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Small States, Colonial Rule and Democracy

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Abstract The Commonwealth Caribbean is often singled out by scholars as one of the most democratic regions in the developing world. Based on the small size of the majority of countries in the region and the link that scholars have drawn between small size and democracy it might be thought that the democratic character of the region is a function of its small size. More recently, however, scholars have begun to question the link between small size and democracy and have argued that democracy in small countries has less to do with size and more to do with other factors, such as their 'historic circumstances'. This paper challenges both of these explanations for the democratic character of the region. Indeed, it goes even further by challenging the very characterisation of the region as a bastion of democracy so far as the latter is measured by reference to responsible and accountable government. It will thus be argued that the legacy of colonial rule, combined with the extensive powers vested in the region's Prime Ministers in the context of these small countries, has resulted in a form of autocracy, which is not so far removed from the rule of a colonial Governor. While acknowledging the important role played by the courts in reviewing the actions of Prime Ministers and other public officials which transgress the limits imposed by the Constitution, it will be argued that this is not the hallmark of responsible and accountable government.

1. Introduction

The Commonwealth Caribbean[1] is often singled out by scholars as one of the most democratic regions in the developing world.[2] The region is also notable for the number of small countries that it includes: whether measured by reference to population size or land mass, these are amongst the smallest countries in the world.[3] Based on the statistical link that has been drawn by scholars between small size and democracy,[4] it is tempting to conclude that the democratic character of the region is, therefore, largely a function of the small size of the majority of its countries.

Certainly, the consensus amongst scholars has been for many decades that 'small country size …is conducive to democracy.' [5] Though it is always possible to identify small states where the record of democratic governance has been either inconsistent or non-existent – Cyprus, Fiji and Brunei, spring to mind – these have been regarded as very much the exception rather than the rule. Anckar and Anckar, thus argues that small size increases social cohesion and reduces the distance between citizens and their politicians.[6] Ott, too, suggests that because they are personalistic and informal, 'small–scale social structures encourage a more cooperative pattern of interaction among elites which is mimicked by the citizenry as a whole,' and that 'small size acts as an enabling environment for democratisation because the social system mitigates political conflict and increases the stake of citizens in the regime.' [7] Some scholars, such as Faris, have even argued that island states are substantially more democratic than

[1] The region comprises 12 independent countries that gained their independence from Britain at different times over a period of 20 odd years between 1962 and 1983: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago . It also includes a number of British Overseas Territories, but since they are not entirely self-governing they are not the focus of this paper.
[2] Dominguez (1993), 57.
[3] For example, Barbados, Grenada, St Kitts and Nevis, and St Vincent and the Grenadines all have land mass area of less than 500 square kilometres; and, with the exception of Jamaica, which has a population of 2.7 million, Trinidad and Tobago, which has a population of just over 1.3 million, and Guyana which has a population of 800,000 the remainder of the countries within the region all have populations of under 400,000. Indeed, many of the countries are miniscule, with populations which hover around 100,000 or less: Antigua and Barbuda, Dominica, Grenada, St Kitts and Nevis, and St Vincent and the Grenadines.
[4] See, for example, Diamond and Tsalik (1999) pp 117-60.
[5] Srebnik, (2004) pp 329-341,
[6] Anckar and Anckar, (1995) pp 211-229
[7] Ott (2000) pp 111-124

continental countries.[8] This is, Faris argues, because their 'insulation' from the international system has allowed them 'to avoid getting embroiled in warfare and hence fostered a climate conducive to democratic politics.'[9]

More recently, however, as scholars have had an opportunity to judge the effect of small size on democracy over a longer period of time they have begun to question the nature of the link. Some now argue that while there may be a correlation between small size and democracy this is not in and of itself evidence that it is the small size of these states that causes them to be democratic. Veenendaal, for example, argues that the maintenance of formal democratic institutions in small states has less to do with their size and more to do with their historic, geographical and political circumstances.[10] It is, he argues, no coincidence that most 'microstates' are former British colonies, which experienced longer and more intense periods of colonial rule.[11] Both the increased length and intensity of colonisation, according to Veenendaal, 'engendered a better socialisation in democratic values and traditions' among the population of these former colonies, creating a better environment after independence.[12] This view is supported by political scientists, writing about the Commonwealth Caribbean, who have argued that democracy flourished in the region because it had been 'socialized by over three hundred years of British colonialism', which had resulted in a 'deep penetration of the British influence.'[13]

In this paper I wish to challenge both the 'historical circumstances' and 'small size' explanations of the democratic character of the region. In doing so, I wish to go even further and to challenge the very characterisation of the region as a bastion of democracy in so far as this is measured by reference to responsible and accountable government. I will begin, in Part 2, by contesting the proposition that three hundred of years of British colonial governance represented a prolonged tutelage in British democratic values, which served the region well as its political leaders took over the reins of power. As I will show,

[8] Faris (1999)
[9] Ibid.
[10] Veenendaal (2013) pp 92-112.
[11] Ibid, at 96.
[12] Ibid.
[13] Payne (1993*)* pp 201-217.

colonial rule, or at least the system of 'Crown Colony' rule, which was the system of governance in force for most of the region for the last quarter of the nineteenth century and first half of the twentieth century, was characterised not by British democratic values but by the autocratic rule of a colonial Governor who had the final say on all matters affecting the colony concerned, and yet was neither accountable nor responsible to the people whom he governed.

In Part 3, I will draw, firstly, upon my analysis of the constitutional provisions surrounding the appointment and removal of key constitutional actors, which are common across the region; and, secondly, upon real life examples from countries across the region, [14] to demonstrate how the very small size of the majority of the countries in the region, combined with the extensive powers vested in the region's Prime Ministers, have enabled the latter to dominate almost every aspect of public life. As a result, it will be argued, periodic elections apart, Commonwealth Caribbean Prime Ministers are politically unaccountable in much the same way as were colonial Governors during the era of Crown Colony rule.

Finally, in Part 4, I will draw upon four very recent examples from St Kitts and Nevis and Antigua and Barbuda to show how the lack of any effective means of holding Prime Ministers politically to account meant that those who wished to challenge abuse of powers in these countries were obliged to invoke the courts' powers of judicial review to prevent the Prime Minister, and other public officials and bodies subject to prime ministerial influence, from transgressing the limits imposed on them by the constitution. While there may be nothing inherently undemocratic in opponents of the government invoking the courts' powers of constitutional review, neither is it the hallmark of responsible and accountable government.

In conclusion, I will argue that it is necessary in the light of the post-independence experience of the Commonwealth Caribbean not only to reconsider assumptions about the link between small size and democracy and about the 'civilising' effect of colonial rule, but also to reevaluate the democratic

[14] Trinidad and Tobago, Grenada, Antigua and Barbuda, Dominica, Jamaica, and St Kitts and Nevis

credentials of a region which is often held up as a paradigm of postcolonial democracy.

2. Colonial Rule

The islands that make up what we now call the Commonwealth Caribbean came into British possession by different means and at different times over a period of nearly two and a half centuries, between 1624 and 1862. On the one hand, there were the *settled* colonies; so called because by British standards they had no 'civilised' inhabitants or settled law. Here the land, being 'desert and uncultivated', to use Blackstone's words,[15] was claimed by the British by right of occupancy.[16] On the other hand, there were the *ceded* or *conquered* colonies; so called because the colony was acquired by conquest[17] or ceded to the British by another European power.[18] The means by which they came into British possession is important because it, typically, dictated the system under which they were governed. [19]

2.1 The 'Representative System'

The settled and ceded islands - Antigua, the Bahamas, Barbados, Dominica, Grenada, Jamaica, Nevis, St Kitts and St Vincent - were governed by what was

[15] Blackstone (1765) vol 1, 107.
[16] The settled colonies in the region comprised: St Kitts (1624), Barbados (1627), Nevis (1628), Antigua (1632), the Bahamas (1648), and Barbuda (1678).
[17] As in the case of Jamaica (1655), though it was treated by the British as if it were a settled colony, St Lucia (1762) and Trinidad (1797)
[18] As in the case of Dominica (ceded by the French in 1763), Grenada and St Vincent (ceded by the French in 1783), Tobago (ceded in 1793 by the French), Guyana (the territory then know as Demerera, Berbice and Essequibo was purchased by the British in 1814, and in 1831 renamed British Guiana) and, finally, Belize (formally recognised as British following a treaty with Spain in 1763, and given the name of British Honduras in 1862)
[19] For a discussion of the distinction between settled colonies and ceded or conquered colonies see *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141. See also Dupont, (2001) 284

known as the 'Representative System'. Under this system there were three branches of government: a Governor, representing the Crown, a Council, and a legislative Assembly (the Assembly). The Governor, who was appointed by the King , had the power of granting or withholding his (they were all males) assent to any Bills which might be passed by the Assembly. The Council was composed of 'the most substantial men in the colony',[20] appointed by the King on the recommendation of the Governor, and could, therefore, be relied upon to support the Governor against the Assembly. The Assembly was comprised almost exclusively of white freeholders (mainly plantation owners) who were elected to represent the interests of the plantocracy.[21]

It was originally presumed that the Assembly would play a minor part in government. However, because any proposal for the expenditure of public money had to be approved by the Assembly, it possessed a powerful weapon which it was not afraid to use against the Governor whenever he sought to implement a policy which was deemed not to be compatible with the interests of its members and those whom they had been elected to represent - the plantocracy. It is arguable, therefore, that, in so far as the Assembly was able to hold the Governor to account by refusing to approve the expenditure of public money, the Representative System bore at least some resemblance to the modern ideal of a government which is accountable to a body of elected representatives, even if those representatives were elected on an incredibly narrow franchise and were mainly concerned with protecting the interests of the plantocracy.

2.2. 'Crown Colony' Rule

The conquered islands of Trinidad and St Lucia, by contrast, were governed from the outset by a system of 'Crown Colony' rule. Though the component parts differed in different colonies, the common elements of Crown Colony rule were a Governor, a Legislative Council and an Executive Council. The Governor sat as

[20] Wrong (1923), 40.
[21] Lewis (2004), 102.

chairman of the Legislative Council, which was composed of an equal number of official members (senior civil servants appointed by the Secretary of State for the Colonies) and nominated unofficial members who were selected by the Governor, usually from among the dominant groups in each colony: the planter and merchant class. As Chairman, the Governor could always carry or veto any measure upon which the votes were evenly divided by virtue of his casting vote. The Governor also presided over the Executive Council, which had a purely advisory role, and was usually comprised of three *ex officio* members,[22] and two or more non-officials nominated by the Governor. The final say on matters affecting the colony thus always lay with the Governor who was responsible solely to the Secretary of State for the Colonies. Within the limits of their instructions from London Governors were, in effect, virtual autocrats.[23]

Though it was originally confined to conquered colonies, the system of Crown Colony rule became the mode of governance for the majority of countries in the region towards the final quarter of the nineteenth century as a result of the collapse of the Representative System following the 'Morant Bay rebellion', in Jamaica, in 1865.[24] The rebellion and the brutal methods used to suppress it made it clear to the British authorities that the Representative System, which had been entirely geared towards protecting the interests of the plantocracy, was completely unsuited to the post-emancipation political landscape of these former slave colonies. Introduced to Jamaica in 1866, Crown Colony rule was subsequently extended to all the other countries in the region; with the exception of the Bahamas and Barbados, which retained the Representative System.

The extension of Crown Colony rule, which deprived the majority black population of any opportunity to participate in the government of their country, was opposed from the outset in Jamaica, and during the first quarter of the twentieth century hostility towards Crown Colony rule gathered pace across the region. This was especially so in a country like Trinidad, which had not had a

[22] Lewis, (2004) 98.
[23] Ibid.
[24] Cambridge History of the British Empire: Volume II The Growth of the New Empire 1783-1870 (1940) pp 735-37.

single elected representative in its Legislative Council since it was established in 1831.[25] In response to this groundswell of discontent various modifications to the system were implemented in the 1920s and 1930s. These comprised: the introduction of a number of elected unofficial members into the Legislative Council; a wider franchise; and lower qualifications for candidates wishing to be elected to the Legislative Council. It was not, however, until the end of World War II that the British Government began in earnest to dismantle the system of Crown Colony rule, which had by then persisted in some countries for over a century, and to lay the foundations for a system of responsible government based on the Westminster model.

2.3 Independence and the 'Westminster Model'

Though the introduction of responsible government took place at different times in different colonies, the broad outline of the process was similar in each.

Firstly, universal adult suffrage was introduced as the property and income qualifications were replaced by a simple literacy test, which itself was eventually abandoned. Secondly, the number of elected members in the Legislative Councils was incrementally increased, while the number of ex officio and nominated unofficial members was correspondingly decreased. In some cases, such as Jamaica and Trinidad and Tobago, the Legislative Council was replaced by a bicameral parliament modelled on the British Parliament, with a wholly elected lower house (the House of Representatives) and a nominated upper house (the Senate), Thirdly, the Executive Council, formerly a purely advisory body, became the principal policy-making body. At the same time, the number of members drawn from the elected element of the Legislative Council steadily increased until it reached the point when the elected members formed a majority on the Executive Council. Fourthly, the semblance of Cabinet government began to emerge as one of the elected members of the Executive Council was appointed as Chief Minister with the approval of the House of Representatives, which also had the power to dismiss the Chief Minister by majority vote, and the Governor assigned portfolios to the other elected members of the Executive Council on the

[25] Lewis, (2004)

Chief Minister's recommendation. In this way the autocratic rule of the Governor under the system of Crown Colony rule was gradually displaced by what was supposed to be a system of collective, democratic self-government.[26]

All of this, however, took place in a very concentrated period, which meant that by the time of independence most countries in the region had barely a decade's worth of experience of functioning under a responsible and accountable system of government. As we have seen, for almost a century before that, and in some cases for more than a century, they had experienced only autocratic rule under a colonial Governor. While it is true that a number of the region's independence leaders and politicians had been educated in England and were familiar with the Westminster model, they nevertheless represented a very small section of the wider political class in the region. [27]

The transplantation of the Westminster model to the Commonwealth Caribbean, where the experience of colonial rule had been quite different to that of the 'white' Dominions of Canada, Australia and New Zealand, was, therefore, something of an experiment. Certainly, there was very little in the region's history to suggest that this transplantation would successfully take root. Though it was relatively straightforward to replicate the institutions upon which the Westminster model is based - the Queen as head of state, a Cabinet, Parliament, the courts and a civil service - it was always going to be difficult to replicate the culture of conventions, habits and understandings which underpin relations between these institutions. This culture had been gradually evolving in Britain over a number of centuries, ever since the 'Glorious Revolution' of 1688, and was the end product of a quite different set of political circumstances and needs. A history of slavery and a century of Crown Colony rule, by contrast, was hardly the most fertile soil in which to attempt to transplant the Westminster model. As that doyen of West Indies studies, GK Lewis, observed of Crown Colony rule: 'as a

[26] Meighoo and Jamadar, (2008).
[27] Norman Manley, Jamaica's first Prime Minster, had served in the Royal Field Artillery in World War I and was a Rhodes scholar at Oxford; Eric Williams, Trinidad and Tobago's first Prime Minister competed his PhD at Oxford; Errol Barrow, the first Prime Minister of Barbados concurrently studied Law at the Inns of Court and economics at LSE; and Forbes Burnham, the first Prime Minister of Guyana also attended LSE where he studied Law.

system…it robbed all who participated in it of self-respect,'[28] echoing the observation of the Jamaican independence leader, Norman Manley, that: 'the system…was a perfect instrument for the degradation of political life.'[29] Its lasting imprint on the political culture of the region can be seen in the next section as we examine the emergence in the post-independence era of very powerful Prime Ministers, dominating almost every aspect of public life.

3. Powers of Commonwealth Caribbean Prime Ministers

In accordance with the Westminster model of government, [30] each of the region's constitutions vests 'executive authority' in the head of state - in most cases the Queen acting through her representative, the Governor General. 'Executive power', on the other hand, is vested in the Cabinet, comprising the Prime Minister and such other ministers from among the members of the legislature as the Prime Minister selects. The Cabinet is thus collectively charged with the general direction and control of government: deciding issues of policy, both domestic and foreign, and how public money should and should not be spent.

Typically under the Westminster model, the Prime Minister, as head of the Cabinet, automatically wields enormous political power by virtue of his or her right of proposal and veto; to appoint and delegate responsibilities to ministers and departments; to be consulted about all significant matters relating to government policy; and to set the government's policy agenda. The Prime Minister will, however, be even more powerful within his or her own party and within Cabinet where he or she is electorally very successful. This happens with especial regularity in the Commonwealth Caribbean. This is in no small part due to the 'first-past-the-post' electoral system, which is the electoral system of choice across the region,[31] and which historically has tended to result in a disproportionate majority for the winning party in terms of seats won and votes

[28] Lewis (2004), 101.
[29] Quoted by Lewis (2004), 101.
[30] With exception of Guyana, which in 1980 adopted a Cooperative Socialist Republic Constitution, all of the other countries in the region have been governed under the Westminster model since independence.
[31] With the exception of Guyana which has a party list system.

cast. This, makes it is easier for Prime Ministers to win electoral landslides,[32] and renders them politically unassailable, at least from within their own party.

The Prime Minister's paramountcy both within Cabinet and within their own party makes it even more important that there exists a wider network of institutions and public officials who are charged by the constitution to provide a check on the Prime Minister, to guarantee the neutrality of the public service, to ensure the integrity of the electoral process, and to supervise the expenditure of public finances. As we will see below, however, in the Commonwealth Caribbean the Prime Minister's involvement in the appointment of the key officials in these bodies makes it difficult for these officials to fulfil the constitutional role allocated to them.

3.1. Powers of appointment and dismissal

Commonwealth Caribbean constitutions vest Prime Ministers with very extensive powers of appointment. Indeed, it would be no exaggeration to say that there are hardly any senior public officials who do not owe their appointment either directly or indirectly to the Prime Minister.[33]

3.1.1 Governor General

For those countries in the region that remain constitutional monarchies - that is every country with the exception of Dominica, Guyana and Trinidad and Tobago[34] - the head of state is the Queen, who acts all times through her appointed representative in the country concerned, the Governor General. This

[32] For example, in Grenada in 1999 when the New National Party under Keith Mitchell won all of the available seats; in St Lucia in 1997 and 2001 when the St Lucia Labour Party under Kenny Anthony won 16 and 14 out of the 17 available seats; Barbados in 1999 when the Barbados Labour Party under Owen Arthur won 26 of the 28 available seats; and in St Kitts and Nevis in 2000 and 2004 when the St Kitts and Nevis Labour Party under Denzil Douglas won 8 and 7 out of the 11 available seats respectively. See Barrow-Giles and Joseph, (2006) pp 5-6.

[33] In addition to those identified in this section the Prime Minister appoints ambassadors, high commissioners and other principal representatives of the state. See, for example, s.101(2)(c) Constitution of Antigua and Barbuda.

[34] Dominica embarked upon independence as a republic with a ceremonial President. Guyana became a republic in 1970 when it replaced the Queen as head of state with a ceremonial President and Trinidad and Tobago followed suit did in 1976.

means that whilst the titular head of state is the Queen, for all practical intents and purposes the effective head of state is the Governor General.[35]

Though it is not mentioned in the text of any of the region's constitutions, Governors General are customarily appointed in accordance with the recommendation of the Prime Minister of the country concerned.[36] There is no requirement that in making their recommendation the Prime Minister must consult with any other person or body. No specific qualifications are required for appointment as Governor General and a candidate's previous political affiliations are no disqualification. Indeed, a number of Governors General within the region have previously been members of the same political party as the incumbent Prime Minister and have even held high political office.[37] The custom of appointment upon the advice of the Prime Minister is taken also to extend to the Governor General's dismissal.*[38]* Governors General are thus removable at the request of the Prime Minister and there have been several instances, since independence, of the premature dismissal or resignation of Governors General.[39]

The contingent status of Governors General is not unique to the Commonwealth Caribbean: it also applies to Governors General elsewhere in the Commonwealth. However, the political as well as social ties between the Governor General and the Prime Minister are usually much closer in the tightly knit communities that are so characteristic of the small islands of the Caribbean than is the norm elsewhere; with the Prime Minister and Governor General often having attended the same schools, and the same churches and the same clubs. When contingent status is combined with a close political and social nexus it creates a highly toxic

[35] Once appointed, the Governor General is a free agent who does not need to receive instructions from the Queen. See Kumarasingham (2010), 45.
[36] Dale (1983), 112.
[37] This is true, for example, of all the Governors General in the Bahamas since independence, with one exception. It is also true of Sir Deighton Ward in Barbados; Carlyle Glean in Grenada; Clifford Campbell, Sir Florizel Glasspole and Howard Cooke in Jamaica; and Allen Lewis, Boswell Williams and George Mallett in St Lucia. Antigua had until recently been an exception to this general trend. However, the most recently appointed Governor General in that country, not only contributed to the governing party's election campaign, but also made frequent public appearances to support the party's election campaign. O'Brien, (2014)
[38] Dale (1983), 113, though Bogdanor and Marshall (1996) have suggested that the Queen may retain a residual discretion to refuse a Prime Minister's request for dismissal of a Governor General.
[39] O'Brien (2014), 48.

mix, which can impact upon the constitutional role of the Governor General in two ways. Firstly, it can undermine the Governor General's independence when called upon to exercise their so-called 'reserve powers': such as the power to summon, prorogue or dissolve parliament and to appoint or dismiss the Prime Minister.[40] Thus, for example, when deciding whether or not to grant a Prime Minister's request for the dissolution of Parliament it may be difficult for the Governor General, in those countries where they are empowered to do so,[41] to base their decision on what is in the best interests of the country rather than what is most politically expedient for the Prime Minister. Secondly, the close relationship between Governors General and Prime Ministers can undermine the former's political neutrality when exercising their power, for example, to appoint independent senators. In such cases the Governor General is expected to act in their own deliberate judgment, but their proximity to the Prime Minister means they may be reluctant to appoint persons who are likely to be critical of the government.[42]

3.1.2 Ministers

Under the Westminster model it is customary for members of the Cabinet to be appointed and removed by the head of state upon the recommendation of the Prime Minister. However, the appointment of government ministers upon the recommendation of the Prime Minister in the Commonwealth Caribbean is distinctive in at least two respects, both of which have implications for the legislature's willingness and ability to act as a check upon the Prime Minister.

Firstly, there is no rule about the number of elected members whom the Prime Minister can appoint to his Cabinet. Prime Ministers can, therefore, pack the

[40] The reserve powers of Governors General also include, by implication, the power to refuse assent to a Bill presented by parliament, though by a convention which applies as much to the Caribbean as it does elsewhere in the Commonwealth, a Head of State under the Westminster model must always assent to a Bill on the advice of Cabinet. Indeed, were a Governor General to refuse to accept the Cabinet's advice assent to a Bill presented by parliament, it would, save in the most exceptional circumstances as where the Bill abolished the independence of the judiciary, be regarded as profoundly undemocratic. In the case of this particular reserve power then the contingent status of the Governor General is not regarded as being problematic.
[41] Belize, St Lucia and St Vincent and the Grenadines.
[42] Robinson et al (2015), 96.

government benches in parliament with members of his or her own Cabinet, who are bound by the convention of collective responsibility to toe the government line or resign their post as minister.[43] Indeed, in the very small parliaments of the Eastern Caribbean, which have fewer than 20 members, it is not unusual for all the elected members from the governing party to be government ministers.[44]

Secondly, there is no rule preventing the Prime Minister from appointing as a senator a candidate who has been rejected by the electorate and, once they have been appointed as a senator, recommending their appointment as a government minister.[45] This occurred in Trinidad and Tobago, following the 2000 election, when Prime Minister Panday requested that the President appoint as senators seven of his party's candidates who had just lost their seats in the election. His request was initially refused by the President, who considered that 'using people who have been, to put it in this way, rejected by the electorate in a representative and democratic system' in such large numbers was 'unprecedented'.[46] However, a compromise was eventually agreed, with the President agreeing to appoint the seven senators upon the Prime Minister undertaking that only two would be recommended for appointment as members of his Cabinet. The practice of appointing defeated electoral candidates as senators who go on to become ministers is not, however, confined to Trinidad and Tobago. Following the 1995 elections in Grenada, seven out of the 13 senators who were appointed on the recommendation of the Prime Minister were defeated candidates in the general election, and five of these defeated candidates went on to be appointed government ministers.[47]

The presence of a significant number of government ministers, who are bound to toe the government line, makes it more difficult for senates to perform their constitutional function of serving as a check on the executive. However, as we

[43] In Jamaica, for example, under the Prime Minister PJ Patterson 22 out of the 34 elected members of the House of Representatives were government ministers.
[44] Robinson, Bulkan and Saunders (2015), 103.
[45] Though in some countries there is a rule about the number of senators that may be appointed as ministers. See, for example, s.69(3) Constitution of Jamaica.
[46] Ghany (2002).
[47] Ibid.

will see below, the appointment of government ministers as senators is not the only mean s by which Prime Ministers can exert their influence over that body.

3.1.3 Senators

With the exception of Belize,[48] a majority of the senators within each legislature are appointed for a fixed period of five years (corresponding to the lifetime of a parliament) upon the recommendation of the Prime Minister and may also be removed at any point during this five-year period upon the recommendation of the Prime Minister.[49] This means that, save in cases where the Prime Minister is attempting to drive through reforms to the constitution (which, typically, require a special two thirds or three quarter majority of both Houses of Parliament), the nominated element in Commonwealth Caribbean legislatures rarely acts as an effective check on the Prime Minister. Senators have the temerity to oppose the Prime Minister's wishes must face the risk of having their appointment summarily revoked. In Trinidad and Tobago, for example, in 2000, the President was obliged, upon the recommendation of the Prime Minister, to revoke the appointment of two senators who had voted against legislation proposed by the Government.

3.1.4 The Office of Speaker

Speakers of the region's Lower Houses are elected by a majority of the members of the Lower House. They are expected to function in the same way as their counterpart in the British Parliament, but are not subject to the same set of conventions, which are designed to emphasise the Speaker's political neutrality. For example, there is no convention that a retiring Speaker will be replaced by someone from the Opposition. In the absence of such conventions, regulating the Speaker's election and their conduct while in office, it has proved to be extremely

[48] Belize Constitution (Sixth Amendment) Act 2008.
[49] Dominica, St Kitts and Nevis and St Vincent and the Grenadines have unicameral legislatures, which include elected members and nominated senators. Nominated senators are not entitled to vote on a motion of no confidence. See..

difficult in the Commonwealth Caribbean to establish a Speakership, which is seen to be impartial and which can earn the respect and trust of all political parties. Instead, the tendency across the region has been for the office of Speaker to be regarded as the privilege of the party in power, making it almost impossible to disassociate the Speaker from party politics.

In Antigua and Barbuda, for example, there was for over a decade a protracted dispute between the Antigua and Barbdua Labour Party (ABLP) and the Speaker of the House of Representatives, whom the ABLP believed had consistently favoured the governing party in her management of business in the House of Representatives. In the course of this dispute Gaston Browne, an ABLP member of the House of Representatives, unsuccessfully sought to challenge the legality of the Speaker's appointment on the ground that she was disqualified because she was the holder of a public office, namely Executive Secretary to the Board of Education.[50] Though it is impossible to establish whether this was by coincidence or not, the day after his legal challenge to the Speaker's appointment was dismissed by the High Court[51] Browne was suspended indefinitely from Parliament by the Speaker for protesting too vocally about the legitimacy of the Government.

3.1.5 Public Service Commissions (PSCs)

Under the Westminster model the traditional view of the role of public servants is based on principles that were first outlined in the Northcote-Trevelyan report of 1854, the essential characteristics of which are: a permanent bureaucracy staffed by neutral and anonymous officials; recruitment and promotion based on merit; self sufficiency; and a strict separation of power between government ministers who decide policy and the public servants who administer it.

In support of these principles the constitutions of all the countries within the region make provision for the establishment of a PSC, which is supposed to have

[50] Contrary to s 39(1)(g) Constitution of Antigua.
[51] *Browne v Giselle Isaac-Arrindell*, High Court Antigua, 16 June 2010. Unreported. Available on file with the author.

exclusive powers over the appointment, promotion, transfer and removal of public servants (which term includes members of the Civil Service, the Teaching Service and Police Service). To secure their independence each constitution imposes strict conditions on eligibility for membership of a PSC,[52] length of appointment[53] and security of tenure.[54] There is also usually a provision that the conditions of service of PSC members shall not be altered to their disadvantage. In this way it was hoped that public servants would be insulated from political interference by the government of the day.[55]

Notwithstanding these prophylactic devices, appointments to PSCs throughout the region continue to remain very much within the Prime Minister's sphere of influence. In a number of cases members of the PSC, including the Chairman, are appointed by the head of state only after seeking the advice of the Prime Minister.[56] Though the Prime Minister is usually required to consult with the Leader of the Opposition before tendering advice to the Governor General, in most cases consultation is no more than a formality, since the Prime Minister is not required to obtain the Leader of the Opposition's agreement to his or her preferred candidate.[57] As Basdeo Panday, the former Prime Minister of Trinidad and Tobago, caustically observed, when describing the process of consultation when he was the Leader of the Opposition: 'I am consulted by a letter written by the President's secretary to me saying that they are going to appoint so and so and if I have any comments or objections. That is the level of consultation.'[58] As a result the risk of indirect prime ministerial influence over the functions of the

[52] Thus, former public officers and members of the legislature are usually disqualified (see, for example, s.77(2) Constitution of St Kitts and Nevis)[52] and there is also usually a quarantine period during which a person who has held office or acted as a member of a PSC cannot be eligible for appointment to another public office (see, for example, s.126(2) Constitution of Trinidad and Tobago.

[53] Appointments to the PSC are for a fixed term, the minimum being two years, as in the case of Antigua, and the maximum being five years, as in the case of Jamaica.

[54] Members of the PSC may only be removed from office by the President or Governor General, as the case may be, for inability to discharge the functions of their office whether arising from infirmity of mind or body or any other cause or for misbehaviour, and then only if their removal has been recommended by a tribunal, comprising a chairman and two other members appointed by the Chief Justice (see, for example, ss.77(5) and (6) of Constitution of St Kitts and Nevis.

[55] *Thomas v AG Trinidad* [1982] AC 113.

[56] S.99(1) Constitution of Antigua.

[57] See, for example, s 99(1) Constitution of Antigua and s 120(1) Constitution of Trinidad and Tobago.

[58] O'Brien (2014), 166.

PSC remains a profound concern in the region. George Eaton, for example, writing about the operation of the PSC in Grenada, has argued that:

> It is naïve to suppose that persons appointed through a process of political patronage to a legally independent, but functionally very important body, will thereafter become immune to political sensitivities … It simply means that political persuasion is exercised surreptitiously or, as in the case of Grenada, under the Gairy regime, by the outright usurpation and subversion of the functions and responsibilities of the [PSC].[59]

Thus at each stage of a public servant's career, the possibility exists of interference in that career by a politically directed PSC.

3.1.6 Election Management Bodies and Constituency Boundaries Commissions

Responsibility for the management and administration of elections is assigned by each of the region's constitutions either to a Supervisor of Elections/ Parliamentary Commissioner or to an Electoral Commission.[60]

Where responsibility is assigned exclusively to a Supervisor of Elections/ Parliamentary Commissioner,[61] appointed by either the PSC or the Governor General,[62] the concern is that both of these appointing bodies are susceptible to the influence of the Prime Minister for the reasons outlined above.[63] Similar concerns have been expressed about potential political interference with Electoral Commissions in the region. Usually, the majority of members of Electoral Commissions are appointed on the Prime Minister's recommendation.[64] Though the Chairman of the Election Commission is usually appointed by the Governor General 'acting in his own deliberate judgment',[65] for the reasons discussed above it is unlikely that the Governor General would

[59] Eaton et al (2002), 210.
[60] With the exception of Antigua and St Kitts, where responsibility is shared, somewhat uncomfortably, between the Supervisor of Elections and the Electoral Commission.
[61] As in the Bahamas, St Vincent and the Grenadines, and Grenada.
[62] See, for example, s.35 (1) Constitution of Grenada, which provides that the Supervisor of Elections should be appointed by the Governor General.
[63] See Report of Constitution Review Commission Antigua (2002), 89.
[64] As in Barbados and Belize, where three of the five members are appointed in accordance with the advice of the Prime Minister.
[65] See s.53(3) Constitution of St Lucia.

appoint as Chairman anybody who was not first approved by the Prime Minister. Even where there is a constitutional requirement that the Governor General must act on the recommendation of the Leader of the Opposition when appointing a proportion of the members of the Electoral Commission, the members so appointed will always form a minority. Moreover, there have been a number of occasions where there has been no Leader of the Opposition to consult either because the Opposition has boycotted the general election, as in the case of Trinidad and Tobago in 1971 and Jamaica in 1983, or the governing party has won all of the available seats in the legislature.

The other key electoral body within the Commonwealth Caribbean are Constituency Boundaries Commissions (CBCs), which have the task of reviewing and making recommendations to Parliament about the size and number of constituencies in each country.[66] In recognition of the importance of the task assigned to CBCs there are a number of express provisions within each Constitution designed to ensure a measure of political neutrality as well as political balance in the composition of each CBC. The degree of neutrality and balance thus achieved is, however, questionable. For example, in the case of the Bahamas, Dominica, Grenada and St Lucia the Chairman is, ex officio, the Speaker of the House of Representatives.[67] As we have seen, the Speaker is elected by the government majority in Parliament, thereby tending to undercut any claim to political neutrality. As the Eastern Caribbean Court of Appeal noted in *Constituency Boundaries Commission and Another v Baron*:[68]with regard to those countries where the Chairman of the CBC is, ex officio, the Speaker:

> The reality of the situation is that when such a Commission is being set up, the respective sides will recommend members whom they are satisfied will look after each side's respective interests. Their concentration will be more on political advantage than constitutional requirements. I agree that the Speaker as Commission Chairman stands in the middle. But again one has to be real. The Speaker was elected by a government majority.

[66] In Barbados and Trinidad, the Electoral Commission and Boundaries Commission are combined in one body – the Electoral and Boundaries Commission. The exception is Jamaica, where under s. 67 of the Constitution, this responsibility is assigned to a Standing Committee of the House of Representatives.
[67] Or House of Assembly in…
[68] [2001] 1 LRC 25.

In the case of Antigua and Barbuda and St Kitts and Nevis, the Chairman is even more obviously a political appointee; being appointed in each case by the Governor General, acting in accordance with the advice of the Prime Minister after the latter has consulted the Leader of the Opposition.[69]

Being able to exert influence over the Chairman of the CBC is important to Prime Ministers because of the Chairman's casting vote in the event of a tie. This is crucial in those countries where members of the CBC are appointed in equal numbers upon the recommendation of the Prime Minister and the Leader of the Opposition.[70] By virtue of their casting vote there is always the potential that a Chairman who is susceptible to the Prime Minister's influence will ensure that the government's view prevails in the event of a tie when the CBC is taking decisions about the review of constituency boundaries.

3.1.7 Auditor General

Auditor Generals in the region are appointed by the President or Governor General, as the case may be, acting in accordance with the recommendation of the PSC after the latter has informed the Prime Minister of their recommendation. [71] The involvement of the Prime Minister in this process, even if it indirect, is highly problematic because of the nature of the constitutional role of Auditors General. this entails auditing and reporting on the public accounts of all government departments and serving as a 'watchdog' on behalf of the public to guard against any impropriety in the conduct of the public finances. As a result, it is almost inevitable that at some point Auditors General will be brought

[69] s 63(1)(a) Constitution of Antigua. In St Kitts, the Chairman is appointed by the Governor General, acting in accordance with the advice of the Prime Minister given after the Governor General has consulted the Leader of the Opposition and such other persons as the Governor General, acting in their own deliberate judgement, has seen fit to consult (s.49(1)(a) Constitution of St Kitts and Nevis).[69]

[70] In Antigua, there is an even greater imbalance as two members are appointed by the Governor General in accordance with the advice of Prime Minister and only one member in accordance with the advice of Leader of the Opposition, thus affording the Prime Minister the final say in the appointment of both the chairman and the majority of the members of the CBC (s.63(1) Constitution of Antigua and Barbuda).[70] There is a similar imbalance in the appointed element of Bahamas CBC, but here at least the addition of two ex officio members – the Speaker as chairman and a Justice of the Supreme Court as deputy chairman – does mean the government is not guaranteed a majority on the CBC (s.69 Constitution of the Bahamas).

[71] Also known in Dominica, Grenada and St Kitts as the Director of Audit.

into conflict with the government of the day. This can be most clearly seen in the case of the Auditor General of Grenada, who was removed from office for a letter of rebuke which she had written to the Prime Minister after she had discovered not only that the report that she had sent him to lay before Parliament had been tampered with, but also that there had been inordinate delay on the part of the Prime Minister in laying her report before parliament.[72]

Because of the potential for conflict with the executive the safer course for Auditors General who wish to remain in office is to do as little as possible. As the High Court of Antigua and Barbuda noted in the case of *Thomas v Harris,*[73] the failure of the Auditor General to file the audited accounts for 1985 to 1988 until 1999 and the accounts for 1989 until 2000, and the Prime Minister's failure to reprimand the Auditor General for his dereliction of his duties or to take any action to remedy the default, led to the inescapable conclusion that this state of affairs actually suited the Government, which had been in power since Antigua and Barbuda had been granted independence in 1981. In the Court's view, as a consequence of its longevity, the Government had 'perhaps grown complacent and unmindful of its public accountability to the citizens who had elected it in the first place.'

3.2 Small Size and Political Patronage

As our detailed analysis of the constitutional provisions surrounding the appointment of the key constitutional actors has shown, the Prime Minister's involvement in the process is ubiquitous. Of course, it might be argued that this is not unique to the Commonwealth Caribbean: there are many other examples of Commonwealth countries where the Prime Minister is vested with very extensive power of appointment and dismissal. However, the problem of prime ministerial patronage assume a particular shape and form in the region because of the small size of the majority of its counties and their faltering economies. In these small and relatively undeveloped countries the dynamics of the relations between the Prime Minister and the other main constitutional actors are much

[72] *Julia Lawrence v AG Grenada* [2007] UKPC 18.
[73] 2004 HC 18. Unreported. Available on file with the author.

more unequal when compared with those in larger more developed countries elsewhere in the Commonwealth. Even if the dimensions of government are not significantly greater, the state occupies a disproportionate space within the life of its citizens in small countries.[74] The opportunities for career advancement outside the public sector are very limited, and the end of a career in public office may often coincide with the end of earning a livelihood. There are, of course, always the occasional mavericks, such as the Auditor General of Grenada, discussed above, and the Chairman of the Electoral Commission of Antigua and Barbuda, discussed below, who are prepared to stand up to the Prime Minister, but they are very much the exception to the general rule. The overwhelming tendency, unsurprisingly, has been for public officials not to be too critical of the person who was responsible for placing the individual in a position of privilege in the first place.

Prime Ministers in the region are thus able to extract an unusually high level of loyalty and deference from those whom they have appointed, which conflicts with the latter's willingness and ability to discharge their constitutional duties. As we will see below, in such circumstances the courts have, on a number of occasions, been asked to intervene either to oblige these officials to discharge their duties in accordance with the constitution, or to prevent Prime Ministers from transgressing the limits imposed on them by the constitution

4. The Role of the Courts

There is not the space here to review each and every case in which the courts have been asked to intervene to prevent abuse of power by Prime Ministers or public officials,[75] so I propose to focus instead on four recent examples, drawn from St Kitts and Antigua and Barbuda, which illustrate the problem of prime ministerial influence in the context of the conduct of elections, and in three of which the courts were required to intervene. Elections are often cited as a vital sign of the region's commitment to democracy, and successive governments

[74] Transparency International Country Study Report: Caribbean Composite Study (2004), 20.
[75] For further examples see O'Brien (2014)

have, since independence, respected the outcome of elections by peacefully surrendering power to their successors. However, the 'winner takes all nature' of the first-past-the-post electoral system,[76] means that the stakes for Prime Ministers are particularly high as is the temptation to exert their residual influence over election officials.

Both of the countries that I have chosen share enough constitutional features in common with other countries in the region to suggest that they are reasonably representative, and the examples that I have selected provide graphic case studies of the kind of abuse of power that can result from the type of relationship between Prime Ministers and their key officials that is all too common in the region.

4.1 Reviewing Constituency Boundaries

The recent case of *Brantley and Others v CBC and Others*,[77] on appeal from St Kitts and Nevis, illustrates perfectly the tension that exists between the CBC's duty to periodically review constituency boundaries and its relationship with a Prime Minister who recommends the appointment of both the Chairman and two of the other four members of the CBC.[78]

On this occasion, the Opposition, upon learning that the Government was proposing to introduce certain boundary changes recommended by the CBC prior to elections that were due to be held in 2015, notified the Prime Minister of their intention to challenge the recommendations on the ground that they did not comply with the requirements of Schedule 2 of the Constitution.[79] Thus alerted to the Opposition's intentions, the Government responded extraordinarily quickly. Within the space of five hours, beginning at 2pm on 16th

76

[77] [2015] UKPC 21

[78] s.49(1) Constitution of St Kitts and Nevis.

[79] Schedule 2 provides, inter alia, that there should be an equal number of inhabitants in each constituency as far as is reasonably practicable always having regard, inter alia, to the need to ensure adequate representation of sparsely populated rural areas.

January, the Government managed: to have the draft report of the CBC signed off by a majority of its members (the Opposition members of the CBC having refused to sign the draft report); to hold an emergency meeting of the National Assembly to approve a draft proclamation giving effect to the CBC's report; to have the draft proclamation then signed by the Governor General at the same time as the Governor General signed a proclamation dissolving Parliament; and, finally, at about 6.30pm, to screen a broadcast by the Prime Minister, announcing that the impugned proclamation had been 'gazetted',[80] that Parliament had been dissolved, and that a general election would be held on 16th February 2015.

The speed with which the Government acted was a function of the ouster clause contained in s.50(7) of the Constitution. This provides that once the report of the CBC has been approved by the National Assembly, and a proclamation has been 'made' by the Governor General, the validity of the proclamation cannot be enquired into in any court of law. The Government thus hoped that if they acted quickly enough the Opposition would be prevented by the ouster clause from mounting a legal challenge to the boundary changes.

The Government's efforts to rush through the boundary changes were ultimately, however, to no avail. This was because upon an appeal by members of the Opposition to the Judicial Committee of the Privy Council (the 'JCPC')[81] it was held that the impugned proclamation by the Governor General had not been 'made' in accordance with s.50(6) of the Constitution until it had been published in the Gazette (in the sense of a hard copy of the Gazette being available to the public); broadcasting the proclamation on the radio and television being insufficient to satisfy s.50(6). On the basis of the unchallenged evidence adduced by the appellants, the proclamation was not 'made' before the 20th January 2015 at the earliest. Since s.50(6) also provides that the draft proclamation by the Governor General only comes into effect upon the next dissolution after it has been 'made', it followed that the dissolution of Parliament, which took effect from the 16th January 2015, predated the 'making' of the impugned

[80] In accordance with s.119 of the Constitution.
[81] The JCPC remains the final appellate court for the majority of countries in the region. The exceptions are Barbados, Guyana, Belize and, most recently, Dominica.

proclamation. As a result, the impugned proclamation, even if valid, would only take effect on the dissolution of the Parliament that was elected on 16th February 2015. This meant that the election which was due to be held on 16th February had to be fought on the basis of the boundaries existing before the purported alteration on 16th January 2015.

4.2 The Announcement of Election Results

The Government's failure to implement the changes recommended by the CBC was not, however, the end of the matter. The subsequent elections, in which the Opposition won 7 out of the 11 available seats, were described by one eminent Caribbean commentator, Sir Ronald Sanders, as 'a fiasco', due to the failure of the Supervisor of Elections to declare the results until two days afterwards. As Sir Ronald Sanders noted, there were only 30,000 voters in the election and even if the votes had been counted twice for accuracy, as the Supervisor of Elections had claimed, a final count should have been available by midnight on the day of the election at the latest. Though it was never conclusively proven, there was a widespread suspicion, based on the fact he had been appointed on the recommendation of the Prime Minister, that the Supervisor of Elections had delayed the announcement of the election results at the Prime Minister's behest. The former Prime Minister of St Kitts and Nevis, Kennedy Simmonds, for example, was stinging in his criticism of the delay : "What we are seeing here…is totally unprecedented…we are once again being made the laughing stock all over the Caribbean and the world."[82] The Prime Minister of Trinidad and Tobago, Kamla Persad-Bissessar, was also concerned about the implications of the delay for the region's reputation for democracy and for free and fair elections:

> As a region we have to be very careful of the messages that we send and that which is emanating from St Kitts and Nevis is not the kind of message we want to send to our people and to the world.[83]

[82] Trinidad and Tobago Newsday, 'Dr Douglas Voted Out', February 18, 2015. Available at http://www.newsday.co.tt/news/0,207085.html
[83] Ibid.

4.2 Reconfiguring the Composition of Electoral Commissions

We have seen above how the Governor General must consult with the Prime Minister when appointing the Chairman of the Electoral Commission. Prime Ministers may also be involved at the preliminary stages in the removal of the Chairman when recommending the establishment of a tribunal to enquire into the question of whether the Chairman of the Electoral Commission should be removed. Sometimes, however, a Prime Minister may seek to have an even more direct input into the Chairman's removal, as occurred in Antigua and Barbuda, following the 2009 elections.

In this case the Antigua and Barbuda Electoral Commission (ABEC) had been subject to a barrage of criticism from the governing United Progressive Party (UPP) in the run up to the 2009 elections. Even though the UPP was ultimately victorious in the elections, the Prime Minister remained unhappy with the handling of the elections by ABEC and its Chairman because of the late opening of the polls in a number of constituencies,[84] which the Prime Minister believed had cost his party a number of seats. Following the election, the Prime Minister recommended that a tribunal be established by the Governor General to consider whether the Chairman should be removed. Though the tribunal subsequently issued a report commending the Chairman and advising that it did not recommend his removal, the Prime Minister was determined to have his way and instructed the Governor General summarily to remove the Chairman. Even though this was clearly in breach of the Constitution, the Governor General, nevertheless, acted upon the Prime Minister's instructions and removed the Chairman from his post.[85] In response the Chairman filed proceedings for judicial review and, though he was unsuccessful at first instance, his appeal was ultimately upheld by the Eastern Caribbean Supreme Court ('ECSC'),[86] which had no hesitation in holding that the decision of the Prime Minister to recommend his removal as Chairman was illegal, irrational and procedurally unfair; and that

[84] See Statement of ABEC available at http://www.abec.gov.ag/pr/ER_2009.pdf
[85] In accordance with s.4 of the Representation of the People (Amendment) Act 2001.
[86] *Watt v Attorney General and Prime Minister Antigua and Barbuda* No. ANUHCV 2011/0025. Unreported decision of the Eastern Caribbean Supreme Court. Available on file with the author.

the decision of the Governor General to remove the Chairman was also ultra vires and, therefore, unlawful.

The Prime Minister was not, however, deterred by this judgment. Anticipating that he might lose the appeal before the ECSC, the Prime Minister had already taken the precaution of enacting the Representation of the People (Amendment) Act 2011 before the ECSC had even delivered its judgment. Section 1 of the Amendment Act 2011 provided that it should come into force on such day as the Prime Minister might appoint by Order. On 31st January 2012, six days after the ECSC delivered its judgment, declaring the recommendation of the Prime Minister to remove the Chairman as unlawful, the Prime Minister appointed 22nd December 2011 as the day on which the Amendment Act 2011 would be deemed to have come into force. The effect of the Prime Minister's Order was to nullify, at a stroke, the judgment of the ECSC: dissolving the existing Commission and empowering the Prime Minister to recommend the appointment of a new Chairman. Once again, however, the deposed Chairman responded by commencing proceedings seeking judicial review of the Prime Minister's Order. Though unsuccessful at first instance, the Chairman's appeal was eventually upheld by the ECSC, which adjudged that the Prime Minister had acted unlawfully in selecting the date that he chose for the Order to come into effect, with the clear intention of undermining or undercutting the ECSC's earlier judgment in favour of the Chairman. The Order was, accordingly, declared to be null and void and of no legal effect.[87]

In a final twist to this saga, following the UPP's loss in the subsequent 2014 general election, and with the ABLP now forming the majority in the House of Representatives, the former Chairman of ABEC, who had proven to be such a thorn in the flesh of the UPP and the deposed Prime Minister, was elected to be Speaker of the House of Representatives, at a meeting of the House which was boycotted by the UPP.

[87] *Watt v Prime Minister Antigua and Barbuda* No. ANUHCVAP2012/0042. Unreported decision of the Eastern Caribbean Supreme Court. Available on file with the author.

4.3 No-Confidence Votes

Under the Westminster model the executive is formed by and is, ultimately, accountable to the legislature through the convention of collective ministerial responsibility. This means that a government which loses a vote of no-confidence in parliament is expected immediately to resign. Votes of no-confidence in the region are, however, rare for at least two reasons.

The first is the power of the Prime Minister to request a prorogation of Parliament. While there has been much academic debate about the circumstances in which a Governor General might refuse a Prime Minister's request for a prorogation, even those who argue that the Governor General has no power to refuse such a request do so on the assumption that any such prorogation will be a temporary affair, a matter of weeks, and that the Opposition will always have an opportunity to table a motion of no-confidence at the next sitting of parliament.[88] However, in the Commonwealth Caribbean there has been at least one example of a Prime Minister requesting an indefinite prorogation of Parliament. This occurred in Grenada, in 1989, when the Prime Minister, Herbert Blaize, acted to pre-empt the possibility of a defeat on a vote of no-confidence by requesting the Governor General to prorogue Parliament indefinitely until such time as the Prime Minister was ready to request the Governor General to dissolve parliament and fix a date for a new election. Though it is arguable that one example does not set a precedent, the concern is that the nature of the relationship between the Governor General and the Prime Minister in these small countries ensures that the Prime Minister's wishes will always prevail, even if the prorogation is for an indefinite period, and even if there are legitimate doubts about the Prime Minister's motives for requesting a prorogation.

The second reason why votes of no-confidence are rare is the ability of the Government to control the parliamentary schedule through its influence over the Speaker, who is elected by the majority party in the legislature, and who may refuse to afford time to debate a motion of no-confidence for as long as possible,

[88] See MacDonald and Bowden (2011)

as occurred recently in St Kitts and Nevis. In this case a majority of the members of the House of Assembly, entitled to vote, first submitted a motion of no-confidence in December 2012.[89] Despite an assurance by the Speaker that the motion would be heard as soon as possible, and despite numerous requests by members of the Opposition, the motion had still not been debated by April 2013. Faced with the refusal of the Speaker to table their motion, members of the Opposition filed an originating motion in the High Court seeking, inter alia, an injunction requiring the Defendants - who included the Prime Minister, his Cabinet and the Speaker of the National Assembly – to take whatever steps were necessary to ensure that the motion of no-confidence was debated as soon as may be practicable.

The outcome of these proceedings was, however, something of a pyrrhic victory for the Opposition. While the Court accepted that it had jurisdiction to review the actions of the National Assembly to ensure that they were consistent with the Constitution, and that each member of the Assembly has a right to request that a motion of no-confidence be debated and voted within a reasonable time as a matter of priority, it also held that there was nothing in the pleadings to ground an allegation that the Prime Minister or members his Cabinet had prevented the Speaker from tabling the motion of no confidence for debate.[90] On this basis, the proceedings against the Prime Minister and his Cabinet were struck out, though the claimants were allowed to proceed with their substantive motion against the Speaker.

With the benefit of hindsight it is arguable that the decision by members of the Opposition to commence proceedings against the Prime Minister and the Speaker to force a vote of no-confidence was politically naive. The Prime Minister of St Vincent and the Grenadines, Ralph Gonsalves, has, for example, observed, that the Opposition played straight into the Government's hands in commencing legal proceedings because it allowed the Prime Minister to sit back and await the outcome of the substantive motion against the Speaker, knowing that there was absolutely no prospect of either this motion or the motion of no-

[89] Robinson, Bulkan and Saunders (2015), 103.
[90] *Brantley v Martin*, 2014 (HC SKN). Unreported. Available on file with the author.

confidence being heard prior to the 2015 elections. It is, however, difficult to know what other remedy was open to the Opposition in a National Assembly that was dominated by members of the Government and presided over by a Speaker who had been elected by members of the governing party. As one senior lawyer observed at the time, the whole handling of the no-confidence vote, 'strikes at the core of parliamentary democracy and does no credit to the Speaker of our National Assembly and the present Government.'[91]

5. Conclusion

The post-independence experience of the Commonwealth Caribbean calls into question the rival claims both of those scholars who claim that democracy is a function of a country's small size and those scholars who claim that it is a function of a country's historical circumstances, especially where that country has enjoyed the benefits of British colonial rule. In the case of the Commonwealth Caribbean it would be more accurate to say that British colonial rule and the small size of the majority of its countries, when combined with the enormous power vested in the Prime Minister, have together produced a political culture which has more in common with the autocratic rule of a colonial Governor than it does with a system of democratic, responsible and accountable government.

As we have seen, the contingent status of Governors General in combination with their close political and social ties to the Prime Minister can make it difficult for them to exercise their powers independently, even when called upon by the constitution 'to act in their own deliberate judgment'. Prime Ministers are also firmly in control of the legislature. Lower Houses in the region, which are usually small in number, are frequently dominated by members of the Cabinet who are bound by the principle of collective responsibility to support the Prime Minister. Proceedings in Lower Houses in the region are also regulated by a Speaker appointed by the party forming the majority, and at least one Speaker has been known to refuse to table for debate a motion of no confidence which, had it been

[91] Ferdinand QC (2013).

tabled, would have forced the Prime Minister to resign. Upper Houses, meanwhile, are typically composed of a majority of members appointed upon the recommendation of the Prime Minister and can be removed upon the recommendation of the Prime Minister for not supporting the government's legislative programme. In addition, Prime Ministers across the region are involved in the appointment of members of the PSC, members of the Election Commission and CBC, and the Auditor General; in all three cases undermining the political neutrality of these key public officials.

This lack of political accountability means that the courts have often been required to intervene to hold both the Prime Minister and other senior public officials legally to account. We have seen, for example, how members of the Opposition were obliged in the case of St Kitts and Nevis to ask the courts to overturn a decision of the CBC, which had been railroaded through by the Government immediately prior to the 2015 elections. We have also seen how the Chairman of the Election Commission in Antigua and Barbuda turned to the courts for protection after the Prime Minister instructed a compliant Governor General to ignore the recommendation of a tribunal that the Chairman should not be removed; and, when this failed, introduced *ad hominem* legislation to secure the Chairman's removal.

In these cases the courts undoubtedly played an important role in upholding democracy and the rule of law. However, the fact that the courts were involved in the first place challenges us to question traditional assumptions about the ways democracy functions in small countries. It also challenges us to question assumptions about the ways in which centuries of British colonial rule have shaped the political culture of these former colonies in the postcolonial era.

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