

Constitutional legacies of empire in politics and administration: Jamaica's incomplete settlement¹

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Abstract

Constitutionalism is characterised by tensions and ambiguities. The Westminster constitutional framework is no different and, in the UK, these tensions are traditionally mitigated through informal institutions, underpinned by what Leslie Lipson called a 'mutually beneficial bargain'. While the existing literature has pointed to a 'transplant effect' in which only the formal but not the informal institutions are transplanted, little is understood about the legacy effects of such transplants, how they are mediated by the presence, absence or modification of such a bargain, and the impact on the conduct and effectiveness of government. Using the case of Jamaica, this paper explores these issues by examining the constitutional tension between principles of responsible and representative government as they operate on the relationship between politics and civil service in the colonial and immediate post-colonial period. We argue that the constitutional legacy is one of a 'mutually suspicious bargain' between politicians and civil servants, which emerged under the era of colonial rule, but persisted into the post-colonial era, becoming, in the 1970s, a central flashpoint of constitutional conflict. As a result of this colonial legacy, there has been an unresolved tension in the operation of the Jamaican constitution regarding the appropriate balance between constitutional principles of responsibility.

Keywords: responsible government; representative government; constitutionalism; 'public service bargain'; colonial legacy.

Introduction

It is widely acknowledged that formal constitutional rules matter to the manner in which societies are governed. They are critical for deciding winners and losers in society and embody 'the principle that the exercise of political power shall be bounded by rules, rules which determine the validity of legislative and executive action by prescribing the procedure according to which it must be performed or by delimiting its permissible content'.² It is also widely recognised that informal institutions – defined here as implicit understandings

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2 S A de Smith, 'Constitutionalism in the commonwealth today' (1962) 4(2) *Malaya Law Review*, 205, 205.

between constitutional actors³ — matter for offering interpretive guidance as to the meaning and application of constitutional rules. Finally, it is similarly acknowledged that the colonial origins of constitutions matter. The ‘transfer’ of constitutional arrangements from ‘metropolis’ to colonies has, however, rarely been straightforward, and the colonial inheritance has had a significant effect on subsequent post-colonial political, economic and social development in newly independent nations.

So far, so bland. What is less well understood is the manner in which transplanted constitutional ideas are affected by informal institutions — and how these matter for constitutional development. As yet, there has been limited interest in such ‘transplant effects’: for example, Berkowitz, Pistor and Richards use this term to describe the detrimental impact on the law’s functioning, either where transplanted law is not adapted to local needs, or where it is unfamiliar to those who use the law as a result of colonial imposition or otherwise.⁴ And in a study of the harmonisation of arbitral law, T T Arvind links the existence of the ‘transplant effect’ to ‘the relationship between formal written sources of the law and unwritten conventions, norms and practices inherent in the legal system’.⁵ Harmonisation frequently goes awry, he argues, because it tends to focus only on the formal institutions of the law and is therefore ‘vulnerable to situations where informal institutions on which the formal institutions rely are missing in the receiving jurisdiction’.⁶

This article focuses on the informal understandings that enable different parties to mediate between ambiguous and conflicting constitutional values that are expressed in formal institutions. Taking the Westminster model of constitutionalism and its transplant to Jamaica as a case study, the article focuses on one particular tension, namely that which exists between ‘responsibility’ and ‘representation’. Within the formal institutions of the Westminster system, we argue, these values are expressed in the relationship between a politically accountable ‘political directorate’ and a permanent, neutral and impartial civil service. The viability of this institutional relationship, and its capacity to negotiate the tension that exists between responsibility and representation, however, depended, we argue, on the existence of what Leslie Lipson (in the context of New Zealand) called a ‘mutually beneficial bargain’.⁷

The informal understandings that underpinned relations between politicians and civil servants in Jamaica were far from constituting a mutually beneficial bargain. In fact, since colonial times, a ‘mutually suspicious bargain’ has persisted. The key features of this distrustful bargain can be found in colonial administration well before independence and proved decisive in shaping Jamaica’s post-colonial political development. This absence an informal mutually beneficial understanding regarding the tension between two fundamental constitutional principles of the Westminster system represents the true British colonial legacy.

3 This definition, emphasising informal understandings that moderate tensions between constitutional principles, differs from other ways in which informal institutions have been explored in the context of constitutionalism, such as the presence of informal power structures affecting the ways in which formal constitutional rules operate (such as decision-making in a system of clientelism) or the role of informal conventions in the absence of codified constitutional rules.

4 Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, ‘The transplant effect’ (2003) 51 *American Journal of Comparative Law* 163.

5 T T Arvind ‘The “transplant effect” in harmonisation’ (2010) 59 *International and Comparative Law Quarterly* 65, 78

6 *Ibid* 79.

7 Leslie Lipson, *The Politics of Equality* (University of Chicago Press 1948) 479.

By arguing that the true colonial legacy of the Westminster inheritance is a presence of mutual suspicion regarding other parties' understanding of constitutional principles, this article also resolves a continuing paradox in the literature on Jamaica itself. Decolonisation in Jamaica was a process of (broadly) consensual political transition in a two-party system; yet, we find the disintegration of this consensus in the 1970s, exposing the frailty of informal understandings shared between political and administrative elites, which proved unable to mediate between demands for representativeness and demands for responsibility. This argument also resolves the apparent contradiction between a literature that points to the transition of constitutional principles (and its functioning) in the immediate post-colonial period and a subsequent literature that has sought to highlight the dysfunctional characteristics of the Westminster transplant in view of a national style of politics that is sometimes characterised in terms of patron–client relations.⁸

The following section outlines in greater detail the tensions over doctrines of responsible and representative government, and how this translated into formal institutions as well as informal understandings between politicians and civil servants. Sections 2 to 5 cover, in chronological order, the dynamics in the conflict over constitutional understandings in the case of Jamaica. They document the development of formal and informal executive government institutions in the pre-independence period, and how key elements in the 'mutually suspicious bargain' were left unaddressed in the immediate post-independence decade. The failure to address them in this period proved crucial when, in the 1970s, the political consensus that had characterised the 1960s broke down and a more ideological style of politics took hold. The conclusions draw out wider lessons for the understanding of Westminster's 'export models' in terms of both formal institutions and the informal understandings which they presuppose.⁹

1 Constitutionalism and responsible and representative government

The Westminster system's unresolved tension over the constitutional doctrines of responsible and representative government has shaped both metropolitan, as well as colonial discussions about constitutionalism. In the legal literature, at the core of responsible government is the duty of ministers to account to a democratically elected body. Roberts-Wray, for example, defines responsible government as 'a system of government by or on the advice of ministers who are responsible to a legislature consisting wholly, or mainly, of elected members; and this responsibility implies an obligation to resign if they no longer have the confidence of the legislature'.¹⁰ Underlying this particular conception of responsibility lies a view that ministers should have, as Birch puts it, 'sufficient independence to pursue consistent policies without permitting them to forget their obligation to keep in step with public opinion'.¹¹ Yet, as Birch further argues, this is only one among several meanings of responsibility within British constitutional thought, coming second in terms of priority to the primary understanding of responsibility as consistency, prudence and leadership.¹² A third conception of

8 Carl Stone, *Democracy and Clientelism in Jamaica* (Transaction Books 1983).

9 S A de Smith, 'Westminster's export models: the legal framework of responsible government' (1961) 1 *Journal of Commonwealth Political Studies* 2

10 Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (Stevens 1966) 64.

11 Anthony Birch, *Representative and Responsible Government* (Allen & Unwin 1964) 170.

12 *Ibid* 245.

responsibility as responsiveness to public opinion and demands has, he argues, still lower priority.¹³

In contrast to doctrines of responsible government, the idea of representative government seems to have no defined meaning in British colonial law, except as an 'inapt and confusing'¹⁴ synonym for a representative legislature. In a broader sense, however, the idea of representative government is part of the British tradition of constitutionalism, one which, according to Birch, incorporates elements of distinct political traditions, including a doctrinal commitment to the independent representative role of MPs (understood primarily in terms of their ability to resist the influence of sectional interests), the link between MPs and local constituencies and, perhaps most importantly, a concentration of political power within an elected chamber which fairly represented all the interests of the country.¹⁵

Within so-called Westminster constitutional systems, the convention of civil service 'neutrality' or 'impartiality' is traditionally seen as playing a crucial role in mediating between values of responsibility and representativeness. 'The task of the politician', as Jennings understood it, included, 'maintain[ing] a close relationship between public opinion and the process of administration'.¹⁶ 'The actual business of government', on the other hand, 'is the function of professional administrators and technical experts'.¹⁷ Thus ministers provide the link to the electorate both directly and through Parliament, while a permanent civil service enhances responsibility, especially in Birch's primary sense of consistency, prudence and leadership. While the civil service never occupied a 'tutelary' position, in the sense used by Hood and Lodge,¹⁸ the indivisibility of political and bureaucratic roles in the Westminster system of government could be seen as a kind of 'Hegelian synthesis' of responsibility and representation. For the philosopher Georg Hegel, the middle class of civil servants embodied not so much the popular will as the 'educated intelligence and legal consciousness of the mass of the people'.¹⁹ Hegel pointed to the danger that, left unchecked, the civil service threatened to assume the 'isolated position of an aristocracy' and to use 'its education and skills as an arbitrary means of domination'.²⁰ Hegel pointed to the crucial role of institutional structures in mitigating against such dangers: the role that the monarchy and organised civil society played in Hegel's Prussia could in Westminster systems arguably be said to be discharged by oversight from ministers and Parliament and by public opinion channelled through the electoral system, as well as the constituency representation function of MPs.

Such a synthesis of responsibility and representation rests, however, on fragile foundations. Anthony Lester noted how, in the British constitutional context, the absolute power expressed in the doctrine of parliamentary sovereignty was checked by conventions which, in turn, relied on 'a sense of fair play' shared between ministers and

13 Ibid.

14 Roberts-Wray (n 10) 69.

15 Birch (n 11) 230ff.

16 Sir Ivor Jennings, *The Approach to Self-Government* (Cambridge University Press 1958) 125.

17 Ibid.

18 Christopher Hood and Martin Lodge, *The Politics of Public Service Bargains: Reward, Competency, Loyalty – and Blame* (Oxford University Press 2006) 37–40.

19 Georg Hegel, *Hegel: Elements of the Philosophy of Right*, Allen Wood (ed), N B Nisbet (trans) (Cambridge University Press 1991) 297.

20 Ibid.

their civil servants.²¹ A more critical interpretation of the elite consensus that prevailed in the Westminster–Whitehall system in London is that these relationships were constitutive of a system of ‘club government’, characterised by members’ trust in all parties’ observation of the spirit of the club rules.²² Yet such a commitment to shared rules was arguably essential to prevent the relationship between ministers and civil servants from becoming one of antagonism. Donald Kingsley recognised, in his *Representative Bureaucracy*, that one crucial assumption was a correspondence of views between politicians and civil servants. ‘The convention of impartiality’, he wrote, ‘can only be maintained when the members of the directing grades of the Service are thoroughly committed to the larger purposes the State is attempting to serve; when in other words, their views are identical with those of the dominant class as a whole’.²³ Writing on the eve of the 1945 Labour landslide in Britain, Kingsley sounded a warning that unless the basis of civil service recruitment was broadened, the bureaucracy would resist the policies for which the future government could claim an electoral mandate.

Ultimately, that Kingsley’s warnings proved largely unfounded in view of the post-1945 Labour programme might point to the presence of a shared ‘sense of fair play’ between politicians and civil servants and, thus, a shared understanding as to how to mediate between responsibility and representation. The underlying institutional configuration was similar to that of New Zealand, in which Leslie Lipson noted how, following the Civil Service Act 1912, conditions for a successful accommodation between politicians and civil servants had emerged:

With the political parties the modern [New Zealand] civil service has struck a mutually beneficial bargain. By guaranteeing to public servants a life’s career and a pension, parties have foresworn the use of patronage and have guaranteed to the state’s employees their tenure of their jobs. In return the parties expect, and the public servants owe, equal loyalty to any government which the party have placed in office.²⁴

Such an accommodation has been essential in New Zealand, as it has in the UK, to resolving the tensions between responsible and representative government.²⁵ The privileged role of a permanent civil service in the management of public affairs provided prudence and leadership and, especially, consistency in an electoral system in which parties alternate in power. Serial loyalty to ministers and traditional civil service anonymity underpinned doctrines of ministerial accountability, while also ensuring responsiveness to public opinion through the electoral system.

Lipson’s ‘mutually beneficial bargain’ also accommodated a degree of representativeness, not only through shifting allegiance to the political programmes of popularly elected governments of different stripes, but as a result of the self-denial by

21 Anthony Lester, ‘Fundamental rights in the United Kingdom: the law and the British constitution’ (1976) 125 (December) *University of Pennsylvania Law Review* 337, 339. Lester noted how this ‘sense of fair play’ was particularly well-suited for a homogeneous Victorian elite.

22 David Marquand, *The Unprincipled Society* (Jonathan Cape 1988) 178. See also Michael Moran, *The British Regulatory State: High Modernism and Hyper-Innovation* (Oxford University Press 2003); David Marquand, ‘Club government – the crisis of the Labour Party in the national perspective’ (1981) 16 *Government and Opposition* 19.

23 Donald Kingsley, *Representative Bureaucracy: An Interpretation of the British Civil Service* (The Antioch Press 1944) 278.

24 Lipson (n 7) 479. It should be noted that the 1912 Act followed (criticism of) an era of extensive patronage in public sector appointments.

25 We do not suggest that there have not been continued tensions over the ‘bargain’ and that this ‘accommodation’ has repeatedly experienced moments of potential breakdown.

politicians of patronage powers over the establishment of a professional, permanent civil service. As with subsequent analyses of 'public service bargains',²⁶ Lipson's characterisation highlights the distinctly informal and often implicit nature of such understandings which, in contrast with the formal constitutional principles, are not amenable to strategies and techniques of legal transplant. 'The peculiar and delicate conditions which ... had permitted the creation of that sort of depoliticised public service with which Australian and British administrators and politicians have been familiar in their metropolitan politics', writes Schaffer, 'were never present in colonial and dependent systems'.²⁷

The immediate pre- and post-independence period in Jamaica provides an ideal and – for scholars of law and public administration – thoroughly fascinating context in which to explore the role of informal institutions emerging in 'peculiar and delicate conditions'. Jamaica is one of the 'purest' cases of the classic Westminster model to exist outside the UK itself. However, the peculiar conditions of the colonialism in the West Indies in general and Jamaica in particular prevented the emergence of a 'mutually beneficial bargain' of the sort described by Lipson. Rather, what we observe might better be described as a 'mutually suspicious bargain'. Moreover, the post-independence political elite believed that the public service was not 'representative' in Kingsley's sense of faithfully reflecting the new dominant interests in society and was suspicious of administrators' loyalty and competence. At the same time, bureaucrats distrusted politicians' claims to enjoy popular support for their policies and their calls for greater representativeness in government, seeing in them instead challenges to settled understandings of 'appropriate' ways of governing and to their own social privilege.

This had serious consequences for the stability of the post-independence constitutional settlement. As well as not being representative, the public service was seen as lacking the necessary autonomy that responsibility, in the senses noted by Birch, would seem to presuppose. As Jones and Subramaniam have argued, an important aspect of the peculiar conditions that characterise societies dominated by plantation and extractive industries was the privileged yet precarious position of a 'derivative middle class' of lawyers, teachers and clerks which mediated between the general public and the colonial administration. In contrast with the metropolitan middle classes, they argue, the middle class of colonial Jamaica was 'lopsided because there was no corresponding economic middle class of distributors, retailers, service-men and rentiers to balance this professional salaried class'.²⁸ Wholly dependent for their position on the beneficence of the colonial administration, this derivative middle class resentfully adopted an attitude that was necessarily conformist to the colonial regime. In other words, the institutional and social configuration which, for Lipson, mediated between the competing demands of responsibility and representation in New Zealand was, prior to independence, almost entirely lacking in Jamaica, as well as in the West Indian territories more generally.

If there is a colonial legacy in terms of constitutionalism in Jamaica and the Commonwealth Caribbean, then it therefore lies in this unresolved tension between fundamental constitutional principles and the absence of supporting informal institutions to mediate between them. These tensions and absences led to the persistence in the post-colonial period of a 'mutually suspicious bargain' which in turn undermined support

26 Hood and Lodge (n 18); Bernard Schaffer, 'Public employment, political rights and political development' in *The Administrative Factor* (Frank Cass 1973).

27 Schaffer (n 26) 258.

28 E Jones and V Subramaniam, 'Jamaica – embracing privatization and seeking integration' (1993) 59 *International Review of Administrative Sciences* 651, 654.

among politicians for the broader constitutional settlement of independence. To develop this argument, we next consider the ambiguity of constitutional principles that were inherited from the times of colonial government.

2 Crown colony rule and its legacies

Any inquiry into the nature of constitutionalism in the context of post-colonial government needs to start with the colonial period. This is not just because this was the period in which the independence-era constitution was written; it was also the period where the dominant informal understandings about responsibility and representation were established and consequential aspects of the relationship between politics and administration took shape. In the following section, we highlight the strong formal emphasis on responsibility that characterised the Crown colony arrangement that defined the government of Jamaica in colonial times. However, we also note how non-mutually beneficial these arrangements were, creating the conditions for the unresolved nature of the tension between constitutional principles.

The Crown colony arrangement emerged in the aftermath of the Morant Bay Rebellion of 1865, later described by *The Times* as ‘one of the most acute public controversies of the nineteenth century’.²⁹ The constitutional significance of the Rebellion and the bloody response of the British authorities was that it led directly to the surrender by Jamaica of its seventeenth-century constitution (known as the ‘old representative system’)³⁰ and its replacement by Crown colony administration. In fact, constitutional relations between the Governor and the Assembly had long been dysfunctional,³¹ and Governor Eyre had previously, but with limited success, sought the support of the Colonial Office for a new constitution. The Assembly now willingly, albeit in a moment of panic, gave up its existing powers.

From a legal point of view, such as that expressed by Roberts-Wray, the expression Crown colony can be seen as lacking in precision. The term, he said, was ‘sometimes freely used with a degree of confidence which is hardly justified, for it is difficult to say precisely what it means’.³² From the internal point of view of the colonial administration, the term acquired a much more detailed understanding. Charles Bruce quoted, in glowing

29 ‘Death of ex-Governor Eyre’, *The Times* (London, 3 December 1901) 8, quoted in Rande Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law* (Oxford University Press 2008) 1. In this work, Kostal has undertaken a detailed legal historical analysis of the episode and its ramifications in metropolitan society – including the private prosecution of two officers, Nelson and Brand, who had executed Gordon, as well as that of Eyre himself.

30 We discuss the old representative system (in contrast both with French and Dutch colonial systems, as well as with later Crown colony rule) in Lindsay Stirton and Martin Lodge, ‘Constitutionalism and colonial legacies in the Caribbean’ in Richard Albert, Derek O’Brien and Se-shauna Wheatle (eds), *The Oxford Handbook of the Constitutions of the Caribbean* (Oxford University Press 2020) 25–46.

31 Of particular relevance to present purposes is the disconnect in the old representative system between the Governor, appointed by the Crown, and the locally elected representative Assembly. The latter, as Wrong puts it, was to have ‘special powers over taxation, but it was to be kept well under control by the Governor and Council, and was to have no right to meddle in executive matters ... [W]hatever control the Assembly secured over the executive was exercised indirectly and below the surface. The power of refusing supplies was the one weapon which the Assembly employed against the Governor and Council.’ See Hume Wrong, *Government of the West Indies* (Clarendon Press 1923) 41.

32 Roberts-Wray (n 10) 44.

terms,³³ a despatch of the Duke of Buckingham, Secretary of State for the Colonies between 1867–1868. The Secretary of State argued that the constitutions adopted in the West Indies from 1865, while differing in specifics, ‘have one feature in common – that the power of the Crown in the Legislature, if pressed to its extreme limit, would avail to overcome every resistance that could be made to it’.³⁴

This was accomplished through a set of constitutional arrangements that placed responsibility for all matters on the Governor. Appointed by the Sovereign on the recommendation of the Secretary of State for the Colonies, he was, as Colonial Office Regulations put it, ‘single and supreme authority, responsible to, and representative of His Majesty’. The Governor was, as Bruce puts it:

... not in the position of a constitutional sovereign; he is actual ruler. He, and he alone, is responsible for the conduct of the local affairs of the colony. He is responsible to the Home Government, while his advisers are responsible to him, and not, as in a self-governing colony to the local legislature.³⁵

Similarly, Barnett describes the role of the Governor in the following terms:

By virtue of his control of the Legislative Council, ultimate legislative as well as executive power vested in him, he alone could initiate financial measures and all legislation was subject to his assent. He had the right to appoint judicial and public officers, subject to the overriding powers of the Secretary of State, at will. He was responsible only to the Colonial Office and was the sole channel of communication with the British Government.³⁶

Crucial to these observations was the subordinate position of advisory bodies, as well as the colonial bureaucracy headed by the Colonial Secretary. Until 1884, there was no elective element to the Legislative Council. Instead, its members consisted of *ex officio* members (including the Colonial Secretary who presented the government’s business in the Council, as well as the main colonial heads of department) and nominated members appointed by the Governor.³⁷ After that year, an element of representation was introduced, in the form of nine elected members, increased to 14 in 1895. The increase in elected members was balanced by an increase in official and nominated members to five and 10 respectively, ensuring the government side had a bare majority.³⁸

An executive Privy Council (more commonly, ‘Executive Council’) consisted of the Governor, as President, the Colonial Secretary, Financial Secretary and the Attorney General, as well as two nominated officials appointed by the Crown on the recommendation of the Governor. It was possible for an unofficial (i.e. nominated or elected) member of the Legislative Council to serve on the Executive Council. This was, according to Hamilton, ‘a high privilege for the unofficial member, as it enabled him to

33 ‘Seldom, if ever, has a system been more clearly explained, and in all essential principles it may be said to constitute the fundamental law of Crown colony government to the present day.’ Charles Bruce, *The Broad Stone of Empire: Problems of Crown Colony Administration, With Records of Personal Experience*, volume 1 (first published 1910, Cambridge 2010) 233.

34 Quoted in *ibid* 235–236.

35 *Ibid* 219–220.

36 Lloyd Barnett, *The Constitutional Law of Jamaica* (Oxford University Press for the London School of Economics and Political Science 1977) 9.

37 The circumstances around the introduction of elected members are discussed in Ronald Sires, ‘The Jamaica Constitution of 1884’ (1954) 3 *Social and Economic Studies* 64.

38 A vote of any nine elected members could defeat any money Bill (‘the power of the nine’), while all 14 could defeat any Bill (‘the power of the fourteen’). See Barnett (n 36) 11.

participate in the business of policy making'.³⁹ He further notes, however, that a frequent criticism among members representing labour interests was that 'the appointment of unofficial members to the Executive Council was limited to representatives of the employer class'.⁴⁰

These constitutional arrangements also served – to some extent – to limit criticism and insulate the Governor from accountability. Although formally accountable to the Crown via the Colonial Office and the Secretary of State, distance and unfamiliarity with local conditions meant that Colonial Office doctrine emphasised the discretion of the 'man on the spot'; the idea that colonies were under the control of the Colonial Office was regarded in Downing Street as 'the one rank heresy we all shudder at'.⁴¹ In the Legislative Council, the Governor not only enjoyed support of official and nominated members who were expected to support the Governor in their votes and their debate contributions, but by a 'quasi-spoils system' that seemed to give greater priority to the constituency needs of those elected members who voted with the government.⁴² In the final instance, the Governor could force through any measure that he declared to be 'of paramount importance to the public interest'.⁴³

Such insulation was never complete, however. Despite disavowals of rule from London, particular instances of defiance or mismanagement of governmental affairs could provoke outrage in Whitehall and Westminster, and in British society more generally, as happened following the Morant Bay Rebellion, noted earlier.⁴⁴ This had to be balanced against criticism from local interests, who voiced their opposition in the local press. As Hamilton puts it:

Invariably he needed the agility of a tight-rope walker. Any action inimical to the identifiable metropolitan interests could raise a storm of protest about his head. On the other hand, it was equally vital that he not provoke local interests to the point where peace and tranquillity were disturbed.⁴⁵

The selective insulation of the Governor and his administration from local interests was noted by the West India Royal Commission (The Moyne Commission), which described the Governor as:

... not an autocrat, inasmuch as ... he and his administration are open to influence; the complaint most frequently heard is, rather, that Governments are dominated by vested interests and that only the representatives of such interests are successful in exercising their influence.⁴⁶

39 B L St John Hamilton, *Problems of Administration in an Emergent Nation: The Case of Jamaica* (Frederick A Praeger 1964) 35.

40 Ibid 35. Hamilton notes the considerable difficulties of appointing members who were opponents of the government in the legislature. Experience in Trinidad suggested that the difficulties fell on both sides. Woodling points out, in the context of Trinidad and Tobago, that the Executive Council 'became so associated in the public mind with supposed blind acceptance of the official Downing Street [i.e. Colonial Office] view that it became a pitfall for any member to enter in'. See H O B Woodling, 'The constitutional history of Trinidad and Tobago' (1960) 6 *Caribbean Quarterly* 143, 154; see also Craig Hewan, *The Legislative Council of Trinidad and Tobago* (Faber & Faber 1951) 149.

41 Ronald Hyam, 'Bureaucracy and trusteeship in the colonial empire' in J Brown and W M R Louis (eds), *The Oxford History of the British Empire, vol IV – The Twentieth Century* (Oxford University Press 1999) 257.

42 Hamilton (n 39) 20.

43 See Barnett (n 36) 11.

44 General Picton's defiance of anti-slavery legislation in Trinidad (1797–1802) provides another example.

45 Hamilton (n 39) 15.

46 West India Royal Commission Report (Cmd 6607, Her Majesty's Stationery Office 1945), Cap V, paragraph 7, hereafter, the 'Moyne Report'.

Similarly, Hamilton contrasted the informality, and indeed deference, with which members of the bureaucracy dealt with members of their own social class with their superordinate position in relation to members of the general public who were expected to stand outside the barricades and wait their turn.⁴⁷

In its constitutional structure, Crown colony rule seemed, in theory at least, to suggest the ultimate emphasis on responsible government, in the foremost sense of consistency, prudence and leadership, while consciously rejecting understandings relating to accountability towards a legislative body or responsiveness to local public opinion. This was justified by an ideology of 'wardship' or 'trusteeship' which emphasised, on the one hand, that the duty of the colonial administration was to balance the different class and ethnic interests and, on the other, that this must be accompanied by sufficient powers to carry out that trust. For West Indian nationalists, such as C L R James, the ideology of trusteeship was a threadbare justification which barely concealed the racism underpinning it.⁴⁸

Even from a European and metropolitan perspective, however, the practice arguably fell far short of this ideal. For example, Harold Laski, writing on the eve of the 1938 disturbances, complained that the word 'trusteeship', was:

... too flattering to the results obtained. It is hardly compatible with the historic incidence of the facts. It is a word whose sound is too noble for the squalid results too often attained; for, in many cases, whether the test taken be standard of life, public health, education, or growth of fitness for self-government, the colonies remain, in large degree, the slums of empire.⁴⁹

Laski blamed this state of affairs partly on a narrow approach to recruitment, which included failing to develop the talents of 'educated coloured people',⁵⁰ as well as a preference for 'sound men' rather than 'innovators'. Compounding this situation was the Treasury's determination to run an empire 'on the cheap'.⁵¹ A series of official reports from the 1920s through to the 1940s shows the consequences of this intention, highlighting the persistence of low salaries, poor recruitment practices and inadequate physical working environments for civil servants.⁵² Senior civil servants were overloaded by excessive workloads, including for some attendance in the Legislative Council for as many as a hundred days per year, while junior officers exhibited little initiative, passing matters for decision up to their superiors, while busying themselves with 'administrivia'.⁵³ The result, as seen locally, was that 'the bureaucracy exhibited incapacity for technical programmes as distinct from routine operations'.⁵⁴

47 Hamilton (n 39) 18

48 'Men have to justify themselves, and [the colonial Englishman] falls heavily back on the "ability of the Anglo-Saxon to govern", "the trusteeship of the mother country until such time" (always in the distant future) "as these countries can stand by themselves," etc., etc.'. See C L R James, 'The case for West Indian self government' in C L R James, *The Life of Captain Cipriani: An Account of British Government in the West Indies* (Duke University Press 2014) 174.

49 Harold J Laski, 'The colonial civil service' (1938) 9 *Political Quarterly* 541, 541.

50 Ibid 547.

51 Ibid.

52 These are discussed in detail in Martin Lodge, Lindsay Stirton and Kim Moloney, 'Whitehall in the Caribbean? The legacy of colonial administration for post-colonial democratic development' (2015) 53 *Commonwealth and Comparative Politics* 8.

53 Edwin Jones, 'The executive agency: a manifesto against administrivia' (2001) 3 *Caribbean Journal of Public Sector Management* 30.

54 Hamilton (n 39) 31.

The reality of responsible government was, to its critics, therefore less about consistency, prudence and leadership, but rather largely about maintaining law and order and ensuring economic production. It barely included extensive understandings of development and welfare understandings that only emerged in the 1930s and 1940s in response to the growth of trade union movements, riots and evidence of widespread underdevelopment. These concerns, as well as the inability of existing constitutional arrangements to respond to them, were exposed by the disturbances of 1938 and laid bare in the Moyne Report, whose findings and conclusions were largely kept from the public eye in order not to fuel potential opposition to colonial rule during the Second World War.

To recap, several things are worth emphasising. First, Crown colony rule operated without the necessity of any ‘mutually beneficial’ understandings between (local) politicians and civil servants. The colonial administration, in particular the expatriate officers who occupied senior positions, enjoyed an exalted position in relation to elected members of the Legislative Council. Moreover, the colonial system successfully monopolised local officers’ loyalties due to the peculiar nature of the class structure of colonial society. In this context, demands for ‘responsibility’ were in reality demands only for responsiveness to particular colonial interests, such as local big business. Frustrated though they may have been, the loyalties of local administrators were completely bound up with the metropolitan interests and institutions. Secondly, many of the features that were later to be associated with the political sociology of post-Colonial Jamaica – including the fragility of the position of the government, despite its apparent power, relations between the bureaucracy and sections of the public that were patron–clientelistic, the absence of technical skills to carry out programmes of social and economic reform, and the concentration of decision-making authority at the apex of governmental structures – were already to be found in barely concealed form in the unresolved tensions within Crown colony government.

3 The path to independence 1944–1962

In less than 20 years, between 1944 and 1962, Jamaica transitioned from Crown colony rule with a minority of elected representatives in its Legislative Council to a fully independent Commonwealth state with a Westminster-style constitution. It is not fanciful or fallacious to see each of the intermediate steps as staging posts towards independence. Indeed, Colonial Office policy during this time embraced the doctrine of ‘preparation’, the training of local populations ‘for the self-government and independence which British policy intends that they should achieve in as short a time as is reasonably possible’.⁵⁵ Nevertheless, and in view of the various intermediate constitutional steps granting greater political authority, the precise course of Jamaica’s path of constitutional development towards independence should not be assumed to have been planned from the outset.

The 1938 crisis marked a sea-change in public opinion in Jamaica – and indeed in the wider Caribbean. Popular unrest had long been a feature of West Indian societies, but the disturbances of 1938 were, as the West India Royal Commission put it, ‘a phenomenon of a different character, representing a mere blind protest against a worsening of

55 S J Robertson, ‘Some problems on the path to self-government’ (1961) 39 *Public Administration* 313, 313.

conditions, but a positive demand for the creation of new conditions that will render possible a better and less restricted life'.⁵⁶ Against this observation, two aspects of the Moyne Commission's recommendations stand out.

First, was the Report's embrace of the need for a far-reaching programme of social welfare. This followed earlier acceptance by the then Secretary of State for the Colonies (Sidney Webb, Lord Passfield) who noted that the poor social conditions in the colonies represented a 'reproach to our colonial administration'.⁵⁷ These were radical and far-reaching recommendations, notwithstanding their burial deep within the structure of the Moyne report⁵⁸ and despite criticism that they were founded on out-of-date assumptions about West Indian society.⁵⁹ In particular, the Colonial Development and Welfare Act 1940, passed in response to the Moyne Commission recommendations, accepted the principle of the UK Treasury's responsibility for the welfare and development of its colonial subjects. This followed the unification of the colonial civil service in 1930 which also intended to encourage the recruitment of civil servants capable of planning and development.

A second noteworthy feature of the Moyne Report was that it placed constitutional and administrative reform at the heart of its recommended response to the 'West Indian question'. Social regeneration was 'not possible under the present form of government'. And it recognised, though it stopped short of endorsing, the strength of West Indian sentiment that a more expansive role for the colonial government in social and economic policy and that, far from being antagonistic ideals, responsible government depended on a greater degree of representation than the mid-nineteenth-century conception of trusteeship allowed:

Rightly or wrongly, a substantial body of public opinion in the West Indies is convinced that far-reaching measures of social reconstruction depend, both for their initiation and their effective administration, upon greater participation of the people in the business of government.⁶⁰

The Moyne Commission, for its part, was willing to contemplate greater representation through variation in the composition of Legislative and Executive Councils.⁶¹ However, it cautioned against 'any fundamental change in the parts they play in the public affairs of those colonies', insisting instead that: 'The initiative in formulating policy should remain with the Governor in Executive Council.'⁶²

Moyne's thinking was reflected in the Jamaican Constitution of 1944.⁶³ The precise content of the political rights granted under the 1944 Constitution were, as Stephens and

56 Moyne Report (n 46) Cap I, 8, paragraph 17. Reporting in 1939, the Moyne Commission presented such a damning picture of British colonial rule in the West Indies that it was suppressed until 1945 for fear of the propaganda value to Germany of its contents. A summary of recommendations was published in 1939.

57 Cabinet Office papers, TNA CAB21/809.

58 As Simey puts it, proposals for welfare reform were 'tucked away as an appendage to another recommendation dealing with administrative machinery, and this is buried in a sub-section labelled "Other needs and Services"', attached in its turn as an afterthought to the section of the Recommendations dealing with administrative reforms in the social services': see T S Simey, *Welfare and Planning in the West Indies* (Clarendon 1946) 233. It should nevertheless be noted that the Report's executive summary that was published in 1939 condemned 'with a sense of shame' the 'situation that now exists'.

59 Ibid.

60 Moyne Report (n 46) Cap XXII, paragraph 2.

61 Ibid Cap XXII, paragraph 6, noted the importance of 'educating unofficial in the business of government', in part to address the 'inordinate' length of speeches in the Jamaican Legislative Council, for example.

62 Ibid Cap XXII, paragraph 4.

63 Jamaica (Constitution) Order in Council 1944, SI 1944/1215.

Stephens note, the outcome of a 'long process of negotiation between the Colonial Office, the Elected Members Association, and the PNP' (the People's National Party).⁶⁴ A reformed Legislative Council became the upper house in a bicameral legislative structure; a newly created House of Representatives, whose membership was elected on the basis of universal adult suffrage, performed the functions of a lower chamber. Responsibility for making policy remained with Governors in Council, chaired as before by the Governor. Now, however, the House of Representatives could elect five of its members to serve on the Executive Council.⁶⁵

In formal terms, the civil service remained responsible, through the Colonial Secretary and the Governor to the Colonial Office and, ultimately, the Crown. But, as Byles put it, it was the voices of Chairs of the five newly created Standing Committees of the House of Representatives 'which are now heard in the House in debates on the work of Departments – not the voices of the civil servants as was the case in the previous setup'.⁶⁶ More generally, this period also witnessed reorganisation of the Colonial Service, especially in terms of advanced training opportunities.⁶⁷ A new constitution in 1953⁶⁸ took a step towards responsible government in the legal sense, by creating what Barnett called an 'incipient cabinet system'.⁶⁹ This was effected through a change in the composition of the Executive Council, which was now to have a eight elected members: a 'Chief Minister' selected by the Governor and approved by the House of Representatives; and seven ministers with portfolio responsibilities selected by the Chief Minister. Ministries were created and took on the functions formerly performed by the Colonial Secretariat, but the old Executive Departments continued at first, leading to tensions, especially in 'technical' departments such as agriculture.⁷⁰

From a political (but not an administrative) point of view, these anomalies were addressed by the 1959 Constitution, which established responsible government in the legal sense.⁷¹ A Cabinet was established 'as the principal instrument of policy', and its members were 'collectively responsible' to the legislature.⁷² While from a political point of view, the 1959 Constitution seemed to establish internal self-government, no provision was made for a change in control of the civil service, with the result, as Hamilton puts it, that 'the control of the civil service under national government remained basically what it was under Crown Colony government'.⁷³

At the eve of independence, therefore, Jamaica had assumed the formal political institutions of responsible government. But, despite the findings of the Moyne Commission that the appalling social and economic conditions that caused the 1938 disturbances were in part due to the 'low standards of administration' practised in the

64 Evelyn Huber Stephens and John Stephens, *Democratic Socialism in Jamaica: The Political Movement and Social Administration in Dependent Capitalism* (Princeton University Press 1986) 17. We were not able to independently confirm this point, but note that it is consistent with the archival record for Trinidad and Tobago, in which the British government undertook detailed consultation with the Peoples National Movement.

65 Elected members of the Executive Council were given the courtesy title of 'Minister', but had no portfolio responsibility. Sometimes they have been called 'ministers in embryo'.

66 G Louis Byles, 'The Jamaican experiment' (1948) 56 *Parliamentary Affairs* 56, 64–65.

67 Colonial Office, *Organisation of the Colonial Service* (Colonial No 197, HMSO 1946).

68 Jamaica (Constitution) Order in Council 1953, SI 1953/747.

69 Barnett (n 36) 18.

70 Hamilton (n 39) 88–89.

71 Jamaica (Constitution) Order 1959, SI 1959/862.

72 Ibid section 47.

73 Hamilton (n 39) 92.

colony, improvements during the post-war period were erratic, piecemeal and incremental. While tensions were bound to arise in a new constitutional dispensation which for the first time expected civil servants to be responsive to the demands of politicians – and ultimately the public – the evidence seems to suggest that relations between elected representatives and civil servants were on the whole more cooperative than they had been before 1944.⁷⁴ There were doubtless numerous reasons for this, but among them was that the civil service had been unable to recover from the loss of prestige it suffered as a result of the 1938 disturbances and was thus reliant on the legitimacy of elected national politicians. Equally, Alexander Bustamante, the leader of the Jamaica Labour Party (JLP), which had won the 1944 elections, was reliant on support from the departments in the face of a virile opposition.

Competence remained a challenge. Despite the acceptance by the legislature of the Mills Report in 1950, the service remained rooted in routine, and was criticised for being unable to adapt to the expectations of Jamaicans of a service that would deliver material and social improvements in line with a growing economy.⁷⁵ While it was a source of national pride that Jamaicans had begun to occupy senior positions, the rapid loss of expatriate officers represented a loss of expertise in a system that had not proved effective in developing local talent.⁷⁶ Pressure of work also increased, especially after the PNP took office following the 1955 elections and began to implement more administratively ambitious central planning measures. Against these expectations it was all too easy for politicians to interpret a lack of responsiveness as ‘sabotage’.

Slowly but surely, however, the old hierarchy, which placed civil servants in an elevated position vis-à-vis elected representatives, began to invert itself. For example, in 1949 Eric Mills, the Public Service Commissioner, observed that frankly expressing their views to politicians ‘may put at risk the career of any public servant’.⁷⁷ With the advent of the ministerial system, argues Hamilton:

The status [civil servants] enjoyed would largely be determined by the politicians whose behavior would indicate to the people whether the civil service was accepted as the bureaucratic arm of the executive or was seen in the relationship of master and servant in the Jamaican context of low status for employees.⁷⁸

This, he argues, led to a situation in which the traditional status roles ‘were reversed so that it was then the civil servants who tended to become sycophants’.⁷⁹

Institutional measures were put in place to limit political control of the bureaucracy. The Public Service Commission Law 1951 placed matters of recruitment and promotion

74 Ibid 60; Barnett (n 36) 16–17.

75 Indeed, colonial development and welfare programmes had initially been administered outside of regular departmental lines, under the direction of the Comptroller of Welfare and Development working in collaboration with the Colonial Office, with the local civil service acting only in an advisory capacity.

76 A partial exception can be inferred from Gladstone Mills’ observation that with the advent of colonial development and welfare funds a career in the Treasury began to rival that of the Secretariat for prestige and influence. Since appointment in the Secretariat had been largely reserved to those in the top levels of colonial Jamaica’s ethnic-complexion hierarchy, this brought new opportunities for talented black Jamaicans to gain experience. He notes a number of notable individuals who served in the Treasury prior to 1944, adding that: ‘All would rise rapidly thereafter, and especially after the introduction of the 1944 Constitution and of the Ministerial system in 1953.’ Gladstone E Mills *Grist for the Mills, Reflections on a Life* (Ian Randle 1994) 60.

77 Eric Mills, *Report of the Commission on the Public Service in Jamaica* (Kingston, The Government Printer 1949) paragraph 5.7; On the Mills Report see further Lodge et al (n 52) 21–23.

78 Hamilton (n 39) 143.

79 Ibid 146.

in the hands of a statutory board, the Public Service Commission. While this was intended as a measure to limit political patronage, the motivation may have been less about ensuring responsible government than about absolving the metropolitan government from complaints that it had abandoned the fate of expatriate officers to the hands of local political elites.⁸⁰ In other words, they were a cheap way for the British government to 'shuffle out' of its implicit commitment to colonial civil servants.

In sum, the period of Crown colony rule had emphasised (even if it did not always live up to) a concept of 'trusteeship' that saw local control over administration as an impediment to consistency, prudence and leadership. In fact, the absence of representative institutions had been irreconcilably associated in the public mind with serious failures of administration. Against this background, the post-war period, with its emphasis on 'preparation', was notable in terms of its attempt to reconcile ideals of responsibility with a greater emphasis on representation. The period is important in terms of the emergence of political demands for as well as institutional configurations through which public servants were supposed to be responsive, through the legislature, to wider movements in public opinion in the territories. As seen from the Moyne Report's ambivalence on this point, this change of approach was not borne out of any great conviction that responsibility and representation could be reconciled, given the state of political development of the West Indies, but out of a sense that the legitimacy of Crown colony rule had been shaken in a way that was irreversible within the existing constitutional framework.

All in all, the civil service during this period was remarkable in its ability to act according to the ideal of neutrality, often in the face of accusations of 'partisanship' and 'sabotage'. On the contrary, the administration often adopted an attitude of quiescence. Combined with the inability to overcome a colonial legacy of a service more comfortable with routine than innovation and the design of institutions that sought to reduce discretionary *political* decision-making by new political elites through creating new formal institutions, the picture that emerges is of a failure to design administrative institutions that could reconcile responsibility and representation. This was to prove highly problematic in terms of supporting the development of informal underpinnings of formal constitutionalisation in the post-independence period.

4 The post-independence period

After the abortive experiment with West Indies Federation,⁸¹ which ended when in 1961 Jamaica voted in a referendum against participation in Federation, preparations began for the country to move towards independence on its own.⁸² Jamaica's independence constitution was framed by a small bipartisan committee, with little input from organised civil society or grass roots groups.⁸³ While there were differences within the committee, for the most part these did not extend to questioning the fundamentals of the political settlement that had been fashioned since 1944. One cleavage was the extent to which the

80 Lodge et al (n 52) 20–21.

81 British Caribbean Federation Act 1956; West Indies (Federation) Order in Council 1957, SI 1957/1364.

82 Jamaica Independence Act 1962.

83 Trevor Monroe, *The Politics of Constitutional Decolonisation, Jamaica 1944–62* (Institute of Social and Economic Research, University of the West Indies 1972) 147ff.

new constitution fettered the post-independence leadership, through the entrenchment of a bill of rights within the constitution, as well as the entrenchment of the Public Service Commissions.⁸⁴

Outside of the then political elites, a more radical critique was emerging. In a posthumous contribution, the late Norman Girvan wrote of being part of a group of young scholars – some of whom would later serve as political advisers in Michael Manley's 1972–1980 PNP government – who rejected the fundamentals of the Westminster model as a basis for nation-building in the Caribbean.⁸⁵ To Girvan and other critical observers, Jamaica's constitution of 1962 was an 'Independence Pact' the purpose of which was to preserve the *status quo* after the end of British rule. One focus for criticism was the inclusion in the bill of rights of the right to private property, which was argued to entrench patterns of foreign ownership of key areas of the Jamaican economy. In fact, the clause that was accepted by the committee was a compromise which allowed expropriation in the public interest but required adequate compensation to be paid.⁸⁶

These contrasting perspectives reflect an emerging conflict between the idea that responsible government – particularly in its primary interpretation of consistency, prudence and leadership – depended on proper limits as to the policies that could be justified by reference to the popular will and those who saw such limits as placing unjustifiable limits on the path that an independent, democratic Jamaica could chart for itself. The latter view also included those who were sceptical about the practice of 'responsible government' in the first place and who suggested that career advancement within the civil service required responsiveness to key (big business) interests.⁸⁷ In Jamaica, the 1960s proved a benign environment inasmuch as the policies pursued by the JLP government, first under Alexander Bustamante and then (from 1967) by Hugh Shearer, did not significantly challenge the *status quo*. The economic policies of the 1960s continued the pattern of the 1950s in which, according to Stephens and Stephens: 'The state's role was limited to providing infrastructure and protection and incentives to local and foreign capital, which were to be the engines of economic growth.'⁸⁸ These policies were heavily influenced by the scholarship of the West Indian economist W Arthur Lewis and formed the basis of a policy consensus between politicians and civil servants, which, as noted above, for Kingsley were a precondition for civil service neutrality. Stephens and Stephens make similar claims about Jamaica's foreign policy, which they characterise as rhetorically pro-Western, but which was in reality isolationist, claiming that 'it hardly entered the international arena at all'.⁸⁹ Subsequent scholarship has suggested that Jamaica emerged, through the leadership of Prime Minister Hugh Shearer and Ambassador to the United Nations, Egerton Richardson, as a major broker in

84 Interestingly, some among the Jamaican political leadership fell on different sides of these issues. Edward Seaga, for example, opposed an entrenched bill of rights, but was in favour of clarifying the powers of the Service Commissions to protect public servants against some future leader who might be 'willing to ransom an ounce of responsibility for a pound of political power'. Quoted in Patrick E Bryan, *Edward Seaga and the Challenges of Modern Jamaica* (University of the West Indies Press 2009) 89.

85 Norman Girvan, 'Assessing Westminster in the Caribbean: then and now' (2015) 53 *Commonwealth and Comparative Politics* 95.

86 Constitution of Jamaica, chapter III, Article 15.

87 It was this view that led Dr Eric Williams, in the case of Trinidad and Tobago, to argue that key appointments should be made by the Chief Minister.

88 Stephens and Stephens (n 64) 22.

89 Ibid 32.

international human rights diplomacy at this time.⁹⁰ The broader point remains, however, that civil service responsiveness to the demands of political leadership remained fragile, dependent on a Kingsleyan correspondence of views rather than stabilised by informal institutional commitment to a Lipsonian mutually beneficial bargain.

In fact, signs of tension already existed for those who were perceptive enough to read the signs. Hamilton documents the severe shortage of skilled administrative expertise facing the government in independence, adding that:

Aware of the high praise showered on the Jamaica civil service in the past they fail to comprehend ineptitude and so politicians of both parties have at sundry times suggested deliberate sabotage on the part of civil service personnel.⁹¹

For their part, civil servants were unable to respond to attempts by politicians to blame them for policy failures by restrictions on speaking publicly. Equally, though, Hamilton notes how civil servants, accustomed to taking direction from heads of departments, resented what they regarded as ministerial intrusion into their sphere of responsibility.⁹²

The perceived limitations of these features of political-administrative interactions prompted the government to invite the UN Technical Assistance Department to undertake a review of the Jamaica civil service. The review praised Jamaica's 'strong, uncorrupt civil service' as 'a national asset of incalculable and fundamental value'. Nonetheless, the resulting report warned of an existential threat to the Jamaica civil service if the service was unable or unwilling to be responsive to the demands of the elected politicians who comprised the government of the day.

If this concept cannot be substantially realised in practice, ministers will inevitably be faced with the temptation to press for the appointment to positions of responsibility in the civil service of people who *will* in fact carry out their policies and plans, because of membership in the same political party or because they appear to the Minister to be more responsive to their own thinking and more active in seeing that things happen. People will be sought who are prepared to be wholeheartedly 'involved' in implementing the policy of the government of the day. It is the essence of democracy that the will of the people, expressed through the government of the day, should be carried out effectively, economically and promptly, and if a permanent career civil service cannot do it then other kinds of executive instruments must be developed.⁹³

These tensions emerged gradually, muted in their effects by the overall 'consensus' politics in Jamaica throughout the 1960s. Politicians, such as future prime minister Edward Seaga, experimented with statutory boards to overcome the perceived lack of responsiveness by the existing public service.⁹⁴ Others sought advice from particular civil servants in whom they had confidence, disregarding official channels of reporting and advice. However, severe strain emerged in the 1970s when the demand for representative politics (and a responsive public service) took a more radical turn.

90 Stephen L B Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge University Press 2016) chapter 3.

91 Hamilton (n 39) 193.

92 Ibid.

93 N C Angus, W P Barrett and E Holstein, *Public Administration in Jamaica* (UN Commissioner for Technical Assistance Department of Economic and Social Affairs 1965) 1. Similar concerns were expressed in Trinidad and Tobago at the time. See First Report of the Working Party on the Role and Status of the Civil Service in the Age of Independence (1964).

94 E.g. the Urban Development Corporation Act 1968.

5 Democratic socialism: PNP administration 1972–1980

In Jamaica, the election victory of the PNP in 1972 marked a turn towards a more radical politics, which by 1974 went under the name of ‘democratic socialism’. This turn reflected, in part, also wider geopolitical changes, whether in terms of the turn towards more activist government in the early 1970s or in terms of Cold War tensions. In part, this turn was also based on particular Jamaican circumstances. The policy programme to which the government now committed itself was, in stark contrast to the earlier policies of the JLP, not only ideologically left-leaning but extremely demanding in terms of state and bureaucratic capacity. This included at the domestic level nationalisation of the commanding heights of the economy, a commitment to increasing economic self-reliance including agricultural and land reform, as well as ambitious social, educational and cultural policies.⁹⁵ In the field of foreign policy, Jamaica adopted an ambitious strategy of third world unity, including promoting the non-aligned movement, as well as continuing the ambitious international human rights agenda that began under the previous administration.⁹⁶

For the then Prime Minister Michael Manley and the ruling PNP, the civil service was perceived as a conservative institution whose traditional emphasis on ‘neutrality’ was incompatible with their ambition (and what they saw as their democratic mandate) to transform society, especially in terms of property rights. Civil servants, it was contended, interpreted their role as ‘protector of the society from the whims, the fancies and the extravagancies of the politicians’.⁹⁷ At the same time, in the face of the political ambition of expanding the state’s role in managing the economy, and the introduction of new social and cultural programmes, the civil service faced difficulties in filling senior leadership positions from within its own ranks and severe criticism for perceived poor policy performance.

A number of measures were taken to overcome this perceived resistance. First, the transformation of the public service was to be achieved through the establishment of a new Ministry of Public Service, which would transform the civil service through the introduction of modern administrative techniques, and to select and train personnel to higher standards of competence. There was also said to be a greater reliance on external appointments and non-Jamaican consultants (see below). Members of the Public Service Commission, which had adopted a traditional approach to public sector appointments during the period between 1972 and 1976 were replaced, following the 1976 election,⁹⁸ by individuals more sympathetic to the ‘politics of change’ that Manley had sought to pursue. In particular, the move was seen as an attempt to ensure that political commitment to fulfilment of the policies and initiatives of the administration was weighed more heavily than seniority.⁹⁹ It is a sign of the administration’s commitment to its particular vision of personnel administration that at this time chairmanship of the

⁹⁵ A full inventory of the Manley administration’s principal policies and initiatives between 1972 and 1979 is given in Stephens and Stephens (n 64) 70–71.

⁹⁶ Ironically, given the Manley administration’s overall approach in relation to issues such as apartheid and third world unity, Jensen (n 90) 258–259 notes that Jamaica ‘seemed to have forgotten their own pivotal role’ in human rights diplomacy in the previous decade.

⁹⁷ Document submitted to the 1973 PNP Conference, ‘Jamaicanise Jamaicans’; see also Michael Manley, *The Politics of Change: A Jamaican Testament* (Andre Deutsch 1974) 205–206.

⁹⁸ The circumstances under which the existing Public Service Commissioners were asked and finally agreed to offer their resignations is described in the memoirs of then Chair of the Public Service Commission, Gladstone Mills. See Mills (n 76) 136–137.

⁹⁹ Stephens and Stephens (n 64) 153.

Public Service Commission became a full-time position. These new appointments were to establish the conditions for a public service that was more responsive to the needs of a developing country. Subsequently, one of the new members of the Commission, Edwin Jones (from the University of the West Indies), justified the measures on a number of grounds.¹⁰⁰ He argued that for government programmes reflecting 'new development orientations', a supposedly neutral administrative 'cadre' was insufficient.

But, as well as seeking to make the civil service as it then existed more responsive, attempts were made, to a much greater degree than under the previous JLP government, to adopt much more responsive means for implementing the agendas of elected politicians. This included successive government reorganisations, involving not just the creation in 1973 of a Ministry of Public Service to oversee the adoption of contemporary administrative techniques, but also the Ministry of National Mobilisation and Human Resource Development in 1977 to coordinate and monitor the implementation of government policies and to act as a progress-chaser of other departments.¹⁰¹ In addition, the Manley government pursued a number of strategies aimed at making public policies more responsive to what it saw as its popular mandate.¹⁰²

Second, the PNP administration sought to identify those within the public service who were prepared to work with its agenda. As a 1973 party document put it: '[Government] must try to identify those civil servants who in spite of the screed of neutrality are nevertheless committed to the goals and actions of democratic socialism.' To this end, the party created an 'Accreditation Committee' chaired by PNP Minister Robert Pickersgill. The function of the committee was to ensure that appointees to statutory boards and other government committees had not only the competence but also the 'commitment' (as it was put by leading politicians at the time) to serve the government's agenda.

A fourth strategy was the appointment to the position of special advisors, a cadre of ideologically committed technical analysts, capable of providing an alternative to the civil service's conventional monopoly on advice to ministers. Such special advisors should be appointed by and solely to the minister: 'These cadres should not be integrated to the regular system. They must work outside of it.'¹⁰³ The appointment of these 'irregulars' (as they were known) often provoked the antipathy of senior civil servants, not just because of their different ideological perspectives – they were radicals, whereas the civil servants tended to be liberals – but also because they adopted different attitudes, mannerisms and even dress to traditional civil servants. For example, Stephens and Stephens quote one of the more conservative members of the then PNP Cabinet as describing the attitude and appearance of the West Indies economists (a group which included Norman Girvan and George Beckford) who worked on an alternative to the International Monetary Fund plan eventually agreed to by Manley:

They would go up to the Bank of Jamaica wearing sandals and a tam, and demand, not ask, for some statistics or data and naturally people resented it. Their personal appearance, all wearing tams, they were known as the 'tam pack'.¹⁰⁴

100 'UWI lecturer testifies at corruption probe' *Daily Gleaner* (Kingston, 15 May 1979) 13.

101 Government of Jamaica, 'The Ministry of National Mobilisation and Human Resource Development: Its Nature, Structure and Functions' (Ministry Paper 17 1977).

102 Quoting Arnold Bertram, Patrick Bryan (n 84) 124 notes how these calls for greater responsiveness not just involved calls for greater social justice, but also appeals to the national business sector by advertising the supposed benefits of greater economic nationalism in contrast to foreign ownership.

103 PNP document (1977).

104 Stephens and Stephens (n 64) 152.

Notwithstanding such culture clashes, in Stephens and Stephens' estimation, when judged by their achievements, the 'irregulars' proved effective in harnessing elements of the state bureaucracy.¹⁰⁵ More generally, by the mid-1970s, there was also a growing stress on the importance of 'competence' even among these ministerial advisors.

Finally, the PNP government ramped up the strategy, which had started with Edward Seaga as Minister for Development and Welfare in the 1960s, of creating statutory boards as vehicles for carrying out public policy. Board members were not permanent appointees but held their position for a fixed term. A convention developed whereby members of such boards were expected to tender their resignations after an election. The purpose of this convention was to further ensure responsiveness to the political goals of the administration. Again, however, by 1977, this strategy had been identified as problematic as these boards were diagnosed to have become unresponsive to political initiatives and to have assumed the position of 'bureaucracies in their own right'.

Overall, the experience of the Manley government in the 1970s reflects the concerns initially flagged by the UN Technical Department Report of 1965. Having embarked on a set of programmes aimed at transforming society, the government found the civil service itself to be one of the obstacles to achieving this goal. The criticisms of politicians of the time, however, went beyond familiar grumbling about civil service intransigence. Instead, the very idea of 'neutrality' was seen as incompatible with attempts at, what the PNP government called, the 'mass mobilisation' of society in pursuit of developmental goals. At the same time, it illustrated considerable tensions even within that strategy: matching 'competence' (i.e. technical expertise to deliver programmes, to analyse policy options and such like) and 'commitment' (i.e. loyalty towards a democratic socialist party seeking to challenge existing domestic and foreign policies) that inevitably led to conflicts, concern about leaks (for example, internal documents to the opposition leader) and accusations of outright sabotage (by supporting 'capitalist' organisations, such as the daily newspaper, the *Gleaner*, or US interests). Compounding these administrative shortcomings was the extremely ambitious nature of the PNP's programme throughout the period. As Stephens and Stephens put it, the government during this period:

... started too many programs, at too fast a pace, for the available state machinery to be able to handle them efficiently. As a result, many of these programmes were poorly implemented and constituted a greater drain on the government's resources than they were supposed to do and than the government could afford.¹⁰⁶

This over-commitment could arguably be said to be compounded by a failure to deal effectively with patronage in public employment, despite a clear policy intention to do so.

This point represents the most extreme attempt in the post-independence period to 'stretch' the constitutional understanding towards a particular ideological version of representativeness. Subsequently, as in the wider global context, the 1980s were characterised by a return towards calls for a more 'responsible' form of government and therefore also understanding of the appropriate role between politics and civil service. Even though a further elaboration is outside the remit of this paper, subsequent waves of public service reform continued to be characterised by the continued presence of mutual suspicion between political and administrative elites, especially during times of changing government.

¹⁰⁵ Ibid 153.

¹⁰⁶ Ibid 312.

Conclusions

This article's central focus has been the persistence of a mutually suspicious bargain between political and administrative elites, reinforced by the process of decolonisation, that centred on the tension between constitutional doctrines of responsibility and responsiveness. The persistence of this informal institution has been central to Jamaica's constitutional development and represents the central British colonial legacy. The lack of agreement as to how to reconcile notions of responsible and representative government, especially in relation to the relationship between political and administrative systems, has been a continual impediment to the development of strong political institutions.

This persistence of a mutually suspicious bargain can be seen in a number of ways. The continuing presence of mutual suspicion had repercussions for the party-political system itself. While the leader-centricity of the party system has been linked to initial political struggles between the fragmented political movement surrounding Bustamante (and the JLP) which forced the PNP to build a personality-based party (around Manley),¹⁰⁷ the continuing centrality of the 'leader' can be interpreted as a continuing expression of a suspicion regarding the competence of the bureaucracy to 'perform' and to do so 'loyally'. At the same time, the continued emphasis on personal leadership and resultant patron-clientelistic relations reinforced conditions of mutual suspensions, given, according to Carl Stone, the seemingly all powerful, yet uniquely vulnerable position of these leaders:

The party boss or maximum leader is like a feudal monarch surrounded by a nobility who grow or diminish on scale of elite power depending on how he chooses to bestow favour. The maximum leader is able to keep the party together only if he constantly exerts personal authority over the party. The effective maximum leader can never be openly challenged, has the final word on most critical decisions (unless he chooses not to exercise that power), and is entrusted with the maximum power to determine policy and overall directions of the party. Maximum leaders who show signs of indecisiveness, weakness and lack of control invite challenges and lose credibility because the role of maximum leader is defined in the political culture as demanding strength, appearances of personal domination, and decisiveness.¹⁰⁸

Indeed, this passage invites comparison with the position of the colonial-era Governor, who seemingly enjoyed a power that could avail to overcome all resistance that might be brought against him, yet had to maintain a fine balance between powerful opinion both locally and internationally.

Furthermore, the persistence of this mutually suspicious bargain is reflected in the incoming political elite that, on the one hand, inherited the ambiguous position of the Governor, a supposedly responsible office that nevertheless was beholden to select powerful interests. On the other hand, this political elite encountered an administrative elite that had not only exchanged loyalty towards colonial government for social status in previous times, but which was ill-equipped to deliver the kind of 'representative' programmes the new political elites and their electoral constituencies demanded of them. This, in turn, reinforced the reliance on informal and indirect governing networks that were classically clientistic.

107 Amanda Sives, *Elections, Violence and the Democratic Process in Jamaica 1944–2007* (Ian Randle 2010).

108 Stone (n 8) 97–98.

More generally, this article also contributes to wider discussions regarding the impact of colonial legacies and, thus, legal transplants. In contrast to those who highlight the dire consequences of 'totalising institutions' (such as a plantation economy) on subsequent political and economic development¹⁰⁹ or those that focus on formal constitutional arrangements, such as the Crown Colony arrangement in enabling essential administrative infrastructures¹¹⁰, this article has highlighted the importance of distinct informal institutions, namely the role of understandings that support the accommodation of competing constitutional doctrines. Such informal understandings or institutions are central to all forms of social life, such as contractual transactions or marriage arrangements. However, as yet, these informal and usually 'unspoken' understandings have enjoyed limited attention in the context of constitutionalism or constitutional 'transplants' between metropolis and periphery. Such an emphasis raises two wider issues. One is that formal constitutional systems are open to considerable degrees of change according to how constitutional actors' understandings of the 'rules of the game' evolve. This is particularly the case with respect to tensions between constitutional principles that are reflected in the formal constitution. In Jamaica, the persistence of a 'mutually suspicious' rather than 'mutually beneficial' bargain fundamentally affected and reinforced these tensions and fuelled political dynamics right throughout the initial period of independence. More generally, such a focus also highlights how problematic it is to rely on simplistic understandings of colonial governance that supposedly established the basis for subsequent infrastructures of administrative power. Instead, the legacy of (Crown colony) colonial government was an unresolved ambiguity about how to govern and the lack of 'mutually beneficial understandings' shared among actors in the political system. The result was a persistent, ongoing antagonism which frustrated political, economic and social development.

109 D Acemoglu and J A Robinson, *Why Nations Fail* (Random House 2012). See also D Acemoglu, S Johnson and J A Robinson, 'The colonial origins of comparative development' (2001) 91 *American Economic Review* 1369.

110 M Lange, *Lineages of Despotism and Development* (Chicago University Press 2009). See also J Gerring, D Ziblatt, J Van Gorp and J Arevalo, 'An institutional theory of direct and indirect rule' (2011) 63 *World Politics* 377; J Mahoney, *Colonialism and Postcolonial Development* (Cambridge University Press 2010).