

The Monarchy, Republicanism and the Privy Council:

The Enduring Cry for Freedom

University of London, 19 June 2012

I am honoured to have been asked to address you this evening and thank the High Commission of Jamaica for giving me the opportunity and the University of London for providing the venue.

A journalist, writing in *The Australian*, recently said, “If you don’t want to be a Jamaican now, you will be by the time the Olympics is over”. But I know that you cannot wait to become Jamaicans. After all, there is a cachet attached to being Jamaican that goes far beyond the running track. It is not every country that can claim that its name has given birth to a new word in the English language. If you are not already privy to it, let me tell you that in the next edition of any reputable English dictionary you will see the word, “jamaicanly *adv.* defying the odds with style, flair and aplomb in such a manner as would normally be deemed incredible or impossible”. If the word is not there, you have my authority to toss the dictionary through the window; it’s not reputable. Of course, one does not have to be a Jamaican to conduct oneself jamaicanly. I know the British will shortly be claiming that they always conduct themselves jamaicanly. But to act jamaicanly it certainly helps if you are Jamaican. So your impatience is understandable and you will not have to wait for another two months. In a preemptive strike, for the purposes of our conversation this evening, and inspired by this season of jubilees, I hereby grant all non-Jamaicans present Jamaican citizenship – this will go down in the Guinness Book of World Records as the speediest process by which a person has become a citizen of another country and at no cost. When I address you as ‘my fellow Jamaicans’, I might not be that far off anyway, given the long historic ties between our two countries.

So my fellow Jamaicans, let us talk honestly about the relationship between the United Kingdom and Jamaica, a relationship that is grounded in a history familiar to all who have had a colonial past or who continue to exist in a colony-metropole relationship. Jamaica has had a constitutional relationship with the United Kingdom for 357 years. Tonight, I would like to consider whether the time has not come for Jamaica to sever the last two constitutional ties with the United Kingdom and exercise the plenitude of sovereignty and independence in the conduct of all its affairs. And Jamaica is not the only nation wrestling with these questions right now – as witness the debate in the land of one of my ancestors in the north of this country; later on, I will have occasion to speak of my other ancestors from the vast continent to the south.

But first, a word or two about the historical context in which questions relating to the Monarchy, Republicanism and the Privy Council arise in Jamaica.

Jamaica's relationship with England started in the period of republicanism that lasted in England for 11 years in the middle of the 17th century. In the English Civil War the Roundheads defeated the Royalists, King Charles I was beheaded, and the Republican Commonwealth and Protectorate commenced in 1649. Oliver Cromwell, a leading figure in the Republican movement that overthrew the Stuart Monarchy, became Head of State, with the title, Lord Protector. He ruled England from 1653 to 1658. When the Monarchy was restored in 1660 it was *lex talionis* as Cromwell's body was disinterred by the Royalists and his head removed.

In 1655, Cromwell sent Admiral Penn and General Venables to take Hispaniola (now Haiti and Santo Domingo) from the Spanish; they failed, but not wishing to disappoint Cromwell by returning empty-handed, they proceeded to nearby Jamaica, which was not well protected, and captured it from the Spanish, who had occupied the island from 1509.

The Spanish imported people captured, enslaved and shipped from Africa to replace the native Tainos, who were decimated by Spanish brutality and diseases. The English continued the slave trade to acquire labour, mainly for their prosperous sugar plantations – in 1774 the average white person in Jamaica was 52.3 times as wealthy as the average white person in England and Wales.

Born in bloodshed and sustained in bloodshed, the relationship between England and Jamaica was marked by atrocity upon atrocity against the enslaved. But they did not meekly accept their lot. There were many acts of resistance. In fact there were more enslaved-led resistance wars in Jamaica than in any other British colonial territory in that period, including the United States of America. Additionally, the English had to contend with the Maroons, Africans who refused to be enslaved and fought the English from 1655 to 1739, when the English were forced to sue for peace and enter into a treaty granting them lands and some autonomy.

Sam Sharpe's Emancipation War of 1831, in which over 500 slaves were killed, the Morant Bay Rebellion of 1865, in which over 400 persons were killed and the Labour Protests of 1938 in which 15 persons were killed, are the seminal events that stoked the furnace in which Jamaica's independence was forged. Indeed, it was the 1831 Emancipation War that more than any other event led to the abolition of slavery in 1834, and full Emancipation in 1838. Although others assisted, notably the Baptist clergy in Jamaica and the abolitionists in England, emancipation from

slavery was achieved by the struggle and courage of the enslaved men and women themselves. While the English gave the Caribbean enslavers 20 million English pounds as compensation for their loss, the newly freed people were given nothing and, for the most part, left to fend for themselves.

After slavery, Chinese and Indians were brought in as indentured labourers. The system of indentureship and post-emancipation employment and subsistence living produced their own horrors for the workers.

Jamaicans received adult suffrage in 1944.

In 1955, Jamaica was granted internal self-government.

In 1957, Jamaica became part of the short-lived West Indies Federation, which was dissolved in 1962.

On 6th August 1962, Jamaica became an independent country with the Queen as the Head of Parliament and the Executive. But the Queen herself has no substantive role in the Government of Jamaica, where she is represented by the Governor-General.

Therefore in one form or another, Jamaica has had a monarchical system of government from 1660 to the present time.

Today Jamaica has a population of 2.7 million people, of which more than 95% are descendants of the former enslaved.

In 1833, the Privy Council was established to hear appeals from the “plantations and colonies”. The Privy Council was, of course, the final appellate body not only for colonial Jamaica, but for Dominions in the Commonwealth. However, today the vast majority of Commonwealth countries have severed ties with the Privy Council, leaving a paltry few, regrettably including Jamaica, with that court as their final appellate body.

My thesis is that the Monarchy in Jamaica should be replaced by a republican form of government and appeals to the Privy Council should be replaced by appeals to the Caribbean Court of Justice (CCJ).

And when we shall have achieved these epochal milestones let us be clear about the event that was their trigger. The struggle for freedom and independence did not begin in 1962 when we obtained Independence; nor did it begin in 1955 on the grant of Internal Self-Government; and it did not begin with the Labour Protests of 1938; nor with the Morant Bay Rebellion of 1865, nor with full Emancipation in 1838, nor with Sam Sharpe's Emancipation War of 1831, nor even with the first big recorded revolt of the enslaved in 1684. No, it did not begin with any of those events, significant though each one was on the long journey to freedom and independence. That struggle started with the first cry for freedom by our oppressed ancestors from the south across the Atlantic. That first cry was not uttered in Jamaica; it was made on abduction in West Africa; if not there, then in the so-called slave castles of Ghana and Senegal and, if not there, then certainly in the notorious Middle Passage. That cry could still be heard in 1684 after the first activist war, in 1831 after Sam Sharpe's Emancipation War, in 1838 after full Emancipation, in 1865 after the Morant Bay Rebellion, in 1938 after the Labour Protests, in 1955 after Internal Self-Government and even in 1962 after Independence; and it is a cry for freedom that will not go away and die, it is a cry that will haunt us until we seize the plenitude of sovereignty and independence available to us by replacing the Monarchy with a Republic and the Privy Council with the CCJ. Let us not be diverted by those who, in advancing the facile argument that relinquishing these two symbols 'can't put food on the table', say that there are more important social and economic issues to which Jamaica must attend. For the replacement of these ancient symbols is an issue that goes to the identity and self-image of Jamaicans, and as such is anterior to and transcends all other issues; indeed it is the basic, fundamental issue in Jamaican society. We are not in an 'either or' situation. It is entirely wrong to suggest that Jamaicans can't take the steps to relinquish these two symbols and at the same time adopt the measures necessary for their social and economic advancement.

And so, the impetus to relinquish and replace the Monarchy and the Privy Council is properly located in our ancestors' primordial cry for freedom. Without their determination and their sacrifice Jamaicans would not enjoy even an iota of the freedom that today we take for granted.

It is to be regretted that so many of my countrymen and women do not wish to have a conversation about our history and do not wish to be reminded that they are descended from African slaves. National Hero Norman Manley – himself a product of the finest education available in the colonies and in England - had no such fears or inhibitions. He readily acknowledged “[springing from] the black masses”, and knew who his ancestors were.

A monarchical system of government is one in which the Head of State inherits power – birth is the criterion for assuming a position in governance. A monarchical system of government is inherently undemocratic, since the will of the people has no influence on the process by which the Monarch, as Head of State, is appointed. I concede that some monarchies have, over time, become very popular with their subjects and enjoy widespread support. For the popularity of this Monarchy, we need look no further than the ardent public participation in the celebration of the Queen's Jubilee earlier this month. Indeed, many Jamaicans also admire the Queen. However, let us separate the two issues and admit that in an age where so much stress has been placed after the Second World War on democratic values as the best guarantee for good governance, a monarchical system would not qualify as the model to follow in modern statehood.

Apart from the principled objection to a monarchical system of government, there is another reason why the present monarchical system is inappropriate for Jamaica: Jamaica is a post-oppression society and its people should not be asked to have as its Head of State a person who symbolizes the oppression inflicted on their enslaved and other ancestors.

By far the worst relic of enslavement, indentureship and colonialism is that they have left Jamaicans with a muddled sense of their identity. Colonisation has left ingrained in the psyche of Jamaicans the feeling that they are not good enough, that what they look like is not good enough and that what is foreign, especially if it is white, English, European or American is better.

Don't underestimate the importance of symbols, especially in a country with a history like Jamaica's, and one as young as Jamaica is. In Jamaica the symbols at the apex of the political and judicial systems are all wrong. The Monarchy and the Privy Council, comprised of foreigners, ignorant of Jamaican culture, living thousands of miles away, many of whom have never set foot in Jamaica, and who have precious little in common with the Jamaican people, are an anachronism that Jamaicans should not be asked to endure any longer. It is no more acceptable for a foreigner, or if you prefer a non-citizen of Jamaica, to be the Head of State of Jamaica than it would be today for the Head of State of France or the Head of State of Germany to be the Head of State of the United Kingdom. In fact, the situation in which a foreigner and the symbol of the oppression of our ancestors is the sovereign Head of State of Jamaica would be deliriously risible were it not so tragic. Certainly, countries such as the USA, France, Germany, Israel and the United Kingdom itself would not in this day and age tolerate a parallel situation. Why, then, 50 years after Independence, do Jamaicans?

While I acknowledge that the Monarchical system has worked well for the people of the United Kingdom, the Monarchy is plainly inappropriate for and irrelevant to Jamaica, and its retention is a clear affront to our enslaved and other ancestors.

Jamaica should have a productive relationship with the United Kingdom, and Jamaica can have such a relationship with the United Kingdom – I note that more than half a million Jamaicans and their descendants make this country their home - but it should not be one in which the British Monarch is Jamaica's Head of State. When Jamaica becomes a republic, it would, like its Caribbean sisters Trinidad and Tobago, Guyana, and Dominica remain within the Commonwealth. As a Republic within the Commonwealth, Jamaica and the United Kingdom will continue to develop their relationship for their mutual benefit. The benefit usually associated with the Monarchy is the perceived stability and certainty that it is said to provide: the Monarchy remains while governments change. It is not clear to me that if Jamaica has enjoyed political stability in the last 50 years - and a fair comment must be that it has - that this can be attributed to the British Monarchy. There is no reason to believe that the current level of political stability in Jamaica would not continue under a republican system of government.

The Prime Minister of Jamaica has indicated that the time has come to move Jamaica to republican status. For that to be achieved, in addition to the observance of other provisions, the Jamaican Constitution requires a two-thirds majority of both Houses of Parliament approving the relevant law and an affirmative outcome of a referendum.

The time has also come to relinquish ties with the Privy Council. There are some in Jamaica who oppose such a move. The explanation for this opposition is the feeling that we are not good enough and cannot be depended on to be just and fair and deliver justice in the way that an English court can. The modern media, particularly television and film, contributes to the negative image that Jamaicans have of themselves; our own misdeeds help to explain the lack of confidence Jamaicans have in their institutions. But, by far the most potent explanation of the mistrust of, and lack of confidence in, each other is the 307-year colonial experience.

If it were true that Jamaica is a nation of incompetents and dullards, then anyone who proclaimed the stellar achievements of Jamaicans like Marcus Garvey, Norman Manley, T.P. Lecky, Una Marson, Mary Seacole and Bob Marley, would be guilty of a scandalous falsehood. Today, the achievements of our athletes at the global level give the lie to the claim that we can't think, plan and manage to the highest international standards. For, if you're unsure of many things, of this one

thing you can be sure: what we have achieved in global athletics is not an accident; it is, rather, the result of a system that has been patiently developed, tried and tested over the past 100 years: a system of athletic instruction, management and administration that is now well-established. Yes, Jamaica has the natural talent, but so do others. Without the system to harness that talent, Jamaica would not be the success story it is in international track and field. The self-reliance and indigenization that have catapulted our athletes to the top of the world can be relied on to propel our judiciary to the same level of achievement. If Jamaica is independent in sports, in music, in education, and in every other facet of national life including its legislative and executive functions, why shouldn't Jamaica also be independent in its judicial function?

Jamaica and the Caribbean have always produced lawyers of the highest calibre – Norman Manley of Jamaica, is an example, and so too Hugh Wooding of Trinidad and Tobago. It wasn't surprising, therefore, that the Federal Court of Appeal, that was in existence for five years from 1957-1962, functioned at the highest level of professionalism, producing judgements of the highest quality.

The lawyers and judges in Jamaica are well equipped to serve in a final appellate body. In the research done the discovery that would perhaps most startle those who berate Jamaican judges is something that I have instinctively known all along: in terms of reversals of their decisions Jamaican judges compare favourably to their UK counterparts. The percentage of appeals allowed by the Privy Council from decisions of the Jamaican Court of Appeal is roughly the same as it is for appeals allowed by the House of Lords – recently replaced by the UK Supreme Court - from decisions of the UK Court of Appeal – between 30% and 40%. Jamaican judges would therefore seem to be as good, or if you wish, as bad as the UK judges. The comparison is apt since the Privy Council is comprised of judges drawn from the UK Supreme Court – formerly the Law Lords in the House of Lords.

Moreover, the Privy Council is not accessible to the vast majority of Jamaicans. The right to appeal to the Privy Council is illusory since Jamaicans cannot afford the 5000 mile trek for justice. Consequently, only a few persons utilise that court; in effect, only those who are relatively well off and those accused of murder who receive *pro bono* help from English lawyers. As one commentator has put it: it is only the wealthy and the wicked who go to the Privy Council.

There is another cogent reason for leaving the Privy Council. Like the tardy guest, Jamaica has overstayed its welcome. It is clear that Jamaica and the other countries still tied to the Privy Council are not wanted and if they had any pride and self-respect they would leave. In 2009, Lord Phillips,

President of the UK Supreme Court, complained that his judges had to spend too much time on cases from the Commonwealth – 40% of their working hours. He said that Caribbean countries should utilize the CCJ and that “in an ideal world” former Commonwealth countries would stop using the Privy Council and set up their own final courts of appeal. After that classic put down, you would have to wonder why any self-respecting Caribbean country, why any country with ancestors such as National Hero Marcus Garvey, who preached self-reliance for the upliftment of the black race, would not have immediately set in motion the process to sever ties with the Privy Council and have its own final appellate body. For Marcus Garvey was right when he said “it is far better to be free to govern or misgovern yourself than to be governed by anyone else”.

Let me say a little about the court that I have identified to replace the Privy Council. The Caribbean Court of Justice was established by an Agreement between countries in the Caribbean Community (CARICOM) in 2001. The CCJ has two jurisdictions. In its original jurisdiction it hears cases that arise from the interpretation and application of the CARICOM Treaty – these are mainly trade disputes. The original jurisdiction binds all CARICOM states. In its appellate jurisdiction it hears appeals from decisions of the courts of appeal of CARICOM states. The Agreement allows a state to enter a reservation in respect of this jurisdiction which will replace appeals to the Privy Council. So far three countries, Barbados, Guyana and Belize, (the last in 2010) have accepted the CCJ’s appellate jurisdiction.

Bearing in mind that until 2010 there were only two countries that had accepted the CCJ’s appellate jurisdiction, one would have to say that it has done very well in terms of the number of applications and cases heard; there have been 43 applications, of which 40 have been determined, and 47 appeals filed, of which 41 have been determined. In its original jurisdiction there have been 7 applications for special leave to appeal and 4 originating applications. Compared to those figures, the European Court of Human Rights only heard 10 cases in its first 10 years, but it now has over 130,000 cases filed. All new courts take time to build up a volume of work. My own Tribunal was established in 1993, but did not hear its first case until 1995.

But why a Caribbean court, and not a Jamaican court, as our final appellate body? There is no denying that Jamaica shares with CARICOM members a common history of colonialism, slavery, struggle, freedom and independence; and that common history makes them part of us, and us part of them. Moreover, the path to the CCJ and a Caribbean jurisprudence has been prepared by the common legal training provided to Caribbean students over the past 40 years under the auspices of the Council of Legal Education. This training is superior to the training received by Jamaicans who

studied law in the UK. It is a training that has produced lawyers of the highest quality and eminent judges, many of whom have become Chief Justices. As good as a final Jamaican appellate body would be, a final appellate body with judges from our sister Caribbean countries and Jamaica, would, by reason of the deeper pool to draw from, be better and stronger, and better serve Jamaica's national interests.

The law to replace the Privy Council with the CCJ must be passed by a two-thirds majority of both Houses of Parliament – the House of Representatives and the Senate.

Fellow Jamaicans, in this, Jamaica's 50th year of Independence, the best gift to Jamaica would be a categorical and unequivocal decision to sever ties with those two symbols that are inappropriate for and irrelevant to the country: the replacement of the Monarchy with a republican system of government – ironically, the system that prevailed in England in the first period of its relationship with that country – and the replacement of the Privy Council with the CCJ. In adopting those measures we will be following the example of another island state: Singapore was a colony of the UK for about a century and a half, became an independent republic within the Commonwealth in 1965 and abolished all appeals to the Privy Council in 1994.

Republican status is the natural and logical culmination of the process that began with the first cry for freedom by our oppressed ancestors and was continued by their full Emancipation in 1838 and the attainment of Independence in 1962. Replacing the two symbols is about acknowledging the struggle of our ancestors – Tacky and Nanny of the Maroons; Sam Sharpe and Eliza Whittingham; Paul Bogle, Elizabeth Taylor and George William Gordon; Marcus Garvey, Aggie Bernard, St. William Grant; Alexander Bustamante and Norman Manley – we say to them: you did not struggle in vain; it will be the final vindication of their struggle; fail to relinquish and replace those ties, and we fail them; not to grasp the plenitude of sovereignty and independence available to us would be an abnegation and a grave betrayal of their hopes and aspirations. But, fellow Jamaicans, even as it is right that we recognise and acknowledge the struggle of our ancestors, it is imperative that we should not allow ourselves to be weighed down by our history; we should be buoyed by the courage of our ancestors and use their spirit to transport us to greater heights of achievement. Relinquishing and replacing the ties is also about saying to our ancestors, “we are ready and able to complete the journey you started centuries ago”. To borrow the wonderfully expressive phrase from the Jamaican language used by Prime Minister Portia Simpson-Miller, “*time come*”.

Fellow Jamaicans, when we relinquish and replace those symbols we do so not only for the sake of our ancestors; we do so also for ourselves and future generations; for it enures to our benefit to take this action; it is in the best interests of Jamaica.

But symbols are not an end in themselves; they are only a vehicle to take us where we want to go. Jamaicans must make Jamaica work. Our enslaved and other ancestors initiated the process that led to political independence. They would want us to achieve economic independence or as much of that as is attainable in our interrelated and globalised world. Mindful of Norman Manley's charge to this generation "to reconstruct the social and economic society and life of Jamaica", the best way to memorialise and celebrate the struggle of our ancestors - who, make no mistake about it, are responsible for the freedom and independence we have today - is for Jamaicans to work hard to ensure that our country experiences real growth and development – "time come" for that too.

Patrick Robinson