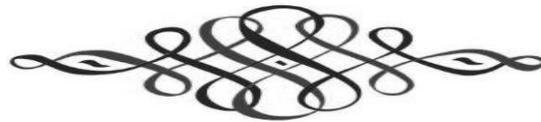


Justice Reform and Emancipation: The Lessons and the Legacy*

Presented by

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PRESIDENT
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**Jamaica's Annual Emancipation Lecture
Webster Memorial United Church**

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*Presented by the Right Honourable Sir Dennis Byron, President of the Caribbean Court of Justice at Jamaica's Annual Emancipation Lecture on Sunday, July 31st 2016 at the Webster Memorial United Church, Jamaica.

Introduction

August 1, 1834 symbolised the date on which slaves in the British Empire were legally granted freedom from their colonial masters. In Jamaica, the Emancipation Declaration, also called the “Proclamation of Freedom”, was read from the steps of the Old Kings House in Spanish Town, St Catherine, the then capital of the island. The Bill which abolished slavery in the British colonies received royal assent on August 28, 1838.

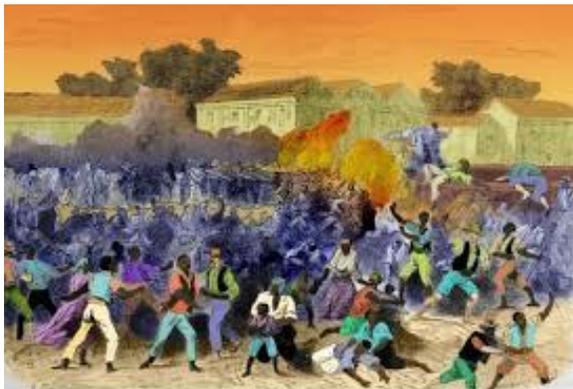
Slavery had a long history in Jamaica. Historians trace it back to the 1664 appointment of Sir Thomas Modyford as Governor of Jamaica and his introduction of a slavery-based plantation economy. It was a source of great economic and financial benefit. Eric Williams in his work “*Capitalism and Slavery*”, detailed the central role it played in funding the Industrial Revolution in Britain. At the same time, the most atrocious conditions were imposed upon the slaves, denying them even the recognition of being human, because under the British Law, the slave was regarded as property and not as a human being. This was one of the terrible aspects of slavery because it denied basic human rights to its victims with horrific effects.

The legal structure that existed during this time in Jamaica legitimized the system of slavery and sanctioned its abuses throughout the island. The planters dominated all branches of government and they served as magistrates. This concentrated power effectively placed Jamaica’s internal affairs in the hands of a small elite class of planter families. Emancipation ushered in a period of history which commenced the extension of civil, economic, humanitarian and political rights to all people regardless of race and ethnicity. In the over one and three quarter centuries since Emancipation, there have been considerable improvements in the concepts and application of equality before the law. Without going into great detail, the initial period demonstrated that rights to economic benefits were unequally considered. The legislation that accompanied Emancipation included financial compensation to slave owners for the economic value of their loss of plantation labour. On the other hand, the former enslaved Africans were required to serve in the Apprenticeship system, which was itself a system that mirrored slavery in many respects and was aimed not at the welfare of the former slaves but to assist the plantation owners to weather the difficulties of the transition from slave labour. This process was gradual and it was

more than a century before every citizen here had the right to vote and participate in the governance of the country.

Today we celebrate the symbol of Emancipation through the eyes of judicial reform. In this context, I want to recall, at least *en passant*, that the Jamaican society is highly diverse but it came from a mixture of indigenous peoples, and peoples from the continents of Europe, Africa and Asia, all living in a society dominated by the white Europeans and to reflect that the impact of emancipation and its related philosophies contributed to human development, and the development of a society that is based on human equality.

The Historical Context



Above - Artist's rendition of the Morant Bay Rebellion in Jamaica

In Jamaica it has become common to express concerns about the effectiveness of the judicial system. I think that it would be interesting to review briefly an incident that rocked society shortly after emancipation. There is the story of the Morant Bay Rebellion in 1865 and its aftermath, as told by Sarah Winter in “*On the Morant Bay Rebellion in Jamaica*”.¹ The rebellion arose

out of grievances by Black Jamaicans about the justice system presided over by white magistrates who were often landowners. It involved loss of life and damage to property, and created fear of wider rebellion against colonial rule in Jamaica. Colonial reaction was swift and martial law was declared, leading to an influx in Morant Bay of troops who participated in the killing of 439 Black Jamaicans and flogging of 600 others, including many women, and the demolition of houses and huts. In addition, several people were detained without charges, and one prominent advocate against the colonial governor was executed. The Jamaica Assembly passed legislation granting full protection, and indemnity from legal liability and process, to the Governor and all who participated in these actions.

¹Sarah Winter, “On the Morant Bay Rebellion in Jamaica and the Governor Eyre-George William Gordon Controversy, 1865-70.”

There was no redress in the justice system in Jamaica at that time. But when the public outcry reached England, attempts were made to have the Governor charged for crimes, including murder. These efforts were unsuccessful. But the colonial government set up a commission of enquiry which reported on the incident. The main effect of the commission was the recall of the Governor. Shortly after in 1866, Jamaica became a Crown Colony under a Governor and a nominated Council. This change in government contributed to the increased political influence of elites in Jamaica.

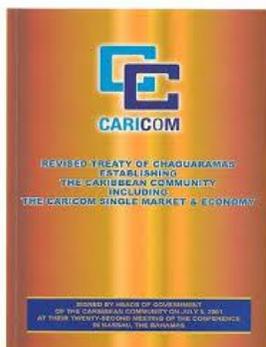
The situation today is different as Jamaica now has an independent and sovereign government based on a written constitution. There have been important developments which have impacted the entire basis on which justice is delivered today. I would like to highlight three of them:

- *Universal Declaration of Human Rights* attracted universal acceptance that all people are equal and entitled to human dignity and pride. This concept has influenced the administration of justice in Jamaica as well as the rest of the world and is reflected in all aspects of society. In recalling the journey from the past, we have to be grateful that today there is now recognition of universal suffrage and the right to vote and participate in the selection of the governance of our community. The concept of colonialism is now accepted as being incompatible with the concept of human equality and dignity and pride; and the country enjoys political independence.

- *The Constitution of Jamaica* is also an important historical landmark as we review judicial reform after Emancipation. The Jamaica Constitution of 1962 and its Bill of Rights provides safeguards for the basic human rights and fundamental freedoms of all citizens by establishing a framework within which these rights and freedoms are protected. The courts in Jamaica have over the years played an indispensable role as guardians of the Constitution by enforcing these rights and ensuring that the executive powers of the government are contained within international standards of good government. This has contributed to the overarching ability of the country's legal system to not only protect democracy but also advance the rule of law. This has been achieved

by promoting accountability and fairness by recognizing fundamental human rights through the ventilation of these issues before the courts. This illustrates the fact that the protection of human rights has been part and parcel of the evolution of judicial reform and the practice of good governance in Jamaica.

- *The Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (RTC)*² completes this part of my story because it reflects the vision of Caribbean leaders for the region, identifying their hope that the economic development and social stability of our region would be best served by strengthening integration and pooling resources as we assert our interests in the global sphere. Their vision included the acceptance of the Caribbean Court of Justice (CCJ) as the final arbiter of judicial affairs. This is part of our evolution as we realise the recognition of our human equality and dignity. It is worth recalling that, despite the almost worldwide jurisdiction of the Privy Council in the last century, today only 12 independent countries still have it as their final court; and 8 are in the Caribbean. The remaining 4 are small islands in the Indian and Pacific oceans. The smallest is Tuvalu, with a population of less than 10,000, and the largest is Mauritius, with a population of 1.2 million. In the Caribbean Community, we have a much larger land and population base, and I would think that our time has come to be equal and proud in our ability to run our judicial affairs.



Above - Cover art of the publication of the Revised Treaty of Chaguaramas

Regional Economic Integration – A Possible Solution?

The signatories of the Revised Treaty of Chaguaramas (RTC) possessed a vision that encompassed substantive ideals that extended well beyond trade ambitions. The signing of the RTC essentially affirmed the necessity of the Original Jurisdiction of the CCJ for the successful operation of the Caribbean Single Market and Economy (CSME); and provision was made in the RTC for the Court to have compulsory and exclusive jurisdiction to

²Signed on July 5, 2001 in Nassau, Bahamas by Heads of Government of the Community.

hear and determine disputes concerning its application and interpretation. It is envisioned that this compulsory and exclusive jurisdiction will foster an environment of economic and social stability throughout the Community.

In this context, it is noted that the Jamaican Government has recently established a Committee to review the relationship between Jamaica and CARICOM to study and make recommendations regarding Jamaica's position within the regional integration process.

The CCJ in its Original Jurisdiction has already supported Jamaica citizens in getting justice. The free movement of individuals throughout CARICOM is an important objective of the Revised Treaty for promoting economic development and social stability in the region. Freedom of movement was also inspired by the concept of human equality, ensuring that the movement of labour had the same rights as the movement of goods and capital, so that the benefits of CARICOM would be distributed to all levels of Caribbean societies.



Above - Shanique Myrie entering the Supreme Court of Barbados (photo courtesy the Nation News online)

The Court has already clarified the rights of freedom of movement of people in the famous case of the Jamaican *Shanique Myrie*.³ Not only has this case established that the judicial system is robust enough to compel enforcement of decisions, it has another aspect that I suggest is more important. Shanique Myrie did not have a power base, of any sort, but she had the courage to stand up for her rights. The CCJ afforded her the

opportunity to get justice in ways that did not exist before. I believe that the actions of Ms. Myrie can inspire and invigorate individuals across the region to involve themselves in the further extension of equal human rights by utilizing the court systems that are available to all.

I should recall that another Jamaican, Maurice Tomlinson, also brought a matter before the Court to enforce his rights of freedom of movement and human equality. In its Original Jurisdiction,

³*Shanique Myrie v Barbados* [2013] CCJ 3 (OJ).

the CCJ has also adjudicated on cases which have supported the Treaty's vision for economic development within the region. There have been the cases addressing the movement of goods and the application of common external tariffs in cases brought against the governments of Guyana and Suriname. This has provided evidence that the CSME system can work in supporting the competitiveness of businesses within the region. The CCJ has also recently addressed the system for ensuring that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct.

Justice Reform

Tivoli Gardens Commission of Inquiry

The Commission of inquiry into the Incursion into Tivoli Gardens and its concluding Report provide good juxtaposition when illustrating the strides of justice delivery in Jamaica since Emancipation and the Morant Bay Rebellion. This report emphasizes the fact that the concepts of human equality and equality before the law do in fact influence the governance of Jamaica. The Commission of Enquiry Report into the Incursion into Tivoli Gardens of May 2010 was tabled in the Jamaican Parliament on Tuesday, June 14, 2016. The Commission's report provided a judicially verified account of the events which led to loss of life, injury to body and damage to property in circumstances it described as assault on human rights. This approach which focused on issues of human rights and principles of good governance has made this a beacon of hope and



Above - Sir David Simmons, Chairman of the Commission of Enquiry into the Incursion into Tivoli Gardens

demonstration of the extent of the evolution of judicial development over time. The entire process was home-grown with Caribbean legal design and Caribbean jurists led by the distinguished Sir David Simmons. It declared the standards that are the hallmark of a modern society governed by the rule of law and a recognition of the principles of equality before the law.

The Commission's Report made several important recommendations, including the call for an apology from the Jamaican government for the "excesses of the security forces during the

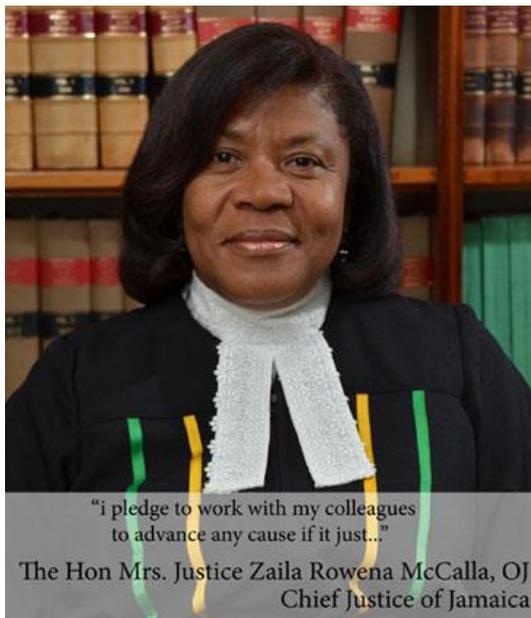
operation,” and compensation for loss of life, personal injuries and property damage, affirming Jamaica’s binding human rights obligations locally and internationally. There was also a critical section revealing a human approach to crime reduction and its relation to human development demonstrating the linkages between economic development and social stability. It suggested approaches for dealing with people who lived outside the mainstream and requiring the government to adopt measures aimed at strengthening and engendering respect for the rule of law and to enable these communities to be brought into the mainstream of opportunities to benefit from the State.

The Report recognized the fundamental principles of human dignity and justice for all as encapsulated by Jamaica’s Constitution and international human rights instruments. The recommendations made by the Commission also embraced the wider dialogue of reform of the justice sector in which Jamaica has been engaged for a number of years. Such dialogue not only recognizes the human rights of all citizens, but the need to prevent human rights violations by institutions entrusted to protect citizens and strengthen those institutions whose role is pivotal to providing effective remedies. In this context, judicial reform is not restricted to the criminal justice system because the entire justice system has to be developed. Every citizen in Jamaica is entitled to benefit from the constitutional mandates that should result in justice for all.



Above - Judge Patrick Robinson (photo courtesy un.org)

Justice reform is an issue that is well within the capacity of our region. Jamaica, as the rest of the Caribbean, has an international reputation for excellence in legal and judicial luminaries, with a Jamaican currently sitting on the International Court of Justice (ICJ), the highest court in the world, Justice Patrick Robinson.



*Above – The Honourable Mme. Justice Zaila McCalla,
Chief Justice of Jamaica (photo courtesy
supremecourt.org.jm)*

Prominence must also be given to the present Chief Justice of Jamaica, Honourable Zaila McCalla, who is currently spearheading Jamaica’s justice reform agenda, together with the Ministry of Justice. Her presence and contributions at international judicial forums has afforded her an excellent reputation in the knowledge and promotion of human rights within the Commonwealth environments.

Jamaica is firmly capable of employing its skills and resources to further advance the ongoing efforts of judicial reform, including the implementation of modern approaches to complement existing strategies.

Training and The Use of Technology

The reform initiatives already underway in Jamaica have received valuable guidance from the recommendations of the Tivoli Commission of Inquiry. These includes the development of cross-disciplinary approaches as well as changes in the operation of major players in the justice system. A particularly instructive recommendation of the Report is the increased use of technology in various aspects of the justice system, such as wireless surveillance, global positioning (GPS) systems, personal digital assistant (PDA) devices, in-car computers and vest mounted cameras to enhance and eventually replace hand written police reports, station diaries, and eye-witness testimony. These initiatives have to be coupled with adequate training to ensure “strategically optimal uses of technology for reducing crime and serving citizens.”⁴

⁴Christopher S. Koper, Cynthia Lum and James J. Willis, *Optimizing the Use of Technology in Policing: Results and Implications from a Multi-Site Study of the Social, Organizational, and Behavioural Aspects of Implementing Police Technologies*, *Policing: a Journal of Policy and Practice* (2014) 8 (2): 212-221, (Oxford Journals).

In addition to these recommendations, special mention should be made of a major criticism levelled at legal systems across the region. This concerns the issue of prolonged judicial delay and chronic backlog of cases. This is an urgent matter that requires swift attention because it has implications on the administration of justice generally in the region. Many strategies have already been employed to address this situation with varying degrees of success. These include utilizing Alternative Dispute Resolution (ADR) practices for certain legal issues instead of formal litigation channels so as to facilitate final resolution of a dispute in a more efficient and time-effective manner. Another challenge facing the criminal justice system in Jamaica and across the region is the length of pre-trial detention. Detaining a person in remand for long periods without trial and in some cases under inhumane conditions is an affront to the concept of justice and the rule of law. This is an area that also needs urgent attention.

However, even in the midst of these issues, it is imperative that some distinctions be made as to how far we have come, as a people and as a society, in the dispensation of justice since the days of Emancipation. For this, we must give thanks.

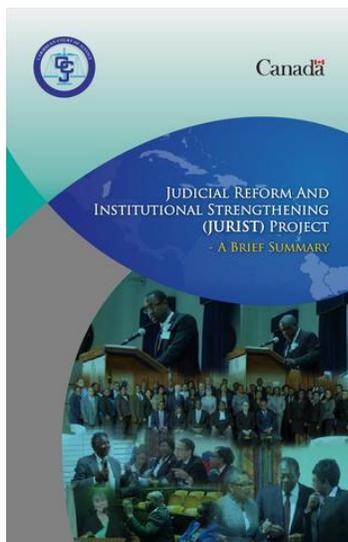
Role of the CCJ in Judicial Reform



Above - The cover art of the publication of the CCJ Strategic Plan 2013-2017

The CCJ in its Strategic Plan has committed itself to the improvement of justice delivery across the region. The Court has already embarked upon this exercise by supporting various reform initiatives in domestic courts in the Caribbean, whether or not those countries have acceded to the Court's Appellate Jurisdiction. This aligns with the Revised Treaty's vision of the CCJ as a transformative institution for furthering regional development. Those Member States which have acceded to the CCJ's Appellate Jurisdiction will have the added benefit of the Court's supervisory powers through the exercise of its appellate functions. The initiation of appellate proceedings before the Court is one mechanism for promoting judicial accountability in the region as important decisions that are made at the domestic level will have the benefit of further scrutiny by another

panel of Judges that is deeply embedded within the legal fabric of the region. At present, the expenses and complexity associated with litigating appeals before the Privy Council have resulted in a small number of appeals originating out of Jamaica. Accession to the Appellate Jurisdiction of the CCJ could increase the number of appeals so that a larger number of critical legal issues affecting the rights of the citizens of Jamaica could benefit from ventilation before a final appellate court.



Above - Cover art for the publication of the Summary Report of the JURIST Project

One of the main areas of the CCJ's support of reform initiatives is the Canadian Government funded Judicial Reform and Institutional Strengthening (JURIST) Project, a regional judicial reform programme being undertaken on behalf of the Conference of Caribbean Heads of Judiciaries and Chief Justices, with the CCJ as the implementing agent. The ultimate objective of the Project is a judicial system that is more responsive to the needs of women, men, youth, business and the poor. The Project seeks to enhance justice service delivery in the CARICOM region and to improve the capacity of Judicial Officers and Court Administration personnel to deliver gender responsive court services through

improved systems, court procedures and policies. It is also intended that the Project will result in the increased public education and awareness programmes by the Courts.

The CCJ's active participation in this Project is indicative of an institution that is in step with the nuances and challenges faced by judiciaries across the region. While cognisant of these issues, the CCJ continually assesses its own performance, and has adopted various solutions to ensure that the people of the region are afforded easy access to the court's services.

Through the use of technology, for example, the CCJ has implemented e-filing, video conferencing, and many other advances in its court processes to improve efficiency and reduce the complexities involved with appearing before the Court.



The CCJ is also engaged in the development of judicial education, training and capacity building exercises in the region's judicial sector region, through its educational arm CALCA (Caribbean Academy for Law and Court Administration) and providing support to the Caribbean Association of Judicial Officers (CAJO). The bodies facilitate seminars, workshops, exchanges and special lectures across the region aimed at empowering legal professionals in various areas of the law. In this regard, CALCA will be hosting a symposium in St. Maarten in October, 2016 under the theme *"Law at the Cross-roads: Reappraising the Role of Common Law and Civil Law Practitioners in Transnational Development"*. This will be done in collaboration with Jamaica's General Legal Council and the St. Maarten Bar Association. The symposium will bring together legal practitioners and other professionals from the common law and civil law jurisdictions in the Caribbean community. The Organization for Harmonization of Business Law in the Caribbean (OHADAC) Project is also involved in this upcoming symposium. Enhanced training and development in these areas will have a positive impact on judicial administration in the Caribbean.

These developments are significant to our journey in judicial reform since Emancipation, as we are now better positioned to fashion the way in which our judiciaries and legal systems progress, in free collaboration with our colleagues across the region.

Brexit

What the recent "Brexit" vote in the United Kingdom has demonstrated is that our society is not alone in addressing issues of sovereignty and integration. It may be that the lesson we could learn concerns our own sovereignty, and our own economic and social interests as Caribbean states fighting for recognition of our own equal humanity, pride and dignity are all associated with economic development and social stability. In the words of English Philosopher John Stuart Mill, *"If a person possesses any tolerable amount of common sense and experience, his*

own mode of laying out his existence is the best, not because it is in the best in itself, but because it is his own mode.”

Over the past few years there has been much activity across the region in the area of judicial reform. This heightened activity is grounded in the acknowledgement that in order to achieve sustainable development and stability, comprehensive judicial reform is a critical element in this process. It entails a modern and responsive legal framework and a well-functioning judiciary to interpret and enforce the laws in an equitable and efficient manner. We can look forward with much excitement to the further advancements that will be made in reforming the regional justice sector and its capacity for delivering justice to citizens. Justice delivery also belongs to the citizens and civil society.

To this end, I believe that civil society has an important role to play in this ongoing judicial reform process by monitoring these processes as well as designing and offering fresh models and strategies of its own. Many of the justice reform issues can be aided by the support of civil society and private sector institutions. Indeed, this is certainly applicable to poverty alleviation in the region. Comprehensive justice reform produces laws and legal systems that are more responsive to the needs of the poor and vulnerable with the resulting legal and economic benefits flowing to both the disadvantaged and society as a whole.

Justice system reform is merely one piece of a much larger puzzle. Change has to be manifested from an individual, societal level and even spiritual dimension as they begin from within the human heart. Many of society’s disorders can be traced back to a general breakdown in morals

and values. There needs to be a re-awakening of a sense of individual responsibility, an awakening that champions moral and spiritual values in all endeavours, in hearts, in homes, in daily interactions with the wider society. There is a need for principled leadership, accountability and transparency.



*Above – Artist’s rendition of Sarah Ann Gill
(courtesy nationnews.com)*

I recall that two years ago I was invited by the Methodist Church in Barbados to address the life and work of National Hero Sarah Ann Gill. Her story is set during the period of colonialism and slavery in Barbados at a time when women and people who were not European were treated as inferior. The Methodist Church in Barbados became a voice in the movement for the abolition of slavery, and came under violent attack by the colonial authorities and the white rulers of the society of the time. I discussed her role and the teaching of John Wesley and suggested that there are two lessons from the story of Sarah Ann Gill and the life and work of John Wesley that are relevant to our discussion. I think they could equally apply to our discussions today. The existence of a moral consciousness and the taking of personal responsibility can motivate the correction of society's wrongs even when the institutions set up to uphold justice fail to do so. And secondly it must be recalled that at that time Christianity was upholding the very practices of slavery, colonialism and racism which it condemns today. This demonstrates that what is, is not always what is right. This demonstrated that societies need to evolve in what John Wesley described as radical social change. This invites consideration of the role of the individual citizen and civil society in general in improving the quality of justice delivery, and allows me to close with a final comment on the value of using the court system because despite its inefficiencies, it provides a credible resource for protecting and upholding the concepts of human equality and dignity. There has been and will continue to be evolution from the dark days of slavery and colonial oppression.

Conclusion

In concluding, I recall the words first spoken centuries ago, in the era of the Roman Empire, by philosopher and political theorist Marcus Cicero, who explored in detail the significance of human dignity. He said "*all men were alike born to Justice, and men by Nature and by Nature's incidents are equal. Not, of course, equal in strength, or intellect, or possession of material goods, but as to basic rights.*" In the years since Emancipation, much progress has been made in re-engineering the legal system in Jamaica and across the region. I am hopeful that sooner rather than later, we will all complete the circle of Emancipation and political independence in our respective societies. In perhaps what was his most stirring public address, the Reverend Martin Luther King, Jr. proclaimed his desire to see a world where people would be judged by the

content of their character, and when “*the sons of former slaves and the sons of former slaveholders will be able to sit down together at the table of brotherhood.*” Let us be positive, and continue to do all that is necessary to empower and embolden ourselves to unite and sing the words of the famed Negro spiritual, “*Free at last. Free at last. Thank God almighty, we are free at last.*”



The Right Honourable Sir Dennis Byron