

Introduction



THE INDEPENDENT COUNTRIES of the Commonwealth Caribbean comprise a group of islands and archipelagos—Antigua and Barbuda (henceforth abbreviated for reasons of space to Antigua), the Bahamas, Belize, Dominica, Grenada, Jamaica, Saint Christopher and Nevis (henceforth St Kitts), Saint Lucia (henceforth St Lucia), Saint Vincent and the Grenadines (henceforth St Vincent) and Trinidad and Tobago (henceforth Trinidad)—which form a wide arc between Florida in the north and Venezuela in the south.¹ To this group must be added the mainland countries of Belize in Central America and Guyana in South America. These countries vary enormously in terms of their size, their populations, their ethnic composition and their economic wealth. In terms of sheer land mass, Guyana is by far the largest country in the region, with a land area of 214,970 square kilometres, which places it eighty-third in the world. The next largest is Belize, with a land area of 22,966 square kilometres. These countries apart, the remaining countries in the region are among the smallest in the world, many with land areas of less than 500 square kilometres—Barbados, Grenada, St Kitts and St Vincent. Land area does not, however, in all cases equate either to population or wealth. Thus, the most populous country in the region by far is Jamaica with a population of 2,706,000, which is more than double that of the second most populous, Trinidad, which has a population of 1,324,699, though some of the smaller islands—Antigua, Dominica, Grenada, St Kitts and St Vincent—do have correspondingly small populations, which hover around 100,000 or less. Measured in terms of Gross Domestic Product (GDP) per capita the Bahamas, which is by no means the

¹ There are also a number of British Overseas Territories located in the Caribbean—Virgin Islands, Turks and Caicos, Cayman Islands, Montserrat and Anguilla—but they are not the subject of this book.

2 Introduction

largest country in the region, is by far the wealthiest, with a GDP per capita figure of nearly US\$22,000, which is comparable to that of a number of European countries.² On the other hand, Belize, Guyana and Jamaica, with GDP per capita figures of US\$4218, US\$2920 and US\$4969 respectively, are among some of the poorest countries in the Western hemisphere. Though most of the countries are racially very homogenous, there is a small but significant Chinese community in Jamaica, and both Guyana and Trinidad are ethnically very divided with large Afro-Caribbean and Indo-Caribbean populations.³

Their diversity notwithstanding, what links these countries, what distinguishes them from their neighbours in the wider Caribbean region and what makes a book like this possible at all, is their shared experience of colonial rule under the British Empire. Not only are their legal systems based predominantly on the English common law, but upon attaining independence in the 1960s, 1970s and 1980s⁴ each country also adopted a constitution (henceforth referred to as the 'Independence Constitution') which incorporated the so-called 'Westminster model' of government, albeit within a context in which the Constitution is supreme and in which certain fundamental rights and freedoms are guaranteed by the Constitution. These Independence Constitutions, which form the core of the subject-matter of this book, have been much criticised by Commonwealth Caribbean scholars for being neither original, in the sense that they replicate to a large extent the system of government introduced by the former colonial power prior to independence; nor autochthonous, in the sense that they came into existence, not as the result of an act of a local constituent assembly established for the purpose of ratifying a new constitution, but by virtue of an Act of the imperial Parliament in Westminster.⁵

² Such as Greece, Portugal and Slovenia. Figures produced by the World Bank.

³ See S Ryan, *Race and Nationalism in Trinidad and Tobago: A Study of Decolonisation in a Multi-Racial Society* (Toronto, University of Toronto Press, 1973).

⁴ Jamaica and Trinidad and Tobago attained independence in 1962. They were followed by Barbados and Guyana in 1966; the Bahamas in 1973; Grenada in 1974; Dominica in 1978; St Lucia and St Vincent and the Grenadines in 1979; Belize and Antigua and Barbuda in 1981; and finally St Kitts and Nevis in 1983.

⁵ Eg, Jamaica Independence Act 1962. See further S McIntosh, *Caribbean Constitutional Reform: Rethinking the West Indian Polity* (Kingston, Jamaica, Caribbean Law Publishing Company, 2002) 294.

Undoubtedly, there is some force in these criticisms and the influence of the particularly British version of the Westminster model of government incorporated within the Independence Constitutions can be seen on a number of different levels. It is there, for example, in the office of the Governor General, serving as the Queen's representative, and exercising similar prerogative powers, in all the countries in the region which embarked upon independence as constitutional monarchies; the exception being Dominica, which embarked upon independence as a republic. It is there in the decision by all the countries in the region, with the exception of Guyana (for reasons considered in chapter three), to continue with a 'first past the post' electoral system even though this was, arguably, unsuited to countries with very small populations, or to a country such as Trinidad where politics is divided along racial lines. The British influence is also there in those countries which retained a bicameral legislature, which included a nominated second chamber—a much criticised feature of the old colonial legislatures. And, finally, it is there, albeit indirectly, in the decisions of all countries in the region to vest ultimate legal sovereignty in the Judicial Committee of the Privy Council (JCPC) based in London which, until relatively recently, has served as the final court of appeal for all the independent countries in the region, with the exception of Guyana, which abolished the right of appeal to the JCPC when it became a republic in 1970.

Set against this, however, it could be argued that the lack of originality of the Independence Constitutions was not due to any lack of vision or imagination on the part of the region's political leaders at the time of independence, but was instead the result of pure political pragmatism. As Norman Manley, Premier of Jamaica at the time its Independence Constitution was being negotiated explained:

I make no apology for the fact that we did not attempt to embark upon any original or novel exercise for constitution-building. We had a system which we understood; we had been operating it for many years with sense. It's a system which has endured in other countries for generations successfully. It is a system which is consistent with the sort of ideals we have in this country, and it was not difficult to decide that we would follow that familiar system with those modifications which we thought the circumstances of Independence deserved.⁶

⁶ Quoted by LG Barnett, *The Constitutional Law of Jamaica* (Oxford, Oxford University Press, 1977) 25.

It could also be argued that if the definition of autochthony is extended to include a constitution which is based on the informed choice of the people exercised through their elected representatives, then the Independence Constitutions largely satisfy such a definition. They may also have acquired autochthonous status by virtue of the sheer force of their longevity, having now endured in some cases for more than 50 years. During this period, the fundamental institutions and principles of the Westminster model—parliamentary democracy, Cabinet government, an independent public service, the rule of law and separation of powers, all of which are embodied in the Independence Constitutions—have come to be widely accepted across the region, with the exception of Guyana, which remains very much a special case. Some scholars even argue that the decision to cleave to the Westminster model of government has done much to underpin the relative political stability which the region has enjoyed since independence.⁷ Certainly, if measured in terms of the holding of regular free and fair elections, resulting in the peaceful transition of power from one government to another, Britain's former colonies in the Caribbean could be said to have exhibited a capacity to sustain liberal democracy which is far superior to that exhibited by former British colonies in Africa and Asia, for example, and to that of the former colonies of other major powers.⁸

It would be wrong, however, to characterise the Commonwealth Caribbean as a paragon of postcolonial political stability, for it is possible—even if we exclude Guyana during its experiment with socialism under Forbes Burnham—to point to several instances where liberal democratic government has been threatened, and even one instance where it has been completely overthrown. In Trinidad, for example, the government came perilously close to being overthrown by the Black Power Revolution of 1970;⁹ and, in 1990, there was a further attempted coup when members of the Jamaat al Muslimeen—a sect of Afro-Trinidadian Muslims—seized, and held hostage at gunpoint, the

⁷ A Payne, 'Westminster Adapted: The Political Order of the Commonwealth Caribbean' in JI Dominguez, RA Pastor and D Worrell (eds), *Democracy in the Caribbean* (Baltimore, John Hopkins University Press, 1993) 57.

⁸ JI Dominguez, 'The Caribbean Question: Why has Liberal Democracy (Surprisingly) Flourished?' in Dominguez, Pastor and Worrell (eds), *Democracy in the Caribbean*, above (n 7).

⁹ S Ryan, *The Black Power Revolution of 1970: A Retrospective* (St Augustine, Trinidad, ISER, University of the West Indies Press, 1995).

Prime Minister, six other Cabinet ministers and several other MPs in the country's Parliament building. This rebellion was only brought to an end after the Acting President granted an amnesty to the rebels pursuant to section 87(1) of the Constitution.¹⁰ In Dominica, too, democratic government has come under threat when, following independence in 1978, there was an almost immediate breakdown of law and order, as exemplified by the disarmament of the Dominica Defence Force on the discovery that its weapons were being exchanged with members of the local Rastafarian community, known as the 'Dreads', in return for marijuana. As a result of this disorder, both the President and the first Prime Minister, Patrick John, were obliged to flee the country. In 1981, the new Prime Minister, Eugenia Charles, announced that she had received information of a plot to overthrow her government and it later emerged that the plot involved Ku Klux Klan activists and a group of mercenaries from the United States who were to be paid a large sum of money in return for restoring the former Prime Minister, Patrick John, to office.¹¹ Elections in a number of countries, including Guyana, Trinidad and Jamaica have also been marred by serious violence: in Jamaica alone there were 800 murders attributed to political violence in 1980, the year of the general election. But without doubt the most serious and sustained threat to democratic government was the revolution in Grenada, in 1979, when the New Jewel Movement, led by Maurice Bishop, used the Prime Minister's temporary absence from the island to seize power and establish a People's Revolutionary Government (PRG), which survived until 1983 when its leader was executed by members of the People's Revolutionary Army (PRA) and a Revolutionary Military Council, led by General Austin, the head of the PRA, succeeded to power. The latter's period in power was, however, to be very short lived: within a matter of days it was, in its turn, overthrown by an invasion force led by US marines, supported by members of the armed forces of Jamaica and Barbados, and democratic government was eventually restored to the island.¹²

¹⁰ F Phillips, *Commonwealth Caribbean Constitutional Law* (London, Cavendish Publishing, 2002) 173.

¹¹ *Ibid.*, 199–206.

¹² A Payne, P Sutton and T Thorndike, *Grenada: Revolution and Invasion* (New York, St Martin's Press, 1984).

Though it could be argued that these are rather extreme and somewhat isolated examples that do not ultimately undermine the long term political stability in the region that is associated with the Westminster model, there has nevertheless been a pervasive undercurrent of dissatisfaction with the Westminster model throughout the region, which is regarded by many Commonwealth Caribbean scholars as being entirely unsuited to the task of promoting representative and responsible government. Thus, it is argued that the tendency of the Westminster model to concentrate power in the executive and, within the executive, in the office of the Prime Minister, has led to an autocratic style of government. It is further argued that local legislatures, because they are relatively small and dominated by government ministers, are weak and ineffectual, unable to provide the check upon executive power that is, in theory at least, such a crucial element of the Westminster model. Finally, it is argued that the first past the post electoral system which, with the exception of Guyana is the electoral system of choice across the region, has encouraged a 'winner takes all' political culture, and this has led in turn to the corruption of public life in general and the emergence of 'clientilism' in a number of countries.¹³

This book seeks to contribute to this ongoing discourse by offering a contextual approach to the study of the constitutional systems of the Commonwealth Caribbean. This will not only entail taking due account of the region's colonial past and the disfiguring effect of slavery upon its constitutional development, but will also entail recognising the challenges to post-independence constitutionalism that the region has faced; in particular, the small size of many countries in the region, their relative poverty, their economic vulnerability and the ethnic tensions that continue to pervade countries such as Guyana and Trinidad.

I will begin, in chapter one, by providing an overview of the region's constitutional history; charting the effect of the sugar industry and the slave trade upon the transition from the original 'representative system' of government, established when the first islands were settled by the British in the mid-seventeenth century, to the system of 'Crown Colony rule' government under which most of the countries in the region were

¹³ S Ryan, *Winner Takes All: The Westminster Experience in the Caribbean* (St Augustine, Trinidad, ISER, University of the West Indies Press, 1999) 317.

governed during the twentieth century, up until independence in the 1960s, 1970s and 1980s.

In the chapters that follow I will explore the constitutional framework embodied in the Independence Constitutions. Thus, in chapter two, I will examine the constitutional role and functions of the head of state who, in most countries, is a Governor General, appointed by the reigning British monarch to serve as their representative in the country concerned. I will also examine the debate that continues to rage across the region about replacing the British monarch with a president appointed locally, and consider the constitutional impact that has occurred in countries such as Dominica and Trinidad, which have abandoned constitutional monarchy in favour of republicanism.

In chapter three, I will examine the constitutional framework that surrounds the management, conduct and financing of elections. I will also examine the operation of the first past the post electoral system, which is the electoral system of choice for all the countries in the region, with the exception of Guyana, but which has been associated with a number of problems, not the least of which is its tendency to exaggerate the popularity of the winning party, resulting in what have been characterised as ‘elective dictatorships’ which encourage clientilism.

In chapter four, I will examine the constitutional framework within which Cabinet government functions and the mechanisms that exist for ensuring that the government is held politically accountable. I will also look at the constitutional framework surrounding the relationship between the government and the public service, and reflect upon how this relationship has been affected by the region’s changing political, social and economic environment.

In chapter five, I will examine the structure and internal characteristics of the region’s parliaments and the ways in which the former determine the latter’s relationship with the other key components of the Westminster model of governance: the executive and the judiciary. This examination will encompass the rules governing qualification for membership of Parliament; the roles played by the Leader of the Opposition and the Speaker; the privileges and immunities afforded to MPs; and the regulation of members’ financial interests.

In chapter six, I will examine the role of the courts in upholding the principle of constitutionalism by ensuring that the executive and the legislature do not exceed the limitations imposed upon each by the Constitution. This will necessarily entail an examination of the institutional

arrangements in place at the national and sub-regional levels for securing judicial independence and the extent to which these institutional arrangements have been undermined by the wider political culture in the region. I will also examine the efforts of the region's political leaders to reclaim ultimate legal sovereignty by substituting the Caribbean Court of Justice (CCJ) in place of the JCPC as the final appellate court for the region. I will then proceed to consider the juridical basis for the courts' powers of constitutional review and the principles of constitutional interpretation that have been developed by the courts and how these have been shaped by a final appellate court—the JCPC—which is geographically and culturally remote from the region.

In chapter seven, I will examine regional efforts through organisations such as the Caribbean Community and Common Market (CARICOM) and the Organisation of Eastern Caribbean States (OECS) to respond to the pressures of globalisation and the erosion of trade preferences for the region's exports by establishing a Caribbean Single Market and Economy (CSME) and an Eastern Caribbean Single Market and Economy (ECSME) respectively. I will be concerned, in particular, to explore the constitutional implications for national sovereignty that arise from the vesting of the CCJ and the Eastern Caribbean Court of Appeal (ECCA) with a supervisory jurisdiction over the interpretation and application of the treaties governing the CSME and ECSME respectively, which are similar in many ways to those that had to be confronted by Britain upon its accession to the European Community (as it was then known).

In conclusion, I will explore the debate surrounding post-independence constitutional reform in the region and examine the reasons why, despite its manifest deficiencies, there have been, Guyana apart, relatively few tangible reforms to the Westminster model of government in the 50 years since independence.