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Contradictions in Faith in the Caribbean Context: Postcolonialism, Religion and the Constitution

Introduction

Yonique Campbell and Se-shauna Wheatle

The Commonwealth Caribbean is, undoubtedly, the manifestation of a set of contemporary forces that reflect—yet are in tension with— colonial ideas of politics, citizenship and the nation-state. The Caribbean in many ways is a site of resistance to, and contestations over, religion, the ‘coloniality of power’ and the cultural and constitutional universalisms of the West. Given its history of creative survival and struggle for full liberation, made necessary by the transatlantic slave trade and meeting of Europe, Africa and other peoples in the ‘New World’, the Caribbean can be said to constitute a complex and at once contradictory interplay of racial, constitutional, political and religious identities. These manifest in the relationship between law and religion or between church and state as well as between the colonial and independence institutions of law and politics. The complexity of these relationships also reveals itself in recent social and legal developments in the Caribbean and challenges that have accompanied attempts to produce changes in the social and judicial order.

In light of these challenges, this issue examines the ways in which the interrelated forces of faith, colonialism and postcolonial institutions of law and governance have affected the societies of the Commonwealth Caribbean. Faith in religion and colonial institutions have influenced the law and protection of rights that are viewed as contrary to popular morality (Lazarus, 2011, 2013) or disruptive of the established order. The retention of specific colonial laws and practices that regulate citizenship perpetuate a hierarchy of power, which has rendered the postcolonial order— purportedly structured on political independence and the constitution as the basis of citizenship—incomplete.

The subject of faith, particularly in relation to postcolonialism, is important within the Caribbean as religion played a central role in establishing the colonial world order (Austin-Broos, 1997; Kerr, 1952; Paton, 2015). Yet, there are few studies that have focused on this topic (Austin-Broos, 1987, 1997; Clarke, 2006; Paton, 2015; Smith, Augier & Nettleford, 1960). There is also a paucity of studies that assess the impact of religion and faith on legal proceedings in the Caribbean; most of our knowledge about this specific topic has come from scholars outside of the legal field. By bringing together authors from different disciplines, stretching across Law, Sociology, Geography and African Studies, and by examining postcolonialism, faith and constitutional identity, we attempt to provide a full picture of the relevant issues and debates. Studies examining the impact of colonialism on Caribbean law have generally focused almost exclusively on Westminster, Whitehall and the Privy Council (Girvan, 2015; Barrow-Giles 2015). While we are also concerned with these pertinent topics, we believe it is important to look simultaneously at constitutional identity and religious faith within the wider colonial and postcolonial context.

There are no major pieces of legislation addressing issues of gender, reproductive rights and sexuality that have been passed by, or debated in, the parliaments of the Commonwealth Caribbean without input from religious organizations. Given the growth and popularity of Evangelical churches, and despite the growing influence of human rights groups across the region, it is clear that the influence of the church will continue to increase. The Jamaican Parliament debated the legalisation of abortion in 2019, while Belize and Guyana saw landmark cases invalidating anti-sodomy laws and anti-crossdressing laws, respectively. The cases and the legislative debates captured the complex interrelationship between religious belief, the retention of colonial laws and the reach of constitutional rights. Churches and religious groups have been a prominent voice in each of these debates and have helped to shape the terms of the discussion, if not determine the outcome. Such current and continuing debates

regarding laws regulating sexuality and abortion – and the central place of faith and the independence constitutions in those debates – suggest the time is ripe for exploration of the relationship between these forces.

Accordingly, the articles in this special issue are centrally concerned with the following themes: the growth and impact of religious groups alongside differential incorporation and the rise of secularism, the influence of conservative Christians on Caribbean constitutional interpretation and reform, Caribbean constitutional identity and the legal prohibition of African faith and Indian spiritual practices. There has been renewed interest in these subjects given recent occurrences, including constitutional contestations and amendments, efforts to reform the Westminster Whitehall model, the predicament surrounding the establishment of the Caribbean Court of Justice as the final appellate court for Commonwealth Caribbean states and the involvement of the church in matters of law and politics. The church has used the space opened for democratic participation to push its own, often, conservative, agenda. At the same time, the growth of secularism, the 2016 and 2020 constitutional rulings invalidating the anti-sodomy law in Belize and the continuing debates over the role of Christian morality in politics constitute challenges to the status quo. Yet, amongst such burgeoning constitutional quandaries, the very identity of Caribbean constitutionalism arguably remains in an embryonic form.

Against this complex background, the contribution by Wheatle and Campbell addresses constitutional faith and constitutional identity in the region. They argue that the Caribbean has not experienced a blossoming of constitutional faith similar to that developed in the USA (which evinces a near religious reverence for its Constitution and its Founders) or even in the United Kingdom (in which there is faith in the evolving yet steady nature of constitutional growth). Within the Caribbean, there is strong faith in colonial institutions and religious traditions. Despite the majority of states in the region claiming formal independence, there

remains strong attachment to the structures, language and legal traditions of the past. This dynamic is also vividly represented in the legal context in the retention of the Judicial Committee of the Privy Council; despite the eventual establishment of a Caribbean Court of Justice, only 4 countries in the region have replaced the Judicial Committee as the final Court of Appeal. More subtly, judicial interpretive practices in the region have generally adhered to the judicial approaches of the former colonial master: evolutionary rather than transformative (Robinson, 2008). The bundle of legal and socio-political acts of retention have understandably led to claims that there is merely a ‘myth of independence’ in the region.

One area in which Caribbean constitutionalism seems determined to forge its own path is in the boundaries of fundamental rights, specifically in decisions about the limits of fundamental rights. These decisions reveal societal perceptions of the deserving and undeserving, with sexual minorities and murder convicts representing the epitome of ‘the undeserving’. Resistance to attempts of the Judicial Committee of the Privy Council to ‘ameliorate’ the death penalty was one motivation behind the establishment of the Caribbean Court of Justice. Resistance to gay rights has been framed as opposition to encroaching cultural imperialism. However, despite these indications of resistance, there are undertones of faith in tradition running through Caribbean designations of the rights-deserving. The root of attitudes to gay rights explicitly reveals an omnipresent aspect of faith in tradition in the region: religion. Further, under the surface of rejection of rights for death sentence prisoners is the belief in biblical penalties as executed by the state. Moreover, and as shown by Wheatle and Campbell, in its approach to (limiting) rights, Caribbean constitutional law mimics colonial era division, subjugation and denial of equal dignity, with citizenship rights often negotiated or denied to marginalized ‘others.’ Yet, is perhaps in the space created by a muted constitutional identity that religion has become established as a force that unifies and also helps to define the

communities within the region. In this sense, religion may be seen to provide a “sacred canopy” for the management and resolution of political conflict (Jelen and Wilcox, 2002, p. 12).

By focusing on the discourses and interventions made by religious groups, Lazarus explores the place of faith in Caribbean legislative debates and the challenges this poses for citizenship, politics and the nation state. Showing a proclivity for active citizenship, the church has advocated for conservative policies and laws in matters of gender and sex and sexuality. The church has, therefore, undercut the development of a strong faith in the constitution as the basis for citizenship in a ‘Christian nation.’ Lazarus shows how religious discourses and groups influence, shape and (re)affirm notions of citizenship for everyday people that are often in conflict with the position adopted by human rights groups. Yet, the church’s ability to combine religious with democratic arguments underlie a certain paradox. The church frames proposed amendments to morality laws as an avenue for imposing ‘foreign beliefs’ about sex and sexuality, undermining sovereignty and the will of the majority. On the contrary, human rights groups view the dominant laws and constitutional provisions on sexuality in the Commonwealth Caribbean as a direct reflection of the enduring impact of religious groups and colonial laws, laws no longer relevant in the metropole.

The constitutions and their provisions are, therefore, treated as central in debates that seek to assess religious influence and the place of the church and Christianity in the postcolonial Caribbean. This influence, explored in the Johns article, cuts across three juridical areas: the drafting of the constitutional text, judicial interpretation of the constitutional text and direct participation by religious groups as “interested parties” in constitutional adjudication. Highlighting developments in the protection of LGBT persons in Belize, Trinidad & Tobago and the Cayman Islands, Johns outlines tensions and new implications that have emerged for human rights and constitutional law. She considers how interventions made by the church at various stages of constitutional proceedings in Jamaica might stymie the country’s

ability to advance human rights protection, despite the activism of local LGBT groups, such as the Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG). Underpinning the discussions in the contributions from Johns and Lazarus is the possible tension between the engagement of religious groups and the deepening and broadening of democracy. In advancing religious views that condemn the experiences and identities of sexual minorities and other disadvantaged groups, religious mobilization may undermine a richer understanding of democracy premised on equal citizenship and participation (Razavi and Jenichen, 2010). Further, while religious groups' engagement can be construed as part of a plural public space, the outsize role of religion within Caribbean societies should prompt questions about the impact of religious voices on the very ideas (and ideals) of democracy and constitutionalism.

While Lazarus and Johns ground their analyses of the church's influence in the contemporary context, Austin-Broos helps us to understand the historical context and how Pentecostalism and other religious systems became such powerful forces in in the Caribbean, rivalling or reflecting other forms of identities and the socio-cultural milieu. The rise and popularity of Jamaican Pentecostalism occurred alongside major social and economic changes in urban and rural life in Jamaica. This historicizing, as well as the neoliberal context provided by Austin-Broos, is important especially in a context of pervasive inequalities and political failures that followed the post-emancipation period and, later, political independence. Pentecostalism, arguably Jamaica's most popular religion, as shown by Austin-Broos, provides the context to examine the characteristics and relevance of religious faith.

Pentecostalism and the growing influence of religion followed a wider process of religious pluralism in the post-emancipation period. Religious pluralism, as argued by Clarke, and the expansion of churches such as the Church of God, the Pentecostal Church and Seventh Day Adventist Church, must also be examined alongside the emergence of secularism, which represents a key element of differential incorporation and differential citizenship in Kingston's

garrisons. Using relevant data and correlations, Clarke demonstrates the ways in which religion expressed itself in the social structure; the Afro-Christian religions and the European Christian denominations in Jamaica were distinguished according to class membership, social acceptance and colour. The colonial order privileged European denominations and their world view while the denominations of the lower class occupied a lower position. It is no surprise that differential incorporation, as articulated by M. G. Smith (1974), sharpened the role of the church in the lives of the deprived. In Clarke's view, the rise of secularism and non-church affiliation among the lower class in the garrisons at independence also had enduring social consequences. Dons who offer de facto citizenship (Campbell 2020) were able to capitalize on this new development. Nonetheless, among the urban poor who live in garrisons, secularism has not significantly diminished the influence of the church in the legal and political sphere. On matters of sex and sexuality, the discourses and staunch defence of the anti-sodomy law, for example, resonate with sections of the garrisons. Secularism has, however, further complicated the picture of faith in Jamaica and the range of actors who are able to influence the social and cultural orientation of the society. This complexification might eventually have greater significance in the legal sphere.

Despite the growth of religious pluralism and constitutional provisions that guarantee religious freedom, many countries in the Commonwealth Caribbean retain laws that forbid certain Afro-Caribbean religious practices (Boaz, 2017; Paton, 2015; Rocklin, 2015). Consequently, while religion mediates certain 'modern' laws, colonial laws also regulate certain religious practices. Drawing on cases from Antigua and Barbuda, Trinidad and Tobago and Jamaica, Boaz interrogates, through both a historical and contemporary lens, the way in which the proscription of African and immigrant religious practices, mainly obeah, pose challenges for religious freedom. Colonial regulation of obeah through laws dating as far back as 1760 continues to suppress African and immigrant religious practices, ensuring that the

coloniality of power pervades Caribbean societies well into the 21st century. Boaz makes clear that the historical persecution of African-Caribbean religious and spiritual traditions and reluctance to decriminalize colonial laws demonstrate a clear colonial pattern of racialized hierarchies and a privileging of Europe over Africa and Asia.

This collection of articles shines a light on the complex ways in which faith continues to influence Commonwealth Caribbean law and society. In particular, the authors reflect on the relationship between faith and coloniality, which affects the growth of Caribbean constitutionalism and the protection of human rights and equal citizenship across the region. The combined effects of the strong influence of religious faith alongside muted faith in the region's constitutions and state institutions serve to undermine the full blossoming of constitutionalism, independence and human rights in the region. These challenges are manifest in recent legislative and constitutional debates in the Caribbean- particularly those relating to LGBT persons- and are likely to continue to affect constitutional conflicts in the region. While the articles in this issue address the largely understudied countries of the Commonwealth Caribbean, the issues and themes explored here echo in other post-colonial locales. The tensions between faith in the religious and traditional and the struggle to develop a local constitutional identity arise from complex yet familiar forces that emerge in post-colonial communities. This issue potentially holds useful reflections on the interactions of faith, religious mobilization, citizenship and constitutionalism that may be relevant beyond the Caribbean region.

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