Constitutional Faith and Identity in the Caribbean: Tradition, Politics and the Creolization of Caribbean Constitutional Law

Se-shauna Wheatle and Yonique Campbell

1. Introduction

Faith in an entity requires a strong understanding of that entity, affiliation and connection to it and belief in the ability of that entity to effect positive change in one's life. Constitutional faith depends on the existence of a firm constitutional identity as well as trust in the state. Yet, there has only been limited development of constitutional identity in the Commonwealth Caribbean, whether in individual states or as a regional collective. Rather, the picture of constitutionalism that developed from the Independence movements in the mid to late twentieth century was one of European retention. Further, in contemporary Caribbean governance, the apparent inability of state organs in some countries to supply security and justice to its people undermines faith in the constitution and its institutions. We maintain that in order to develop constitutional faith in the region, there must be both a firm constitutional identity and trust in the legal system and the state's capacity to deliver important public goods. The limited growth of both constitutional identity and trust in the state have inhibited the development of constitutional faith in the Caribbean.

This article proposes a creolized approach to both constitutional development and state engagement with citizens as a means of fostering greater faith in the constitution. Creolization, as a creative process of transculturation, involving a blending of different cultures, languages and systems, represents a means by which political and legal actors in the region can recognize and grapple with a colonial past while creating norms that speak to the needs of its citizens in a modern constitutional world. By drawing on the concept of creolization, we suggest that constitutional identity must be situated within a cultural context and must recognize the fluid exchange between law, culture and the wider society, and between the present and the past. The concept, because of its distinct 'Caribbeanness' and origins, provides us with a means of conceptualising Caribbean constitutional identity as distinct from European constitutionalism and the inherited colonial model. As we argue in this paper, creolization has the potential not only to make the constitutions of the Caribbean more indigenous, but to also position Caribbean constitutional development within an increasingly globalised legal world. Creolization can generate meaningful interaction among Caribbean, foreign and international actors, while

ensuring the continual development of a truly Caribbean vision of constitutional law. By being responsive to and respectful of cultural differences, a creolized approach can also facilitate greater state recognition of, and response to, the variety of communities within the Caribbean. Creolization provides a way of thinking about tools to break down cultural and hegemonic barriers that contribute to the marginalization and disempowerment of citizens or groups of citizens. This approach, we argue, can strengthen both constitutional identity and faith in the constitution while reckoning with socio-political forces in the external world as well as other forms of ethnic, religious and political identities.

To explore these issues, the article proceeds as follows. Part 2 of the article discusses the concept of constitutional faith, understood as belief or trust in the constitution. We briefly outline how constitutional faith is manifested and its role in securing an effective and successful constitution. It is suggested that constitutional faith cannot exist without the development of both a robust constitutional identity and public trust in the state. From this point of departure, we argue in Part 3 of the article that retention of European norms and models typified constitutional design in the region and has stymied the growth of indigenous constitutionalism. In Part 4 we explore how the provision- or lack thereof- of important public goods can either consolidate or undermine faith in the constitution. Finally, Part 5 considers how to develop stronger constitutional identity and greater public trust in the state's capacity to provide public goods through the use of creolization. We explore the concept of creolization and discuss how it can be used to facilitate a creative and inclusive approach to developing the constitutionalism of the Anglophone Caribbean.

2. Constitutional Faith and Constitutional Identity

Faith is a contested concept, susceptible to a range of interpretations. At its core, however, it connotes a belief in the existence of an entity and belief that this entity will provide adherents with what they need (Swinburne, 2009). It therefore goes beyond passive acknowledgment or recognition of the existence and attributes of that entity, but also speaks to active trust that the entity can and will deliver on its promises and work for good in the life of the faithful. This understanding of faith traverses the religious context and has relevance and resonance in the constitutional realm.

Faith in the constitution matters for several reasons. Firstly, faith induces reliance which is important for securing trust. Second, faith in an entity induces faithfulness to that entity. There is much truth in Jack Balkin's claim that constitutional faith is intimately connected to

the legitimacy of a constitution. Balkin's view, speaking of the Constitution of the United States of America, is that:

> The legitimacy of our Constitution depends, I believe, on our faith in the constitutional project and its future trajectory. For if we lack faith in the Constitution, there is no point in being faithful to it. … And our faith in the Constitution, in turn depends on the story that we tell ourselves about our country, about our constitutional project, and about our place within them' (Balkin, 2011, p 2).

The stories that people tell themselves are informed by embodied experiences with, and perceptions of, how and in whose interest the constitution works. The historiography of a country and the ends towards which a state uses the constitution therefore have implications for constitutional faith. Consequently, the existence of a constitution does not suffice: 'a constitution, and the ancillary practice of judicial review, can undermine the respect-worthiness of the constitution and the legal system if the constitution's provisions allow or require very unjust results and judges or other legal officials act tyrannically' (Balkin, 2011, p 35).

Perhaps nowhere is faith in a constitution more deeply embedded than in the United States of America. '"Veneration" of the Constitution has become a central, even if sometimes challenged, aspect of the American political tradition' (Levinson, 1988). The US Constitution is accordingly described as one of the central pillars of the USA's civil religion, a higher law imbued by its people with the powers and majesty of a higher power. Faith in the constitution is preserved and nurtured through constitutional interpretation and application across successive decades. Accordingly, it is said that the Constitution and the belief of the American people in the Constitution endure because of an ongoing and evolving process of constitutional interpretation and understanding generated by judges, politicians and ordinary citizens (Liu, Karlan & Schroeder, 2010). In short, the Constitution endures because each generation imbues it with meaning to suit the present age (Liu et al., 2010). It is that continued evolution and enduring relevance that maintains faith in the Constitution.

We argue that constitutional faith is lacking in the Commonwealth Caribbean for two main reasons. First is the failure to develop a Caribbean constitutional identity for both official actors and ordinary citizens to believe in. Second, constitutional processes have failed, in some respects, to engender trust among ordinary people, who do not trust the institutions of the state established by the Constitution to deliver important public goods. The following sections address the first inhibitor of Caribbean constitutional faith- the limited development of a distinct constitutional identity; we discuss the concept of constitutional identity and signs that the region has struggled to exhibit a distinct Caribbean constitutional identity.

3. Caribbean Constitutional Identity or European Imitation

Constitutional identity manifests as two separate but related concepts. There is the macro concept of the identity of the constitution, as set out by Gary Jacobsohn (2010) and second, the micro concept of the identity of the constitutional subject, discussed by Michel Rosenfeld (1994). It is the broader concept of the identity of the constitution that concerns us in this paper. For Jacobsohn, the identity of a constitution 'emerges dialogically and represents a mix of political aspirations and commitments that is expressive of a nation's past, as well as the determination of those within the society who seek, in some ways, to transcend that past' (Jacobsohn, 2006, p. 363). Constitutional identity involves both continuity and invention (Jacobsohn, 2006). In this conceptualisation of constitutional identity, there is a strong sense of a dialogue between history and the present, of utilising and operationalising the past in creating a future. A nation's constitutional identity is also a reflection of both general and particular elements, as it balances universal (or transnational) values and the specific precepts of the constitutional document(s) of the country in question (Jacobsohn, 2006).

The identity of a constitution is not fixed at the moment of its creation, but rather develops through the experience of its operation (Jacobsohn, 2006). In legal theory and constitutional studies, we often characterise the constitution as constitutive of the state, its structures and institutions. However, Jacobsohn's work invites us to reflect on the wider social and civil constitutive work of the constitution. Thus, a constitution not only creates the formal institutions, but it also contributes to a new sense of selfhood and character for the people of the state. Yet, the identity of a constitution differs from the identity of the state or nation; changing boundaries or changing political leaders, for instance, does not transform the core characteristics of the constitution. What we are contemplating here is therefore, not national identity or nationalism but a sense of the main features of the constitution and its application.

A range of factors have affected constitutional identity in the Caribbean, including constitutional design, colonial history, constitutional interpretation, religion and the performance of the legal system. While experiences across the Commonwealth Caribbean are not identical in all respects, there are significant similarities. Among the most important factors is that postcolonial Caribbean constitutions largely avoided attempts at defining or creating a specifically Caribbean constitutionalism. The Westminster system was prevalent in the institutional design of the newly independent states. A Westminster style model is typified by the following attributes:

> a constitutional system in which the head of state is not the effective head of government; in which the effective head of government is a Prime Minister presiding over a Cabinet composed of Ministers over whose appointment and removal he has at least a substantial measure of control; in which the effective executive branch of government is parliamentary inasmuch as Ministers must be members of the legislature; and in which Ministers are collectively and individually responsible to a freely elected and representative legislature (De Smith, 1961, p. 3).

Girvan has opined that 'Westminster was an element in a package – the Independence Pact in the British Caribbean. That pact was not about Independence; it was about preservation of the status quo' (Girvan, 2015, p. 95-96). To the extent that the Caribbean constitutions engage in definition, this definition was characterised by affiliation with European political and legal frameworks. It was the conscious decision of both Europe and the Caribbean colonies that in embarking on independence, the colonies would adopt and continue the constitutional and political traditions of Europe. With the exception of Trinidad and Tobago, Dominica and Guyana, Anglophone Caribbean countries retained a parliamentary system with the Queen remaining the Head of State, and Governors General acting as the monarch's representative. The majority of Anglophone nations also retained bicameralism, 'a somewhat curious fact given the general association of bicameralism with larger states' (Elkins & Ginsburg, 2011, p. 8). In sum, the organization of institutions of state, their relationship to each other and the mechanisms for their selection largely mimicked those of the soon to be former colonial powers.

The exported parliamentary model adopted in the small states of the region produced a tendency towards domination in governance. First, the system produces 'a clear centralization of power in the hands of the Prime Minister' (O'Brien & Wheatle, 2012, p. 685). That dominance then extends to Cabinet dominance in Parliament, through adoption of the Westminster convention of appointing Cabinet members from Members of Parliament. There were certainly some changes; in founding the new Caribbean states on written constitutions, the countries of the Anglophone Caribbean appeared to make a break from the famously uncodified British constitution. Yet, this is a break that in some respects served to fuse the new Caribbean states to Europe and to the past. The written constitutions cemented in perpetuity the traditions and power balances of the colonial period. Even the inclusion of a bill of rights in the constitutions was designed to reassure investors that their property rights would be secure and protected from potential moves towards reform or revolution (Munroe, 1962).

Post-independence continuity has been explained by the length of British rule and concomitant familiarity and comfort with British institutional design (Anckar, 2007).

Accordingly, institutional design evolved as outgrowths of European influence rather than as tools for problem-solving (Anckar, 2007). Accordingly, there was no attempt to reckon with the problems facing the region's countries, particularly the divisions that arose during- with some persisting beyond- colonialism. The eras of slavery, emancipation and post-emancipation gave rise to deep-rooted divisions and tensions along race, colour and class lines. Afro-Caribbean and Indo-Caribbean communities in Trinidad and Tobago and Suriname, and Afro-Caribbean, Chinese and Indian communities as well as upper-middle- and lower-class communities in Jamaica crystallized as a result of a complex combination of factors arising during colonialism (Premdas, 2014; Stone, 1976; Henriques, 1953).

The Westminster model of government can thus be said to have betrayed Caribbean governance and social cohesion in important ways. The features of this form of political system, in their capacity to entrench patterns of political inclusion and exclusion, can serve to deepen and cement racial divisions. Trinidad and Jamaica exemplify some of the effects of Westminster retention. Despite opting for a President rather than a Governor General as a representative of the Queen, Trinidad nonetheless retains strong Westminster elements, including a bicameral Parliament elected through first past the post elections. Political parties in Trinidad are partly differentiated by racial affiliation (Premdas, 2014; Ragoonath, 1999). The United National Congress has emerged as a majority Indo-Trinidadian party while Afro-Trinidadians dominate the People's National Movement. In Jamaica, politics has become 'a perpetual game of alternating 'ins' and 'outs' and Winner Takes All'' (Girvan, 2015, p.100). The two-party political system, adopted under the Westminster model, also intensified class tensions in Jamaica. Competition for electoral victory under a two-party system created and consolidated clientelism, a 'winner takes all' political culture and a form of exclusionary politics. The resulting patron-client relationship between politicians and voters among sections of the urban poor created strong loyalties to politicians rather than to the nation state and its legal apparatus (Stone, 1983). Consequently, in Jamaica partisan political violence became entrenched and party supporters have been mobilized to use violence to secure political victory and the spoils that accompany such victory. This pattern and its deleterious effects have undercut faith in the constitution and the rule of law.

Beyond responsiveness to racial and class tensions, Westminster systems have also been critiqued for lacking strong ex-ante oversight powers, thereby leaving room for the festering of corruption (Stapenhurst, Staddon, Draman & Imbeau, 2018). Strong prime ministerial powers, limited separation between the legislative and executive branches of government and 'winner takes all politics' can encourage the distribution of state resources to party supporters,

as seen in countries such as Trinidad and Jamaica. Undermining the merit-based principle, key positions in government have often been filled with party supporters who lack the requisite qualifications. Party supporters are also rewarded for their loyalty with positions on governmental boards. Recent corruption scandals at PETROJAM (Jamaica's only petroleum oil refinery) involved nepotism, mismanagement, misappropriation of public funds and procedural breaches in the award of contracts. Without the right of recall and formidable oversight mechanisms, it is difficult for the public to hold ministers accountable for their actions. Reliance on ex post facto executive accountability to Parliament presents a particular challenge in Caribbean states, with societies and parliamentary chambers smaller than their European counterparts.

Fidelity to European institutions has shown marked persistence in the Caribbean, a persistence which is demonstrated in the retention of the Judicial Committee of the Privy Council as the final appellate tribunal for the majority of Commonwealth Caribbean jurisdictions. Only Barbados, Belize, Dominica and Guyana- that is, one in four of the eligible states- have acceded to the appellate jurisdiction of the Caribbean Court of Justice (CCJ), which began operating in 2005. Referendums on the issue of replacing the Judicial Committee with the Caribbean Court of Justice have failed to deliver support for the CCJ. Voters in Antigua and Barbuda opted to retain the Privy Council by a margin of 52.04 to 47.96 in 2018 (Antigua and Barbuda Electoral Commission, 2018). In Grenada, the CCJ was rejected by a wider margin, with 54.39% of those voting preferring to send appeals to the Privy Council (Caribbean Media Corporation, 2018).

Early constitutional interpretation in the region also reflected a retentionist approach, with judges restricting constitutional rights by reference to pre-existing common law. Lord Devlin's opinion in *DPP v Nasralla* encapsulates this interpretive style by stating:

> This chapter, as their Lordships have already noted, proceeds upon the presumption that the fundamental rights which it covers are already secured to the people of Jamaica by existing law. (*DPP v Nasralla*, 1967, p. 247-48)

Such an approach had concrete consequences as it led courts to deny that the constitution gave rise to rights such as the right to take strike action (*Collymore v AG*, 1967) and the right to trial within a reasonable time (*DPP v Tokai*, 1996). The colonial deference in constitutional interpretation has given way overtime to a more independent approach. The position in *Nasralla* was decidedly rejected by the Privy Council in *Watson v R*, on the basis that it was scarcely conceivable that Jamaican human rights were 'frozen indefinitely' upon Independence (*Watson v The Queen*, 2004, para 60). The steady development of a more independent

jurisprudence is welcomed, though there remain calls for 'a more speedy evolution' of a more distinctly Caribbeanised legal system (Jackson, 2013, p. 4).

Commonwealth Caribbean states have also made departures from British law in the context of familial relationships. The Constitution of St Christopher and Nevis, for instance, provides for freedom from discrimination attributable to 'birth out of wedlock'. Such laws reject the traditional British distinction between children born within and outside of marriage. This modern attitude to children and families was powerfully enunciated in the decision in *Fisher v Minister of Home Affairs* (1980) that the word 'child' in the Bermuda Constitution does not distinguish between children born in or out of wedlock. While Bermuda remains a British Overseas Territory, the judgment has been impactful throughout the region. However, much of the law affecting family relationships, such as reforms recognising 'common law marriage' are addressed outside of -or below- the constitutional sphere. Accordingly, they are seen as family law reforms rather than integrated within- or necessitated by- constitutional equality, privacy and dignity guarantees (Robinson, 2008).

Moreover, despite evidence of steps towards the development of an independent constitutional identity, deference to colonial norms and values is made explicit in the constitutional texts through savings law clauses that purport to insulate pre-Independence laws from constitutional rights. There are two types of such clauses: general savings law clauses and special savings law clauses. The latter provide that punishments that were lawful prior to Independence shall not be held to be inconsistent with constitutional prohibitions of inhuman and degrading punishment. General savings law clauses have a broader remit and protect all pre-Independence laws from being held inconsistent with the rights provisions in the Constitution. The general clauses appear in earlier Constitutions, including those of The Bahamas, Barbados, Jamaica, Trinidad and Tobago. The Jamaican provision stated, in section 26(8) of the Constitution:

> Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter [fundamental rights chapter], and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions.

Though the Jamaican Constitution was amended to include a new Charter of Fundamental Rights in 2011, the new Charter retains an amended savings law clause in section 12:

> Nothing contained in or done under the authority of any law in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, relating to

a. sexual offences;
b. obscene publications; or
c. offences regarding the life of the unborn,
shall be held to be inconsistent with or in contravention of the provisions of this Chapter.

Despite narrowing the categories of laws that were shielded from constitutional rights standards, the new section continues to restrict the reach of constitutional rights. Moreover, the section constructs a constitutional hierarchy of citizens, creating a distinction between groups that are deemed worthy and groups deemed unworthy of constitutional protection. Accordingly, it insulates primarily criminal laws, including laws criminalising persons who contravene societal mores that prevailed in the colonial era. The insulation of laws relating to 'the life of the unborn' and sexual offences was meant to preserve laws that were first enacted in the Caribbean during the period of European rule- laws outlawing abortion and same-sex sexuality (Joint Select Committee on Constitutional and Electoral Reform, 2002). The effect of immunising such laws is that women and gay persons receive limited constitutional protections. The state and the Constitution thereby retain colonial ideas that undermine the ideals of equal worth and dignity that underpin modern constitutional rights.

The colonial deference embodied in savings clauses is in part manifested in the absurdity that 'independent states are still tethered to colonial laws that have been discarded as unjust by the colonial power itself' (Burnham, 2005a, p. 252). This absurdity is most evident in the retention of laws criminalising same-sex sexuality- such as sodomy laws that criminalise sexual interaction between men and laws prohibiting cross-dressing- and the preservation of the death penalty. Savings clauses have been said to 'pose the most formidable obstacle to constitutionalizing the death penalty system' (Burnham, 2005b, p. 604). The Privy Council's judgments have applied constitutional due process constraints to the death penalty, finding that the penalty could not be carried out while a prisoner's application before an international human rights body was pending (*Lewis v Attorney General of Jamaica*, 2001) and that a delay of more than five years between sentence and execution was unconstitutional inhuman and degrading treatment (*Pratt v Attorney General of Jamaica*, 1994). However, the savings clauses have limited the Privy Council's ability to constrain the death penalty. While the Board has ruled that the mandatory death penalty is a violation of the right to freedom from cruel and inhuman punishment or treatment, the general savings clause has prevented the court from giving effect to this finding throughout the region. Thus, the Privy Council held that in

Barbados and Trinidad and Tobago, the general savings clause prevented the court from striking down the mandatory penalty, despite the penalty's clear inconsistency with the Constitution (*Boyce v R*, 2004; *Matthew v State of Trinidad and Tobago*, 2004). In the Barbadian case- *Boyce v R*- Lord Hoffmann described savings clauses as 'exceptions to the supremacy of the fundamental rights provisions of the Constitution over all other laws' ((*Boyce v R*, 2004, para. 30). Savings law clauses have therefore stymied the development of human rights and the reach of those rights in the Commonwealth Caribbean.

Despite that the Privy Council has only applied limited restraints on the death penalty, those constraints have fuelled resistance to the Privy Council and spurred calls for the CCJ (Antoine, 2005; Burnham 2005b; Rediker 2013). The CCJ was therefore seen by some commentators as a means for local politicians in favour of the death penalty to reverse some of the ameliorative steps taken by the Privy Council. In essence, there was a worry among some commentators that the move towards indigenising Caribbean constitutional law and institutions could simultaneously pose a threat to the advance of human rights in the region. Yet it is argued below that autonomous Caribbean constitutionalism can simultaneously champion a Caribbean constitutional identity while championing individual rights. As discussed in Part 5, by confronting the savings clauses and charting a course for progressive Caribbean rights development, the Caribbean Court of Justice is proving to be anything but a 'hanging court'. The CCJ is demonstrating its capacity to deliver justice in the Caribbean through Caribbean constitutionalism. Yet, as the following section explores, traditional constitutional institutions have struggled to deliver public goods such as justice, thereby undermining public faith in the constitution and its organs.

4. Constitutional Capacity to deliver Public Goods

Beyond the recognition of a constitutional identity, constitutional faith is also sustained by the capacity of the constitution and its organs to deliver public goods, including justice, security and equality. The political and constitutional system exists and survives through a mixture of coercion and consent. The polis accepts the coercive authority of the state on the understanding that the state will in return deliver important public goods (Balkin, 2011). While some laws will be unjust or unfair, the system as a whole must be seen as a force for justice, fairness and public good. 'If the system is too unjust, people will lose respect for it and they will no longer have a moral and practical interest in cooperating with its coercive power'(Balkin, 2011, p. 34). Powerful exemplars of this lack of faith are perhaps Jamaica and Trinidad and Tobago, where the absence of the nation state in the lives of 'marginalized others' and its inability to deliver

important public goods such as security and justice have shaken the very core of the social contract between the state and some of its most disenfranchised citizens (Campbell and Clarke, 2017). The prolonged use of emergency powers to regulate and respond to violence, incidences of police abuse, delays in the criminal justice system and criminalization of urban poverty are signs of the unenviable state of constitutional processes in the Caribbean.

There is widespread belief that the judicial system is slow, unresponsive and does not evince full respect for constitutional rights. The citizens most affected by the inefficacies of the justice system are usually the most socio-economically deprived segments of society. The Jamaican Justice System Task Force found that 'police abuse of civil rights, including illegal application of the state's power and authority over its citizens by some of its staff and the application of physical and verbal abuse… contribute to waning public confidence and alienation from the justice system' (Jamaican Justice System Task Force, 2007, p. 14). Extra-judicial killings and the abrogation of constitutional rights such as the right to due process and the right to life have made it difficult to cultivate reliance, trust and positive stories about the constitution and the state, particularly among the 'othered' urban poor. In St. Lucia, police abuse and alleged extrajudicial killings led to the eventual suspension of US funding for the Royal St. Lucia Police Force in 2013. The US relied on the 'Leahy Amendments', which prevent the US government from providing aid to foreign security forces that are accused of human rights violation. It was alleged that special forces within the police summarily executed 12 St. Lucians for involvement in criminality between 2010 and 2011, under a special police operation. Such events challenge the expectation that the state will comply with its own constitutional provisions to resolve criminal cases and provide justice to victims via mechanisms established in law.

A security crisis, resulting in human rights violations, also occurred in Jamaica in 2010. Residents of the West Kingston garrison, Tivoli Gardens, were strongly opposed to the state's decision to extradite their 'don' and 'drug kingpin'- Christopher 'Dudus' Coke- to the United States of America. The burning of police stations and the resulting battle between Tivoli Gardens residents and the state led to the death of approximately 70 persons. The Commission of Enquiry that was established in the aftermath to investigate allegations of human rights violations by the security forces noted that 'although the operation of the security forces was justified, the manner of its execution by some members of the security forces was disproportionate, unjustified and unjustifiable' (Western Kingston Commission of Enquiry, 2016, p. 478). Both the St. Lucian and Jamaican examples point to the ways in which the actions of the state, in matters related to the provision of security and human rights, can

undermine faith in the constitution. State organs were seen as operating outside the laws of the nation-state and contrary to the constitutional rights of citizens.

Security laws and practices have also shaped contemporary discourses about trust in the Constitution and the rule of law. Recently, the surveillance practices of the state have intensified, raising concerns about the state's commitment to guaranteeing the right to privacy (Campbell, 2020b). On one hand, the state regards these laws as important for solving national security problems. On the other hand, such laws have generated fear about potential threats to privacy rights, real or perceived. The National Identification and Registration Act (NIRA) 2017 sought to establish a National Identification System (NIDS) applicable to all Jamaican citizens. The Act sparked a debate in Jamaica about the ability of state law to solve public problems and ensure the provision of public goods without having adverse effects on members of society. According to section 3(c) of the Act, one of the objectives of NIDS is to 'facilitate the collection and compilation analysis, abstraction and publication of statistical information relating to the commercial, industrial, social and economic activities of citizens of Jamaica and individuals who are ordinarily resident in Jamaica.' Julian Robinson- a member of the opposition Peoples National Party- challenged the constitutionality of the NIRA and the law was subsequently struck down by the Jamaican Supreme Court in *Julian Robinson v Attorney General of Jamaica* (2019) on the basis that it violates the right to privacy. While judicial review provided a check on state power, thereby safeguarding this important right, concerns remain over the delivery of a broader set of rights and justice for a wider cross section of society.

Certainly, the main concerns about privacy rights have come from the middle class while concerns about the enforcement of security laws have come from the urban poor. The urban poor have been directly affected by laws such as the Zones of Special Operation (ZOSO) in Jamaica and anti-gang laws in Trinidad and Tobago and Jamaica and by the use of emergency powers. Indicative of a lack of consensus in society about how the law should be used to resolve public problems, support for these practices seems to vary according to class. In Jamaica, the use of emergency powers- which affords the state more power over its citizens, including the power to suspend constitutional rights- has been welcomed by some sections of the social strata who embrace it as a viable constitutional tool, but rejected by other sections of the public who regard the prolonged use of such measures as intrusive and unconstitutional. In garrison communities, de facto systems of justice have emerged in response to state neglect and lack of faith in the rule of law and constitutional processes. The state must therefore compete with armed actors who enjoy a measure of legitimacy by providing security and social services

within the community, thereby establishing an alternative to the rule of law and the judicial system operated by the state (Campbell, 2020a).

The flaws within the official justice system are also a prominent area of concern raised by international development organisations operating in Caribbean states. Among the flaws highlighted by the Canadian International Development Agency (CIDA) are widespread public disillusionment; limited sensitivity to gender and the particular needs of children; lack of regional coordination in the implementation of justice reforms and a scarcity of strong organizations able to manage large justice reform programs across the region (Stiles and Darby, 2012). The region faces significant external pressure to reform the justice system and constitutional rules. This has been a historical reality that continues to produce strong responses about sovereignty and the need to take domestic ownership of the constitutional agenda. Additionally, international law does not always align with the values and constitutional preferences in the local and national domain. This has been especially true for the death penalty.

Petitions to human rights bodies such as the Inter-American Commission on Human Rights and the Human Rights Committee contributed to delays in carrying out the death penalty. Yet, a series of Privy Council rulings established that, first, delay of more than 5 years in carrying out the death penalty was unconstitutional and second, that it was unconstitutional to execute someone while they have a pending petition before an international rights body. The effect was that 'Caribbean jurisdictions found themselves in a catch-22' (Burnham, 2005b, p. 604) and the dilemma was seen as a means for the Privy Council and international organs to effectively abolish the death penalty. This led some states, including Jamaica and Trinidad and Tobago, to eliminate review by international human rights tribunals by denouncing relevant articles of the American Convention on Human Rights and the International Covenant on Civil and Political Rights (Burnham, 2005b). This reaction provides evidence of the historical complexities that beset constitutional identity in the Caribbean. While Helfer has described Caribbean states' resulting withdrawal from human rights mechanisms as a consequence of the 'overlegalization of international law' (Helfer, 2002, p. 1891), the reality is that the Caribbean must operate within the sphere of international human rights standards (Antoine, 2005, p. 153). Such standards operate not only within international organisations but have gained such wide acceptance that they affect national judgments in the region (*Maya Leaders Alliance v Attorney General of Belize*, 2015). In developing an independent constitutional identity, the Caribbean must simultaneously grapple with international norms and the particularities of the regional context. States must contend with the growing idea of 'global' public goods such as human rights, that generate benefits and costs beyond the national sphere. Both constitutional identity

and constitutional faith must therefore be built through domestic delivery of norms informed by both domestic and global imperatives.

5. Building Faith in the Constitution through Creolization

How might Caribbean states set about forging distinct national and regional constitutional identities within a global constitutionalist setting? Creating a Caribbean constitutional identity requires reckoning with the history of law, politics and culture in the region as well as with the present and future of legal development in the world. The previous sections examined the dominance of European law and institutional frameworks in the creation of Caribbean constitutions and the early development of Caribbean constitutional case law. It was argued that such European retention, which inhibited the growth of a distinct Caribbean constitutional identity, was inimical to the flourishing of faith in the constitutions of the region. It was also shown that faith in the constitution and its organs are challenged by lacunae in the provision of public goods including justice, rights and security. In this section, we argue that a creolized approach to constitutional development and engagement in the region can provide a means of forging a robust Caribbean constitutional identity and increasing public trust in the constitutional capacity to deliver public goods. Creolization can thereby assist in the growth of public faith in the constitution. We also suggest that the Caribbean Court of Justice is developing a creolized approach that could provide a model for constitutional adjudication in the region.

Although by no means an uncontested subject, creolization in a broad sense speaks to a mixture of cultures, particularly hybridization among the various African, European, Asian and indigenous peoples that met in the Caribbean. The concept is embedded within Caribbean history and tracks the path of region's culture(s), describing the ways in which different peoples interacted within the region and generated transcultural practices, languages, processes and institutions. Braithwaite sees creolization as a process that is creative, plural and shaped by African and European cultural exchanges during slavery and colonialism, but existing as part of a wider 'American or New World Culture' (Brathwaite, 1978). Mintz and Price (1976) have argued that it involves the survival processes and remaking that took place because of the difficulties in transplanting African culture. For Price the concept is a 'marker for the process by which enslaved and self-liberated Africans, against all odds, created new institutions (languages, religions, legal systems, and more)—for the ways that these people, coming from a diversity of Old World societies, drew on their knowledge of homeland institutions to create new ones that they could call their own and pass on to their children, who elaborated them further' (Price, 2017, p. 214). We adopt the term because of its distinct 'Caribbeaness' and

how it helped to define, and aid in the survival of, Caribbean societies in a 'particular sociohistorical context' but also for its usefulness in understanding the complexities of constructing a firm constitutional identity in the contemporary context. In the current milieu, values and preferences are diverse, power relations are unequal and contested and globalization presents both challenges and opportunities. That is to say, the Caribbean is beset by complex power relations and remains engaged in an incomplete process of constitutional development that reaches into, and is impacted by, the global space. The benefits of creolization in this context include its embrace of fluidity, its ability to break down boundaries and the creative dimension of the concept- that it leads to the generation of fresh ideas and practices. Creolization therefore has the potential to supply tools to reach into the past to cultivate the future as well as to speak across jurisdictional boundaries.

Creolization, however, is not without its detractors. It has been viewed as exclusionary on the basis that its historical origins referred to African and European populations in the region and did not take account of Sino- and Indo-Caribbean peoples (Khan, 2001). The perceived erasure of Asian descendants made the term especially problematic in the racial and cultural context of Trinidad and Tobago. Creolization has also been said to represent idealized mixture, which masks crucial differences and ruptures. The concern is partly that, in prioritising and privileging fusion, creolization ignores real, impactful differences and discourages subversion (Khan, 2001). The experience of creolization is also said to rest upon and celebrate hegemonic power dynamics, stratifying citizens and cultures rather than benignly mixing them. However, modern adherents of creolization argue that it can represent the empowerment of marginalized peoples, by championing a right to be different, to operate outside imposed categories and to create imaginaries from what exists (Glissant, 2008). Further, despite its arguably limited origins, the term has evolved substantially and encompasses a broad range of cultures and experiences.

Consequently, the objective of creolizing constitutional law and constitutional engagement in the region requires adoption of the creative dimensions of the concept— "the good side of creolization"- while rejecting the negative qualities of hegemony and dominance (Hall, 2003, p. 31). Recent jurisprudence of the autochthonously established Caribbean Court of Justice provides a blueprint for a creolized model of Caribbean constitutional interpretation and implementation. The CCJ, through its constitutional analysis, has shown how Caribbean constitutions can be understood and applied in a manner reflective of, and sensitive to, the history and dynamics of Caribbean societies. This approach is vivid in three cases in particular: *Maya Leaders Alliance*, *Nervais* and *McEwan*. The cases address very different issues but each

highlights themes of creolization, including mixture of local and external influences, reckoning with the past and respecting difference. Moreover, the cases highlight these themes in the course of delivering justice for marginalized groups, particularly indigenous peoples, prisoners and LGBTQ persons.

The CCJ in *Maya Leaders Alliance* found that the Government of Belize had violated the rights of the indigenous Maya peoples by failing to create laws that protect property rights of indigenous peoples to customary land. The Court moved beyond a purely Eurocentric view of land ownership by acknowledging that indigenous peoples owned land before European arrival and that this ownership is entitled to recognition. The CCJ ordered the Government of Belize to create a fund for the purpose of developing measures to identify and protect Mayan property rights. In arriving at this conclusion, the Court referred to a need for 'redress for centuries of oppression endured by the Maya people since the arrival of the European colonisers' and framed the judgment as 'a form of reparation' for the Maya people ((*Maya Leaders Alliance v Attorney General of Belize*, 2015, para. 75). The decision reflects the respect for different cultures that must form an aspect of creolized Caribbean constitutional law. It demonstrates a Caribbean constitutional organ giving a voice to marginalized peoples who struggle to make their voices heard. The judgment also involves a mixture of domestic localised constitutional reasoning and awareness of international standards. The reasoning was grounded in the domestic Constitution but also referred to international law in the form of the Inter-American Convention on Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples and opinions of the Inter-American Court of Human Rights as well as foreign domestic law from courts such as the Supreme Court of Canada and the Constitutional Court of Indonesia. The CCJ demonstrated a means of crafting a constitutional approach that is respectful of difference, mindful of past wrongs and grounded in domestic rights, but deeply aware of international standards.

This creolized approach was to bear fruit in the CCJ's limitations on the savings law clause in *Nervais v R* (2018) and *McEwan v R* (2018). In both cases the Court developed a highly restrictive interpretation of savings law clauses and thereby rejected the colonial mindset reflected in these clauses in favour of modern Caribbean constitutionalism. The Court in *Nervais* invalidated the pre-Independence mandatory death penalty in Barbados on the ground that it violated the guarantee of protection of the law in section 11 of the Bill of Rights. The Barbadian savings law clause only protected laws from inconsistency with sections 12-23 of the Bill of Rights so the CCJ held that the savings clause did not apply in this case. Constitutional rights were framed in equalising terms as the CCJ explained that 'protection of

the law…affords every person, including convicted killers, adequate safeguards against…fundamental unfairness or arbitrary exercise of power' (*Nervais v R*, 2018, para. 45). Moreover, the Court rejected the idea of insulation of pre-Independence laws and the notion that 'the function of the Bill of Rights was to police post-independence laws, not past laws' (*Nervais v R*, 2018, para. 57). Rejecting the automatic protection of colonial laws, the Court stated:

> The general saving clause is an unacceptable diminution of the freedom of newly independent peoples who fought for that freedom with unshakeable faith in fundamental human rights. The idea that even where a provision is inconsistent with a fundamental right a court is prevented from declaring the truth of that inconsistency just because the laws formed part of the inherited laws from the colonial regime must be condemned. (*Nervais v R*, 2018, para. 58)

This posture was maintained in the *McEwan* case, in which the Court struck down a prohibition on cross-dressing. The law was set out in section 153 of the Summary Jurisdiction (Offences) Act of Guyana, which made it a crime for a man to wear female attire or a woman to wear male attire in a public place 'for an improper purpose'. The CCJ found that section 153 violated the appellants' right to equality and non-discrimination and was so vague that it undermined the rule of law. While section 153 was first enacted before Guyana became independent, it was held that the general savings clause of Guyana's Constitution did not protect the law because the law had been substantially amended post-Independence and, as such, was no longer an 'existing law'. Much like the *Maya Leaders Alliance* judgment, *McEwan* involved a critical assessment of the colonial past and the development of a Caribbean constitutionalism that is rooted in the local but sensitive to the international (*McEwan v R*, 2018). Referring to social science research, Justice Saunders' analysis referred to the dominating objectives and exclusionary impact of the law in question: 'The laws were designed to regulate and exercise control of both the ex-slave population and, in places like Guyana, the newly imported indentured labourers….The laws, which also regulated gender and religion, were rigorously enforced by magistrates and police' ((*McEwan v R*, 2018, para. 30).

In this series of cases the CCJ cultivated a Caribbean constitutional law that is responsive to historical wrongs and seeks to protect the rights of marginalized peoples within the context of domestic constitutional norms and international human rights standards. This contextual approach, that respects and mixes local and external influences, while carving out a Caribbean space, is reflective of the dynamics of creolization. Such an approach shows that a Caribbean

constitutional identity can be developed that respects the diverse communities within the region through the tools provided by Caribbean constitutions.

A more systemic creolized constitutionalism can be achieved through constitutional redesign and patriation of the constitutions and state institutions alongside the use of a blended constitutional approach such as that adopted by the CCJ in the three cases outlined above. However, to date there has been limited constitutional reform in the Commonwealth Caribbean (O'Brien and Wheatle, 2012). Creolization could also manifest in the approach to constitutional reform and the mechanisms through which constitutional doctrines are created and experienced. It is one thing for the constitution to be creatively designed and tailored to meet the needs of diversity and compromise but respect for its principles also requires meaningful participation from vulnerable groups in the reform process and positive experiences in the everyday application of its norms. The creativity, compromise and remaking espoused by creolization reflects this concern with a broader engagement with groups that have been dominated by the constitutional agendas and preferences of elite groups. Discussions about judicial reform and the legislative processes have mainly been dominated by national-level civil society groups and the political elite. To counterbalance this lopsided tendency, the enactment of the law in everyday spaces would have to be imbued with this sense of creativity, rupture, and the long struggle towards building constitutional faith. Meaningful input from a more diverse group would provide an avenue for consensus building and reflection as well as an opportunity to centre the law within the social and cultural milieu.

Truth and Reconciliation Commissions created with the right intentions might also provide another mechanism for realizing a creolized vision of constitutional law. Such Commissions feed constitutional processes because they normally examine issues of constitutional and national significance and provide an accessible means of connecting constitutional principles to questions of justice, identity, nationhood and the imagined future. While a Truth and Reconciliation Commission does not guarantee justice or the implementation of its recommendations, it reaches into the past in an attempt to create a future that guards against revisionist history, distrust in the law and 'constitutional scepticism.' The Grenada Truth and Reconciliation Commission 2001 was tasked with examining one of the most significant periods in Grenada's history- the Grenada Revolution and its culmination. The Commission 'enquired into political events which occurred in Grenada during the period 1976-1991 with particular reference to events leading up to and including those of 13th March 1979; certain shooting deaths during March to December 1983; events leading up to and including those of 19th October 1983 when various persons including Prime Minister Bishop and other

Ministers of Government died … and foreign intervention by armed forces of the United States and the Caribbean.' This enquiry provided a moment to reflect on Grenada's past, to engage in conversations related to human rights, the law and the wider global context. Faith in Caribbean constitutionalism can be engendered through these mechanisms which seek to create or legitimize new institutions and ensure that there is a reckoning with the past.

Similarly, Commissions of Enquiry, typically established through Commissions of Enquiry legislation, have been used (since the 19th century) to examine matters of a constitutional nature in the Commonwealth Caribbean. When used to investigate human rights violations, they provide an opportunity to explore new ways of restoring faith in the constitution and can be used to improve transparency and accountability in public services. One such commission was the Western Kingston Commission of Enquiry, discussed in Part 4, which was established to investigate alleged human rights violations during the Tivoli Incursion (as defined by residents of Tivoli) or Operation (as defined by state actors) that took place in May 2010 when the state responded to attacks precipitated by the planned extradition for the 'drug kingpin' Christopher 'Dudus' Coke. In arriving at its recommendations- which included an apology from the state for the use of excess force and compensation as a means of redress- members of the Commission pointed to the ways in which these measures would assuage 'the hurt feelings, bitterness and resentment of the people of West Kingston' towards the state (Western Kingston Commission of Enquiry, 2016, p. 478).

6. Conclusion

Caribbean constitutionalism is in an embryonic stage; it remains incomplete, encumbered by colonial sentiments and laws and weakened by the unresolved vestiges of the past. The constitutions of the Commonwealth Caribbean did not emerge from an indigenous process. Rather, the Westminster Whitehall model was exported at the time of independence with very little effort to adapt it to the realities of the Caribbean. The process of state formation therefore suffered from an over-emphasis on European retention and the absence of constitutions that had broad based legitimacy among citizens. The Caribbean, with its multicultural and pluralistic orientations, remains deeply divided along ethnic, racial, political and cultural lines. Encouraging the growth of Caribbean constitutional identity requires recognition of the intersecting and divergent communities and practices of the region. True constitutional patriation must manifest in textual, institutional and cultural forms; it requires reckoning with the past but with an eye towards the future.

Through a more 'Caribbeanized' constitutional identity, the constitutions of the Caribbean must play a role in building consensus around a collective vision that strengthens the legitimacy and faith in the legal apparatus. Faith in the constitution remains elusive, both in reality and in the imaginations of many. The inequitable distribution of, or failure to provide, important public goods, which are directly tied to *de jure* constitutional provisions, has contributed to lack of faith in the constitution. Faith in the constitution is therefore easily superseded by identity politics and more particularistic facets of identity. The region must also contend with the emergence of global constitutional rights, which demands a creative and fluid process of building constitutional identity. Creolization represents a means by which the Commonwealth Caribbean can engage in this creative process. Creolization as a concept offers a way of conceptualising how to both transcend and reckon with the past and the Caribbean's history of slavery and colonialism while striving towards the goals and aspirations of a diverse collective.

References

Anckar, D. (2007). Westminster Lilliputs? Parliaments in Former Small British Colonies. *Parliamentary Affairs*, 60(4), pp.637-654

Antigua and Barbuda Electoral Commission, '2018 Referendum Results' http://www.abec.gov.ag/referendum_2018/results.php

Antoine, R-M B. (2005). Waiting to Exhale: Commonwealth Caribbean Law and Legal Systems (2005) *Nova Law Review*, 29(2), pp. 141-169

Edward Brathwaite. The Development of Creole Society in Jamaica, 1770–1820. New York: Oxford University Press. 1971. Pp. xvi, 374

Burnham, M. (2005). Saving Constitutional Rights from Judicial Scrutiny: The Savings Clause in the Law of the Commonwealth Caribbean. *University of Miami Inter-American Law Review*, 36, pp. 249-269

Balkin, J. (2011). *Constitutional redemption*. Cambridge, Mass: Harvard University Press.

Burnham, M. (2005). Indigenous constitutionalism and the death penalty: The case of the Commonwealth Caribbean. *International Journal of Constitutional Law*, 3(4), pp.582-616

Campbell. Y. (2020a). *Citizenship on the Margins: State Power, Security and Precariousness in 21st Century Jamaica*. New York: Palgrave Macmillan

Campbell, Y. (2020b). Rights and National Security. In R. Albert, D. O'Brien and S. Wheatle, ed., *Oxford Handbook of Caribbean Constitutions*. Oxford: Oxford University Press. (forthcoming)

Campbell, Y., and Clarke, C. (2017). The Garrison Community in Kingston and its Implications for Violence, Policing, De Facto Rights and Security in Jamaica. In T. Higlers and L. Mcdonald (Eds.), *Violence in Latin America and the Caribbean: Subnational Structures, Institutions and Clientelistic Networks*. (pp. 93-111). Cambridge University Press.

Caribbean Media Corporation, 'Grenada: Prime Minister Mitchell disappointed at results' https://www.stlucianewsonline.com/grenada-prime-minister-mitchell-disappointed-at-results/

Constitution of St Christopher and Nevis

Boyce v R [2004] UKPC 32 (Judicial Committee of the Privy Council, Barbados)

Collymore v AG (1967) 12 WIR 5 (Court of Appeal, Trinidad and Tobago)

Smith, S. A. D. (1961). Westminsters export models: The legal framework of responsible government. *Journal of Commonwealth Political Studies*, *1*(1), 2–16. doi: 10.1080/14662046108446955

DPP v Nasralla [1967] 2 AC 238 (JCPC, Jamaica)

DPP v Tokai [1996] AC 856 (JCPC, Trinidad and Tobago)

Fisher v Minister of Home Affairs [1980] AC 319 (JCPC, Bermuda)

Julian Robinson v Attorney General of Jamaica [2019] JMFC Full 04 (Supreme Court, Jamaica)

Lewis v Attorney General of Jamaica [2001] 2 AC 50 (JCPC, Jamaica)

Matthew v State of Trinidad and Tobago [2004] UKPC 33 (JCPC, Trinidad and Tobago)

Maya Leaders Alliance v Attorney General of Belize [2015] CCJ 15 (Caribbean Court of Justice, Belize)

McEwan v R [2018] CCJ 30 (CCJ, Guyana)

Nervais v R [2018] CCJ 19 (CCJ, Barbados)

Pratt v Attorney General of Jamaica [1994] 2 AC 1 (JCPC, Jamaica)

Elkins, Z and Ginsburg, T. (2011). *Constitutional Reform in the English Speaking Caribbean: Challenges and Prospects* (Conflict Prevention and Peace Forum)

Helfer, L. (2002). Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash against Human Rights Regimes. *Columbia Law Review*, *102*(7), 1832. https://doi.org/10.2307/1123662

Henriques, F. (1953). *Family and Colour in Jamaica.* Eyre & Spottiswoode, 1st Edition

Girvan, N. (2015). Assessing Westminster in the Caribbean: then and now. *Commonwealth & Comparative Politics*, *53*(1), 95–107. doi: 10.1080/14662043.2014.993162

Glissant, E. (2008). Creolization in the Making of the Americas. *Caribbean Quarterly*, *54*(1-2), 81-89. https://doi.org/10.1080/00086495.2008.11672337

Stuart Hall, 'Créolité and the Process of Creolization' in Okwui Enwezor (ed) *Créolité and Creolization* (Distributed Art Pub Incorporated 2003) 31

Jackson, L. (2013). 'Fi We Law: The Emergence of Caribbean Jurisprudence and the Doctrine of Precedent. In D.S. Berry & T. Robinson (Eds.) *Transitions in Caribbean Law* (pp. 3-32). Jamaica: Caribbean Law Publishing Company.

Jacobsohn, G. (2006). Constitutional Identity. *The Review Of Politics*, *68*(3), 361-397. https://doi.org/10.1017/s0034670506000192

Jamaican Justice System Task Force: Final Report (Ministry of Justice 2007)

Joint Select Committee on Constitutional and Electoral Reform 'Report of the Joint Select Committee on its Deliberations on the Bill Entitled An Act to Amend the Constitution of Jamaica to Provide for a Charter of Rights and For Connected Matters' (2002)

Khan, A. (2001). Journey to the Center of the Earth:The Caribbean as Master Symbol. *Cultural Anthropology*, *16*(3), 271-302. https://doi.org/10.1525/can.2001.16.3.271

Levinson, S. (1988). *Constitutional Faith*. Princeton: Princeton University.

Liu, G., Karlan, P., & Schroeder, C. (2010). *Keeping faith with the Constitution*. New York: Oxford University Press.

Mintz, S.W., and Price, R. (1976). *An Anthropological Approach to the Afro-American Past: A Caribbean Perspective*. Philadelphia: Institute for the Study of Human Issues.

Munroe, T. (1972). *The Politics of constitutional decolonization*. Institute of Social and Economic Research, University of the West Indies.

O'Brien, D., and Wheatle, S., (2012) Post-Independence constitutional reform in the Commonwealth Caribbean and a new charter of fundamental rights and freedoms for Jamaica. *Public Law*, 683-702.

Premdas, R. (2004). Elections, Identity and Ethnic Conflict in the Caribbean. *Pouvoirs Dans La Caraïbe Revue Du Centre De Recherche Sur Les Pouvoirs Locaux Dans La Caraïbe*, (14), 17-61. https://doi.org/10.4000/plc.246

Price, R. (2017). Créolisation , Creolization, and Créolité. *Small Axe*, *21*(1 52), 211-219. https://doi.org/10.1215/07990537-3843962

Ragoonath, B. (1999). Participative democracy or party/race consolidation. *Pouvoirs Dans La Caraïbe Revue Du Centre De Recherche Sur Les Pouvoirs Locaux Dans La Caraïbe*, (11), 199-225. https://doi.org/10.4000/plc.513

Rediker, E. (2013) Courts of Appeal and Colonialism in the British Caribbean: A Case for the Caribbean Court of Justice. *Michigan Journal of International Law*, 35, 213

Report of The Commission Of Enquiry Appointed To Enquire Into Events Which Occurred In Western Kingston And Related Areas In May 2010 (2016). Retrieved from https://moj.gov.jm/news/report-western-kingston-commission-enquiry-2016

Robinson, T. (2008). Gender, Nation and the Common Law Constitution. *Oxford Journal Of Legal Studies*, *28*(4), 735-762. https://doi.org/10.1093/ojls/gqn024

Stone, C. (1976). Class and the Institutionalisation of two-party politics in Jamaica. *The Journal of Commonwealth & Comparative Politics*, *14*(2), 177–196. doi: 10.1080/14662047608447258

Stone, C. (1983). *Democracy and Clientelism in Jamaica*. London: Transaction Books.

Stapenhurst, F., Staddon, A., Draman, R., & Imbeau, L. (2018). Parliamentary oversight and corruption in the Caribbean: comparing Trinidad & Tobago and Grenada. *Commonwealth & Comparative Politics*, *56*(4), 493–522. doi: 10.1080/14662043.2018.1444933

Stiles, M., and Darby, D., 'Justice Reform in CARICOM: Analysis and Programming Options' (Canada International Development Agency, 2012). Retrieved from http://juristproject.org/images/publications/Justice_Reform_in_CARICOM_-_Analysis_and_Programming_Options_-_January_2012.pdf

Swinburne, R. (2005). *Faith and Reason*. New York: Oxford University Press.

Watson v The Queen [2004] UKPC 34 [2005] 1 AC 472 (JCPC, Jamaica)