

**THE POST-COLONIAL CONSTITUTIONAL ORDER OF THE COMMONWEALTH  
CARIBBEAN: THE ENDURANCE OF THE CROWN AND THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL**

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***Abstract***

Amongst Britain's former colonies the independent countries of the Commonwealth Caribbean represent something of an anomaly in so far as the majority of them remain constitutional monarchies and continue to retain the Judicial Committee of the Privy Council (JCPC) as their final appellate court, even though the region has had its own final appellate court – the Caribbean Court of Justice – since 2006. This is in marked contrast to Britain's former colonies in Africa and South Asia, the majority of which switched to republicanism soon after independence and at the same time abolished rights of appeal to the JCPC. This paper seeks to uncover the reasons for this anomaly by examining how the path that led to independence was shaped by a particular conception of Dominion status and by the willingness of nationalist leaders to embrace a dual identity: equal parts West Indian nationalist and Empire loyalist. It will also examine the phenomenon of the 'postcolony'; being the persistence of the colonial order following the acquisition of constitutional independence. The paper has three aims. Firstly, to contribute to a better understanding of the impact of Dominion status and all that it symbolised in a region which is often overlooked in the scholarly literature on this topic. Secondly, better to understand the competing political forces that led three countries in the region to adopt republicanism, but inhibited its adoption elsewhere in the region. Thirdly, and finally, to enhance discussion of the complex nexus between republicanism and the abolition of rights of appeal to the JCPC where political and juridical considerations do not neatly align.

## Introduction

In his recent monograph, *The Empire's New Clothes*, Philip Murphy, recounts a lecture given to the Institute of Commonwealth Studies by the Jamaican judge, Patrick Robinson, on the twin movements in his country to establish a republic and to end appeals to the Judicial Committee of the Privy Council (JCPC). At the end of this lecture, in which Robinson rehearsed the long history of British oppression in the West Indies, Murphy posed this question: "That's all fine. But what kept you so long?" This question was presumably intended to highlight the disparity between Britain's African colonies which gained independence at around the same time as Jamaica and which rapidly made the transition from monarchical to republican status – Ghana (1960), Tanginikya (now Tanzania) (1961), Nigeria (1963), Kenya (1964), Malawi (1966) and the Gambia (1970). At the same time as they became republics, each of these former colonies also abolished the right of appeal to the JCPC. By contrast, of the 12 independent countries of the Commonwealth Caribbean,<sup>1</sup> only three have adopted republicanism - Guyana (1970), Trinidad and Tobago (1976), and Dominica (1978); while only four have abolished the right of appeal to the JCPC - Guyana (1970), Barbados (2006), Belize (2010) and Dominica (2015).

It is, of course, true that Britain's white settler Dominions have been equally slow to embrace republicanism: Canada, Australia and New Zealand all remain constitutional monarchies, and were also tardy in abolishing the right of appeal to the JCPC.<sup>2</sup> However, the comparison of Britain's Caribbean colonies with the 'white' settler Dominions is uneasy in at least three respects. Firstly, in marked contrast to the 'white' Dominions, Britain's settled colonies in the Caribbean endured almost two centuries of slavery followed by a further century of 'crown colony rule' before finally being granted independence and Dominion status in the 1960s and 1970s. Secondly, a number of Britain's Caribbean colonies do not trace their roots to English settlers, but were either ceded, as in the case of Grenada, or conquered as in the case of Trinidad and St Lucia. Thirdly, since 2006, the region has had its own final appellate court, the Caribbean Court of Justice (CCJ), which is paid for collectively by all of the independent countries

in the region and which was established to hear appeals in civil, criminal and constitutional matters.

The loyalty of so many of Britain's former colonies in the Caribbean to the Crown and their continued willingness to vest ultimate legal sovereignty in the JCPC is, therefore, a striking anomaly, the reasons for which I seek to uncover in this paper. I will begin by examining how the path that led to independence was shaped by the pursuit of a particular conception of Dominion status, which corresponded with that of the older 'white' settler Dominions. I will then turn to examine the distinctive nature of Caribbean nationalism, which was characterised by the commitment of its leaders to the values and institutions of British political liberalism and by their willingness to embrace a dual identity: equal parts West Indian nationalist and Empire loyalist. Finally, I will turn to explore the reasons why so few of these 'postcolonies' have managed to excise these residual symbols of colonial rule from their constitutional systems.

The paper has three aims. Firstly, to contribute to a better understanding of the impact of Dominion status and all that it symbolised in a region which is often overlooked in the scholarly literature on this topic. Secondly, better to understand the competing political forces that led three countries in the region to adopt republicanism, but inhibited its adoption elsewhere in the region. Thirdly, and finally, to enhance discussion of the complex nexus between republicanism and the abolition of rights of appeal to the JCPC where political and juridical considerations do not neatly align.

### **Independence and the Pursuit of Dominion Status**

The origins of Caribbean nationalism are commonly traced by scholars to the end of World War I with the return home of soldiers who had served in the British West Indies Regiment, such as Captain Arthur Cipriani and Uriah Butler, who were to become iconic figures as leaders of the nationalist movements in Trinidad and Tobago and Grenada respectively. As a result of the contribution which West Indians had made to the war effort, which they regarded as equal to that of the self-governing Dominions, there was an expectation that the values

and institutions of British political liberalism, in particular, a democratically elected and representative legislature, would be extended to the Caribbean and that they would be rewarded with a greater voice in the government of their territories. For the previous half century, and longer in the case of Trinidad and St Lucia, Britain's West Indian colonies had been subject to 'crown colony' rule. This meant the autocratic rule of a Governor, appointed by the British Government, who presided over both the Executive and Legislative Council in each colony, and who had the final say on all matters affecting the colony, subject to instructions from London.<sup>3</sup>

Initially, at least, Caribbean nationalism was defined by its opposition to this system of crown colony rule, as Representative Government Associations sprang up across the region,<sup>4</sup> organising public meetings and presenting petitions to the British authorities calling for the addition of elected members to the region's Legislative Councils.<sup>5</sup> During the inter-war years this resulted in incremental reforms to the system of crown colony rule that marginally enhanced the representativeness of the regions' legislatures. In addition to introducing a small number of elected members into the Legislative Council, this included reducing the number of officials and nominated unofficials, widening the franchise, and relaxing the qualifications for candidates. However, the elected members in the Legislative Council were always in a minority, and the final say on matters affecting each territory ultimately resided in the Governor. In this way the essence of crown colony rule was preserved.

Various justifications were offered for the British Government's refusal to extend to its Caribbean territories the kind of responsible self-government enjoyed by white settlers colonies, such as Australia, Canada and New Zealand. According to a report by Major EFL Wood (later Lord Halifax), who had been sent to the West Indies in 1921 in response to the demands of nationalists for a greater voice in government, responsible government was inappropriate for these colonies for a variety of reasons. These included: the racial and religious heterogeneity of some of the islands<sup>6</sup>; the absence of a leisured class willing and able to take an active part in political life; the smallness and isolation of many of the islands; and the tiny proportion of qualified voters.<sup>7</sup> These justifications did

not, however, dispel the suspicion amongst nationalists that the underlying reason for opposing responsible government was the fear that it would, in effect, mean rule by a black majority.<sup>8</sup> This sense of discrimination was heightened by the Balfour Declaration of 1926, which highlighted the contrast between the autocratic system of crown colony rule to which Britain's West Indian colonies were subject and the autonomy and equality of status enjoyed by Britain's 'white' Dominions.<sup>9</sup> As Arthur Cipriani<sup>10</sup> told Trinidad's Legislative Council in 1930:

The people of this Colony have got the education, the ability, the civilization, and the necessary culture to administer their own affairs...Crown Colony rule may be well for the jungle and the wilds of Africa, but it has outlived its usefulness in these colonies.'<sup>11</sup>

West Indians, he argued, were as entitled to Dominion status as Canadians or Australians.

Aware, however, that no one territory was likely to be granted Dominion status in its own right, West Indian nationalists began to turn their attention towards the possibility of creating a federation, which would enable them to achieve Dominion status. In anticipation of a visit to the region by a Commission appointed by the British Government to examine the possibility of a closer union between Trinidad and Tobago, the Windward Islands and the Leeward Islands - The Closer Union Commission (CUC) - nationalist leaders gathered for a six-day conference in Roseau in Dominica at the end of October 1932, at the conclusion of which they agreed to press the British Government for a federation of all the islands and a draft federal constitution was prepared. The CUC was not, however, persuaded that there was sufficient support for federation more widely in the region, and instead recommended further modest constitutional reforms.

The prospect of Dominion status receded even further as a result of the the report of the Moyne Commission, which was dispatched to region in 1938 to investigate 'the social and economic causes' of the wave of strikes and civil disorder that engulfed the region in the 1930s. Though the Commission was aware of nationalist frustrations with the refusal of the British authorities to

dismantle the system of crown colony rule which continued to deny them an effective voice in government, it concluded that the region's problems required social and economic solutions, rather than radical constitutional reform. As a result it recommended the establishment of a West Indian welfare fund, financed by an imperial grant of £1 million per annum for a period of 20 years.

The award of this grant provided the ostensible justification for rejecting nationalist demands for self-government, since this would be inconsistent with the British Government's need to retain overall control over distribution of the welfare fund.<sup>12</sup> However, in truth there was never any prospect of the British Government acceding to nationalist demands for self-government in the Caribbean or to its other dependent colonies, as was made clear in a statement by the Secretary of State for the Colonies, Oliver Stanley, in 1943:

We are pledged to guide colonial people along the road to self-government within the framework of the British Empire...[However], it is no part of our policy to confer political advances which are unjustified by the circumstances, or to grant self-government to those who are not yet trained in its use.<sup>13</sup>

A similar sentiment, was expressed, albeit more bluntly, in 1943, by Herbert Morrison, then Home secretary in Churchill's Wartime cabinet:

'...to talk about grants of full self-government to many of the dependent territories for some time to come...would be like giving a child of ten a latch key, a bank account and a shot-gun.'<sup>14</sup>

While it was difficult for nationalist leaders to press their claims for responsible self-government in the shadow of World War II,<sup>15</sup> as the War approached its end they resumed their demands. This coincided with a discernible shift in the British Government's attitude towards its colonies in the region, which was in no small part due to increasing pressure from the Americans, whose interest in the region had increased as a result of the 'Destroyers for Bases Agreement' in 1940; a lend-lease deal under which the US

provided Britain with 50 'mothballed' warships in exchange for 99 year leases of military bases throughout the Caribbean.<sup>16</sup> From the American viewpoint there was a distinct incongruity in helping Britain to win the war if the end result was the reinstatement of the old colonial system.<sup>17</sup>

The first sign of this shift in attitude was a new Constitution for Jamaica in 1944, which at the time was adjudged by the Colonial Office to be the most politically mature of Britain's colonies in the region. The 1944 Constitution provided for a bicameral legislature in which the dominant body was an entirely elected House of Representatives with all of the official and nominated members concentrated in a second chamber, the Legislative Council, which could only delay Bills passed by the House by one year. At the same time, provision was made for the introduction into the executive council of persons elected from and removable by the legislature. This was a watershed moment and over the course of the next two decades the region experienced a wave of constitutional reforms greater than any it had experienced in the previous half century as internal self-government, but not Dominion status, was gradually extended to the remaining colonies. While the rate of advance varied - with Jamaica, Trinidad and Tobago in the vanguard, along with British Guiana and Barbados - and the detailed features were not the same everywhere, the general direction of travel was towards the British model of government: the so-called Westminster model.

In the meantime, nationalist hopes for Dominion status had been revived by an invitation to attend a Conference convened by the new Labour Colonial Secretary, Arthur Creech Jones, at Montego Bay in Jamaica in 1947, to discuss the "Closer Association of the British West Indian Colonies.' Having previously voiced their support for federation at the Roseau Conference in 1932, Caribbean political leaders attending the Montego Bay Conference enthusiastically agreed to the appointment of a Commission,' The Standing Closer Association Commission' (SCAC) which was charged with consulting and reporting on the form of federal government 'most likely to give effect to the aspirations of the people of the British West Indies.'<sup>18</sup> When it became clear, however, following publication of the SCAC report, in 1950, that there would be no immediate grant of Dominion status to the proposed Federation, the more radical elements

amongst nationalist leaders withdrew their support. In British Guiana, for example, Cheddi Jagan, leader of the Marxist-leaning PPP, argued that the proposed Federation was a complete betrayal of nationalist aspirations.<sup>19</sup> In Jagan's view, it was 'nothing more than a glorified Crown Colony, the amalgamation of several units which will carry us no further to self-government.'<sup>20</sup>

Jagan's fears were to an extent confirmed by the federal Constitution that was promulgated by the West Indies (Federation) Order in Council 1957.<sup>21</sup> This was a disappointment even to those more moderate nationalists who continued to support the principle of federation, such as Eric Williams, the leader of the People's National Movement (PNM) in Trinidad and Tobago, who described it as 'a disgraceful constitution, colonialist from top to bottom'. Its only saving grace appears to have been the provision for a major review within five years of its inception,<sup>22</sup> which Norman Manley, leader of the People's National Party (PNP) in Jamaica, relied on when seeking to persuade Williams, to keep faith with the Federation: 'I am absolutely certain that at the end of the first five years if we unitedly wish to we will get Dominion status for the asking.'<sup>23</sup>

Before then, however, the Federation had already begun to unravel. In October 1961, in a referendum forced upon Norman Manley by Alexander Bustamante, the leader of the Jamaica Labour Party (JLP), who had denounced the Federation, Jamaicans voted by a majority of 54% to secede. Even though the British Government had by now indicated its willingness to concede to nationalist demands for the grant of immediate Dominion status to the Federation, it was apparent it could not survive Jamaica's withdrawal. As Eric Williams wryly observed, 'One from ten leaves nought, not nine'.<sup>24</sup> As far as Williams was concerned, once Jamaica withdrew 'everything mash up.'<sup>25</sup> Five weeks after the general elections in Trinidad and Tobago, in December 1961, which were won by Williams' People's National Movement (PNM), it was announced that Trinidad and Tobago would also be withdrawing from the Federation. Two months later, the Secretary of State for the Colonies announced to the House of Commons that, following meetings with the Premier of Barbados



and the Chief Ministers of the Leeward and Windward islands, he was dissolving the Federation.

The dissolution of the Federation was in marked contrast to the progress towards self-government in the individual territories, in particular Jamaica and Trinidad and Tobago. Upon Jamaica's withdrawal from the Federation the case for its independence had, as the Colonial Office acknowledged, become virtually irresistible; especially given the precedent of Cyprus and Sierra Leone, two equally small territories which had already been granted independence.<sup>26</sup> At the Jamaican Independence Conference in London in February 1962, which took place only four months after the referendum that had ended Jamaica's membership of the Federation, it was further agreed that the British Government would sponsor Jamaica's application for membership of the Commonwealth so that it could embark upon independence as a Dominion.<sup>27</sup> At a meeting of the Cabinet Colonial Policy Committee, which was taking place at the same time as the Jamaican Independence Conference was in session, it was also conceded that it would be impossible to refuse independence to Trinidad and Tobago, 'which was already independent for all practical purposes.'<sup>28</sup> As the former Colonial Secretary, Iain McLeod, recalled in a 1967 interview:

You see, when you are giving independence to a country the size of Gambia, to islands the size of Malta and Cyprus, it's a bit much to expect Jamaica or Trinidad and Tobago to link their sovereignty with a whole collection of islands, many of which they would have to help almost as pensioners.<sup>29</sup>

At the subsequent Trinidad and Tobago Independence Conference held in London in June 1962 it was further agreed that the British Government would similarly support Trinidad and Tobago's application for membership of the Commonwealth.<sup>30</sup> Trinidad and Tobago thus followed Jamaica in embarking upon independence as Dominions and in the ensuing two decades all of Britain's remaining colonies in the region attained independence and Dominion status on the same terms.<sup>31</sup>

It is arguable that to this extent Caribbean nationalism had achieved its ultimate goal even if it had taken much longer than many nationalists would have wanted and even if it was not as part of a larger West Indian state. Dominion status meant that Caribbean Prime Ministers could now take a seat alongside the leaders of the old Dominions, together with the Prime Ministers of the newer South Asian and African Dominions, at the annual meetings of the Commonwealth Heads of Government. Arguably, however, Caribbean prime Ministers had more in common with the former than the latter. Like them they continued to swear an oath of allegiance to the Crown and retained the JCPC as their final appellate court. By contrast many of the post-World War II Dominions had already or were about to embrace republicanism and abolish appeals to the JCPC. In order to understand Caribbean political leaders' identification with what was already a somewhat outdated version of Dominion status it is necessary to understand the very distinctive nature of Caribbean nationalism.

### **Caribbean Nationalism: 'Civic Britannicus Sum'**

Throughout the struggle for independence Caribbean nationalists, with very few exceptions, demonstrated an unwavering commitment to achieving independence within the framework of the British Empire. The intense nationalism and anti-imperialism that characterised the struggle for independence in so many of Britain's African and Asian colonies did not make its presence felt to anything like the same extent in the Caribbean.<sup>32</sup> Caribbean nationalists may have been opposed to the form of colonial rule but they did not criticise the imperial connection. The distinguished Caribbean scholar, Gordon Lewis, has referred to this as the fatal ambiguity lying at the heart of West Indian nationalism: the attempt to 'be an Empire loyalist and a West Indian nationalist at the same time.'<sup>33</sup> For Caribbean nationalists there was no incompatibility between the demand for responsible self-government and participation in the British imperial mission.'<sup>34</sup> ERD Evans, a member of the Jamaican Labour Party (JLP), and one of the first five elected members to sit on Jamaica's Executive Council thus justified his support for self- government in these terms:

In order that in verity Jamaica will in every respect be an integral portion of the Great British Commonwealth of Nations and Jamaicans be de facto citizens of Empire – justifying the designation Civic Britannicus Sum.<sup>35</sup>

This same sense of a dual identity permeates a speech to the Legislative Council of Trinidad and Tobago made by Arthur Cipriani in 1937:

I look forward...to the day when the British Government will say to us, and I know they will say it...yes, we agree you must hold and control the administration of your won country and we will give you what we have given to the other parts of the great Empire, a full measure of Dominion status. Until that time comes, we, like true, loyal, honest and devoted members of the Great commonwealth of nations, must fight on...for the right to live in our own country and for the right to hold and control its own administration.<sup>36</sup>

Cipriani was very typical of his generation of nationalists. T E Marryshow, for example, a close ally of Cipriani, and owner of the West Indian newspaper, is caricatured by Gordon Lewis as a 'Royalist-Loyalist'. Even supposed firebrands such as Uriah Butler, who had been expelled from the Trinidad Labour Party for his 'extremist tendencies', and Alexander Bustmante, both of whom had been imprisoned for their involvement in the strikes and disturbances of the 1930s, remained thoroughly loyal to the British Empire and all that it represented. According to Millette, Butler 'epitomized perfectly the ideological commitment of the West Indian peasant to the benevolent despotism of the British monarchy.'<sup>37</sup> Though ideology was no part of Bustmanate's political makeup he was no less enthusiastic about Empire. In 1946, for example, upon his release from custody, following a charge of manslaughter, he shouted to his supporters: 'Long live British justice. Long live the British Empire. And long live Me.'<sup>38</sup> While this may have been characteristically tongue-in-cheek, two years later when he went to London in 1948 to conduct negotiations on constitutional reform Bustamante was clearly being sincere in declaring his loyalty to the British Empire:

‘No one knows the weakness and bad things about England as well as I do. But in spite of all these weaknesses and all the bad, the breaking up of the British Empire would mean the end of democracy, the end of everything good on this earth.’<sup>39</sup>

Even an avowed ‘socialist’, such as Norman Manley, was, according to Louis Lindsay, a ‘pronounced’ Anglophile.<sup>40</sup> In a coruscating essay, critiquing the ‘myth of independence’ in Jamaica, Lindsay castigates Manley and his fellow PNP leaders for their veneration of ‘things and ways British.’<sup>41</sup> By way of example, he recounts how at the closing of the inaugural Conference of the PNP its leaders led the audience in an enthusiastic rendition of God Save the King.<sup>42</sup> Alexander also recounts how, at the same conference, Stafford Cripps scandalised the PNP’s leaders with his criticism of the British Empire.<sup>43</sup> In Lindsay’s view, the PNP was ‘completely dominated by Afro-Saxon men, deeply steeped in the values of British political liberalism.’<sup>44</sup> Though there was certainly within the PNP, a radical, Marxist, anti-imperialist element, represented by the ‘4 Hs’ (Ken Hill, Frank Hill, Arthur Henry, and Richard Hart), whose aim was to convert Jamaicans ‘to switch their allegiance from the traditional attachment to the British crown and towards the sickle and hammer emblem of soviet communism,’<sup>45</sup> this element was expelled in 1952.

Following hard on the heels of the disbandment, in 1949, of the Caribbean Labour Congress, an umbrella organisation which represented trade unions from across the region, and the expulsion of the more racial element of the PNP, the only remaining torchbearers for anti-imperialism in the region were Cheddi Jagan’s PPP in British Guiana. The PPP were much less in thrall to the values of British political liberalism, but soon found itself isolated from the mainstream of Caribbean nationalism as Bustamante and Manley in Jamaica, and Grantley Adams, leader of the Barbados Labour Party, united in support of British intervention in British Guiana in 1953 and the suspension of the Constitution just 133 days after the PPP’s victory in the general election. Jagan found himself even more isolated in 1955 when the PPP split and Forbes Burnham, regarded by the British as more moderate than Jagan, left the PPP and went on to form the People’s National Congress (PNC) in 1958.

For political leaders, such as Adams, Manley, and Bustmante, who were joined by Eric Williams in the mid-1950s, self-government was incomprehensible other than in association with Great Britain.<sup>46</sup> For these nationalist leaders independence did not connote a new beginning or a rupture with the colonial past, but rather an opportunity to entrench political liberalism by adopting a parliamentary model of government as the blueprint for independence. As Manley explained in a speech delivered five months before independence, defending the embodiment of the Westminster model in the draft independence constitution for Jamaica:

I make no apology for the fact that we did not embark upon any original or novel exercise in constitutional building...Let us not make the mistake of describing as colonial, institutions which are part and parcel of the heritage of this country. If we have any confidence in our own individuality and our own personality, we would absorb these things and incorporate them into own use as part of the heritage we are not ashamed of. I am not ashamed of any institution which exists in this country merely because it derives from England.<sup>47</sup>

A similar view was expressed by Eric Williams in 1955, shortly before his PNM won the general election in Trinidad and Tobago in 1956:

I suggest to you that the time has come when the British constitution, suitably modified, can be applied to Trinidad and Tobago. After all, if the British Constitution is good enough for Great Britain, it should be good enough for Trinidad and Tobago.<sup>48</sup>

This conservative strain amongst Caribbean nationalists and the tendency to look to Britain for a model of governance was no more than a reflection of Caribbean culture, or perhaps more specifically its absence. As John Darwin argues, the West Indies had no indigenous, pre-colonial past for nationalists to evoke: 'language, tradition, sport and new patterns of post-War migration drew them towards Britain.'<sup>49</sup> Anne Spry Rush too notes that 'from the late nineteenth century a variety of British campaigns (official and unofficial) promoted loyalty to the Empire and admiration of all things British was encouraged in the media,

through schools, churches, and at public events.’<sup>50</sup> By the early twentieth century, she observes:

‘Britishness’ was an integral part of the culture of colonialism that had long pervaded daily life in the British Caribbean. In newspapers, periodicals and monographs, in classrooms and churches, on playing fields, at meetings of voluntary organizations, and in public ceremonies Caribbean peoples had for decades been encouraged to identify with the social structures and cultural values touted as intrinsically British.<sup>51</sup>

According to Gordon Lewis, the British had sought through education to convert West Indians into ‘coloured English gentlemen,’ resulting in culturally disinherited individuals, ‘caught between the dying Anglophile world and the new world of Caribbean democracy and nationalism seeking to be born.’<sup>52</sup> Many of the leading Caribbean nationalists of the 1950s, including Manley, Adams and Williams, were products of this culture. After being steeped in British values as part of their secondary education in the Caribbean, these men went on to study at Oxford and exactly the same could have been said of them as was said by the Soulbury Commission about Ceylon’s political leaders at the time of its 1946 Constitution:

It must be borne in mind that a number of them have been educated in England and have absorbed British political ideas. When they demand responsible government, they mean government on the British parliamentary model and are apt to resent any deviation from it as ‘derogatory to their status as fellow citizens of the British Commonwealth of Nations and as conceding something less than they consider as their due.’<sup>53</sup>

For Caribbean political leaders the parliamentary model of government was, accordingly, cast in the monarchical form familiar in Britain.<sup>54</sup> As Darwin notes, ‘far from being a symbol of alien domination, in the Caribbean the Crown was a popular institution.’<sup>55</sup> Though this can seem somewhat counter-intuitive in a region so ravaged by the experience of slavery, and where the majority of its

citizens were direct descendants of those former slaves, devotion to the Crown was in fact linked to the era of slavery as a result of a mistaken belief that Queen Victoria had played a part in the slaves' emancipation.<sup>56</sup> As a consequence, the Queen came to be viewed as a symbol of liberation and the annual Emancipation Day celebrations were viewed as an opportunity by colonial administrators as a means of promoting loyalty to the Crown.<sup>57</sup> Even after Queen Victoria's death, local participation in special activities designed to memorialise and celebrate the British royal family, such as Empire Day, funerals, jubilees and coronations was encouraged as a way of reinforcing loyalty to the Crown.<sup>58</sup>

The strength of this loyalty was noted by Major Wood in his 1922 report in which he commented on the remarkable degree of attachment of 'black' West Indians to the Crown.<sup>59</sup> It is also remarked upon in the memoirs of former colonial Governors, such as Hugh Foot,<sup>60</sup> and Sir Kenneth Blackburne;<sup>61</sup> with the latter offering the following description of the celebration of the Queen's Coronation on the Antigua Recreation Ground which was 'more crowded than for any cricket match':

The crowd participated in the actual Coronation ceremony when I announced over loud speakers the time honoured phrases – 'Sirs, I here present unto you Queen Elizabeth, your undoubted Queen; wherefore all of you who are come to do your homage and service, are you willing to do the same?' The cry came back from the vast crowd and echoed round the town – 'God Save Queen Elizabeth'.<sup>62</sup>

Aware of the continuing popularity of the Crown amongst many West Indians, and its usefulness both as a symbol of continuity and as a foundation for nation-building in the post-independence era,<sup>63</sup> nationalist politicians were at great pains to demonstrate their own personal loyalty to the Crown.<sup>64</sup> Perhaps never more so than in the warm welcome which the Queen received from Bustamante and Manley when she visited Jamaica in 1953, only a few weeks after the British had suspended the Constitution of British Guiana and ousted its democratically elected leader. Indeed, demonstrations of loyalty to the Crown

permeated each stage of the decolonisation process: from the Montego Bay Conference in 1947, which concluded with a pledge of allegiance to George VI; to the opening of the federal Parliament in 1958 by Princess Margaret; and, finally, to the first session of the Jamaican Parliament, which opened with a speech by the Queen, read on her behalf by Princess Margaret. This included a fulsome declaration of praise for the former imperial power:

[B]oth my Government in the United Kingdom and my Government in Jamaica wish to maintain the bonds of friendship which have existed for over three centuries and have made it possible for Jamaica to proceed to independence peacefully and happily.<sup>65</sup>

As Gordon Lewis, caustically observes: 'for Jamaicans, colonialism ended not in a bang but a whimper.'<sup>66</sup>

## **The Postcolonies**

The historian, Richard Drayton, has written about the problem of the 'postcolony' in the Caribbean, by which he means 'the persistence of the colonial order even after the acquisition of constitutional sovereignty.'<sup>67</sup> In the sections that follow I will examine the steps that have been taken to excise two of the most enduring and most visible symbols of the colonial order - the Crown and the JCPC - from the region's political and legal orders.

### ***Caribbean Republics***

As we have seen, at the time that the first countries in the region attained their independence, at the beginning of the 1960s, the leading nationalist politicians, were in the main constitutional monarchists. There were however pockets of resistance to the retention of the Crown in the postcolonial order. As the widely respected Jamaican political scientist, Norman Girvan, recalls of this period:

In early 1962, several of us attended the sessions held in Kingston to solicit the views of the public on the design of the Jamaican Independence Constitution. Our main concern at the time was the retention of the



Monarchy. We argued that it was contrary to the psychological necessities of nation-building that the Queen of England should be the head of State of Independent Jamaica...It had the effect of embedding the core symbol of colonial governance into the institutions and rituals of the independent state.<sup>68</sup>

Though this was very much a minority view at the time, within a decade Guyana had become the first republic in the region, in 1970, to be followed six years later by Trinidad and Tobago, in 1976. Two years later, in 1978, Dominica became the first country in the region to embark upon independence as a republic. In each case the political context out of which the demand for republicanism grew was quite different and each, therefore, merits separate attention.

### *Guyana*

As noted above, British Guiana and its PPP-led government stood very much outside the mainstream of Caribbean nationalism. It is perhaps not surprising, therefore, that it should have been the first country in the region to embrace republicanism. According to Cheddi Jagan, the PPP first advocated republicanism at the Independence Conference for British Guiana in London in 1962, but it was opposed by the conservative United Front, led by Peter D'Aguiar, and by Forbes Burnham's PNC who 'ambiguously supported monarchical status for some time to be followed later by republican status.'<sup>69</sup> However, three years later, when the time came to negotiate the terms of British Guiana's independence, Jagan's PPP, having been defeated in the 1964 election by a coalition of the PNC and UF, boycotted the Independence Conference in protest at the imposition of a state of emergency and imprisonment of a number of the PPP's leading members. In the absence of the PPP a compromise was reached between the UF and the PNC on the question of whether independent Guyana should be a republic. This entailed the inclusion of a provision in the independence Constitution - Article 73 (5) - which allowed for Guyana to become a republic if the National Assembly should so resolve by a majority vote of all its elected members after 1<sup>st</sup> January 1969.<sup>70</sup> Though British officials had some reservations about this provision, it was deemed a price worth paying. This was in part because it was thought a period of

monarchical rule would enhance Guyana's credit-worthiness and improve the morale of expatriate businessmen and investors.<sup>71</sup> More importantly, it ensured the survival of the coalition, the future of which might otherwise have been jeopardised, leading to fresh elections, which might conceivably have been won by the even more fiercely republican PPP.<sup>72</sup>

Having won an outright victory in the elections of 1968, the PNC wasted no time in implementing Article 73 (5), which they considered to be a crucial step in achieving meaningful decolonisation. As Guyana's Minister for Information at the time explained:

The British Crown is the symbolic head of Great Britain and it is from that country that we have struggled so long for our independence. It may be that some, very few, among us still accord to the British Crown a position of high idealism. But I cannot recall the British Crown successfully raising its voice in a public forum against British colonialism imposed upon millions of us across the world who now struggle to make our way as independent peoples. The fact that the British Crown today does not control the decisions of the British Government hardly seems an argument in favour of our retaining allegiance, however symbolic that allegiance may be.<sup>73</sup>

Guyana simultaneously abolished the right of appeal to the JCPC (see further below) and thereafter ploughed a quite different political furrow to its neighbours; abandoning the British parliamentary model of government and moving towards an executive style Presidency with the adoption of its 1980 Socialist Cooperative Republican Constitution.

### *Trinidad and Tobago*

By the late 1960s, a new kind of postcolonial nationalism was emerging in the region, inspired not by British political liberalism but by the Black Power Movement in the United States, and calling for a decisive break with the 'historically white and racist imperial past.'<sup>74</sup> Though it was not the first,<sup>75</sup> the fiercest confrontation between a government and a popular nationalist

movement inspired by the Black Power Movement was the so-called 'February Revolution' in Trinidad and Tobago in 1970.<sup>76</sup>

Between February and April 1970, Trinidad and Tobago was overwhelmed by a series of mass public demonstrations and marches, involving thousands of protesters. The protests, which had started in the capital, quickly spread throughout the country. They were only finally quelled following a declaration of a state of emergency on 21<sup>st</sup> April 1970, and the arrest and incarceration of the leaders of the National Joint Action Committee, which had orchestrated the demonstrations. Though a small group of youthful revolutionaries, calling themselves the National Union of Freedom Fighters, sought to continue the revolution by waging guerilla warfare, they failed to garner popular support for their cause and their endeavours ultimately came to nought; 18 of the group being killed by the police. The February Revolution was followed by the boycotting of the 1971 elections by the main opposition parties, calling into question the legitimacy of the PNP's landslide victory in those elections.

It was against this background that the PNP, still at this time led by Eric Williams, established, in June 1971, the eponymous 'Wooding Commission', chaired by the Chief Justice, Sir Hugh Wooding, to review the country's 1962 independence Constitution and to make recommendations for its reform 'with a view to encouraging the maximum participation of citizens in the political process'.<sup>77</sup> As the Wooding Commission noted, the survival of constitutional, parliamentary politics in the country was being challenged as never before.<sup>78</sup> In dealing with the question of whether Trinidad and Tobago should become a republic the Commission noted that there had been almost unanimous agreement about this issue amongst those making submissions to the Commission. In the Commission's view:

[This] is no more than an expression of the fact that independence must involve the creation of indigenous symbols of nationhood. Among young people in particular the British Sovereign has no symbolic meaning. The thrust since Independence has been towards the discovery of a new

identity which involves leaving behind the colonial heritage of subjection, imitation and external dependence. The oath which the Governor-General now takes on assuming office brings the problem sharply into focus. He swears to be faithful and bear true allegiance to HM the Queen. To most ears this is anachronistic. His oath quite obviously should be faithfully to serve the people of Trinidad and Tobago and to defend and uphold its Constitution.<sup>79</sup>

Though the Wooding Commission, which published its report in January 1974, made a number of other recommendations for reform of Trinidad's independence Constitution, the proposal that Trinidad and Tobago should become a republic with a President as head of state was one of the very few of its recommendations to be accepted by the Prime Minister.<sup>80</sup> According to Murphy, this was mainly as a sop to radical nationalists who had focused attention on the Crown as a symbol of colonial oppression and who had ridiculed Williams, once a scourge of colonialists, 'as nothing more than a black puppet of white economic interests.'<sup>81</sup>

Accordingly, when Trinidad and Tobago adopted a new Constitution in 1976 it made provision for a presidential head of state, elected by an electoral college comprising all of the members of the House of Representatives and the Senate.

*(c) Dominica*

Dominica differs from both Guyana and Trinidad and Tobago where, at the risk of generalisation, support for republicanism was associated with a more radical, anti-colonial brand of nationalism, whilst the more moderate nationalists tended to favour retention of a constitutional monarchy. In Dominica, the proposal to adopt a republican Constitution on independence was originally put forward by the leader of the opposition Freedom Party, the 'conservative' Eugenia Charles. However, her reason for proposing republicanism was not because she wished to

excise the remaining vestiges of colonialism, but rather because she felt that an executive-style President was the best safeguard against the dominance of the executive that had characterised self-government in the ten years that Dominica had been an Associated State. At the independence conference in London in 1978, Charles argued that having a purely ceremonial head of State was an expensive luxury which Dominica could ill afford. Instead, she wanted to have a President with responsibility for defence, internal security and foreign affairs.<sup>82</sup> In addition, the President would have 'the right to delay for one month or to the next sitting of the National Assembly any Bill which in his opinion affects special interests which have not had the opportunity of making their views known.'<sup>83</sup> However, the Government delegation led by the 'socialist' Prime Minister, Patrick John, refused to accept this proposal, arguing that it was the wish of the majority of people of Dominica that the Queen should remain the Head of State.<sup>84</sup>

As it proved impracticable to resolve this difference of views, the British Government initially concluded that, taking account of the relevant representation of the opposing delegations in the Dominica House of Assembly, it should proceed on the basis of the Government's proposal. However, following the Conference, a senior official from the Foreign and Commonwealth Office, R N Posnett, was dispatched to Dominica in May 1978 to see if agreement could be reached between the governing and opposition parties on this and other issues. By this point both sides had modified their position on this issue. The governing Labour Party was now prepared to accept a republican system, but not with an executive-style President. Instead they were happy for the President to be given certain responsibilities, such as the appointment of Chairmen of certain Commissions, such as the Public services Commission.<sup>85</sup> The Leader of the Opposition had also withdrawn her demand for an executive-style President, having, apparently, recognised that 'divided executive responsibility might be unworkable.'<sup>86</sup> Instead she was content for the President's powers to be restricted to non-executive matters. Thus Dominica embarked upon independence with a ceremonial President similar to the Presidents of Guyana and Trinidad and Tobago.

## 2. Caribbean Realms

The question of whether to embrace republicanism has featured prominently in the deliberations of the numerous constitutional review commissions that have reported over the last two decades, all of which, with one exception, have recommended the replacement of the Queen with an elected President. The exception is Belize, but this is because of concerns about Belize's security in the face of its border dispute with Guatemala and the fear that replacing the British monarch as head of state might decrease Britain's willingness to come to the aid of Belize in the event of an invasion by Guatemala.<sup>87</sup> Over the last two decades a number of the region's political leaders have also declared their intention to appoint a ceremonial President as Head of State in place of the Queen.<sup>88</sup> And yet, Guyana and Trinidad and Tobago apart, no other country in the region has managed the transformation from constitutional monarchy to republicanism (Dominica having embarked upon independence as a republic.)

Though they do not exclude the possibility of there being others, two reasons for this failure to switch to republicanism immediately stand out. The first, which we considered, in Part I is the historic loyalty to the monarchy in the region which dates back till at least the mid-nineteenth century and which has managed to survive independence. Perhaps the most extreme example of this loyalty is Grenada where, even after they had staged a Marxist coup, in 1979, the New Jewel Movement (NJM) retained the Queen as head of state. As the leaders of the NJM subsequently explained, there was no popular demand for abolishing the monarchy and at such an early stage of the revolution they did not want 'to frighten the horses'.<sup>89</sup> As recently as 2011, a report of a poll in the *Jamaican Gleaner*, noting that 60 per cent of respondents agreed that Jamaica would have been better off if it had remained a colony, ran under the headline: 'Give us the Queen!'<sup>90</sup>

Philip Murphy suggests that this residual enthusiasm for the monarchy may be based on 'a sense of respect and even genuine affection for Queen

Elizabeth II', which may not survive her demise.<sup>91</sup> However, there is a second reason for believing that these realms are not about to become republics, which has nothing to do with the personal popularity of Queen Elizabeth II. This concerns the requirement in a number of countries for such a constitutional amendment to be approved by the vote of a majority of citizens in a referendum. To date, no government in the Commonwealth Caribbean has secured majority approval in a referendum for any constitutional amendment; apart from the Government of Guyana, which secured majority approval for the amendment of its 1970 Constitution, but in that case the referendum was widely believed to have been rigged.<sup>92</sup>

In a number of countries in the region the task of amending their Constitution is made even harder by the requirement of a super-majority of two-thirds of voters in a referendum: Antigua,<sup>93</sup> St Vincent and the Grenadines,<sup>94</sup> and Grenada.<sup>95</sup> In the only referendum to be held in the region since independence in which the question of becoming a republic has been put directly to voters, in 2009, in St Vincent and the Grenadines, the proposal was rejected by 55% of those who voted.<sup>96</sup> In Grenada, which held a referendum in 2016 on seven Constitution (Amendment) Bills, the question of replacing the Queen with a ceremonial President was not even included on the ballot papers, despite the fact that no less than two constitutional review commissions had recommended such a change.<sup>97</sup> Instead, voters in the referendum were asked merely to approve an amendment to the Constitution which would entitle public officials to swear allegiance to the State of Grenada rather than the Crown. However, even this relatively modest amendment failed to secure the support of a majority of voters in the referendum.

Even where the approval of a majority of citizens in a referendum is not expressly required by the constitution, as for example in Barbados, the government has been reluctant to effect such a fundamental constitutional reform without the mandate afforded by popular approval in a referendum. Thus, following the recommendation of the Forde Commission, in 1998, that Barbados should become a republic,<sup>98</sup> the Government decided, even though it could easily have attained the two thirds legislative majority required in both

Houses of Parliament to amend the Constitution, it would proceed instead by way of a referendum. A Referendum Act was introduced in 2005 and a date was fixed for the referendum to coincide with the general election in 2008. In the event, however, the referendum was not held in 2008 and has been deferred by successive governments ever since.

## **The JCPC**

As early as 1921, Arthur Berriedale Keith had declared the JCPC to be 'in the process of obsolescence.'<sup>99</sup> Five years later, the Balfour declaration of 1926 made it clear it was no part of the British Government's policy 'that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected.'<sup>100</sup> Of the original Dominions, Ireland abolished the right of appeal to the JCPC, in 1933, and South Africa followed suit in 1950. Amongst the new post-World War II Dominions, India and Pakistan both abolished appeals to the JCPC very shortly after independence. For nationalist leaders in Africa, executive, legislative and juridical sovereignty were inextricably interconnected: delinking from the JCPC was, therefore, seen as a key step in their assertion of independence and sovereignty and by 1966 most of these ex-colonies had abolished all appeals to the JCPC.<sup>101</sup> It is true that in a number of other former colonies the JCPC survived for longer after independence – Sri Lanka only finally abolished appeals in 1971, Malaysia in 1985, and Singapore in 1994 – but the retention of appeals to the JCPC by the majority of Commonwealth Caribbean countries, over fifty years after the first countries in the region attained independence, is still a striking anomaly, made even more striking by the existence, since 2006, of the CCJ.

As noted above, only four countries have so far ratified the CCJ's appellate jurisdiction – Guyana, Barbados, Belize and, most recently, Dominica - and these do not include the region's most populous and, arguably, most politically influential countries - Jamaica and Trinidad and Tobago. That Trinidad and Tobago has not ratified the CCJ's appellate jurisdiction is made all the more curious by the fact that it has been a republic since 1976. As long ago as 1974,



the Wooding Commission had expressly identified the link between republicanism and abolishing the right of appeal to the JCPC:

Besides it seems incongruous that we should want to become a republic and yet look to a monarchical institution for justice from our courts. India, Pakistan, Nigeria, Ghana and Guyana are among other republics, which, while remaining in the Commonwealth, have disallowed any further appeals to the JCPC.<sup>102</sup>

Though Jamaica is not yet a republic, it is notable that the governing JLP, when announcing its intention to hold a referendum with a view to becoming a republic in the near future, did not link this issue with abolishing the right of appeal to the JCPC.<sup>103</sup>

All of this is not to say that the disjuncture between independence and retention of the right of appeal to the JCPC has passed unnoticed. As the former Chief justice of Barbados, Sir David Simmonds, one of the foremost supporters of the CCJ, has argued:

The independence of the states of the region will not be complete, is not complete, when our constitutions entrench a foreign tribunal as our final court of appeal. It is inconsistent with independence: it is an affront to our sovereignty and the sovereignty of independent nations. You may say this is an emotional argument, but these psychological considerations are important and the symbolism is not to be discounted.<sup>104</sup>

This is linked to concerns at the juridical level about the JCPC's role as the final arbiter of the meaning of the region's constitutions. As Simeon McIntosh, has observed:

[S]o long as we remain the 'subjects' of the British Crown with its Judicial Committee as the apex in the hierarchy of our legal system, it is to be expected that our constitutional discourse would reflect a cluster of values, intellectual orientations and practices that carry a distinct British cast...Our constitutional conversation is carried out in a 'foreign' voice. We are either silenced or are constrained to speak within the institutions

and traditions of interpretation of the colonial constitutions that have been imposed on us.<sup>105</sup>

Constitutional interpretation involves the exercise of a powerful judicial discretion, which often requires judges to make decisions which are essentially policy decisions and which are not very different to the kind of decisions that are made by a democratically elected parliament. As the former Chief Justice of the CCJ, Michael de la Bastide has argued:

In making such decisions, [a judge] is not unearthing some universal verity but determining what is best for a particular society in the circumstances existing at a certain point in its history.

It was in his view, therefore, essential that those who make such decisions have an intimate and first hand knowledge of the society upon whose behalf the decision is made: not only because they will be better informed about the needs of that society, but also because residence in and membership of that society is the most salutary form of accountability.<sup>106</sup>

These are each very compelling arguments for abolishing the right of appeal to the JCPC, but they have not gained the political traction necessary to build the consensus that would be needed to effect such a constitutional amendment. This is in part because there are still those who advocate retention of the right of appeal to the JCPC on the grounds, firstly, that its appellate jurisdiction is available at no cost to the governments of those countries that still subscribe to its jurisdiction; and, secondly that it is composed of judges who are of the highest calibre and who are judicially independent, being free of the political influence and control that some of the region's governments have been accused of exerting over their national judges.<sup>107</sup> Though the latter are, undoubtedly, principled reasons for retaining rights of appeal to the JCPC, more often attempts to build the necessary consensus to abolish the right of appeal to the JCPC and replace it with a right of appeal to the CCJ have failed not for principled reasons but for reasons of partisan politics. In Jamaica and Trinidad and Tobago, for example, there have been spectacular U-turns on the issue of abolishing rights of appeal to the JCPC by, respectively, Edward Seaga, the

leader of the JLP, and Basdeo Panday, the leader of the United National Congress in Trinidad and Tobago, both of whom supported the establishment of the CCJ whilst in government, but then opposed it when no longer in power.<sup>108</sup> Indeed, in the case of Jamaica, Edward Seaga was one of the parties to proceedings before the JCPC, *Independent Jamaica Council for Human Rights (1998) v Attorney General Jamaica*,<sup>109</sup> in which the JCPC held that the PNP Government's attempt to abolish the right of appeal to the JCPC on the basis of a simple legislative majority was unconstitutional because it did not comply with the procedure for amending the entrenched provisions of the Constitution. The JLP has interpreted this decision to mean that any amendment to the Constitution that involves the removal of the right of appeal to the JCPC must first be approved by a majority of voters in a referendum.

In the case of Trinidad and Tobago, it would be possible, in theory, to effect the necessary amendment to the Constitution without a referendum, and the PNM Government, which won the 2015 elections, has announced that it is committed to ratifying the CCJ's appellate jurisdiction.<sup>110</sup> However, it cannot secure the necessary two-thirds legislative majority required by the Constitution without the support of the opposition United National Congress, led by Kamla Persad-Bissessar, and she has previously made it clear when she was in office that she would not support any such move unless it had first been approved by a majority of voters in a referendum.<sup>111</sup>

This does not bode well for those campaigning to abolish the right of appeal to the JCPC. As noted above, the record across the region of attempts to reform the constitution by means of a referendum is, to say, the least very poor. Thus, even if the JLP in Jamaica and the PNM in Trinidad and Tobago were willing to put the issue to their citizens in a referendum the likelihood that voters would support such a reform is slim. It is even slimmer in countries such as Antigua, Grenada and St Vincent and the Grenadines, where a two thirds majority of voters in a referendum is required, so deeply entrenched are the provisions surrounding the right of appeal to the JCPC. It is, assuredly, no coincidence that in all four of the countries that have so far ratified the CCJ's

appellate jurisdiction the amendment to their constitution has been effected by means of a legislative majority and without the need for a referendum to be held.

## **Conclusion**

When Commonwealth Caribbean political leaders conceived of independence and Dominion status they adopted as their point of reference the 'white' settler Dominions of Canada, Australia and New Zealand, rather than the newer South Asian and African Dominions. Upon independence they would become constitutional monarchies and would retain the JCPC as their final appellate court. While all of these political leaders have since been replaced by a generation of politicians who have, at best, a vestigial memory of British colonial rule, its two most visible symbols - the Crown and the JCPC - endure.

Of the three countries that have adopted republicanism, each was affected by different political forces that marked them out from their neighbours. Guyana, as we have seen, had always stood outside the mainstream of Caribbean nationalism; Jagan and the PPP being much more fiercely anti-colonial and much less committed to the ideal of British political liberalism than, for example, the avowedly 'socialist' PNM in Jamaica. In Trinidad and Tobago republicanism was a response to a Black Power revolution, which rejected the tradition of British political imperialism inherited upon independence, and which made it impossible for the Prime Minister to retain political credibility so long as a 'white' British Monarch remained as Head of State. In Dominica, republicanism had nothing to do with anti-colonial sentiment. The government was in fact proudly pro-monarchical, but agreed to accept a ceremonial president as Head of State as a compromise to secure the opposition's agreement to the terms of the independence Constitution.

One feature, however, that these three countries had in common was that they were able to become republics without the need for a referendum. As we have seen, almost everywhere else in the region a referendum is required either expressly by the Constitution or, as in Barbados, by the perception that it would not be politically legitimate to effect such a constitutional amendment without a referendum. The exception is Belize but there are particular security concerns

which explain Belizean exceptionalism. In combination with a residual loyalty to the Crown, the requirement for a referendum presents a formidable obstacle to republicanism. As we have seen, everywhere in the region that referendums on constitutional reform have been held they have, with one exception, been used as an opportunity for voters to give the government a bloody nose.

Even assuming, however, that the remaining realms were to overcome this obstacle and become republics there is no guarantee that they would at the same time abolish rights of appeal to the JCPC. In the Commonwealth Caribbean the adoption of republicanism and the abolition of the JCPC have not been seen as two sides of the same coin; with the exception of Guyana which abolished rights of appeal to the JCPC when it became a republic in 1970. Trinidad and Tobago had the opportunity to follow suit in 1976 when it adopted a republican Constitution, but Eric Williams chose not to accept the recommendation of the Wooding Commission in this regard. It is also notable that the only other republic in the region, Dominica, waited almost 40 years before finally abolishing rights of appeal to the JCPC. It could be argued that this was because Dominica did not possess at independence the resources necessary to establish its own second tier appellate court, but even following the inauguration of the CCJ in 2006, it was a further decade before Dominica signed up to its appellate jurisdiction.

Elsewhere the link between republicanism and the abolition of right of appeals to the JCPC has proved to be equally tenuous. Barbados, for example, has ratified the CCJ's appellate jurisdiction, but has fought shy of holding a referendum on whether to become a republic. Conversely, in Jamaica, where the JLP has declared that it wants Jamaica to become a republic within the lifetime of the current parliament, it has refused to give any indication of when, if ever, it will hold a referendum on abolishing rights of appeal to the JCPC.<sup>112</sup>

The constitutional identity of the majority of the region's countries thus remains fixed as it was at the time of their independence as they continue to define themselves as a political community in terms of their links to the British

Crown and to vest their ultimately legal sovereignty in that most imperial of courts, the JCPC.

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## Notes

- 1 Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago.
- 2 Canada abolished rights of appeal in 1949, Australia in 1986 (though the process actually began in 1968), and New Zealand in 2003.
- 3 See Wrong, *Government of the West Indies*.
- 4 See Wallace, *The British Caribbean*.
- 5 Proctor Jr 'British West Indian Society and Government in Transition 1920-60.' 34.
- 6 Trinidad and Tobago and Guyana, in particular, being made up of separate communities of predominantly Christian Afro-Caribbean and Hindu Indo-Caribbeans
- 7 Report by the Hon. EFL Wood on his Visit to the West Indies and British Guiana (December 1921-February 1922), Great Britain, *Parliamentary Papers*, Cmd. 1679, 1922
- 8 Wallace, *The British Caribbean*. 26.
- 9 Lewis *The Growth of the Modern West Indies* 108
- 10 Cipriani was one of the first elected members of Trinidad's Legislative Council.
- 11 James, *The Life of Captain Cipriani*. 20-26
- 12 Johnson, "The British Caribbean" 614
- 13 Lee and Petter, *The Colonial Office*, 244.
- 14 Quoted by Millette, "Decolonization", 189
- 15 In Jamaica the People's National party expressly instructed its supporters 'to abstain from agitation for constitutional reform.' See Louis Lindsay, 'The Myth of Independence: Middle Class Politics and Non-Mobilization in Jamaica' Institute of Social and Economic Research, University of the West Indies, 1981, 102
- 16 Martin, "Eric Williams and the Anglo-American Caribbean Commission", 274-290
- 17 Millette "Decolonization" 188.
- 18 *Parliamentary Papers 1947-1948*, Cmd. 7291, Conference on the Closer Association of the British West Indian Colonies 7-11.
- 19 Jagan. *The Caribbean Revolution*, 25
- 20 Jagan op cit, 19.
- 21 Pursuant to British Caribbean Federation Act 1956
- 22 s.118
- 23 Jamaica National Archives, Manley papers, 4/60/2A/18
- 24 Palmer, *Eric Williams*, 179
- 25 *Sunday Guardian*, 5 November, 1961, quoted by Wallace 201
- 26 TNA:PRO, CAB 128/35/2, 28 September 1961
- 27 *Report of Jamaica Independence Conference*, 1962 Cmnd.1638, 6
- 28 CAB 134/1561 2 February 1962.
- 29 Johnson, op cit 620.
- 30 *Report of Jamaica Independence Conference*, 1962 Cmnd.1638, p2
- 31 Barbados and Guyana (1966), the Bahamas (1973), Grenada (1974), Dominica (1978), St Lucia (1979), St Vincent and the Grenadines (1979), Antigua and Barbuda (1981), Belize (1981), and St Kitts and Nevis 1983.
- 32 Darwin, *Britain and Decolonisation*, 220.
- 33 Lewis, op cit 207.
- 34 Putnam, 615-30.
- 35 Speech by ERD Evans, in Plain Talk, 14 January, 1939, p2. Quoted by Lindsay op cit 113.
- 36 Trinidad Hansard 1937 (Port of Spain: Government printing Office) 268-69.
- 37 Millette, "Decolonization", 204.
- 38 Girvan, "Assessing Westminster in the Caribbean", 97
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- 41 Ibid 101
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- 43 Quoted in Alexander, *Presidents, Prime-Ministers and Governors of the English-Speaking Caribbean*, 17.
- 44 Lindsay, "Slaying the Westmonster", 101
- 45 Ibid, 109
- 46 Ibid, 114
- 47 Jamaica Hansard, 1962, p719 and 751.
- 48 Sutton *Forged from the Love of Liberty* 129
- 49 John Darwin, *Britain and Decolonisation* 220.
- 50 Rush, *Bonds of Empire*, 9.
- 51 Ibid 2.
- 52 Lewis, *op cit*, 19.
- 53 *Ceylon: Report of the Commission on the Constitution* Cmd 6677 91945), 110. Quoted by Kumarasingham, *A Political Legacy of the British Empire*, 78.
- 54 Darwin, 'A Third British Empire?' 76
- 55 Darwin, *Britain and Decolonisation* 220.
- 56 Though Victoria did not ascend to the throne until 1837, four years after the Emancipation Act, freedom from the period of apprenticeship that was a condition of emancipation did not occur until the late 1830s, giving rise to a link in the minds of these former slaves between their freedom and Victoria's ascension to the throne. See Anne Spry Rush *op cit*, 51.
- 57 Johnson, *op cit* 597
- 58 Ibid.
- 59 Wood, *op cit*.
- 60 Foot, *A Start in Freedom* 124
- 61 Blackburne, *Lasting Legacy*.
- 62 Blackburne *op cit* 152.
- 63 Lewis *op cit* 393
- 64 Darwin, 'A Third British Empire?' 85.
- 65 Quoted by Hart, *The End of Empire*, Chapter 28
- 66 Lewis, *op cit* 186
- 67 'Secondary Decolonisation: The Black Power Movement in Barbados, c.1970', 117
- 68 Girvan, "Assessing Westminster" 96
- 69 Jagan, *op cit* 44.
- 70 Art 73(5) Constitution of Guyana
- 71 Murphy, *Monarchy and the End of Empire*, , 95
- 72 Ibid 95
- 73 Quoted by Lutchman, 'The Co-operative Republic of Guyana' (1970),100.
- 74 Kate Quinn, *op cit*2
- 75 This occurred in Jamaica in October 1968. See further Lewis, 'Jamaican Black Power in the 1960s.'
- 76 The following account is taken from Samaroo 'The February Revolution (1970) as a Catalyst for Change in Trinidad and Tobago,' 97-116.
- 77 Report of the Constitution Commission 1974. Available at <http://www.tparliament.org/documents/1101.pdf>
- 78 Ibid, Paragraph [20.]
- 79 Ibid, [138]
- 80 Ibid[57]
- 81 Murphy, *Monarchy and End of Empire*. 157
- 82 *Report of the Dominica Constitutional Conference*, 1977 Cmnd.6901, p19
- 83 Ibid
- 84 Ibid
- 85 *Dominica Termination of Association*, 1978, Cmnd.7279. 5
- 86 Ibid.
- 87 See further Grant, *The Making of Modern Belize*.
- 88 PJ Patterson in Jamaica in 2003, Portia Simpson-Miller in Jamaica 2012, Freundel Start in Barbados in 2015, and Andrew Holness in Jamaica in 2016. See Rob Crilly, 'Jamaica Unveils Plans to Ditch Queen as Head of State, *Telegraph*, 16 April 2016.
- 89 Answers to questions asked by Kate Quinn of former members of NJM at conference in Grenada. Note on file with author.

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- 90 *Jamaica Gleaner*, 2011, June 28.
- 91 Murphy, *The Empire's New Clothes*, 91.
- 92 James and Lutchman, *Law and the Political Environment in Guyana* 71.
- 93 s.47(5)(c)
- 94 s.38(30)(b)
- 95 s.39(5)(c)
- 96 See further, Bishop, "Slaying the "Westmonster" in the Caribbean?" 420–37
- 97 In 1985 and 2006. Unpublished. On file with author.
- 98 Report of the Constitution Review Commission Barbados 1998. Unpublished. On file with author.
- 99 Quoted by Mohr, 'A British Empire Court', 127
- 100 Cmd. 2768, p19.
- 101 Ibhawoh, "Asserting Judicial Sovereignty" 31.
- 102 Report of Constitution Commission op cit [354]
- 103 Crilly, 'Jamaica Unveils Plans to Ditch Queen as Head of State, *Telegraph*, 16 April 2016.
- 104 Quoted by McIntosh, *Caribbean Constitutional Reform*, 266
- 105 McIntosh, op cit 294
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- 107 O'Brien, "The Caribbean Court of Justice and its appellate jurisdiction" 356.
- 108 I am grateful to Kate Quinn of IALS, who commented on an early draft of this paper, for reminding me of this point.
- 109 [2005] UKPC 3
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- 111 Ibid.
- 112 'Holness Steers Clear of Giving CCJ Referendum Timeframe,' *Jamaica Gleaner*, July 7, 2016.