
of*

**HUMAN RIGHTS & RELIGION
Held on**

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FAMILY LIFE CENTRE

**Grand Cayman
Cayman Islands**

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**WEDNESDAY
26 MARCH 2008
CONSTITUTIONAL MODERNIZATION MEETING
FAMILY LIFE CENTRE
HUMAN RIGHTS & RELIGION**

WELCOME

Mrs. Suzanne Bothwell: Good afternoon everyone. Thank you for coming out tonight.

I am kindly asking those persons who have cell phones to put them on vibrate and to silence them at this time so that we do not have interruptions during this program. Thank you.

We will be starting in just about a minute from now. We are just going to cue in for the television program.

[pause]

Okay, we are going to start with a prayer by the president of the Ministers' Association, Brother Bob Thompson.

Thank you so much, sir.

PRAYER

Br. Bob Thompson: One thing, all of us are here tonight because we are concerned that there is a God that directs the steps of nations when we turn to him, and we want to do that tonight. Shall we pray?

Heavenly Father, this evening we are coming to your presence recognising the fact that you have invited us to bring all our cares, not just about our individual lives, but our corporate life and community life here in Cayman. We come to you tonight asking for your direction. We ask, O Lord, that our hearts will be responsive to your spirit and we pray that we will be a people who truly are an example of what it means to be a Christian nation.

Lord, I pray that you will help us. We realise that there are many forces that are fighting against us, but Lord we still want to choose your side. We are glad tonight that we can invite you to direct our steps.

In Jesus' name I pray, Amen.

Mrs. Suzanne Bothwell: Amen.

Again, I would like to welcome all of you who have taken the time out of your busy schedule tonight to attend this meeting hosted by the Leader of Government Business and the Secretariat on the Human

Rights, or Bill of Rights in our Constitution and the issues that are relevant to the Cayman Islands.

For those who are tuning in on Radio Cayman and watching the program on CITN, I also would like to welcome you and hope that you tune in for the duration of the program.

We will move right to business, and I would like to now ask the Leader of Government Business, the Honourable Mr. Kurt Tibbetts, to begin with a few opening remarks.

OPENING REMARKS

Hon. D. Kurt Tibbetts: Thank you very much, Suzanne.

A very good evening to everybody. I am happy to see that we still have some people coming in and we have a fairly large representation from within the community. Just to say a few words before we get into the meat of things—and I am sure we will tonight. As Suzanne has just said, we wanted to have this meeting specifically, but not limited to, the issue of human rights and the proposal for a Bill of Rights to be included in any new Constitution that is drafted.

Let me first of all say to you that in every communication that we have had with London from the time we went to do our first set of negotiations in 2002, they have told us that any new Constitution that is agreed upon between the United Kingdom and the Cayman Islands must contain a Bill of Rights. So, we have to get past the point of whether a Bill of Rights should be contained in the Constitution or whether it should be an Act on its own as part of our own domestic legislation. Once we can accept the fact that there needs to be a Bill of Rights in the Constitution, then we can spend our energies gaining consensus among ourselves as to what that Bill of Rights should contain. The main purpose of tonight's meeting is just that. As I said, we are not limited with our focus to that area, but that is what we would like to concentrate on tonight.

We are with the benefit of the presence of Professor Jeffrey Jowell, who is the advisor to the Government and, indeed, to the country at this point in time with a background of constitutional law and also with tremendous knowledge regarding the actual crafting of constitutions, having dealt with this in various territories. Suzanne will introduce Professor Jowell formally, but I just wanted to note his presence. I am sure we will all benefit from his knowledge as we engage in the discussions.

Suzanne is also going to welcome the Secretariat team. Minister McLaughlin and I are simply here to help facilitate this meeting. Once again, the whole purpose of the exercise is to hear what your views are so that we can take all of those views on board with regard to the forward movement of the constitutional modernization process.

Once again, I want to thank you all for coming here tonight. I am sure that we will all have benefit at the end of the evening because of the dialogue we will be able to engage in.

Minister McLaughlin, unless you wish to have a few words now, I will hand right over to Suzanne so that we can get into this evening's program.

Thank you.

Mrs. Suzanne Bothwell: Thank you sir.

I would just like to invite those persons who are coming in right now . . . we do have about 20 free seats up front. So, if you are not shy of being up front, I would invite you to come forward and utilize those empty spaces.

Again, I would like to welcome all of the persons here tonight, in particular the Ministers' Association for coming out, your congregation, Members of the public, citizens and residents.

We do have with us today Professor Jeffrey Jowell. As the Leader of Government Business indicated, he is acting as the advisor to the Government regarding our current constitutional reform process.

Professor Jowell is a Barrister at Law. He is also a Queen's Counsel. He is a professor of Law at the University of London. He is a constitutional lawyer and he has advised on the constitutions of many countries including South Africa, Jersey, Gibraltar and a number of countries in the former Soviet Union.

He is an author, or joint author, in leading legal texts on constitutional law and human rights and he has so kindly come out from the United Kingdom this week to participate in this meeting. He is very keen in providing you, the citizens of the Cayman Islands, with whatever information you need clarification on in relation to human rights. That is the reason why the Secretariat and the Cayman Islands Government has sought the services of Professor Jowell and we are happy to extend his knowledge and expertise directly to you.

The format for the meeting will be that he will do a brief presentation talk on some of the already identified areas of concern regarding human rights. Then we will have a question time.

I see we have a large group of persons coming in. Again, I would invite you to take advantage of the empty seats which are at the front of the room.

So, without any further ado, I would like to invite Professor Jowell to say a few remarks and open the discussion.

PROFESSOR JEFFREY JOWELL

Professor Jeffrey Jowell: Thank you, Suzanne.

Can you hear me?

From the audience: No.

Professor Jeffrey Jowell: Right. I will use this . . . I prefer to stand up so I can see you all down there.

It is just such a pleasure and delight for me to be back here and to be involved in this exercise. I do feel very privileged to be here, as I always do on this beautiful Island, and to be among you.

I am going to talk about things that I have spoken about before here, before this exercise really took off. So forgive me if much of this is common ground. But I think halfway through this process of discussion one needs, perhaps, to go back to a few basics because rumors abound and there are anxieties which perhaps need to be thought through a bit and allayed.

What does a constitution do?

A constitution, really, just sets out the powers of the various organs of government—what the executive does, what the legislature does, what the courts do, what the attorney general does, what they all do and what their powers may be. These are the enabling parts of a constitution.

Now, virtually every country in the world (not here yet, but virtually every democratic country) also has a disabling part of the constitution, and that is usually in the first chapter. And that is what the Bill of Rights is all about. It enumerates a certain set of rights that individuals possess—not against each other, but against the government.

The Bill of Rights says there are certain things that we ought to be able to do in freedom, in liberty, and without government interference in normal circumstances (and I will come back to that in a minute). It is the zone of freedom and a protection from any abusive power in that area. And that is all a Bill of Rights seeks to do. As I said, virtually every country, virtually all the British Overseas Territories now have a Bill of Rights that does just that.

What are the fundamental rights that are proposed in these various documents by the Government now? They are not particularly alarming. They are things that I am sure that you would all subscribe to, the fundamental rights. The first batch of them deals with human dignity. The Government should observe that every person is equal in their dignity and the respect to which Government should accord them. And those are the rights, such as, the right to life; the right not to be subject to torture or inhuman or degrading treatment; no slavery; personal liberty, you cannot simply be detained by the police without trial. You must be able to defend yourself. And when you do defend yourself, the trial has to be fair, natural justice, fairness. You ought to be able to defend yourself properly before an impartial and fair tribunal or court.

And then, there is the respect of private and family life and for property. There is also the right to marry between men and women.

So those are the basic dignity rights, as we call them, which are probably in every single Bill of Rights all over the world. And many of those are respected in the law already.

Then, in addition to what I call the dignity rights, there are the political and civil rights, such as the right of freedom of conscience; the right to manifest your religion. And then there is the right of free expression. Those rights allow you to participate both in society to express your own views, but also to criticize the government. Within a democracy the government must be open to criticism.

Then there is the right of assembly and the right of movement, and the very important right to be treated equally on certain ground, which is usually in most countries a fairly restricted list. Certainly race, color, creed, sex and disability are the core equality rights.

So that is what a Bill of Rights is. And, as I said, most countries have them, but some countries go even further. South Africa, for example, has what are called socio-economic rights—rights to healthcare, rights to clean water, rights to a roof over your head to shelter, rights to medical treatment. The difficulty with those rights is that the country cannot normally afford them and you tend to think that maybe that's something the legislature should introduce. This is a matter of preference of a particular government at a particular time and therefore most countries do not have those socio-economic rights. Certainly they are not proposed in these proposals that you have before you.

But there are other rights that some countries have recently put in, such as the right to a clean environment and biodiversity. That is something that is proposed here and that is something that has recently arisen as a result of environmental degradation. People feel it is a right to a decent environment because the planet really depends on it.

Why do we want these rights?

As I said, some of them sort of affirm and celebrate human dignity; others allow proper participation at all times in the political process. The first country to create a Bill of Rights in the Constitution was the United States. There is that famous expression that justified their first Bill of Rights, "All men are created equal", it was said, and "they are endowed by their Creator with certain inalienable rights." And then among these are "life, liberty and the pursuit of happiness."

So, the very first Bill of Rights called on the Creator as providing fundamentally for everybody's individual dignity as being inalienable. Government just cannot interfere with it and must always respect it. If it does interfere, it must carefully justify it.

Why don't all countries believe in rights?

Well, tyrannies don't believe in rights. One of the first things they do . . . look across the country. You look now at Zimbabwe and countries like that. Even though you might say the head of Zimbabwe, Mr. Mu-

gave, was democratically elected one of the first things that he did was abolish the Bill of Rights, and he certainly started by preventing freedom of expression. He shut down the newspapers. So countries like that do not have any track with a Bills of Rights.

The Marxist countries, the former Communist countries, they did not believe in rights either. They were too individualistic. Their only concern was duties towards the State. They thought that rights were egoistic, people should not be engaging in the right to any kind of religion, we should abolish religion; we should abolish most of the law as well, and we should abolish property and these should not be rights. So the Marxist and the Communists don't believe in rights and the tyrants don't believe in rights.

Against whom can these rights be asserted?

People often think that once there is a Bill of Rights we will all be able to assert these rights against each other. I'll be able to sue you for discrimination or for interfering with my freedom of religion and association and so on. That is not how they operate.

As I said, these are disabling rights, disabling the government. These are rights only against the government and any future government; it is not a right between individuals. These rights very rarely have what are called horizontal application. You might want to introduce laws that stop us from being nasty to each other in different ways, but that is not what a Bill of Rights does. It aims specifically at governmental powers, people exercising governmental or public functions.

The next question about rights is: To what extent are they absolute? To what extent can they be limited?

Some rights, in the list that I just read you, some of them are absolute—the right to life, the right not to be tortured. That kind of right, slavery; absolutely can't have that. But there are other rights. In respect of other rights it's often recognized that they must be able to be limited in certain situations. If you look at all the Bills of Rights, and the one that was drafted under the Cayman Islands Draft of 2003, you will see that time and again it provides that in some circumstances the government can limit the rights, where it is justified very carefully—in the interest, say, of national security, or public morality. That is another reason, for example, of limiting rights of conscience or rights of speech; or when rights interfere unduly with the rights of others, or with the sensibility of others.

And for that reason, certain films can be confiscated by government. Censorship is frowned upon, but occasionally governments all over the world intervene and, say, confiscate a movie that mocks the religious sensibility of certain sections of the public. And this has been done time and time again. And in all countries that is being held, that kind of thing, as a justifiable interference with the basic right.

When Minister Farrakhan wanted to come from the United States into the United Kingdom, it was feared that he would preach racial ha-

tred, that what he would have say would be divisive among certain communities. And he was excluded from the United Kingdom. Of course, there is always the right to exclude non-nationals, non-citizens, and foreigners. But in this case in particular, Mr. Farrakhan pleaded his freedom of speech, but the freedom of speech provision provides that it can be limited if it interferes with the rights of others or if it is likely to cause any violence or upset to the community.

So there is this constant balancing exercise that the judges undertake and the legislators and the executive undertake themselves when conscious that they ought really to fulfill rights, but they may also be limited in certain circumstances.

The next question is: Well, if you have rights, why not write in duties? What about duty?

That is an issue that has been considered recently in the United Kingdom. The United Kingdom introduced its Human Rights Act adopting the European Convention on Human Rights as its Bill of Rights. Although it is a mere statute, it does have some kind of constitutional status now. But outright people are thinking, *Is it enough? Do we want to, perhaps, extend the Bill of Rights to environmental rights, to some socio-economic rights? Do we want to strengthen the rights?* And at the same time they are saying, *Well, perhaps we ought to think about duties as well.*

The answer to that is there are tons of duties already in our law. Most of our law, common law and statute law, provides duties. There are duties of the employer to the employee to provide a safe work environment. We all have the duty to drive safely . . . that kind of thing. Most of our law is about duties to other people. That's what it is all about. But perhaps you want to elevate some of those into a Bill of Rights. It's difficult to do so. How would you phrase it?

Strangely enough, the countries that have most duties in their constitution (and I never understood exactly why) are the former Soviet Union countries. I mean, it was the actual old Soviet Union Constitution . . . it's a beautiful constitution—young people have to look after old people; if you see anybody in distress, you have to go and help them; you must provide healthcare to everybody. All wonderful sentiments, I totally agree. But how do you enforce them? That's the problem.

What they did in the Soviet Union, they would say, *'Right, you've got a great constitution. Now let's put it in the bottom drawer and get on with what we were doing before'*, simply because those duties were so vague and they were incapable of any meaningful enforcement. And the whole constitution, therefore, was somewhat degraded by the fact that the rest was considered not really to be enforceable either.

But I should not deride that. I think there is a genuine search on to think that the people should not feel that they simply have a free ride and perhaps there are some duties that are enforceable duties. All these

rights that I have mentioned are and over time are rights that you can get your teeth into. A person can approach government and say *You've been denying me this*. Or, *You've been invading my right*. But these duties are much more general, and in any event are in all our legislation and in all our common law anyway.

So much, then, for duty.

One more topic that is often raised is why do we need a Bill of Rights in a constitution? Why don't we just have it in ordinary statutes?

Some of those rights are already in statutes, for example, about discrimination, that it is forbidden and that kind of thing. As I said, in the United Kingdom there is a statute that introduces their Bill of Rights, the European Convention on Human Rights, but it is considered a super statute because the United Kingdom does not have a written constitution. Here you do have a written constitution, so it's a slightly different situation.

Logically, also, the constitution, as I said, sets out the enabling rights—what the government can and cannot do—so it is logical that it should then proceed to say that the government is disabled from doing certain things for individuals.

Secondly, the reason for having a Bill of Rights in a constitution is that it cannot be overturned in the heat of the moment. It is much more difficult to amend the constitution. If you want to endorse these as really fundamental, or as the Americans put it “inalienable”, they are somewhat upgraded by having them in a constitution.

Another reason for having them in a constitution is that they then become an expression of the values of the nation. They will be learned in school by children, they will be carried around.

It was very moving in South Africa, when I was involved there in their first constitution after the apartheid years—those dreaded years of apartheid—when you found schoolchildren memorizing the Rights in the Constitution, reciting them to their parents. And in the streets people would carry little copies of the whole Constitution, look at them from time to time. They saw this as an expression of the new South Africa. I know it is very different here from there, but the same effect is there. If you have a constitution of that kind, then people sort of realize their value.

It will be interesting during the evening (I'll say not much more now) to go through some of the anxieties or worries or fears that you might have, or to answer any questions. I have encountered a couple in the reading I have done of some of the discussions we've had. Let me just address a few of those in the light of the background that I have just set out.

What about prayer, people have said. And it's a very heartfelt and genuine question. School prayer; prayer before the sessions of the Legislative Assembly; prayer before the sessions of the Courts.

Well, of course that is endorsed by the **notion of freedom of conscience** and the opportunity to manifest your religious beliefs. Absolutely. And if the government were ever to interfere with that, it would be the churches and the schools and the legislatures that go to the court and say, *This is a fundamental right to display to manifest your religious beliefs in a society like this.*

Now there are societies that do not permit prayer in public institutions—not very many of them. The United States is one of them because they had this straight separation between Church and State. They do not want the two to get involved, therefore prayer is not allowed in many public institutions and school. But that is not the case in most other countries which endorse the notion of freedom of conscience for that very reason—to express your religious values.

What about bigamy?

What about Satanism?

Again, here, there is, of course, the right to marry; but there need not be a right to marry many wives. Most of the countries in Europe forbid bigamy, for reasons that we have given, because the right to marry is limited by the notion of offence to the general community to the rights of others, and so on. And so, with Satanism and other religious creeds that might induce violence and so on.

I am sure you have much better examples than those I have just introduced. That was just by way of background.

Thank you very much.

[applause]

Mrs. Suzanne Bothwell: Thank you Professor Jowell.

Again, I am quite pleased to see that so many people have joined us during the course of the last few minutes. We will be moving to questions or comments that persons may have. This is why Professor Jowell is here tonight, that if you have any specific human rights questions that he is here to provide some insight into the rationale.

I would just like to say for persons who have cell phones on, please put them on vibrate. The program is being aired live on Radio Cayman and on CITN. As a courtesy to everyone here, would you please have them silenced? Thank you.

Now, the rules for tonight in terms of asking questions is that we have a microphone up front here. So, if anyone would like to ask questions, you can line up and one question at a time. Once you have finished asking your question you can step aside. You can either be seated or remain standing and have your question answered by Professor Jowell.

Okay. If it is too inconvenient, we will probably carry this microphone around but we can move on from that.

QUESTION TIME

Freedom of Conscience and Religious Schools

Mrs. Suzanne Bothwell: We can, perhaps to draw discussion, start with the issue of freedom of conscience and religious schools, Professor Jowell. I think this is one of the issues that many here tonight have voiced concerns over. Certainly this has been a question that has been raised in a number of public meetings.

One of the first questions is, when we look at freedom of conscience what does that mean? And, also, how does that impact private schools hiring individuals into their establishment?

Professor Jeffrey Jowell: Do you want me to answer that now?

Mrs. Suzanne Bothwell: Yes.

Professor Jeffrey Jowell: Well, freedom of conscience has two parts: first of all the right to think what you wish—nobody can really know what you are thinking—the right also to manifest your beliefs. This allows you to, as I have recently said, pray as and when you wish, either individually or in groups, or to manifest your religious beliefs by your dress, by what you wear, up to a point. As I said, in respect of this belief, of conscience, this is qualified by the other rights, the right not to offend other peoples' rights and the rights of morality. So people could not go around nude as some groups would like to do in expression of their religion. That would not be allowed in the interests of public morality and decency. The government could certainly ban that type of behavior.

In terms of hiring in schools, the Bill of Rights says nothing in particular about private schools because, as I said, the Bill of Rights has to do with the individual's rights against government, against those exercising public functions. It might apply to public schools to some extent insofar as they are exercising public functions, but not to private schools.

In the United Kingdom the Bill of Rights does not address this, but additional legislation has been enacted initiating from the European community to provide that you cannot discriminate on the grounds of religion in hiring practices. But, of course, there is an exception there to. If it is an essential qualification, or a reasonable qualification, for a particular post that that person be of a particular religion, then you are entitled simply to appoint people of that particular religion. There can be no doubt about that at all.

There is what in the United Kingdom is called the “**janitor test**”. If you are hiring someone who is a janitor, has nothing to do with any of the kind of religious education or religious practices that are carried out in a particular religious institution, then perhaps there you should not be able to insist that the janitor should be a member of your religion. But if you are talking about a head master for the school, or somebody who is involved in some way in the activities of a church or religious institution, of course you can require that person to be a member of that particular faith.

Mrs. Suzanne Bothwell: Thank you Professor Jowell.

Now, there have been reports of a case called, I think, the ***Bishop of Hereford***, and a situation where the Bishop was, I think (one of the Minister Association members was discussing that case and has provided that to the Secretariat) . . . certain concerns over you know in that case in the United Kingdom the Bishop was fined for not hiring a certain person because of their sexual orientation, and also was required, I think, to attend sensitization classes. This has been raised as a concern in the local community as to whether or not introducing a Bill of Rights in particular the freedom of conscience or any of the provisions will cause something like that to happen here.

This is obviously . . . the example is contrary to what you have just said. I do not know if you would like to provide a bit of explanation as to what in the United Kingdom causes that sort of outcome? Is it human rights, a Bill of Rights? Or is it something else?

Professor Jeffrey Jowell: Well, it depends on the scope of the Bill of Rights. The European Convention has a Bill of Rights. It is fairly narrow in respect of that kind of equality and discrimination. It forbids discrimination in respect only of the rights within the Convention. It is confined to that, piggyback rights only—discrimination only in respect of the exercise of the rights. It is a sort of technical question which you needn’t really bother with.

What I am trying to say is that the equality provision in the European Convention is a very narrow one.

And then it specifies a number of grounds on which you cannot discriminate. They include the normal list that are proposed for the Cayman Islands that I mentioned—race, sex, disability, color, national origin—and also, in the European case, sexual orientation. That is not the reason for the *Bishop of Hereford’s* case because as I said, the Bill of Rights only applies to governmental activity; would not apply to employment practices within a particular diocese or church. Not at all. It would not go there at all. All that it deals with is the exercise of governmental functions, not private functions. I repeat what I said earlier, it does not have horizontal application.

But again, here, through a European directive from the European Union (which is completely different situation from here), it was held that employment, local employment discrimination legislation had to go further than the normal list and include sexual orientation. Therefore, in that case—which has nothing to do with a Bill of Rights—it was held (I do not know the details of the case, but I have heard about it) that in refusing to employ a homosexual that that particular statutes—but not a Bill of Rights—was violated.

So, the short answer to your question is, it has nothing to do with a Bill of Rights, the Bill of Rights goes against government not against private institutions. And it had to do with a particular employment legislation.

In respect to the notion of Gay rights and Gay marriages, again here the European Court of Human Rights has never said that the right to marry must include the right of Gay people to marry. It has never gone that far. It is said that this is really very much a matter for local culture. And they are very mindful of the fact that Catholic countries, in particular—Italy, Spain, others indeed; new European Union former Soviet Union countries, which are Catholic in their orientation, like Poland—would never accept the notion of Gay marriages, rightly or wrongly. It is not for me to comment on that. All I am saying is that that is an issue which up to now has never been regarded as a fundamental right, the right to marry.

In fact, in the United Kingdom, despite a huge amount of pressure, and despite much legislation that does not permit discrimination against homosexuals, the United Kingdom decided it was not going to introduce the notion of Gay marriages, as such, but allowed a notion of a civil partnership instead. That was introduced through ordinary legislation, not at all driven by any kind of Bill of Rights or the European Convention because the European Convention does not actually require that. This is an issue really very much for your own political decision, your own wisdom as to what fits the culture and the local soil; what you would prefer. There is nothing in a Bill of Rights that requires Gay marriages to be recognized, as I say, perhaps rightly or perhaps wrongly. But that is not for me to say.

Mrs. Suzanne Bothwell: Thank you Professor Jowell.

Do we have any questions from the floor?

Yes?

Okay, I have (please put your hands up again) . . . two. Okay. We have number 1 and number 2, and 3 in the back there. I would have preferred if we had a lineup so we could keep track of who has their hand up first. But just keep your hand up.

Brother Bob Thompson [Question #1]: Thank you.

I appreciate the theory that is being said here. But popular concept and the way it is coming down is not just like you are stating. I give two examples: I have worked as a volunteer Chaplain/Pastor at the prison for 20 years. I can remember the days when you were not required to be at worship; you were in your cell quiet. At that time we had no problems with the worship services and the majority of the inmates would choose to come to service.

I have since watched it deteriorate. I brought this up just recently in a meeting and I was told that human rights would not in any way allow us to have that kind of a thing in the prison, of worship or lock down.

I am not . . . I believe that men and women are placed there predominately because they have made wrong choices and our community and the Christian ethos that we espouse here is a moral type of religion when it comes to that. Now, I am not saying everybody follows that, but that's our belief.

Then, the second area . . . and I was told that couldn't happen because human rights.

The second area is that I work at the Cayman Counseling Centre up at Caribbean Haven and I am there as a minister there as well. Just recently it has been removed from that the church service is part of the discipline of the program. It has now become purely volunteer. I question this. I do not see where the change had to be, and I was told it was because of human rights.

Now, these are not theories that I am talking, this is actual things that are taking place and we are seeing . . . I do not see where going to church can't be part of their program. They are there because they have problems; they are there because they can't make right choices, we need to make some for them. And hopefully we, as the ministers of the Island would be very conscious of our position there. It is not our church, but it is a place where we need to give direction and I believe that we can be a positive part.

And if human rights . . . I think I am hearing two different stories; one is affecting the way I operate and the other, what you say, doesn't sound so bad, Professor.

[laughter and applause]

Mrs. Suzanne Bothwell: Thank you Brother Rob.

Professor Jeffrey Jowell: Well, you know, I would like to meet the person who gave the legal advice about this because I would just say it's just flat wrong. Maybe it was just bad advice or wrong perception of what human rights are all about.

To me, human rights are the right to pray when you want, to display your conscience and your religious beliefs. If you try to force people

who are not Christian into making them attend, absolutely require them, proselytize them, perhaps there is an issue on that one. But if you are trying to say, you know, all Muslims have to come to the Christian service, I think that could be [inaudible]. I don't know whether that is so, but, yes, they ought to be able to pray in their own way to their own God. And that is a question of freedom of conscience.

But I would say this, that certainly in the United Kingdom the people who are seeking to provide this kind of activity within the prisons were denied the right to offer prayer or solace or religious education or the opportunity for religious worship in any way, I would feel that members of my Chambers of the Bar would be the very first to represent them before the Courts and say that their human rights have been invaded.

Mrs. Suzanne Bothwell: Yes, thank you.

I think there are two issues at hand. I think the first that you mentioned was your role as a pastor being able to provide religious instruction and guidance in the prison. Perhaps this is the larger question for government itself. I know that in the LA we open with prayer. In the public schools right now we have devotion. And there are ways in which you can operate the Conscience Clause, you utilize the conscience clause, but to say that there is a denial, I think Professor Jowell, has given a solid indication that perhaps government itself in this particular case has to look at how consistent its practices are and to ensure that we follow suit.

Brother Bob Thompson: It wasn't denied, but it cannot be part of the program.

Mrs. Suzanne Bothwell: Required.

Brother Bob Thompson: Required.

Mrs. Suzanne Bothwell: Well, that goes to the Conscience Clause. That goes to the individual's right to choose something in terms of their freedom of conscience. I think that is what the—

Brother Bob Thompson: I thought they lost their freedom.

[laughter]

Mrs. Suzanne Bothwell: No. They did not lose their . . . maybe freedom to come out in the community but, certainly, even if you are in prison, you have not lost all of your freedoms. Certainly not.

Brother Bob Thompson: I think they should have the freedom to do right. But, no, I have not been denied to go in. I don't mean to imply that at all.

Mrs. Suzanne Bothwell: Oh. Okay. All right. I was just taking my notes.

Brother Bob Thompson: It is to have it as a requirement or else nothing else they would do.

Mrs. Suzanne Bothwell: Mm-hmm.

Brother Bob Thompson: And it was that way. But now I'm told because of human rights they can play football during church time, they can have their music blaring during church time, they watch movies that are not fit for any prisoner to watch, and you can go right on down the line. All of this takes place and they are not inclined to come. Out of 883 prisoners, if you can get 20 you're doing good.

Mrs. Suzanne Bothwell: Well again, I think Professor Jowell, this brings us right into the issue of the Conscience Clause, and what does that mean, a Conscience Clause, in terms of freedom of conscience?

How does it apply to, for example, the prisons, those who are children in public schools, children in private schools, where let us say religious instruction is being taught. We have that on a daily basis in some of our schools. Does freedom of conscience prevent an institution from providing that service?

On the part of the individual, what happens if that individual chooses not to participate?

Professor Jeffrey Jowell: This would only apply to public schools because we are talking, again, about government activity where certain kids may feel perhaps because of their religious background or their belief that they do not wish to participate in the normal prayer services, Christian prayer services. And the freedom of conscience in that situation would allow them not to participate. You can't force people to believe something they do not wish to believe. It is as simple as that.

At the same time, everybody who wants to do that and continue worship and continue prayer can use the Conscience Clause to their benefit to assert that right against any government interference. And that's where some of these misconceptions have arisen. It will never stop prayer. There is prayer in the United Kingdom before every session of the House of Lords, as a legislative body and as a judicial body, and both Houses in Parliament. And there is prayer in the schools and elsewhere.

The United States, as I said, is a very different situation because there is separation of church and State.

Mrs. Suzanne Bothwell: Who has the microphone?

Christopher, I believe the gentleman at the back had his hand up, Mr. Coles? Ground? Coles. Sorry. And then here and here.

Mr. Richard Coles [Question #2]: Thank you Suzanne.

Professor Jowell, you were saying that human rights are designed to permit a private individual to assert his or her rights against government rather than against other individuals. There are just two comments I would like to make on that and to ask a question as well.

You addressed that in particular regarding schools and the difference between private schools and government schools. But my experience with the way this has worked in the United Kingdom is that private schools who receive public funding from the government are treated in much the same way as government schools. And because of this, private faith schools in England that receive government funding have been required to conform, do exactly the same regulations and restrictions as government schools. And I see no reason why the same process should not apply here in Cayman where, as we know, all private schools in fact receive government grants, and I am sure are very grateful for them.

So that's one point I would make.

The other point that I would like to make is, certainly, it is reassuring that rights will only be enforceable by private individuals against the government. But it may interest the panel to know that at a meeting of the South Sound Community Centre earlier this week, when we were addressed by the Deputy Chairman of the Human Rights Committee in Cayman, he very frankly and openly said that it is the hope and proposal of that committee that those rights be enforceable by individuals against other individuals.

In view of the fact that that is a Cayman Islands Committee, I wonder if that represents Cayman Islands Government policy.

Professor Jeffrey Jowell: I think I will leave the second of those to Minister McLaughlin.

In respect of the first question, yes . . . well, not always yes. The test of what is a public institution is a very complicated one and funding is one of the criteria that is taken into account, the other is if there is a statute governing them; are they a regulatory body, and so on. It is a very complicated question.

But the general purpose of the Bill of Rights I stress is not to encompass private institutions.

I have noted that under the Protection of Freedom of Conscience Clause in the Draft 2003 Cayman Constitution, there is a specific exemption. It says this, that "No religious community . . ." for those of you who are interested this is section 10(3) of the Draft of the Cayman Islands Bill of Rights] "No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education . . . whether or not that community or denomination is in receipt of any government

subsidy, grant or other form of financial assistance designed to meet, in whole or part, of the cost of such . . . education.”

So in this draft (and I think this would be perfectly permissible to insert) such institutions would be excluded from that aspect of the Conscience Clause even though they receive public subsidies.

The second question I will hand over to Minister McLaughlin.

Hon. Alden M. McLaughlin, Jr.: Thank you, professor, and thanks to Mr. Coles for the question.

Before I answer the policy question, I just want to comment on that provision as well, the one the Professor just read.

That is contained in the Draft Constitution that was sent back to the Cayman Islands by the United Kingdom in February 2003 following the discussions in London between the Opposition, the Government and some members of civil society in December of 2002.

The point of that is that that provision is or was (I should say because some years have passed) perfectly acceptable to the United Kingdom. And the bigger point is we do have some leeway to write in to our Bill of Rights conditions such as that one which limit the application of some of the rights that provide derogations, conditions and restrictions on how those clauses actually operate. That is not true in respect of every clause, but it is certainly true in respect of the majority of them. And that is why this input, these concerns, are so important to the process that we are going through because the team that sits down to negotiate the Constitution with the United Kingdom needs to be able to say to them that we have a clear mandate from the people that this is a matter of concern that provisions such as the one about the application of the freedom of conscience clause to the private schools is something that we have concerns about because all of the private schools in Cayman receive grants and we certainly do not want them to have to be subjected to provisions which relate to public schools.

So those things are quite possible. That particular provision is evidence that the United Kingdom will accept those sorts of restrictions being placed on some of the provisions.

But to the bigger policy question . . . the Human Rights Committee operates independently of Government. We have worked hard to make that happen. Those of you who remember the re-establishment of the Committee by this Government under my chairmanship back in 2005. The chairmanship is now in private sector hands. The chairman is here, Mrs. Sara Collins, and the deputy chair is here. They operate quite independently of Government.

Their job, their mandate, their remit, is to look at Human Rights issues, look at allegations in relation to breaches of human rights, write reports, make recommendations, lobby for what they believe ought to be the case in particular instances or in terms of broader government policies. But the view expressed by Mr. Carter is the view of the Committee.

It is not current Government policy for the rights that are contained in the proposed Bill of Rights to have general application vis a vis one private individual and another private individual. They are, as the professor said, rights which we propose should be enforceable by the individual against the State. That is current Government policy.

Mrs. Suzanne Bothwell: Thank you.

I just want to take care of a few housekeeping matters. We had originally planned to have persons who wanted to ask questions come up to the podium, but because of the large number of persons here we decided not to do that. So we do not disenfranchise those persons I would ask you to keep your hand up if you have a question to ask. One of the Secretariat staff, Ms. Yvette Cacho, will be coming around and taking down your name in order so that you will have an opportunity.

I have been trying to keep some note, and I would just like to say the next three persons whose questions can be asked will be Mr. Norman Bodden, I think your hand was up for quite awhile; Mr. Peguero, after that; and Mr. Elio Solomon. So if you are not those three persons keep your hands up and Ms. Yvette Cacho will be coming around taking your name so that we can then call your name and you can ask your question.

Mr. Richard Coles [Question #3]: Suzanne, I just wanted to say that my question on the faith schools was not limited to the freedom of conscience clause, and I believe that one of the real concerns of the faith schools in Cayman is on the issue of hiring Christian teachers because you are not going to get a faith school unless you have faith-based teachers there, Christian teachers. And one of the issues that is certain to hit private schools in the United Kingdom is that they are no longer allowed to advertise for and exclusively employ teachers who practice the Christian faith. If that would apply to private faith-based schools in Cayman they would struggle, I am sure, to maintain that faith-based education

I know that is a concern, and perhaps that is another area that Government might look at in the Bill of Rights when it is being drafted.

Thank you for allowing me that second question.

Mrs. Suzanne Bothwell: You're welcome.

[applause]

Professor Jeffrey Jowell: I think I addressed that earlier. I think it is certainly permissible for faith-based schools to require persons of the same faith to teach in those positions. Even when you have an anti-discrimination law this is permitted. You can't discriminate on the grounds of sex, but if you require a woman for a particular performance

in a play, of course you can discriminate. You can choose a woman over a man.

In the same way in a faith-based school, and the list of equality of legislation all across the world, you can require people teaching them basically to be a member of that faith and to have some knowledge of that faith.

I don't see that those anxieties have any foundation with due respect.

Mrs. Suzanne Bothwell: Okay.

We did have Mr. Norman Bodden, I said would be the next person.

Mr. Norman Bodden: Thank you very much, Suzanne.

Mrs. Suzanne Bothwell: You're welcome.

Mr. Norman Bodden [Question #4]: I will be the first to admit that I am not as informed as I should be, and that is not because Government has not done its job in distributing a lot of literature, but I have not taken the time to read it all. But I have a question, and I suppose this is a good place to get it answered.

If the Cayman Islands is a party to the European Convention on Human Rights, and much of the literature I have seen speaks about Caymanianizing the human rights for the Cayman Islands. My question is, which one takes precedence?

[applause]

Professor Jeffrey Jowell: The answer is that if you don't Caymanize your Human Rights Bill the European Convention will take precedence and at the moment there is a right of petition to the European Court of Human Rights in Strasbourg in France.

That was the situation in the United Kingdom up until 1998 too when you had these European judges, and I mean no disrespect to them, but with not much knowledge and understanding of the British culture making judgments time and time again on the United Kingdom as if they were part of that. And that was one of the reasons why it was decided that the British Bill of Rights should be taken home. The White Paper that introduced it said "Bringing home our Rights" so that they would be interpreted by local judges with knowledge of the local society and the local culture and argued in a local environment by local lawyers when there was a dispute, but also applied by various institutions in this country when every the decision they would make they would say, Well is this human rights compatible, or is it not? in terms of the local feelings and beliefs and the local morality. So that is the advantage.

The answer is that if it were put into the Cayman Constitution then the Cayman Constitution, the Bill of Rights there would take precedence.

[applause]

Mrs. Suzanne Bothwell: Thank you Professor Jowell.

Just to jump up on that same point in terms of Caymanizing or localizing one's rights, can you perhaps give some further explanation on why, when you look at human rights and Bill of Rights, there are these concepts of limitation of rights? The limitations are allowable for a sovereign state or country of rights, but also the issue of margins of appreciation.

Professor Jeffrey Jowell: Well, the point is that what a Bill of Rights does is it creates certain absolute rights, just things you can't do to people—like put them into slavery, as I said, torture, that kind of thing. Just a no-no.

But there are other rights which, if exercised with a certain amount of license, could offend other people, could tear apart the culture, could cause security risks, and so on. So, for that reason, the freedom of expression . . . freedom of expression is a wonderful freedom. It is being exercised tonight. People want to be able to constructively contribute to political debate. It is a marvelous right. But there are terrible dangers also and it's limited all over the place. You can say what you like about my argument tonight, but you can't be too nasty about me because then you would slander me. And that's a law that has always been in. There is a limitation to freedom of expression through the law of what's called defamation.

And similarly, in a Bill of Rights it also recognizes that all of these rights are wonderful things and part of our culture and part of our freedoms, and part of really a central part of any country that really considers itself a democracy. You don't want rights to lead to license. And that's built into these, into all the European style human rights conventions. The United States doesn't do it quite like that. The US says there shall be due process of law; there shall be equal protection of law, no limitation clause in the US Constitution.

When the South Africans were looking for a new constitution, I mean completely different from the past, they went all over the world. And with due respect to any Americans here, they said, *We don't want that, because we want to specify that in certain circumstances our rights can be limited.* Therefore, in the case called *Preminger*, there was a film made, I alluded to it briefly a while ago, that in a way was very disrespectful of the Lord, of Jesus and of Mary, and the government came in in that country and confiscated that film and the filmmaker said *'I have a right to free expression and artistic expression.'* The European Court of

Human Rights said, *'No. It can be limited on grounds of public morality, of public interest and interference with the rights of others.'* And the same was true when Mr. Farrakhan pleaded free expression to whip up racial division and hatred in the United Kingdom.

So the answer to the question is that rights cannot easily be derogated from. You have to justify it carefully on the basis of the notion of proportionality. The margin of appreciation comes in for the European community saying we're going to give this country some leeway to decide something in accordance with its own culture. That is the margin of appreciation. It doesn't apply when you've brought the rights home.

In that case the notion of proportionality comes in. You can say, Yes, you can interfere; but you have to show that the interference of the right . . . for example detention of some suspect, some terrorist suspect, for a certain amount of time in the United Kingdom, perhaps 28 days, has been said to be more or less justified. If you say indefinite detention, no; you are putting innocent people in confinement indefinitely. But if you put a control order on them or keep them in jail for a limited period . . . that can be justified after 9/11. So many of these rights do have the possibility of limitation so that they cannot simply become license.

Mrs. Suzanne Bothwell: Thank you.

Mr. Peguero, do you have your microphone?

You can use that one, thank you.

Mr. Peguero [Question #5]: Mr. Jeffrey and our Leader of Government Business and other Minister, thank you so much for being with us tonight.

I must tell you from the very outset that I do not trust the EU because the bottom line, as far as I am concerned, their society is not faring any better we are. As a matter of fact they have so many malice that it would be difficult to enumerate them tonight.

I do have a problem with the way things are being infringed upon us in the reality that I believe just so quickly without us being able to disseminate all of the different things that are being proposed tonight.

I would like to say that I do not have a problem personally and I am speaking for myself, not about the other pastors here, or any other Christians, I don't have a problem with anybody expressing religious views. But the problem for me that many of the other countries were propagating their beliefs have a problem with us expressing our beliefs, so they are having a problem.

I see today where in England crosses are being taken down and they are trying to tell us what to do. And every church is being bought by a Muslim group and a Mosec is now being erected.

Am I correct now, Mr. Jeffrey? Yes or no?

[applause]

Mr. Peguero: I am not as eloquent as you are, but yes or no?
Yes or no, sir?

Mrs. Suzanne Bothwell: Thank you Mr. Peguero.

Mr. Peguero: Okay, I understand. You are a lawyer. Maybe I should run for one later.

Well, I am asking the question.

My other concern is when I see what happened to Lebanon that in 1970 used to be a 60 percent Christian nation and today is disseminated with the Muslim belief and the oppression that took place. I am really concerned.

Now, as far as our human rights, again, I do not have a problem with human rights as long as it doesn't infringe on my rights.

So, I respect you. You are my Leader of Government, and you know I respect you. But I need you to respect us as well and I would like whatever we elect to do the same for us.

He is getting paid well. He can handle any comment that a little man like me can do!

[applause]

Mr. Peguero: Surely.

So that is where we are coming from. And the last thing I am going to say, we are getting ready to start a youth program and I am looking forward to Minister McLaughlin to help us with that. I support you sir, but I would not hire a homosexual to take care of our children whether it is a lesbian or a man.

[applause]

Mrs. Suzanne Bothwell: Thank you so much Mr. Peguero.

Hon. Alden M. McLaughlin, Jr.: Thank you Mr. Peguero.

Actually you just made, I think, the most powerful case I have heard in some time for why we actually need a freedom of conscience provision in our Bill of Rights.

You referred to the fact . . . was Lebanon the country? You said it has gone from 60 percent Christian to now essentially a Muslim state. That is an example of a reality that could happen to this place. I say that, and I hear the concern being expressed. But let's look at the development of Cayman.

In 1970, there were only about 10,000 people here. Most of us were indigenous, as far as any Caymanian can truly be indigenous. But *our people were from here*, to use a Caymanian expression.

Now, there are about 60,000 by most people's estimation; 118 different nationalities. Cayman, 10, 15, 20 years from now may be very, very different than it is now. We may well be in a position where the majority here are not of the Christian faith. It is a real possibility.

Therefore, the things that we worry about now, about other religions coming and impinging upon the Christian faith, whittling it away, it may be the other way around in 10, 15, 20 years. And every one of us who believes and practices Christianity will want to know that there is a basis of protection for our ability to practice our belief.

If we do not have a freedom of conscience clause in our Bill of Rights in our Constitution which enables each and every one of us to proclaim what they believe, practice what they believe, you then leave it to chance the day that the legislature is made up of people who do not subscribe in the majority to the Christian faith. That's important.

If you look at history, why the South Africans are so passionate about their Bill of Rights is because they were a nation that was under subjugation that suffered at the hands of a tyrannical state. And because we have never had that experience in Cayman it is often difficult for us to understand the context in which the concept of a Bill of Rights grew up. We can't leave it to chance.

We can't hope and pray simply that forever Cayman will be the way it is. The Cayman that we are in today is nothing like the Cayman I grew up in. It is very different. And if I were a betting man I would bet that in 20 years it is going to be significantly altered from the state it is in now.

So we need constants, we need guarantees, we need such assurances as there can be that whatever your belief, as long as you don't offend morality, public decency and those sorts of principles, you will be free before God and man to do so with the protection of the State and protection against the potential abuses or attempts by the State to infringe on your right.

That is why we need a Bill of Rights.

[applause]

Mrs. Suzanne Bothwell: Thank you, Minister McLaughlin.

The next person with a question is Mr. Elio Solomon.

Mr. Elio Solomon [Question #6]: Good night.

Professor Jowell, you mentioned on the radio today and I believe you alluded to it again tonight in terms of the fact that the present Government has signed us up to the right to petition on a permanent basis and I believe that is significant because if we even listen at the question that would have been brought to the table by Mr. Norman Bodden, as well as from of the statements by Mr. Peguero, that is significant because that in itself would suggest that right now the individual in this country has the right to petition the European Court of Human Rights, which

means in essence those same fears that are being expressed by Mr. Norman Bodden and otherwise means that that is indeed the situation right now. Any individual in this country can petition the European Court of Human Rights and ask for many of those things to be enforced, if you like, that they have expressed fears about.

I do have a quick comment and then a question. I suppose it goes in the vein of some of the statements that were raised by Mr. Richard Coles as well.

The Government has suggested that the Cayman Islands has a blank sheet of paper when it comes to the Constitution and has the opportunities to write on it whatever they would like, specifically in terms of the Bill of Rights.

My question is to ask you in speaking to that issue of putting together a Bill of Rights if it is possible to do so for the Caymanian people to enact in our Bill of Rights the values and so forth without violating or coming into conflict with the international obligations of the United Kingdom. Is that possible?

I would like, if possible, to give an example of one particular area of concern.

The United Kingdom, as a result of the various transvestites, for example, that would have taken cases to the European Convention of Human Rights, which we now have access to, made the case to the European Court and as a result of that, the United Kingdom ended up passing the Gender Recognition Act, which meant that those individuals who had, for example, one that was once male they got his organ changed and became a female, that they called on the United Kingdom Government to recognize that their gender had been changed to the point where their birth certificate had to be changed.

I think that is significant here because in this country we would take the position that what has God together let no man put asunder; that only God could determine the sex of an individual or the gender of an individual. So we have clearly seen where the United Kingdom itself has already made, put into place, that Gender Recognition Act, that they would comply with these conventions, again I will stress, of which the Cayman Islands are signed up to.

So, my question is, Is it really possible for the Cayman Islands to actually put together, the Caymanian people, to put together a Bill of Rights that at the end of the day is not going to violate or conflict with that of the United Kingdom?

And if you could speak specifically, for example, to that Gender Recognition Act as to what the Cayman Islands could put in our Constitution to avoid that specific scenario from occurring here in the Cayman Islands, I would greatly appreciate it.

[applause]

Professor Jeffrey Jowell: Well, like every other question that was a very good question.

The right of petition at the moment to the European Convention leaves you in pretty much the same situation the United Kingdom was in before it introduced its own Bill of Rights, through the Human Rights Act, 1998. The individual first has to go through, you know exhaust his remedies in this country, and, if necessary, go to the Privy Council or whatever it might be. And if he gets no joy, he is then entitled to go to the European Court of Human Rights.

The judgments of the European Court will have no direct effect here, because you have not been incorporated into the law in the same way as it had no direct effect in the United Kingdom prior to bringing rights home. The Government of the United Kingdom in most cases, virtually all cases, did actually apply what was required by the European Court of Human Rights. So that's how that operates at present.

And the first part of your question, I repeat what I said earlier to Mr. Bodden, that, yes, it will. Bringing your rights home will mean that that will take precedence.

Now on the second question on the rights of transsexuals, for a long time, for many, many years the European Court of Human Rights said very much the same way as it said for Gay marriages, this is a matter of a margin of appreciation. Each State must decide this. If States like Italy and the United Kingdom and Spain and maybe others do not want to recognize Gay marriages, that's really very much up to them.

Transsexuals became somewhat more difficult because mistakes were made initially in some of the initial cases that came before the Court. It wasn't a mistake of nature; it was a mistake of registration. So the person was registered sometimes as a male when they were in fact a female. Now how this happened, I do not know. But the case will tell you if you want to read it. Then people later wanted to change.

There were also cases of genuine transsexual changes to be made and the law was very firm in most countries that they would not necessarily recognize that.

In a couple of fairly recent cases, the European Court has said not that we are going to interfere, but that we are going to look much more closely at this in future. We think we see some injustice here in some heartbreaking cases, and we think that nations ought to take care of this. It didn't actually require them to do so. The United Kingdom, in a very complicated bit of legislation (that I just haven't time to go into now) it certainly doesn't make it easy to recognize transsexuals. It makes it extremely difficult. It makes it possible in certain very narrow circumstances as past legislation in that case. In my view, this is not a fundamental right in terms of international recognition into national norms and standards. It is something that could certainly be regarded as an exception in this country without breaching fundamental norms of International Human Rights Law.

Mr. Elio Solomon [Question #7]: Sir, I just for clarity have to ask, I mean if it's a case where you would have right now in the United Kingdom the Gender Recognition Act. How does this balance out in terms of the conflict, or at least what I would perceive as a possible conflict, where you would have the Mother country accepting and working in one direction and supposing, as what I understand you to be saying, where we are working on something completely different. What is the individual going to be saying (the transsexual in this particular case) in terms of that duplicity of standards?

Professor Jeffrey Jowell: What I am trying to say is that there will be permissible differences between the United Kingdom and this country in these recognized civil partnerships between members of the same sex. But it is not required to do so under the International Human Rights Law. It is a voluntary decision taken by the legislature. It has nothing to do with the European Convention or the Human Rights Act.

In those cases, what is so valuable about a discussion period such as this, rather than coming to a country with a finished constitution and saying, Yes or No, is that these kinds of anxieties can be expressed at this stage with a discussion document at the end of the day on which you will vote might say, *These are the areas where we want to stake out our own claim, our particular Caymanian claim*, and go to the United Kingdom with them and be quite clear about that.

But in my view, the United Kingdom is very unlikely to create any difficulty if you feel that you do not want to go down that particular road.

Mrs. Suzanne Bothwell: Thank you Professor Jowell.

Minister McLaughlin does have a comment on this.

Hon. Alden M. McLaughlin, Jr.: This raises a very, very important issue to which I have spoke two or three times now in recent weeks, and that is the recognition of the distinction between the Bill of Rights, modeled essentially on the European Convention of Human Rights and what I shall call "anti-discrimination legislation" which is grown out of the concept of Human Rights, which is constantly evolving, particularly on the continent. And it's an important distinction.

Because the European Convention on Human Rights is more than 50 years old now, it was established in the wake of World War II in an attempt to prevent ever again the terrible injustices that were done to humankind during the War. Most of the rights, the fundamental rights, are well established, understood, have been interpreted time and time again by courts. There is nothing novel or particularly scary about any of that. And that is essentially the template from which we are working subject to our ability to Caymanize them in some respects. Obviously, we can't undermine the fundamental rights. They are not going to accept a provision

which allows us to torture people because, you know, that's a Caymanian thing—if that were a Caymanian thing.

[laughter]

Hon. Alden M. McLaughlin, Jr.: As an extreme example.

But some of the other modifications of which you have spoken, like defining marriage, the right to marry and found a family, as being something that can only occur between persons of the opposite sex, that has actually been accepted by the United Kingdom in the Draft 2003 Constitution, the Bill of Rights attached to that that we have. So those sorts of things are permissible.

But the bigger issue for us and the real fear is not about the impact of the Bill of Rights which we will have as part of our Constitution. To a large extent we can ensure that that reflects what we want. The bigger fear, the bigger concern, is the application or possible application of either EU Directives or United Kingdom legislation being extended to us by the United Kingdom either because they think it is a good idea, or they think they are bound to because of their international obligations.

In the same way (using a non-human rights example) that we wound up the unwilling recipient of the European Union Savings Directive, we could wind up as the recipient of another EU Directive, such as perhaps the one which resulted in the legislation on which the *Bishop of Hereford* case was based.

One of the most important things we need to do as part of this Constitutional Modernization exercise is to negotiate firmly with the United Kingdom to have them restrict their ability to legislate for us and to extend to us legislation or directives. The only way we can ensure that is to give that constitutional basis. It is not unprecedented. They have gone a long way in relation to Gibraltar.

If you look at the Gibraltar Constitution, which was negotiated two years ago, the United Kingdom has significantly restricted its own ability to legislate for Gibraltar. They did the same with Bermuda in 1968. I wouldn't cite that necessarily as the best example because the Bermuda Constitution is acknowledged as being a pre-independence constitution, Bermuda just never took the other step. But Gibraltar is a much newer situation where the United Kingdom has acknowledged and accepted that it should restrict its ability to legislate for one of its Overseas Territories.

In the case of the British Virgin Islands and the Turks and Caicos Islands, there is a certain amount of that. But they certainly haven't achieved the level of constraint that Gibraltar has succeeded in doing.

If we are unable to do that, we do run the risk . . . most of the concerns I have heard expressed here tonight and elsewhere over the course of the past years, really, relate to issues and examples that are borne not out of your basic Bill of Rights, your European Convention on Human

Rights Charter, they are borne of other legislation, domestic legislation established to prevent discrimination whether it is unemployment rights, such as the case with the *Bishop of Hereford*, or the gender recognition case or the situation to which Elio earlier referred.

So, while this discussion here tonight is principally about the Bill of Rights, it is also really important that we understand that in the Government's proposals for more autonomy, those are considerations which we have had. Because unless we are able to restrict or limit, we can't do so to get the United Kingdom to agree to limit its ability to do these things to us—they will say *for* us, but *to* us—we will continue to ride the wave of concern about the importation or the exportation to us of continental, European or Eurocentric principles and attitudes and cultures as part of our domestic legislation. Not because we want it, but because the United Kingdom feels it is obligated to do so.

[applause]

Mrs. Suzanne Bothwell: Thank you, Minister McLaughlin.

Just for those persons who have taken on board this point, the reason it has been raised is because in the *Summary of Proposals*, what has been proposed for Constitutional change is that we re-visit the constitutional provision which allows the United Kingdom to “legislate directly for the Cayman Islands in instances of peace order and good government.” That is a phrase that is used in our Constitution and right now that can mean anything. And they have made the proposal you will see in the blue or red document that if the United Kingdom wishes to continue to legislate for Cayman, it should only do so in cases of national emergency.

We do have a gentleman standing at the back, and we do have a lady here who has her hand up.

Member of the Public [Question #8]: Thank you gentlemen and ladies for coming out tonight.

This is my home and I really love this place, the three islands are unique, the characteristics of my culture and heritage which we feel will leave when I get off the plane returning from a different country. When I come back from traveling to different countries I have a relief when I touch down in Cayman because I re-enter into my country that has characteristics that I relate to, culture that I know. In some of those little things that are embedded in our society, such as when I go through government buildings I see all these little prayers written on the walls, a whole pile of little Christian things all over the place, all these bumper stickers, you know.

I think that an island so small, we should have that right to keep these characteristics and this is the beginning of the journey. I know you are trying to say well change is not going to change anything. That is

what I am getting. But change will always change everything. It takes time, but it will.

There was an article in the paper with the Human Rights Committee this week laying out the apparatus of how things will be changed if they have their way. They are going to get the judges to make the decisions on what will be fair and right. I have a problem with that on a lot of issues. Well, we won't even go into that . . . but since this is the beginning and I really like how this is evolving now because now we are having a committee that is taking in and involving in what they are hearing. At the other meetings I didn't get that. I got a rock-steady determination to give you what they decide to give you. But I like what I see now.

And that goes to the issue . . . we need a little more time. This is a big, big subject. This is not something that three months, four months can happen. We need more time to digest this because as I see what is happening here tonight it is evolving and things are moving and I am hearing stuff I have never heard before. Now I am starting to hear my Minister saying that there are things we can do to enshrine and make it Camanized and protect us. In the beginning I wasn't hearing that. Now that I hear that we have to have human rights in the Constitution . . . in the beginning I didn't hear that. I heard that we had a choice. Now I am hearing we have to have it. I like that. That is setting out the parameters.

So, as we go on in its evolving and we are learning more, I think we should get more time to keep it going so we all fully can make a decision here that is right for all of us.

What I am saying, and what I want to say is, since this is the beginning, I don't want to see Church and State separate. I don't want to see Government being the villain, because I keep hearing that. I heard that on some of the Human Rights Committee meetings where the Government was being painted as the villain—it's going to be that entity that is going to harm us, so we have to protect ourselves from the Government.

If we keep going down that road, I don't know where we are going to end up with that. That means if I keep taking this in like that I am not going to trust anything you guys say, you know? I think we need to get off of that road because Church and State has always worked good in Cayman. I believe we need to put something in place defining our culture, defining our heritage, including in it Christianity, Jesus Christ.

When we do that, Article 27 of the Human Rights Declaration will guarantee us a cultural protection where if we get down to the point now that somebody wants to carry government to court over, *You know what? I don't want to hear this Christian stuff inside the government building, I am going to the Human Rights Committee, they are going to carry it to the judges, they are going to make the decision . . . then somebody can say, Well, Article 27 says that "everyone has the right to freely participate in the cultural life of the community."*

Now, we need to define what the cultural life is. And if we put that and don't make it non-binding; make it binding. If we put that in place at the beginning of this, then we can eliminate a lot of those problems the US is going through because they haven't defined their culture or their heritage. That is why the judges are defining it.

So, since we are at the beginning, I think we need Government members, all the Committee members to find ways to protect our principles and our characteristic and our cultural identity. Once we do that, then everybody can come and do whatever they want, we're protected, you know? If they want to do what they want to do, that's their business once they keep it behind their doors and they are not on TV and I don't see it on the street and, you know, they are not dragging me out of my house; they are not coming into my house, they are not coming into my workplace and forcing me to hear stuff, you know.

So I think we need to put something in place and, like I said, that's my suggestion and I hope you know maybe the Ministers can add something to it. Maybe the learned gentleman there can say legally if it can be or can't be done, you know. I believe anything can be done if you pay the right price.

[applause]

Mrs. Suzanne Bothwell: Thank you.
Thank you sir.

Member of the Public [Question #9]: I heard a couple of times separation of Church and State in the US going around. And you hear it in the US as well.

Those words do not actually appear though in the Bill of Rights or the Constitution of the US.

[applause]

Member of the Public (continuing): It actually appeared about 20 or 30 years later in a letter that Thomas Jefferson wrote, but the Bill of Rights in the States basically what it says is you cannot have a State established religion. So, you can't have Methodist as the official religion in the US, or Lutheran or whatever.

In my opinion though, I think people purposely misinterpreted that in order to take prayer out of the schools and religion out of the public square. And so, the point is this: that I think a Bill of Rights is good, but you really have to be careful about how you are going to define what you want in there. Otherwise people will take it and misinterpret it to mean whatever they want it to mean. And they are going to take it and say things, you know, that you never intended it to mean or what have you. So you really have to be careful about how you define what is in the Bill

of Rights otherwise somebody is going to come around and say, Well, okay, right to life, yes; but that doesn't necessarily extend to the unborn or you want equal dignity for everybody, well, dignity of the woman means that you have to have unlimited access to abortion or, I mean if you don't want these things you are going to have to say it.

So, just be careful about how you define what's in the Bill of Rights. It's a good idea, but you are going to have to be careful about what you are going to say and how you are going to say it.

That's all.

[applause]

Mrs. Suzanne Bothwell: Thank you Father.

Do we have any comments?

Dion?

I have a list, thank you.

Member of the Public [Question #10]: Good night.

I have a question regarding what the first gentleman asked.

You said, basically that what he does is minister in prisons and at the Cayman Haven. He said that if any religion basically wanted to go in there and I guess minister that would be their right to do that, correct?

Mrs. Suzanne Bothwell: You mean the institution cannot stop them from offering that service?

Member of the Public: Yes.

Mrs. Suzanne Bothwell: I think that's what you said. Yes.

Member of the Public (continuing): He said basically he would fight for that in the United Kingdom. His department or whatever would fight for that because that is their right.

I think basically where we are losing track is basically our Christian heritage that we are trying to hold on here to basically if someone comes along and they are a Satanist and they want to go in there and minister, that is contrary to what we are trying to protect. So, basically, they would have the right and they would be protected with that. And I think that is basically what we are trying to get to.

Mrs. Suzanne Bothwell: Okay.

I am going to let Professor Jowell answer that because he did speak in particular to groups such as those like Satanists and so forth.

Member of the Public (continuing): But just to clarify, Satanists . . . they don't kill people and sacrifice like that. It's just the way that they

practice and it's contrary to Christian belief because there are actually recognized institutions in the States. They don't do anything that would go against the Penal Code or whatever. Just to clarify that.

Mrs. Suzanne Bothwell: Okay.

Professor Jeffrey Jowell: I was really addressing the question if Christian ministers were refused access to these institutions, one would fight for their right. It doesn't necessarily mean that everybody can go in and do their own little thing in closed institutions. That would lead to chaos. Obviously you have to use a bit of common sense about this in terms of any religion that preached violence or tried to put people against each other, of course, or was marginal religion in some way was trying to breed dissent. Of course they could be excluded. Absolutely. I didn't mean to imply that there would be a complete free for all.

Mrs. Suzanne Bothwell: Go ahead.

Member of the Public (continuing): Sorry to be a pest, but that kind of still is just a bubblegum answer for it really. It is not clarifying whether they would be privileged to that same access or have the same access as Christian ministers. That is really what I want to find out, if a group like that be recognized as a religion would still be able to go in, have the same privileges as a Christian minister. I think that is contrary to the Christian belief.

Hon. Alden M. McLaughlin, Jr.: Well, there are a lot of things that may be contrary to the Christian belief or a number of religions that would be contrary to the Christian belief. But they are recognized religions. The question would be, I think . . . there are two questions in that case: whether or not what you mentioned is actually recognized religion and then, secondly, whether or not it offended against public morality, public decency, whether it incited violence, racial hatred—maybe not even racial—hatred of one group of people against another.

So, those sorts of considerations would have to be taken into account. But let me say to you that history preaches some very powerful lessons about when one religion is believed to be sacrosanct and others are not and usually results in lots of bloodshed to start with. History . . . just look at history, even recent history, and you will see the examples of which I speak.

It is difficult because I am not *from* this place; I am *of* this place—seven generations. I understand how we feel about the Christian faith and belief. And it is difficult for many of us to appreciate and accept that there are other religions which ought to be accorded the same equality before the law. I understand that. Intuitively it is a difficult thing for a Caymanian to accept.

But I want to say to you that discrimination on the basis of religion is as terrible a thing as any other form of discrimination.

[applause]

Hon. Alden M. McLaughlin, Jr.: Thank you for that.

But I want to give you an example from my family. This community that we call Cayman, that I grew up in, we can be pretty tough on people that are different from us. Very tough.

My great-grandfather was a man called Gilbert Magdalee [PHONETIC] McLaughlin. Those of you of the Adventist faith might recognize the name as the man who established the Adventist religion in these Islands. I grew up listening to my grandfather talk about the terrible discrimination that his father faced in trying to establish the Adventist religion to these Islands, having returned from Honduras where he was converted to that faith and the segregation and the terrible treatment that he and his family received in establishing that religion in the district of East End. Now, it is considered by all of us as one of the principal denominations of the Christian faith in these Islands.

Because it is different from what we know and accept does not mean that it is wrong or bad. We must as individuals have respect for every other individual's freedom of choice. The Good Book that I read tells me that God made man with free will. So, even if he goes to the Good Book, it is a matter of choice for people. As long as what you do does not offend other people, does not infringe on other people's rights, does not create chaos, does not offend public morality and public decency, does not incite violence, racial and other hatred, you ought to be free to practice what you believe.

As is said, I know that runs counter to Caymanian intuition about this because we are firmly rooted in the Christian faith. That is where I come from, that is where all of my family comes from. That is what I believe too. But we have to accept that there are other established religions and have been for thousands of years around the world. And we must accord those people and those who subscribe to those beliefs respect and equality before the law.

[applause]

Mrs. Suzanne Bothwell: Thank you sir.

We do have a question from Elaine Harris. Could we get the microphone to Elaine please?

And then Ms. Zemry [PHONETIC] who is at the front afterwards.

Ms. Elaine Harris [Question #11]: Good evening.

I agree with everything the Hon. Alden McLaughlin said a while ago and that leads me into my question now which is, Government has rec-

commended for the employers to hire outside of certain geographical regions. And this can be viewed as discrimination against a country or certain countries. I would certainly invite the panel to weigh in on this.

Hon. Alden M. McLaughlin, Jr.: I know Reverend Sykes will agree with me on at least this part of what I am going to say, because I have read some of the things he's said. All discrimination is not bad.

[laughter]

Hon. Alden M. McLaughlin, Jr.: No, but seriously, there are areas where discrimination is permissible. I'm not joshing. I am just talking about in the Cayman context. And immigration is one of those recognized areas. If not, you would wind up with a free for all where regardless of where you came from you could just go to another country, set up shop, set up home, work as you please.

So, the area of immigration is an area of permissible discrimination and it is entirely within a country's ability to say we want to balance in terms of percentages and numbers the number of people, the percentage of people who come from this particular part of the world, or that particular part of the world because we do not want any one nationality to overwhelm or grow out of proportion to the rest of the immigrant population. And that is what Cayman has practiced for a long, long time, some will say ineffectively. But we have tried. Maybe we haven't done such a great job, but it is not an area that would offend against any of the provisions in a proposed Bill of Rights.

[inaudible comment]

Hon. Alden M. McLaughlin, Jr.: You are not leading me down that road.

Mrs. Suzanne Bothwell: Thank you.
Thank you very much Elaine.
He is asking you to weigh in on the issue.

Professor Jeffrey Jowell: On that one I have to say that I agree with my learned friend.

[laughter and applause]

Mrs. Suzanne Bothwell: Yes.
We do have Ms. Zemry who is up at the front, second row. And then we have Mr. Kent Eldemire, sorry Marcus McLaughlin and then Kent Eldemire. Thank you.

Ms. Zemry [Question #12]: Hallelujah thank you Jesus.

We are not in church, but I am glad for this . . . I know we're not in church, but I am glad for this forum. It's my first meeting actually because of my schedule and I had to leave my grandbaby at home just to be here, so you better appreciate it. I'm here! Okay?

But seriously, what I am concerned about, a few months ago, late last year, I was at a workshop and we were talking earlier about freedom of conscience, and I am so glad that I came to this meeting because I am so concerned . . . the fact that we are not an independent country. And we know how it goes, the Mother says this, we have to do it; and I am hoping that whatever you, the Government, prepare as the Bill of Rights will really be able to give us that protection and that assurance that if you take all of this time to go through these negotiations and so forth, in the end we will have something to hold on to and not just because we are not independent we are going to have something just stuffed down our throats because we are . . . you understand?

A few months ago, I was at this forum, like I said, and the issue came up that the organization, which was actually the Red Cross, told us, the whole group of people—

Can you guys still hear me without this microphone?

From the audience: No.

Ms. Zemry: You can't hear me?

Mrs. Suzanne Bothwell: Please use it because it is being broadcast live on the radio and TV.

Ms. Zemry: So it's not—

Mrs. Suzanne Bothwell: It's working.

Ms. Zemry: Yes, they told us a whole group of people that the people there, who were Jamaicans, Caymanians and other nationalities, they could not pray. Now this was in the Cayman Islands in 2007. That blew me away. We could not have a corporate prayer because the Red Cross is an international organization.

That is what I want legislation to be careful about. We welcome everybody in the Cayman Islands and we are grateful, but we are a Christian nation. Amen?

[applause]

Ms. Zemry: Yes we are.

I want those rights protected. No discrimination against any other religion, I do agree with you. That's what makes us wonderful Christians.

We have tolerance for everybody, to a point, yes. But there is freedom of religion. There is freedom of choice. And I always say may the best man win, because we know who will win, right? So we will leave that to choice.

But I am concerned about Government-wise. If the Cayman Islands is opened up as a free port for any organization to come in with their whatever . . . do you hear what I am saying? Where will that leave us in all of these Bill of Rights if when we get here you are going to tell me that because we are an international organization you will not allow me my freedom of conscience and believe you me I was scared for them that people were going to beat them in that meeting because they said we want to pray before we eat. And eventually . . . do you understand what I am saying?

I sat there shaking in disbelief that I am in the Cayman Islands and I have lived to see the Bible, whether you believe it or not, being fulfilled. They got to pray in the end, but the whole emphasis was gone. It was different. Number one.

Number two, I went to school in the US and when I became a Christian at the age of 16, I said no more short shorts. I don't believe in wearing shorts in public. So I refused to go to gym and wear shorts. For those of you who are Holiness believers, you don't have—and I hope this Bill of Rights will protect that—if we don't want to show our legs in gym at school, at government school, we should still have the right to play in our skirt and we will be protected by this Bill of Rights. Am I correct?

Why I say that is that everybody was talking about the private schools being protected because of it being religious. But there are a lot of Christian children who go to Government schools. I want protection for them also that they won't be kicked out of school, they won't be reprimanded because they refuse to take off the long skirt and put on the short-shorts. We do have a right to protect what's ours. And if we don't want to wear short shorts to gym, we shouldn't be forced.

Thank you very much.

Make sure that whatever negotiation we will remain true Christian, not just because we call ourselves Christian, but because we are really trying to follow the morals of the Bible. Number one. That concerns me. Everybody says Christian, but some of them are doing worse than the people who are not calling Christian. I had to say that, Christians, to be fair. But I am talking government wise, please protect us.

In all this negotiation are we going to cave in—I hope not—when the Mother country says whether you like it or not because of human rights. We are going to stand firm. You have to assure us that we will stand firm as Caymanians. This is what we want, we will stand firm, whether the Mother says yes or no. We will stand firm!

Amen. God bless.

[applause]

Mrs. Suzanne Bothwell: Thank you Ms. Zemry.

I think, Ms. Zemry, this brings home the very issue that we have been talking about. We question why a Bill of Rights, why human rights. If there was that challenge being made where would your child or your grandchild seek recourse? Where do you find in any document or any law which says that you are entitled as an individual to practice the tenets of your faith? I think that is perhaps, instead of looking . . . we do have to look at the areas of concern, but we have to then look at why it is important because these things do offer a particular protection.

We do have . . . sorry.

Minister Marcus McLaughlin, I think is the next person. Then Mr. Eldemire.

Reverend Sykes, I do have you on the list.

Minister Marcus McLaughlin [Question #13]: Thank you very much.

I have a question, a concern, perhaps one of the Ministers could speak to this.

In reading the local paper it seems to me that the local Human Rights Committee is somewhat out of tune with what Government is trying to do. For instance, in the paper (today I think it was, or some days ago) it said that the chairman of the Human Rights Committee implied, or said . . . okay, or the deputy, under the 2003 Draft Constitution in talking about marriage, it said that each one would have a right to marry to a person of the opposite sex and found a family. Now . . . and I think that somebody needs to set him right—and if he is here I would like to set him right—that it should be, oh we should not put a definition of marriage. In effect, this defines marriage as saying union between opposite sex. But he said in the paper that it should be that we have no definition of marriage. I think somebody should really pull his socks up about that because if he is going to perpetuate that it is contrary to what the Caymanian public is asking.

[applause]

Hon. Alden M. McLaughlin, Jr.: I just want to reiterate the point that we made earlier, that the Human Rights Committee is quite independent of Government. It is not their job to be in sync with Government. In fact, if they were, they would be a pretty useless bunch really because they would not operate as a watchdog on what Government does.

They may advocate, and that is part of their job, what that group of people, all of whom are experienced lawyers or human rights advocates or people . . . there are even, believe it or not, ministers of religion on the Human Rights Committee.

[inaudible]

Hon. Alden M. McLaughlin, Jr.: Yes, there is one. Definitely.

So, there is a balance on the Committee and it is not their job to support the Government. It is not their job to say what Government would like them to say. Sometimes we wish they would come out and support some of the positions we've taken. But it is a matter for them. If they did simply do what Government asked them they would compromise their particular role. So I wouldn't beat up on the deputy chairman who is actually very close to you right there now!

[laughter]

Minister Marcus McLaughlin: At least he's hearing me!

Hon. Alden M. McLaughlin, Jr.: He's closer than you think. He's right in the front!

I wouldn't beat up on them because they have a different position. You may take issue with their position, but they do not have to get in sync with what Government thinks.

Minister Marcus McLaughlin: But it appears to me that a lot of people are getting the misconception that they are saying what Government is saying. And I have not been to another meeting where the Government made it clear that it is their intention to leave that as it was in the 2003 [draft], but then comes along the paper and I see it being advocated. So it gave me . . . it gives people the conception that they are speaking for Government.

So, perhaps, I understand what you are saying but I wish such statements would not be made. And I don't take back what I said either.

Now, also, coming back to the original question that Brother Bob asked, I don't think . . . it seems like you kind of derailed the intent. Maybe he didn't put it . . . well, he put it . . . I mean it was understandable but still I don't think it got the right answer.

In reference to . . . he was saying about so few prisoners actually attend services now at the prison. It used to be that they were required to do so. Well, I was prison inspector for 16 years until recently, and prisoners were always required to attend church services. And they did in large numbers, going back a few years. But also I have known of cases in which the court of law mandated that a particular person as part of their rehabilitation had to attend church services.

So his question was . . . but they are saying now, *Oh? Human rights say that we cannot, that type of thing cannot be done.* So I still have a question in my mind. Are we saying that because of human rights that a court of law cannot mandate that a prisoner attend services.

I assist in juvenile court and occasionally we have said that a particular juvenile would be required to attend church services. Are we saying that that's wrong according to human rights? I believe that's more or

less the direction Brother Bob was trying to go in. But I don't think he got . . . at least the answer, I was not satisfied with the answer that was given.

Professor Jeffrey Jowell: Right. If I could just answer that.

It used to be thought even without a Human Rights Act . . . sorry. Let me start that again. I beg your pardon.

It used to be thought that if a prisoner was incarcerated that they had no rights at all. That was the case in England as well. You could confine them to their cells without giving them any fair trial, you could search them without any notice, they had no rights to lawyers, they had no rights to correspond with their families, and they had no rights to correspond with their legal advisors. And over the years, views about prisoners changed and there have been some notable court cases, completely irrespective of any Human Rights Act. They just simply evolved their views about that. And people have come to believe that a prisoner needs to be incarcerated, of course, but apart from that incarceration and possibly following certain courses and so on, they aren't free game for any kind of punishment or treatment.

Even prisoners have rights well outside of any Human Rights Act that says that. In fact, when you look at it, the Human Rights Act does not deal much with what goes on in prisons except the right of prisoners' correspondence and right of access to the outside world from time to time.

I don't know the detail of this, but one can understand that in this case that it might be said that prisoners themselves, as Suzanne said earlier, might have the freedom of conscience on this question and if they feel that they don't want to attend any kind of service which is not absolutely essential and is not considered essential by the policymakers to their rehabilitation or punishment, they should have the opportunity not to do so. But I am not aware of the details.

I think there are complicated issues there about how you treat prisoners generally.

Mrs. Suzanne Bothwell: Thank you Professor Jowell.

We do have Mr. Eldemire as the next question. We're coming to you.

Okay, since we are taking care of some housekeeping matters, I would just like to make a list of the remaining persons with question that we will take for the night. It is past 9 o'clock, so I will say that we have Denny Warren afterwards, the lady in the front . . . oh, that's okay. Not you? Brother John Jefferson, Jr., if you are still here; Reverend Sykes, Deidre Seymour, Courtney Platt, Steve McField, Verona Davis, Chastain Bodden, and I have Sara Collins as the last person.

If persons have any other questions I would like to invite you at this time to put them down in writing because these questions will prob-

ably take up until 10 o'clock and the Secretariat and Professor Jowell will be looking at them because we will be putting out some questions and answers in print in the near future so you can have a keepsake of some of these human rights issues.

Mr. Kent Eldemire [Question #14]: Thank you very much. I didn't mean to rearrange the whole situation.

I would first of all like to say before I get into what I want to discuss that I have to congratulate you sir, as Leader of Government Business, and the Honourable McLaughlin and the Committee of Mrs. Collins and Suzanne, for going into the public late at night and doing what they have done. I have been able to attend some of the meetings. So I congratulate you most sincerely on some of the speakers that you have brought down.

I went to one of the . . . let me just read this first so I can really get into it. My major concern is police, immigration, and prisons. And I do not see very much stuff coming out where these three services—that operate in almost a clandestine secret way under the direct auspices of the Governor—and I just think . . . eh?

I don't think that there are enough checks and balances to take care of these important services that have such an opportunity to perpetrate human abuse on people without us knowing. And I have heard many horror stories, some of them hard to prove, many of them on the Marl Road, where police officers impersonate lawyers so they can talk to a prisoner and information from him. We hear of police beatings. I, for one, have a very serious complaint (which I won't discuss tonight) before the police. And it is incredible that the complaint that I have, I have to submit it guess where. To the police!

[laughter]

Mr. Kent Eldemire: Let me read this for you. It says: "Human rights advocacy is not just about campaigns on the big issue. It is an attitude of mind and spirit which is put to use in the smallest spaces in the civil or criminal courts. Human rights are not just at risk through the policies of governments, but in the petty daily abuses of immigration officers, police officers, prison officers, town hall officials, human resources executives, and other public and private holders of office who have the power to wreck people's lives."

I don't think many of you know where that quote came from. Well, let me tell you where it came from. The first of the meetings that was had under the auspices of our Government, there was a gentleman there called Lord Anthony Gifford. This gentleman is probably the finest human rights fighter, attorney, and British Lord, and is one of the most challenging and passionate people I have ever met in my life.

When he gave his talk, he had some books for sale for \$25 and I am here to tell you it is the best investment I have ever made in my life. I would suggest we make it mandatory reading for every Member of Government and every school child because this is a man who helped Mandela, has helped almost every major country in the world with a human rights and, like me, is color blind. And I think that is absolutely gorgeous.

Let me read from a law book. This book is *Walkers & Walkers English Legal System*, and in it it says, "Complaints against the police: The adequacy of mechanisms for dealing with complaints against the police has been a matter of considerable debate since the 70s. The complaint system is a non-legal mechanism available to members of the public who are dissatisfied with the conduct of an individual officer. Continuing pressure for a more independent form of scrutiny led to the Police Act, 1976, which established the Police Complaints Board. The creation of this body failed to satisfy critics principally because complaints were essentially still investigated by the police. The evidence has convinced me that there is a widespread and dangerous lack of public confidence in the existing system for handling complaints against the police. Unless there is a strengthening of the independent non-police element, public confidence will continue to be lacking."

I would like to see the human rights and everything to do with our new constitution have strong vigorous teeth in it whereby we do not allow the Governor of this Island, whom I have the greatest respect for as Her Majesty's representative, so I am not saying anything against him personally, I am talking about what he represents in terms of his authority. I do not think that any one person in any jurisdiction should have the kind of power that he has over the three most dangerous services that can commit human rights abuses and get away with it.

Having said that let me say this: I have the greatest respect for many members of our police force. I have the greatest respect for many members of the prison. I have the greatest respect for many of the other services that can commit these abuses. But let me say this: Within the confines of those services are cowboys, mavericks, and dreadful people who, themselves, should be in prison!

[applause and cheers]

Mr. Kent Eldemire: And I have no fear in saying that. And tonight I will tell you why I am here.

I am here because in my deepest recesses of my heart and soul I do believe that I am my brother's keeper, and that is why I am here tonight. And I sincerely hope that some note will be taken, especially the fact that when I presented this at one of the recent meetings two of the committee members in there did not understand what I was saying. And that member is in the audience tonight and I hope tonight he under-

stands it because I am just as sincere about seeing this enshrined somehow to protect innocent people that cannot protect themselves.

That's all I have to say, and thank you for the opportunity.

[applause]

Mrs. Suzanne Bothwell: Thank you Mr. Eldemire.

Professor Jeffrey Jowell: Let me say this on that, that under a Bill of Rights, and it is contained in the 2003 Draft, "Any kind of investigation shall be conducted by an independent and impartial body." So there you are.

[applause]

Mrs. Suzanne Bothwell: Okay.

Mr. Kent Eldemire: The seriousness of this offence committed by seven policemen on my daughter at quarter to twelve at night when she had not committed any crime and had to shout for me to come down there and I was resoundingly told to move on, and of course I told them I had no intention of moving on . . . the seriousness of the crime made both my daughter and I submit a report to the police complaints.

First of all, none of the seven policemen would give me their name, rank or serial number except for one sergeant. That's number one. All of that was in the complaint.

I was then advised by the Compliant Commission that they could not adjudicate it or do anything about it until such time as it went to court, that she was prosecuted and went to court.

I am going to tell you a little bit about it because it is so important.

She was prosecuted for running a red light. Let me tell you why she ran the red light. She was coming back from her friend's where she'd gone to drop some presents on Christmas Eve. She passed the Lobster Pot. There was a car going very slowly. Nothing was on the road that was dangerous. There were no double lines. She overtook. Immediately this car came up behind her bumper to the point where she could not see their headlights. Anybody who wants to know how close that is, try it some time. It's like 18 inches away.

She became scared. She lives at Kentyre. So she drove and when she got up this car kept following her and when she got up to Delworth's service station the light was just changing red and she went through it. They still kept following her and she went in to the Queen's Court and circled the back of Queen's Court and they still followed her. She came out on the highway and she called me.

She said, “Dad, open the gate.” I live in a gated community at Canal Point. She said “Dad, open the gates. I am coming to you. A strange car is following me.”

When she got up to the turnoff at the Harquail Bypass, this car came up alongside. He had no lights, no sirens, no warning, and it is not a white car, it’s a silver car. The police have pictures of the car so they cannot deny that they have that car. She was coming up to my house. I told her to leave the phone open. She came to the roundabout by the gym, just past the gym. A police car was on the side. She pulled over, went and said “Please help me. This care is following me and I have no idea what is happening.”

That other car pulled in front of her, blocked her so that she is now between two police cars.

This officer said, “What’s going on here?”

She said, “Those two men are following me and I have no idea who they are and I am scared.”

And I could hear her and she started to cry.

And lo and behold, two policemen with black jackets on step out of this silver, unmarked car that had no siren or nothing to warn her about anything.

She broke that stoplight to try to get away from them. And in my report I said to them I would like to know what it was that highlighted you to start following her. I would like to know what evidence you had, what suspect you had to make you follow her.

She is going to court because of the actions of the police, and I set that out—she went through the red light to get away from a car that was tailing her that was unmarked. She is now going to go to court. It will probably cost me \$2,000 or \$3,000, and I still don’t know who to go to to complain about it. But I am here to tell you it ain’t over.

My grandfather used to say to me, when you are right you fight!

[applause]

Mrs. Suzanne Bothwell: Thank you, Mr. Eldemire.

I think this had brought home the point what a Bill of Rights would do is help a citizen identify where he can go to seek redress. That is perhaps what is lacking here right now.

We do have Denny, I have you next on the list. And then Brother John Jefferson who is on my left.

Mr. Denny Warren [Question #15]: Thank you for this opportunity.

I would like to address two issues. I will continue on what Mr. Eldemire just spoke to about, government entities.

I would like to say that I have looked at this 2003 Draft Constitution. And I don’t see where it adequately addresses the right of self defence. It talks about the right to life, but there is no constitutional word-

ing that I see which talks about how do you defend the most precious thing you have. What footing do you stand on, constitutionally?

I know that in the past answers have been given about the right to self defence being addressed in common law. And for a right that is so precious—life—I fail to see how we would not give the right to self defence as being a constitutional provision.

My second, and just for clarity, I want to, because this often gets assumed to mean arms, and what I am saying is the right to self defence is separate from how do you defend yourself, and separate from the right to life. What I see in the 2003 Draft Constitution is how the State, the derogation provision for the State to deprive the individual of that right but it just seems to stop right there and everything else is assumed to be taken care of in common law.

And then on another issue, when we were talking about religions earlier, I would like to know who, what are legitimate religions. Who gets to decide what are legitimate religions? And, particularly, if there is a question of a new religion, say 20 years down the road, 50 years down the road, and some of the answers that you gave earlier, Professor Jowell, touched on hate. And I would like to know whether those religions would be able to say to the Christian faith that you cannot say that it is morally wrong to engage on homosexual activity, to say that that is a sin. Would the profession of such a position be challenged. And would the Christian faith have to back away from using that terminology because it is considered hateful?

[applause]

Professor Jeffrey Jowell: Thank you. Again, yes, some big questions.

The first one was about self . . . the right to life and self defence. And the right to life under the Draft Constitution of 2003 “No person shall be deprived intentionally of his life.”

But, as you implied, there are reservations there. And the use of force is permitted where reasonably justifiable for such things as “the defence of any person from violence or for the defence of property.” So this is permitted in those particular situations.

Of course, the Bill of Rights does not cover everything, work out every detail about when you can intervene, what is reasonable force and so on, and it is not expected to do so. Those gaps are filled out by the common law, by interpretation and so on. So you can’t expect the Bill of Rights to do too much.

Mr. Denny Warren: My understanding of what you were saying at the outset is that the Bill of Rights protects the individual from the State. Well, if a thief or a murderer is attempting to take an individual’s life and that perpetrator is not an employee of the State that would mean that you are talking about a situation that is horizontal, as you describe it. If I

am understanding you correctly, the provisions that are in there deal with the vertical relationship?

Professor Jeffrey Jowell: By and large, that is quite true.

What this provision says here is that a person shall not be regarded as being deprived of his life in contravention of this section if he dies as a result of the use of reasonably justifiable force in defence of his property and so on. By and large this refers to action taken to suppressing riots, insurrections, mutiny of that kind when the police or the army kills someone. So, the right to life is there, but there are exceptions in those difficult times. That is basically what it applies to.

Mr. Denny Warren: But there is no wording that says that one has the right to protect themselves. Am I understanding that correctly?

Professor Jeffrey Jowell: Yeah. Okay.

What you are asking for is whether the constitution should provide a right to self defence for the individual against another individual, is that right?

Mr. Denny Warren: Yes sir.

Professor Jeffrey Jowell: Well that, as I said earlier, is not normally provided in a constitution simply because the constitution is about the restriction of State activity. So the State has no right to take your life, but if they kill you—you are in a riot, insurrection or a war—that is permissible taking of life if it is done in a reasonable fashion.

Mr. Denny Warren: Except that I heard you talking about first, second and third generation rights.

Professor Jeffrey Jowell: Those have to do—

Mr. Denny Warren: And civil and political rights.

Professor Jeffrey Jowell: Which has not been adopted, certainly in this constitution or in most of the constitutions of the BOT's or the United Kingdom. That is a slightly different issue.

But let me just take your question full on. Should there be a right to self defence against other individuals? Not normally provided in any Bill of Rights because that has to do with governmental action by and large. There are some small exceptions to that.

Should it be provided through a statute? Perhaps. You might want to do that. And in fact you do have it in the common law. In the common law, you are quite right, you defend yourself against someone and if it is a reasonable defence and it is not excessive and it is reported then you

have the perfect right to defend yourself. But that is under the common law anyway. It is possibly not necessary to go any further. But it can be decided by the legislature, a matter for the legislature.

The second question . . . would you just remind me again what that was under?

Mr. Denny Warren: It is in relation to what is a religion. Who gets to decide what a religion is, and . . .

Professor Jeffrey Jowell: Yes, sorry. Well, unless you have registration of religions, which is very unusual and the exception rather than the rule (there are some countries that have them), anybody can form a genuine religion in accordance with their own belief, according to their own god and so on. Unless they harm others, they interfere with the morals of the community or deprive other people of rights, that has to be really taken in a very pragmatic way.

Normally there is a freedom of religion. There are definitions of religion, we don't have time to go into them, and to deal with their belief system, and sometimes prayer and worship and that kind of thing, and I think it just has to be taken on a case by case basis. If something is professing to be a religion and it is really a dangerous cult under the cover of religion, they can certainly be banned by the State. There is no problem about that.

Mr. Denny Warren: What's a definition?

Well, if there is no definition then it would mean that someone could come and say, form a company, and say from today on there is going to be the Church of Satanism.

They could do that, right? If there's no definition, it could be whatever someone believes, if I am understanding what you are saying.

Professor Jeffrey Jowell: It's not so much what they say, it is what they do.

Mr. Denny Warren: Okay.

Professor Jeffrey Jowell: And if during the religious practices they demonstrate that they are an evil cult out to create problems for people's rights and encouraging violence and dissent in the community then they can simply be banned. And that's that. A Bill of Rights will not protect them.

Mr. Denny Warren: Does that mean that if a preacher were to say that homosexuality is a sin and that if one continues in that lifestyle . . . would that then be offensive to this other group and would the Christian—

Professor Jeffrey Jowell: Yeah, that was your third question. And if I had to give an opinion on that now, I would say, no, that would not be . . . that sort of statement would be protected by the Article about free expression.

Mr. Denny Warren: So it's not hate speech?

Professor Jeffrey Jowell: Freedom of expression goes a very long way and courts in most countries, certainly in the United Kingdom and the European Courts have been very loath to interfere with speech, even hate speech to some extent. Denial of the Holocaust in the United Kingdom is not a crime; people can say that. It's absurd. There was a Holocaust, we all know that. There are countries that ban it. Germany and France, for example, say that Holocaust denial is a crime. The European Convention is pretty well neutral on that point. It does not require hate speech to be abolished. It rather tends in the other direction somewhat and attempts to say the breadth of free speech is very wide. Certainly, the expression that you were saying there, homosexuality is a sin, has never been regarded as hate speech that can outlawed.

Mr. Denny Warren: So we could tell the United Kingdom that you said we wouldn't have any problems with that here!

Professor Jeffrey Jowell: You can tell the United Kingdom.

Hon. Alden M. McLaughlin, Jr.: It's really a question of degree. I mean, if someone stands in the pulpit and urges their congregation to do terrible things to homosexuals, you know to beat them up or to murder them or those sorts of things, then you have crossed the line. But to condemn it, to say it is a sin, that it doesn't find favor with God . . . nothing at all wrong with that.

Mrs. Suzanne Bothwell: Thank you so much.

In moving forward I am asking that we perhaps keep the question to 1 o'clock, because we do have to wrap up—

[laughter]

Mrs. Suzanne Bothwell: Sorry, to one question! Keep the questions to one because we do have a list that we are working through. I would, however, like to intervene in the list and ask Mrs. Collins to provide her statement as she has indicated to me that she has to leave because of other engagements. So I would like to perhaps ask the microphone to come to the front, and then we can give it to Brother John.

As I said, if you have any questions that you will not be able to ask tonight or any comments, please write them on a piece of paper and put them in our question box at the front of the door.

Mrs. Sara Collins [Comment]: Thank you Suzanne, I am sorry for jumping the queue, but I have been sitting here wondering how the Human Rights Committee became the villain of this particular piece. For those of you who do not know me, I am the chairperson of the Committee. I have, since taking that position, watched a group of volunteers who are not paid and seldom thanked for what they do sit in meetings late in the evening leaving their families and their jobs neglected, trying to do what no other institution or organization on the Island is yet empowered to do which is to listen to the cries in the dark from the people who feel that their rights have been abused to try to find some recourse or redress for them. We do not spend our time trying to inflame or exacerbate the situation here. Much of what we do is simply answering individual complaints from people who have no other opportunity for redress. And I would like to make that plain.

Mr. Carter, who is our deputy chair, has been singled out for particular criticism and I think that is most unfortunate. He is one of the most well educated, well qualified human rights experts that we have on the Island. He has given us the benefit of his vast experience without asking for any gratitude, thanks or reward, and he has served the Committee tirelessly and I would like to thank him publicly for doing so in this forum.

I think what Mr. Carter said—which represented the position of the Committee by the way, not Mr. Carter personally—in relation to marriage, has been taken out of context and misinterpreted. The position of the Committee is that marriage is a religious issue and a religious institution, not a constitutional one. It is the preserve of the churches to dictate how religious marriage should be conducted and formalized, and between whom. And we do not seek to interfere with that or to cause any offence.

We do, however, as a Human Rights Committee (and one will not be surprised by this) we firmly believe that there should be no discrimination against anyone based on the factors which have been outlined but including sexual orientation for other legal purposes. And I hope that clarifies the position.

Because we are running out of time I won't try in this forum to correct the other misinformation about our proposals, but I would invite you to tune into *Crosstalk* on Wednesday when Elio has promised he will give us an opportunity to put our case comprehensively and to explain what our views are. And we will take questions and invite discussion at that time.

Thank you.

[applause]

Mrs. Suzanne Bothwell: Thank you so much Sara. Thank you for that clarification.

I am sure that a lot of our members here will tune in to hear exactly what the Human Rights Committee has to say because, as you said, you are the body of persons we go to.

Brother John, I have you next.

Mr. John Jefferson [Question #16]: I would like to be able to thank the panel, and all those that are here having gathered to deal with such a subject, human rights which we hope will also cover our religious rights.

It makes you feel bad when people are asking the same questions. But I guess the only thing about Communists that I like is that they keep saying the same things over and over and after a while somebody believes what they are saying.

I think why we are here tonight is because we are concerned about . . . the issue here is our way of life. I think that is all we are asking. We are just asking that our way of life is preserved, and whether the human rights includes my religious rights.

The reason why we are concerned is . . . you know I like to listen to London like 5 o'clock in the morning. The other morning they were saying that in England that RAF people can't wear their uniforms and army officers can't wear their uniforms because a few people in some town in England are against [recording skips here]. . . in other words they are told *don't wear your uniform just to be able to make somebody else feel good.*

So that tells us, my friend, why we need to be able to say over and over what we believe and what we would hope is enshrined and will be preserved as far [recording skips here] . . . are concerned.

I think we are the freest people in the world and I think we are the most powering people in the world. And all we are saying to anybody is that just give us what we have. Just protect what we have and that's all we are concerned about. And that is that marriage means a man and a woman; where it means that a school, if I have a religious school, I have the privilege of being able to say that the only persons who are going to come in my school to teach is somebody that has a religious background and believes in the things my church believes. So I think those are really the things that we are concerned about, our rights.

And what frightens us is discrimination. Now, that is something that frightens us because Her Majesty the Queen, I am sad to say that, over the Privy Council made an Order in Council that you know Caymanians . . . and the only people . . . I don't think we as the people who discriminate against anybody but sometimes in the past we have found that we have been discriminated against. All we are doing, we are saying is

just respect us for what we are. Give us what we have and just leave us alone. I think that's where we are.

We are a law abiding people. We are free. And all we are asking is just make sure that we are protected, we don't have any less than what we have and nobody is going to be able to come in and override and push down the things that we believe because we have a Christian heritage that we are proud of.

Me, personally, I would give my life for the things that I believe without any question. I believe in principles and that is all we are trying to do, to say that we want to be respected, we want to be protected, and if that is true then we have no other arguments. So, I think that all we need is the privilege of being able to continue to choose the way we've been choosing. And for that I say thank you and good night.

[applause]

Mrs. Suzanne Bothwell: Thank you Brother John.

I would just like to say that for those who are tuning in on Island 24, that we will be tuning out in about 10 minutes and I would like to thank you for taking the time tonight to listen to the program. I hope that what has been said here tonight is good food for thought and that you will continue to be involved in the constitutional review process, participate actively, continue to learn about the issues and, in particular, come to a sense of understanding in relation to all of them.

I would like to then move on perhaps to Reverend Sykes.

Rev. Sykes: Good evening.

Mrs. Suzanne Bothwell: Good evening sir.

And because of time, we are asking one question from now on. Thank you.

Rev. Sykes [Question #17]: Yes, the issue that I wanted to raise was something similar to what Brother John was saying. Can we, under the new thinking as it were, maintain a particular identity in terms of being a Christian community because that is the history which I believe most people in this room (who have now largely left) . . . but we really want to maintain that. And I think that implies a number of things: It implies, can we ask for the religious education in schools, for instance, even in government schools, to be predominately Christian. Not saying that the other religious views must not be covered, but can it be taught from a Christian perspective? Can prayers be maintained from a Christian perspective? And so on.

Isn't that different from the multicultural vision of a society, remembering that the man who was called Legion, in the Gospels, was ac-

tually mad. So might it not really be a mad vision to think of a society as being strictly multi-cultural and not having a unifying spirit, so to speak.

That's the basic question I wanted to ask. And should not this heritage, as it were, being basically maintained through the parliamentary system, should not the judiciary be required to, you know, follow that rather than lead it especially since our judges are not necessarily of our own culture and should not quasi-legal commissions such as is suggested in the blue book and in the red book here not be . . . and I know that the Minister in another forum has said that this really need not be part of government policy. But, after all, at the moment it is written down, that there shall be a quasi-legal (what I am calling a quasi-legal) Human Rights Commission to deal with human rights abuses.

I think the basic thing I am wanting to ask is, Can we maintain a Christian society?

[applause]

Mrs. Suzanne Bothwell: Thank you Reverend Sykes.

Professor Jeffrey Jowell: I would give a very short answer to that question, that a freedom of conscience provision and a human rights provision in a constitution—freedom of conscience, freedom of speech—precisely allows the country to make its mind up on these questions. It does not necessarily allow it to impose its will on those who are unwilling to accept it, or to discriminate against others from different backgrounds and different religions. But it certainly allows the maintenance of this.

We have been through this. You can, if necessary for the function of a Christian school, you can employ Christian people if they are in a teaching capacity even if you have got an anti-discrimination law that prohibits discrimination on the grounds of religion, if it is necessary for a particular function

So the short answer to the question is, there is no obstacle that I can see in a Bill of Rights to what you want to achieve. The Bill of Rights prevents, in fact, the State coming in and saying you have got to teach in a particular way in accordance with a particular religion. It is a safeguard against central governmental interference in these kinds of matters rather than an obstacle.

[inaudible]

Professor Jeffrey Jowell: Yes. Minister McLaughlin is reminding me that you are also asking a specific question, a little more specific than the answer that I gave, is Christian prayer possible. Well—

Rev. Sykes: In government schools, not Christian prayers but—

Professor Jeffrey Jowell: In government schools. And the answer is, again, there is nothing that prevents that. What a conscience clause might prevent is your subjecting non-Christians to Christian assemblies, forcing them to pray and not allowing them to exempt themselves. But most conscience clauses exempt members of other religions faiths from having religion imposed upon them.

In the United Kingdom there is, of course, an established religion. The Anglican religion. Nobody has ever suggested that the Human Rights Act would prevent that happening. So the answer to your question is, yes, that is certainly possible unless it involves discrimination or subjection of others who do not want to be part of this to the Christian education which they would rather not undergo.

Mrs. Suzanne Bothwell: Thank you.

We do have Courtney Platt, if you are still here. Yes? Okay.

Then Steve McField, Verona Davis, if you are still here, and then Mrs. Chastain Bodden, if you are still here.

Mr. Courtney Platt: Thank you.

That was the perfect segue for my statement. I mean, this is not a question. It is a statement.

Mrs. Suzanne Bothwell: Thank you.

Mr. Courtney Platt [Question/Statement #18]: I want to reiterate what the gentleman on the far side said earlier, and that is that we have to be very careful how we word the intention of this Constitution.

The writers of the Constitution of the United States had no intention of legislating Christianity out of the schools and government. They had a firm foundation in Christianity. And, in fact, had every intention of protecting their right to profess . . . well, at least to practice and be good Christians everywhere that they go. So, we have an opportunity now as a country founded firmly on Christianity to preserve that foundation and not allow it to be eroded away and chipped out from under us.

Let us not allow the snake convince us to bite the apple.

[applause]

Mrs. Suzanne Bothwell: Thank you very much for that.

Before I invite Professor Jowell to respond, I have been informed that the television is just about to turn off, so I would like to thank those persons tuning in for listening tonight. You are going to be turned off now, but if you want to continue to listen to the remainder of questions and answers please feel free to do so on Radio Cayman. God bless and good night.

I now hand over to Professor Jowell.

Professor Jeffrey Jowell: The speaker asks to what extent can we prevent the constitution drifting into areas that you might not have intended and, therefore, to make quite clear about the purpose.

I said earlier that when South Africa was looking for a new constitution in the 1990s, it looked at various models. It looked at the model of the United States with very general statements about due process of law and about equal protection of the laws and so on. And it looked at the other model which was mainly the European, the United Kingdom model certainly as it applied to its Overseas Territories (not this one, but others), which was much more specific, much more detailed. Not completely detailed but much more detailed than the United States.

Not only that, but it looked also to the case law of the European Court of Human Rights as interpreted in a number of other countries as well and through the Privy Council. And if you look at all that it is pretty clear these days what these provisions in the Bill of Rights require and need from a particular country. It is not easy under this model, the more specific model, which South Africa adopted because it was much more specific, because it had been looked through, because it was a template that was well known and understood, to drift into all these other areas that you didn't intend at the beginning.

It is possible, certainly, to expand the rights when you suddenly realize, you know, perhaps the rights of children ought to be protected under a provision that you were not aware of before. This sort of thing happens. But to say that a provision that was intended to allow freedom of religious expression eventually bans religious expression, to have that happen under the European-kind of model constitution is highly, highly unlikely.

Mrs. Suzanne Bothwell: Thank you Professor Jowell.

We do have Mr. Steve McField who is next, and then we will wrap up with our last two questions.

Mr. Steve McField [Question #19]: This is directed to Professor.

Recently a Grand Court case went up to the Privy Council and the case had to deal with the right as set out in the Draft Constitution of 2003 and the draft Bill of Rights therein. I know that you alluded to this when you first began about the right to a fair trial, which also includes the right to be tried by one's peers.

Now, we have a provision in certain statutes that says that there is this mode of trial and that mode of trial was challenged in the first instance and it went up to the Grand Court. One of the Grand Court judges refused to follow the Grand Court precedents that said that that mode of trial, that offence should be tried in the Summary Court.

Well, the case wound up in the Privy Council. And the Privy Council said in effect that the Grand Court judge who refused to follow the precedent of the other Grand Court judges was right and that the mode

of trial should have been by judge and jury in the Grand Court and that the defendant had been deprived of his rights to be tried by a judge and jury of his peers.

What I want to ask is in a case like that now where the defendant's rights were obviously violated by the government and, as I understand the government was to say that less than 12 people who were affected by the Privy Council judgment. I believe there have been more people who were affected by that judgment than just 10 people. What is the remedy then? Is the Privy Council's judgment purely declaratory? Or is there a penal sanction when the State has violated your rights and you have suffered damage like imprisonment wrongly? That's my question.

Professor Jeffrey Jowell: I think the answer to that, and anybody who knows more about it must correct me, is that the judgment of the Privy Council apply here directly—

Mr. Steve McField: Yes—

Professor Jeffrey Jowell: —as the highest court—

Mr. Steve McField: —that is our highest court. Yes.

Professor Jeffrey Jowell: —and they are directly enforceable. Yes.

[pause]

Professor Jeffrey Jowell: We're having a little legal discussion on this.

Mr. Steve McField: Yes, we are all lawyers in this.

Professor Jeffrey Jowell: Yes, lawyers always do.

Mr. Steve McField: I know that we are not going to all agree.

Professor Jeffrey Jowell: I am not ducking your question, but it seems to me it really depends on what the order of the Privy Council was. If the order of the Privy Council was purely a declaration, which seems unlikely in this sort of case, then that would simply be a declaration. Government normally follows that. If it says they've got to do this, an order of the court to actually do something—a mandatory order; or striking down a conviction and so on, then the government would normally have to obey. This is an issue here, this requires, I think a long legal opinion.

Mr. Steve McField: The Privy Council struck down the conviction and said that the mode of trial was wrong, the statute was wrong, the mode

of trial . . . he had been denied a fair trial in that he was not allowed to be tried by his peers and that the statute was wrong.

Now, I notice that nothing has been done about that particular provision in the statute that says this mode of trial should be this way. So what I am asking is, What is the remedy now that the defendant has, now that his rights have been violated and he has spent time in prison wrongly? Where does he go from now? Where does he go?

Professor Jeffrey Jowell: Has he been released?

Mr. Steve McField: I don't think so.

Professor Jeffrey Jowell: Well then he could apply to the court here to have himself released in accordance with the judgment to the Privy Council that so—

Mr. Steve McField: Does he go to the same court? Does he go to the judge who upheld judgment? Or does he go to the other court who ruled against him?

Professor Jeffrey Jowell: He would apply for judicial review on the grounds of what is known as Habeas Corpus, perhaps, or something along those lines.

Mr. Steve McField: Thank you.

Mrs. Suzanne Bothwell: Thank you, Mr. McField.
Verona Davis, are you still here? Okay. Thank you.

Ms. Verona Davis [Question #20]: Okay. Good night to the panel.

Mrs. Suzanne Bothwell: Good night.

Ms. Verona Davis: And my learned friends here.

I am just touching on Ms. Elaine Harris' question re: the permissible discrimination factor. I just want to ask what will be enshrined in the constitution to protect the first preference laws in Cayman re: local employees because in some instances there are even conglomerates here who are discriminating against locals. And we know for the erosion of poverty it has to be constant working or constant accumulation of finances.

I am trying to figure in my mind's eye, like for the next 10 years or 15 years, what is going to happen to the younger Caymanian job-seekers and what sort of a protection because I don't think adequate amounts of stuff is done, especially with the Labour Board. And you can just speak to any local employee who has been to that medium for any sort of services.

So I would just like to know what will be addressed where that is concerned because to me, in some of the organizations people from different geographical regions apart from Cayman are preferred to locals in the job market.

Mrs. Suzanne Bothwell: Thank you.

Professor Jeffrey Jowell: As I see it, you are asking whether that kind of legislation or issue should be constitutionalized should put into a Bill of Rights. Is that the question? I don't think there is any intention to do that at the moment for the reasons we have discussed time and again.

A Bill of Rights doesn't cover everything. This is something that seems to me, anti-discrimination employment legislation is really suitable for a law that is of the Legislative Assembly rather than a constitutional provision.

[inaudible]

Professor Jeffrey Jowell: The other point is, yes, are you permitted to discriminate in favor of your citizens.

You certainly, under any human rights legislation or provisions do not have to provide citizenship to people from another country except with very clearly outlined conditions. You don't have to admit people to this country who you don't want to admit. Immigration laws are not normally contrary to human rights.

Once they are in this country, then I think some of . . . most countries provide for some degree of equality for them. Some don't. They might fall foul of anti-discrimination laws.

Hon. Alden M. McLaughlin, Jr.: I am sure what I am saying everybody in this room already knows, but we have a long history of, I won't call it discriminatory legislation, but legislation which is aimed at protecting and promoting the interests of Caymanians. In fact, it used to be called the Caymanian Protection Law in the good old days. That is all about discriminating in favor of local people in terms of job preferences and job opportunities and career advancement and so forth.

The difficulty was, and still is, effective enforcement of those provisions. Whether we write it into the Constitution, or whether it remains as part of our domestic legislation, that is still forever going to be the challenge.

It is a difficult issue to deal with. I am talking personally now because having spent 22 years in the private sector, discrimination against Caymanians is real in the workforce, even when you are very well qualified, in fact a better qualified, you are likely to face real discrimination because you are often viewed as a threat.

[some applause]

Hon. Alden M. McLaughlin, Jr.: So that is the other side of the coin an issue which we really have not been able to effectively address. And we really have to find better ways of enforcing or to ensure that Caymanians who are qualified do get access to the career opportunities that are out there.

But that I don't think, or that cause is not going to be advanced by writing it into the Constitution. It is an enforcement exercise.

Mrs. Suzanne Bothwell: Thank you Minister McLaughlin.
Chastain Bodden, are you still here? Okay, good.

Ms. Chastain Bodden [Question #21]: It concerns me to know that Cayman is such a small Islands, or the Cayman Islands are such small Islands and we are being bombarded with so many things like bigger countries have to do. I have asked the question at all the meetings that I have been to over the years concerning the freedom of religion because freedom of religion can mean anything. Religion that we need to consider is the Christian religion which we have grown up on, which has made our Island become what it is today.

The reason we say Christian religion is because it is about Christ, the Savior, who came 2,000 years ago to redeem us from the sin of the world that Adam and Eve put upon us so that we can prepare for our eternal home. It is not just here that we are thinking about; there is a land beyond that we have to prepare for. I am not here to preach, but I like to say what I feel. And we need to protect this Christian religion.

When we say freedom of religion, we can mean freedom of the atheist religion, freedom of, like some people say, Satanistic religion, Buddhist religion and many others of these. Now, these other religion don't do for mankind what the Christian religion does. And that is why I feel we need to protect it.

And, Mr. McLaughlin, I love you very much, but I really could feel a fear coming over me when I heard you saying, you know, that so many people are coming into our Island. Remember we only had 10,000 people, now we got like 30,000, 50,000 or 60,000 that we can't let those people come in and change what has meant life eternal to us. This is why I really feel we need to stand up and can we say the freedom of the Christian religion in our Constitution, not just freedom of religion. Because in the United States they have the freedom of religion, but it looks like the Christians don't have the freedom because they can't put up the Ten Commandments, they can't do many things to Christmas any more, so where is the Christian going?

Mrs. Suzanne Bothwell: Okay, thank you Ms. Chastain.

I think on the United States point, Professor Jowell earlier said that the United States model of rights and separation of church and

State is somewhat different. So they may have where you cannot pray in public schools and you cannot have your Ten Commandments in your courts, but they have a different system . . . but they are closest to us so those are the examples we see. But there are other examples in terms of human rights where you are still able to maintain your faith, to pray in schools, to have private schools have prayer, public schools have prayer and so forth.

I will just hand over to Jeffrey now.

Professor Jeffrey Jowell: One way of trying to achieve what you wish to achieve is through the preamble to the constitution and if you look at the 2003 draft, which is contained in these documents, there is a preamble there that says that people affirm their intention to be a God fearing country based on traditional Christian values. It starts off by saying similar things. So, although a preamble isn't an enforceable part of the constitution, it is sort of the introduction saying what basic intentions are.

It infuses the whole constitution and indicates what its purpose might be. And then if you look again at the fundamental rights and freedoms of the individual it says again "whereas the Cayman Islands is a Caribbean Territory with its own distinct history, culture, Christian values, and socio-economic framework . . ." So in a couple of places your sentiments are reflected in that kind of constitution. Now that can't be directly enforced because nothing capable of doing so without entering into a kind of Christian dictatorship. And I am sure you wouldn't want that more than anybody else would. But there is an infusion of values that will be used by judges and others when they are interpreting the general spirit of the constitution in that way.

Ms. Chastain Bodden: So, would say atheists, Satanists, and some of these other people, Buddhists, and so forth be allowed to come and, say, start their own church and so forth? I mean I suppose if they come from other countries you know, you can't hinder them from what they do in their homes, but as far as having a meeting place and inviting people to come like how the Christian churches do?

Professor Jeffrey Jowell: I think on this question, I was about to say this freedom of expression which is very important as well even outside of the Bill of Rights is very important, and people have different points of view which they are entitled to express unless you want to suppress all kinds of views from other people. Again, that leads to a kind of tyranny, the kind of tyranny you see in some of the extreme Muslim countries where they say we're not allowing any kind of Christian expression. So, do you want that kind of society, or do you want a society where freedom of expression is permitted?

But you can infuse these values through a preamble with one or two other provisions in the way that I have outlined.

Ms. Chastain Bodden: The thing that bothers me with so many other people coming in, we know what is happening with our generation of young people and even older people now, they are getting confused and it seems like the fear of God is gone from so many of them. That is why we are having so much trouble every day with our young people and crime and so forth. And the more different ideologies come into our Island, the more confused they will get and the further away from God they will get. I mean, I know it is our responsibility as Christians to stand up and to love and in a Christian way to help them and do everything we can to reach them, but with the confusion of the other ideologies coming in, you know, how can we prevent that from happening.

Mrs. Suzanne Bothwell: Thank you Ms. Chastain. I think the end note on that is that we already live in a society, a multi-religious society where people are free to practice their faiths. I think as Christians part of our duty is to evangelize.

Ms. Chastain Bodden: Definitely.

Mrs. Suzanne Bothwell: This is perhaps more of an evangelical issue, a social issue, a cultural issue, as opposed to necessarily purely a human rights one. I don't think that a Bill of Rights will allow us to revert, to narrow the freedoms that we have now, the freedoms every individual here has now. We have had meetings of persons of different faith who speak of discrimination here and they are adamant that they would like to see the provision on protection of religion. They may not necessarily subscribe to the tenets of my faith, your tenets of faith, but we do have to respect that we have it now and I do not think a Bill of Rights is going to narrow that.

What it can do, as Professor Jowell has indicated, is to preserve each individual's ability to practice his or her faith. So, as a Christian moving forward you will not be prevented from practicing your faith, from evangelizing and promoting your faith in public.

Ms. Chastain Bodden: I understand that. It is just that I am concerned about these other religions being able to come to do the same as the Christian religion.

Mrs. Suzanne Bothwell: Okay. We take on board. Thank you.

Well, we have now come to a close to this meeting. I think we have had a lot of positive discussion. I would perhaps like to thank Professor Jowell he has afforded us and invite the Leader of Government Business to, perhaps, close tonight's event.

CONCLUSION

Hon. D. Kurt Tibbetts: Thank you very much Suzanne. And although tonight is winding down, the process certainly isn't winding down. I think perhaps in a sense we are just getting heated up.

There is Issues 27 tomorrow evening on CITN. I think that's a . . . is that a two hour program? That's a two hour program and there will be some guests on that program. Professor Jowell will also be on the program. So I am certain other issues will arise and there will be other discussions happening through that medium tomorrow night.

Suzanne has said that for those of you who may have had questions or wish to make comments to forward them to the Secretariat, but I want to say to you that while we have a schedule of meetings certainly if we need to continue this specific discussion another evening, and we have enough interest for us to do so, then we will fit that in and we will do so because we want to make sure that everybody has an opportunity to air their views.

I think by now we should realize that it is going to be physically impossible in one exercise to satisfy every single concern that is raised. There is no constitution in the world that will have done all of that. And the truth is, because it's simple, that while there are some basic beliefs that will be common in our thought process, there will absolutely be individual thoughts and expressions that will vary from time to time with people so it's going to be virtually impossible to get a document or a framework on a governance model that will satisfy everyone's thoughts about everything.

What we have to make sure of is that the things that are extremely important, that we listen and make our own contributions, inform ourselves and engage in the process so that the Secretariat, specifically, can be gathering and collating all of the information with regard to the views that have been expressed so that we, by way of consensus, can make sure that whatever we are going to negotiate when we get to that point reflects the aspirations of the vast majority of the people of the Cayman Islands. And that is the exercise that we will have to complete.

I just wanted to take a minute to say that I know that dealing with this issue of a Bill of Rights and perhaps there are other issues too that some people may hold a view that if it's not the way that I see it should be then it has to be wrong. But we need to remember that we are all God's children and God has given us all a free will and with the best of intentions it is going to be impossible for everything that each of us thinks to mate with what the other thinks with all of the thoughts that we may have regarding what should be contained in a Bill of Rights.

I want to especially thank Professor Jowell for his many contributions tonight, and certainly while he is only here for a little while, his schedule is going to be very busy until he leaves on Friday evening, but

whenever we need him back—and I am certain that he will be back next month—we can expose him again to the rigors of this exercise. By then William and I will have settled on how William is going to take his time with him so that Professor Jowell doesn't get nervous about the exercise.

I couldn't help that William. That was just a light moment there.

But, again, let me just say that I thank you all very much for coming out tonight. Let us keep the interest up. Let us engage in the discussions. And let us air our views so that we can come to consensus and move the process forward so that we might get to the point in fairly short order that we can begin the negotiations after we go through the referendum stage.

There has been the thought expressed tonight about us changing the referendum date from the one that we proposed earlier. And I just want to say from the very beginning we set our schedule and we launched the process on the 12th of January with our document simply to begin the exercise of the discussions, not with any fixations as to what a new constitution should contain. But we needed to begin the thought process and to evoke the thought process with people. We will look very seriously with regard to how much longer we might need to extend this process to make sure that people are satisfied with the discussion. But what I would not wish for people to look towards is for it to be extended for an extremely long time because the truth is that we are not starting from scratch.

I have heard many questions raised tonight . . . if we take the time out to get a copy of the 2003 Draft Constitution, there is that preamble that Professor Jowell referred to and there is also a section in there about the Bill of Rights. There are many things contained in that document which I know would have satisfied several questions asked tonight had persons either had the time or the availability of that document with them.

What is contained in that document, which was the 2003 draft, I am with full confidence that London will accept that and perhaps more things that we may wish to add to it. So it's not like we are starting from scratch. And I would encourage everybody to get their hands on that document. Have a read. I know it's kind of a boring subject matter, but this is important and we need to get our heads around this and get the process put to bed so that we can move on with other things in life.

Let me close again by saying thanks to all of you and to our listening audience. I think our television audience is off for the night. I also believe there are a few snacks in the back if you care to enjoy each other's fellowship, where one or two of us are gathered in his presence then there will be good fellowship.

Suzanne. Thank you.

Mrs. Suzanne Bothwell: Thank you Leader of Government Business, Mr. Tibbetts.

Again, thank you all so much for coming.

[applause]

Mrs. Suzanne Bothwell: Again, if you have additional questions or comments please take advantage of our question box. As I said, the Secretariat is going through a process and if there are other concerns that have not been raised here tonight please put them down because we are trying to look at everything.

Thank you again. Thanks to the Secretariat Staff, Radio Cayman and CITN.