

## **Constitutional Legacies of Empire in Politics and Administration: Jamaica's Incomplete Settlement**

It is widely acknowledged that formal constitutional rules matter. They are critical for deciding winners and losers in society. They represent ‘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.’<sup>1</sup> It is similarly widely acknowledged that informal institutions matter for offering interpretive guidance as to the meaning of constitutional rules. And, it is also widely recognised that the colonial inheritance of constitutional principles has had a significant effect on subsequent post-colonial political, economic and social development.

So far, so bland. How is it then that political systems post-independence move from a period of initial constitutional acceptance to turmoil over constitutional principles? To answer this question, this paper explores how the absence of an informal understanding regarding the tension between two fundamental constitutional principles of the Westminster system represents the true British colonial legacy in one critical colonial case, namely Jamaica. It does so by focusing on the pre-and immediate post-independence period up to the late 1970s. Focusing on Jamaica offers for the investigation of the informal underpinnings of formal constitutional settlements that emerge in colonial and colonial settings. The paper argues that the lack of informal understandings as to how to address the tension between responsible and representative forms of government led to the presence of a *mutually suspicious bargain* between national political and administrative classes in the post-independence period.

In highlighting the importance of the colonial legacy of (the absence of) informal constitutional understandings, this paper contributes to a number of strains in the literature regarding the impact of colonial legacies (and constitutionalism within these legacies). One strain points to the question as

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<sup>1</sup> S A de Smith, ‘Constitutionalism in the Commonwealth Today’ (1962) 4 *Malaya Law Review*, 4(2), 205, 205.

to how to ‘transfer’ or ‘transplant’ constitutions and policies from one geographical place to another, given the importance of the endogenous effects of institutions that make the outcomes of a transfer of institutions from one setting to another highly uncertain.<sup>2</sup> A second strain, represented by Acemoglu and Robinson’s seminal *Why Nations Fail*, notes how extractive political institutions complement extractive economic institutions in placing little-constrained discretionary powers in the hands of a small elite.<sup>3</sup> Such colonial inheritance, as represented by a plantation-based economy such as Jamaica’s, is said to stand in the way of the type of inclusive political and economic institutions that support subsequent development. A third strain focuses on the constitutional effects of colonial rule specifically. For example, Matthew Lange noted how British colonial rule had attracted both positive and negative commentary as to its impact on subsequent (post-colonial) political and economic development.<sup>4</sup> Lange emphasises the importance of the ‘direct’ rather than ‘indirect’ form of colonial government in establishing essential administrative infrastructures for subsequent development. Such potentially positive effects of direct rule could be circumvented by unfavourable conditions during time of political transition, Lange argued, highlighting the case of ethnic conflict and cold war politics in Guyana as example.

The following account of Jamaica’s colonial legacy finds considerable change in constitutional understandings over time. The case of Jamaica is one of a (broadly) consensual political transition in a two party system, yet, we find the disintegration of a broad political consensus in the 1970s which revealed the unresolved nature of shared understandings given constitutional principles. By arguing that the true colonial legacy of the Westminster inheritance is a lack of informal agreement on constitutional principles, this paper also resolves a continuing paradox in the literature on Jamaica itself, namely the tension between a literature that points to the transition of constitutional

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<sup>2</sup> Adam Przeworski, ‘Institutions Matter?’ (2004) 39 *Government & Opposition*, 527.

<sup>3</sup> D Acemoglu, and J A Robinson, *Why Nations Fail*, (Random House, 2012). Also D Acemoglu, S Johnson, and JA Robinson, ‘The Colonial Origins of Comparative Development’ (2001) 91 *American Economic Review* 1369.

<sup>4</sup> M Lange, *Lineages of Despotism and Development* (Chicago University Press, 2009). See also J Gerring, D Ziblatt, Van Gorp, and J Arevalo, J, ‘An Institutional Theory of Direct and Indirect Rule. (2011) 63 *World Politics* 377; J Mahoney, *J Colonialism and Postcolonial Development*, (Cambridge University Press, 2010).

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.<sup>5</sup>

To illustrate this argument in light of the colonial legacy of constitutionalism, this paper focuses on one central tension inherent to the context of Westminster systems, namely the tension between doctrines of responsible and responsive government.<sup>6</sup> More specifically, this paper focuses on how this tension is translated into understandings regarding the appropriate role of the civil service in terms of loyalty and competence understandings. This paper argues that for political (and economic) development to occur, there needs to be a presence of a ‘mutually beneficial’ bargain or understanding to navigate formal ambiguities over constitutional rules. Instead, we find, in the case of Jamaica, a colonial legacy of absent mutually beneficial bargains between political and administrative elites. The bargain that emerged may instead be characterised as ‘mutually suspicious’. We argue that the lack of informal understandings can be traced back to ambiguities in colonial governance and unresolved controversies over constitutional principles in the immediate transition to independence period. The lack of a supportive, or ‘complementary’ informal understanding regarding the tensions over ‘how to govern’ subsequently were at the heart of emerging conflict in the immediate independence period.

### **Constitutionalism, responsible and representative government**

The colonial legacy of constitutionalism goes beyond the very general commitment to restraining the behaviour of those in political power and setting out procedures for decision-making. Informal understandings need to be ascertained that fill the formal constitutional rules with content: it is about the interpretations of constitutional rules and how constitutional principles are brought to life in every day conduct. The critical importance of informal aspects of constitutionalism relates to

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<sup>5</sup> Carl Stone, *Democracy and Clientalism in Jamaica* (Transaction Books, 1983).

<sup>6</sup> Anthony Birch, *Representative and Responsible Government* (Allen & Unwin, 1964)

areas of uncertainty, areas where observed ‘facts’ require translation into existing constitutional understandings. These informal understandings emerge in particular settings; they also matter when it comes to areas of tension between constitutional principles. For any form of stable constitutional rule to exist, requires a broad degree of informal acceptance as to the appropriate boundaries between these competing principles. In other words, informal understandings (or institutions, as defined by Helmke and Levitsky<sup>7</sup>) shape how formal institutions work, how they are reinforced or undermined. For comparative politics scholars, informal institutions often operate side-by-side of formal institutions, such as systems of patronage or clientism. In this paper, we focus on a particular set of informal understandings, namely those understandings that give meaning to formal arrangements, for example by guiding interpretations in inevitable cases of ambiguity regarding the meaning of formal arrangements. In doing so we follow the historical institutional tradition: How institutional rules are to be operated and understood requires a degree of understanding as to the appropriate zone of agreement and disagreement regarding constitutional principles that are in inherent tension with each other. The need for informal understandings underpinning formal arrangements is not unique to constitutions: every relationship may be regarded as an ‘incomplete contract’, thereby requiring understandings and conventions’. However, such informal understandings and conventions are rarely written down, their origins are often in dispute, they are open to disagreement, if not cheating, and they reveal contrasting emphases on particular principles that should govern the informal understandings underpinning a formal constitution.

To explore this argument, this paper focuses on the inherent tension in the so-called Westminster system between principles of responsible and representative government. In the context of the Westminster system, the main features have been defined as:

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<sup>7</sup> G. Helmke, and S Levitsky (eds.) *Informal Institutions and Democracy*. (Johns Hopkins University Press, 2006). Helmke and Levitsky (at p. 5) define informal institutions ‘as socially shared rules, usually unwritten, that are created, communicated, and enforced outside officially sanctioned channels’.

a constitutional system in which the head of state is not the effective head of government; in which the executive branch of government is parliamentary inasmuch as Ministers must be members of the legislature; and in which Ministers are collectively and individually responsible to a freely elected and representative legislature.<sup>8</sup>

One fundamental tension within this constitutional setting of the Westminster system lies between the ideas of responsible and representative government. 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’.<sup>9</sup> 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’.<sup>10</sup> Yet, as Birch further argues, this is only one of 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.<sup>11</sup> A third conception of responsibility as responsiveness to public opinion and demands has, he argues, still lower priority.<sup>12</sup>

In contrast with responsible government, the idea of representative government seems to have no defined meaning in British colonial law, except as an ‘inapt and confusing’<sup>13</sup> synonym for a representative legislature. In a broader sense, however, the idea of representative government is an essential part of the British tradition of constitutionalism, one which incorporates elements of

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<sup>8</sup> S A de Smith ‘Westminster’s Export Models: the Legal Framework of Responsible Government’ (1961) 1 *Journal of Commonwealth Political Studies* 2, 3.

<sup>9</sup> Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (Stevens 1966), p. 64.

<sup>10</sup> Birch (n 6), p. 170.

<sup>11</sup> *Ibid.* 245.

<sup>12</sup> *Ibid.*

<sup>13</sup> Roberts-Wray (n 9), p. 69.

distinct political traditions, including a commitment to the independence of Members of Parliament, 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.<sup>14</sup>

In its core understandings, therefore, doctrines of responsible government are in potential tension with those of representative government: The idea of responsible government emphasises the importance of ‘prudence’ over excessive political accountability and direct input of the public. The idea of representative government, in contrast, emphasises the control of political decisions by elected representatives acting in a directly and immediately responsive mode to interests of their constituents and the country as a whole. These tensions are not just reserved for Westminster type systems. In the contemporary European context, for example, the late Peter Mair diagnosed a decline of a form of democracy that combined constitutional and populist elements: ‘the democracy of elections as well as checks and balances, and the democracy of mandates, popular accountability, representative government’<sup>15</sup> Instead, he argues, an emphasis on responsibility and managerialism had crowded out the earlier focus on responsiveness to constituents’ changing preferences. The tension between responsible and representative government will arguably always be present to some degree, and political conflict over these tensions is, in essence, a reflection of a wider (non-) acceptance of initial constitutional settlements.

Such conflicts between notions of responsible and representative government are also at the heart of colonial and post-colonial experiences. In fact, Jamaica (and elsewhere in the Commonwealth Caribbean) has been characterised by a distrustful accommodation between these two rival notions. We explore this conflict between demands for representation and responsibility in the context of one central constitutional relationship that characterises the Westminster model, namely the relationship between politicians and public servants. To illustrate how such an informal accommodation within this relationship in view of the two notions of responsible and representative

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<sup>14</sup> Birch (n 6), pp. 230 ff.

<sup>15</sup> Peter Mair, *Ruling the Void* (Verso Books 2013), p. 14.

government succeeded, one can point to New Zealand (a 'dominion' in terms of colonial governance arrangement). There, Leslie Lipson noted how a successful accommodation between politicians and civil servants provided a stable basis for this ongoing relationship:

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.<sup>16</sup>

Such an accommodation has been essential in New Zealand, as it has in the United Kingdom, to resolving the tensions between responsible and representative government.<sup>17</sup> In terms of responsible government, 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 vis the electoral system. Despite still emphasising doctrines of responsibility over representativeness, 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 politicians of patronage powers over through the establishment of a professional, permanent civil service.

Such a mutually beneficial bargain will always be open to challenge and changing societal contexts may mean that some parties may regard the bargain as no longer mutually beneficial. For example,

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<sup>16</sup> Leslie Lipson, *The Politics of Equality* (University of Chicago Press 1948), p. 479.

<sup>17</sup> We do not suggest that there have not been continued tensions over the 'bargain' and that this 'accommodation' has repeatedly experienced moments of potential break-down.

in the context of understandings of civil service neutrality, Kingsley argued (in the case of the UK) that this aspect of responsible government was based on somewhat fragile foundations:

The convention of impartiality 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.<sup>18</sup>

The rest of this paper explores how unresolved ambiguity and tension over interpretations between trade-offs over constitutional principles of representation and responsibility, such as those noted by Kingsley above, translated into the area of the the public service. As the notion of ‘mutually beneficial’ bargain highlights, for informal understandings regarding formal constitutional arrangements to persist, all parties to this (often mythical) bargain need to be broadly supportive and regard it as beneficial to its particular interests. It is the absence of a mutually beneficial bargain over the tension between responsible and representative government of the ‘Westminster model’ that characterised the constitutional evolution of Jamaica pre- and post-independence. Instead what shaped the constitutional evolution was the presence of a mutually suspicious bargain in which the post-independence political elite was suspicious of the loyalty and competency of the administration, whereas the latter was suspicious of calls for greater representativeness in government, as these represented challenges to both understandings of ‘appropriate’ governing and challenges to social privilege.

More generally, therefore, institutions of responsible government in particular were viewed with suspicion in the post-colonial context of newly emergent political elites with a different understanding of the role and purposes of the state in the era of independence, and for who claimed the backing of the people for the policies they sought to implement. In Jamaica, and, more

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<sup>18</sup> Donald Kingsley, *Representative Bureaucracy: An Interpretation of the British Civil Service* (The Antioch Press, 1944), 278.



generally, the former West Indian territories, the public service was no longer seen to be 'representative' in Kingsley's sense of faithfully reflecting the new dominant interests in society. In addition, it was also argued to lack autonomy. In societies in which plantation and extractive industries prevailed, there was the absence of an emerging commercial class. Instead, a 'derivative middle class' emerged in the Caribbean whose dependence on political beneficence meant that the underlying source of autonomy and responsibility had to be conformist to the political government of the day.<sup>19</sup> In other words, the institutional and social configuration which mediated between the competing demands of responsibility and representation in the cases of the United Kingdom and New Zealand were almost entirely lacking in Jamaica and the wider the Commonwealth Caribbean. Therefore, ideas regarding appropriate forms of responsible and representative government, and the balance between these forms, and the particular commitments underlying them, have fuelled, and have been amplified by the political tensions and cleavages in Jamaica (and other jurisdictions of the Commonwealth Caribbean). If there is a colonial legacy in terms of constitutionalism in Jamaica and the Commonwealth Caribbean, then it lies in the unresolved contestation between fundamental constitutional principles, such as about forms of responsible and representative government. More generally, such a lack of informal understandings and thus lack of support for a broader constitutional settlement puts into place a trajectory of constant opposition to the formal rules of the constitution, undermining any legitimacy of the constitutional settlement in itself. To develop this argument, the rest of this paper first considers the ambiguity of constitutional principles that were inherited from the times of colonial government.

### **Crown Colony Rule and its Legacies**

Any interrogation 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

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<sup>19</sup> E Jones and V Subramaniam, 'Jamaica – Embracing Privatization and Seeking Integration' (1993) 59 *International Review of Administrative Sciences*, 651.

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 Morant Bay Rebellion of 1865, later described by *The Times* as “one of the most acute public controversies of the nineteenth century,”<sup>20</sup> was a watershed moment in Jamaica’s constitutional history. For present purposes, the significance of the Rebellion, and the bloody response of the British authorities was that it led directly to the replacement of its seventeenth century constitution (known as the ‘old representative system’) and its replacement by Crown colony administration. In fact, constitutional relations between the Governor and the Assembly had long been dysfunctional, 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, surrendered its ancient 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’.<sup>21</sup> From the internal point of view of those responsible for the administration of the Crown colonies, the term acquired a much more specific understanding. Charles Bruce quoted, in glowing terms,<sup>22</sup> a despatch

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<sup>20</sup> ‘Death of Ex-Governor Eyre’, *The Times*, (3 Dec. 1901), 8, quoted in Rande Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law* (OUP 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.

<sup>21</sup> Roberts-Wray (n 9), p. 44.

<sup>22</sup> “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.

of the Duke of Buckingham, Secretary of State for the Colonies between 1867–68 in which the latter argued that constitutions adopted in the West Indies from 1865, “whilst more or less different from each other in their component parts, 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.”<sup>23</sup>

In the case of Jamaica, 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.”

Bruce describes the reality of the Governor’s position in the following terms:

the governor is 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 to the local legislature.<sup>24</sup>

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 whom, 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.<sup>25</sup>

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<sup>23</sup> Quoted in Bruce (n 16), 235–6.

<sup>24</sup> Bruce (n 16), 219–20.

<sup>25</sup> Lloyd Barnett, *The Constitutional Law of Jamaica* (Oxford University Press for the London School of Economics and Political Science 1977), 9.

Crucial to these observations are the subordinate position of advisory bodies—in formal terms, the Executive Council and the local legislature, the Legislative Council—as well as the Colonial bureaucracy headed by the Colonial Secretary. These include strong elements of representation and constraints on (at least, formal) local elected representation. 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.<sup>26</sup> After that year, an element of representation was introduced, in the form of nine elected members, increased to fourteen in 1895. The increase in elected members was balanced by an increase in official and nominated members to five and ten respectively, ensuring the the government side had a bare majority.<sup>27</sup>

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 participate in the business of policy making.”<sup>28</sup> 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.”<sup>29</sup>

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<sup>26</sup> The circumstances around the introduction of elected members is discussed in Ronald Sires, ‘The Jamaica Constitution of 1884’ (1954) 3 *Social and Economic Studies* 64.

<sup>27</sup> A vote of any nine elected members could defeat any money bill (“the power of the nine”), while all fourteen could defeat any bill. (“the power of the fourteen”). This was subject to the ultimate power of the Governor to enact any measure that he declared to be ‘of paramount importance in the public interest’ to the colony. See Barnett (n 25), 11.

<sup>28</sup> B L St John Hamilton, *Problems of Administration in an Emergent Nation: The Case of Jamaica* (Frederick A. Praeger, 1964), 35.

<sup>29</sup> Hamilton, (n. 28), 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

As well as enabling the Governor and his administration, these constitutional arrangements also served—to some extent—to limit criticism and insulate the Governor from accountability. Although formally accountable *via* the Colonial Office and the Secretary of State, to the Crown, 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 Downing Street was regarded as “the one rank heresy we all shudder at.”<sup>30</sup> He was protected in the Legislative Council not only by the support of official and nominated members who were expected to support the Governor in their votes and their debate contributions, and by the paramount importance clause, but in financial matters by a “quasi-spoils system” that seemed to give greater priority to the constituency needs of those elected members who voted with the Government.<sup>31</sup>

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 we noted in the case of the Morant Bay Rebellion.<sup>32</sup> 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 tranquility were disturbed.<sup>33</sup>

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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; also Craig Hewan, *The Legislative Council of Trinidad and Tobago* (Faber and Faber, 1951), 149.

<sup>30</sup> 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* (OUP 1999), 257.

<sup>31</sup> Hamilton (n 28), 20.

<sup>32</sup> General Picton’s defiance of anti-slavery legislation in Trinidad (1797–1802) provides another example.

<sup>33</sup> Hamilton (n 28), 15.

Insulation of the bureaucracy from local interests was always somewhat selective, and depended on the degree of visible support towards metropolitan interests. As the West India Royal Commission (The Moyne Commission) subsequently put it:

[T]he governor is 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.<sup>34</sup>

Moyne's analysis was supported by Hamilton's study of Jamaican administration on the eve of independence which noted a pronounced class (and consequently ethnicity-based) distinctions. Hamilton noted the informality, and indeed deference, with which members of the bureaucracy dealt with members of their own social class, in contrast with their superordinate position in relation to members of the general public who were expected to stand outside the barricades and wait their turn.<sup>35</sup>

In its constitutional structure Crown colony rule in theory therefore represented 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 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.

The practice arguably fell far short of this idea. For example, Harold Laski, writing on the eve of the 1938 disturbances, complained that the word 'trusteeship', was

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<sup>34</sup> West India Royal Commission Report (Cmd. 6607, Her Majesty's Stationery Office 1945), 45.

<sup>35</sup> Hamilton (n 28), 18

...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.<sup>36</sup>

Laski blamed this state of affairs partly on a narrow approach to recruitment, which included failing to develop the talents of "educated coloured people"<sup>37</sup>, 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'.<sup>38</sup> A series of official reports from the 1920s through to the 1940s point to the persistence of low salaries, poor recruitment practices, an inadequate physical working environment for civil servants.<sup>39</sup> 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 what Edwin Jones would later term "administrivia".<sup>40</sup> The result, as seen locally was that "the bureaucracy exhibited incapacity for technical programmes as distinct from routine operations."<sup>41</sup>

The reality of responsible government was 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 only emerged in the 1930s and 1940s in response to trade union movements, riots and evidence of widespread under-development. These concerns, as well as the ability of existing constitutional arrangements to

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<sup>36</sup> Harold J Laski, 'The Colonial Civil Service' (1938) 9 *The Political Quarterly* 541, p. 541.

<sup>37</sup> *Ibid.*, 547

<sup>38</sup> *Ibid.*

<sup>39</sup> 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 & Comparative Politics* 8.

<sup>40</sup> Edwin Jones, 'The Executive Agency: A Manifesto Against Administrivia' (2001) 3 *Caribbean Journal of Public Sector Management*, 30.

<sup>41</sup> Hamilton (n 28), 31.

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 was able to operate without the necessity of any ‘mutually beneficial’ understandings between politicians and civil servants. The Colonial administration, in particular the expatriate officers who occupied senior positions enjoyed an exalted position in related 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.<sup>42</sup> Frustrated though they may have been, their loyalties 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.

### **The Path to Independence 1944–1962**

In less than twenty 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

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<sup>42</sup> Jones and Subramaniam’s (n 19) analysis points to the importance in colonial societies of what they call a ‘derivative middle class’ of lawyers, teachers and clerks which mediated between the general public and the colonial administration. This derivative class had, they argue, four basic characteristics of being derivative, imitative, lopsided and frustrated: “It was derivative in the sense of being derived from colonial occupation rather than by natural evolution. It imitated some of the characteristics of the colonial rulers functionally and to establish rapport. It was lopsided because there was no corresponding economic middle class of distributors, retailers, servicemen and rentiers to balance this professional salaried class... Finally, it was frustrated economically because there was less and less scope for employment in a stagnant colonial economy; politically as the class was denied the share it demanded in governing and in administrative positions, and socially as members of the class were rebuffed from entering the social circles and clubs of the colonial rulers.”



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’.<sup>43</sup> Nevertheless, we should not make the mistake of assuming that, in its particulars, Jamaica’s path of constitutional development towards independence was planned from the outset.

The 1938 crisis marked a sea-change in the 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 conditions, but a positive demand for the creation of new conditions that will render possible a better and less restricted life.”<sup>44</sup> 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’.<sup>45</sup> These were radical and far-reaching recommendations, notwithstanding their burial deep within the structure of the Moyne report,<sup>46</sup> nor criticism that they were founded on out of date assumptions about West Indian society.<sup>47</sup> In particular, the Colonial Development and Welfare Act 1940, passed in response to the Moyne Commission recommendations, accepted the

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<sup>43</sup> Robertson SJ, ‘Some Problems on the Path to Self-Government’ (1961) 39 *Public Administration* 313, p. 313.

<sup>44</sup> Moyne Report (n 34) Cap I para. 17 (p. 8). 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.

<sup>45</sup> Cabinet Office papers CAB21/809, held in *The National Archives*, Kew.

<sup>46</sup> As Simey puts it, proposals for welfare reform were “...tucked away as an appendage to an other 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’.

<sup>47</sup> *Ibid.*

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 fell short of endorsing, the strength of West Indian sentiment that a more expansive role for the colonial government in social and economic policy in turn meant that far from being antagonistic ideals, responsible government depended on a greater degree of representation than the mid-nineteenth 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.<sup>48</sup>

The Moyne Commission, for its part, was willing to contemplate greater representation through variation in the composition of Legislative and Executive councils.<sup>49</sup> 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".<sup>50</sup>

Moyne's thinking was reflected in the Jamaican Constitution of 1944.<sup>51</sup> A reformed Legislative Council became the upper house in a bicameral legislative structure; a newly created House of

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<sup>48</sup> Moyne (n 29) Cap XXII, para 2.

<sup>49</sup> The Moyne Report noted the importance of 'educating unofficial in the business of government' (p. 375), requiring addressing the 'inordinate' length of speeches in the Jamaican Legislative Council, for example.

<sup>50</sup> Moyne (n 29) Cap XXII, para 4.

<sup>51</sup> Jamaica (Constitution) Order in Council 1944, SI 1944/1215.

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.<sup>52</sup>

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.”<sup>53</sup>

A new constitution in 1953<sup>54</sup> created what Barnett called an “incipient cabinet system,”<sup>55</sup> an intermediate step towards responsible government. 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.<sup>56</sup>

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.<sup>57</sup> A Cabinet was established “as the principal instrument of policy”, and its members were “collectively responsible”

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<sup>52</sup> 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”.

<sup>53</sup> G Louis Byles, ‘The Jamaican Experiment’ (1948) 56 Parliamentary Affairs 56, pp. 64–5.

<sup>54</sup> the Jamaica (Constitution) Order in Council 1953, SI 1953/747.

<sup>55</sup> Barnett (n 22), 18.

<sup>56</sup> Hamilton (n 23), 88–9.

<sup>57</sup> Jamaica (Constitution) Order 1959, SI 1959/862.

to the legislature.<sup>58</sup> 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.”<sup>59</sup>

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 colony, improvements during the post-war period were erratic, piecemeal and incremental. While tensions were bound to arise in a new constitutional dispensation which civil servants for the first time expected 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.<sup>60</sup> There are 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, 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.<sup>61</sup> While it was a source of national pride that Jamaicans had begun to

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<sup>58</sup> Jamaica (Constitution) Order 1959, s. 47.

<sup>59</sup> Hamilton (n 23), 92.

<sup>60</sup> Hamilton (n 23), 60; Barnett (n 22), 16–17.

<sup>61</sup> Indeed, Colonial Development and Welfare programmes had initially been administered outside of regular departmental lines, under the direction of the Comptroller of Development of Welfare and Development working in collaboration with the Colonial Office, with the local civil service acting only in an advisory capacity.

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.<sup>62</sup> Pressure of work also increased, especially after the Peoples National Party took office following the 1955 elections and began to implement more administratively ambitious central planning measures. Against these expectation 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. An early manifestation of this was that, as The observation in 1949 by Eric Mills, the Public Service Commissioner, that frankly expressing their views to politicians "may put at risk the career of any public servant"<sup>63</sup> suggests that the situation developed rapidly in the half decade since the 1944 constitution was introduced. 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.<sup>64</sup>

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."<sup>65</sup>

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<sup>62</sup> A partial exception can be inferred from Gladstone Mills' observation that with the advent Colonial Development and Welfare funds a career 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.

<sup>63</sup> Eric Mills, *Report of the Commission on the Public Service in Jamaica* (Kingston, The Government Printer, 1949), para. 5.7; On the Mills Report see further Lodge *et al* (n 34), 21-3.

<sup>64</sup> Hamilton (n 23), 143.

<sup>65</sup> Hamilton (n 23), 146.

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 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.<sup>66</sup> 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

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<sup>66</sup> Lodge *et al.* (n 39), 20–21.

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.

### **The Post-Independence Period**

After the abortive experiment with West Indies Federation,<sup>67</sup> 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.<sup>68</sup> While there were differences within the bipartisan committee which framed Jamaica's independence constitution, 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 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.<sup>69</sup>

Outside of the then political elites, a more radical critique was emerging. In a final, posthumous contribution, the late Norman Girvan wrote of being part of a group of young scholars—some of whom would later serve Michael Manley's 1972–1980 PNP government—who rejected the fundamentals of the Westminster model as a basis for nation-building in the Caribbean.<sup>70</sup> To Girvan

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<sup>67</sup> British Caribbean Federation Act 1956; The West Indies (Federation) Order in Council 1957, SI 1957/1364.

<sup>68</sup> Jamaica Independence Act 1962.

<sup>69</sup> 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.

<sup>70</sup> Norman Girvan 'Assessing Westminster in the Caribbean: Then and Now' (2015) 53 *Commonwealth and Comparative Politics* 95.

and others like him, 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.

We can see in these contrasting perspectives 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 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 consensus between politicians and civil servants which for Kingsley were a precondition for civil service neutrality. Yet it is important to remember that the conditions that stabilised this compromise, would remain out of reach as long as civil servants were unwilling or unable to respond to the new political demands.

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.<sup>71</sup>

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, he notes how civil servants,

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<sup>71</sup> Hamilton (n 23), 193.



accustomed to taking direction from Heads of Departments, resented what they regarded as Ministerial intrusion into their sphere of responsibility.<sup>72</sup>

It was partly out of an awareness that these features of political–administrative interactions that the government invited the United Nations Technical Assistance Department to undertake a review of the Jamaica Civil Service. While praising Jamaica’s ‘strong, uncorrupt civil service’ as ‘a national asset of incalculable and fundamental value’, 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.<sup>73</sup>

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<sup>72</sup> Hamilton (n 23), 193.

<sup>73</sup> N C Angus. W P Barrett and E Holstein E, *Public Administration in Jamaica* (United Nations 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.

The result was a perceived lack of responsiveness which if not addressed would have exacerbated claims to greater representation, and prompted a search for alternative means of service delivery, further undermining the bargain.

These tensions emerged gradually, but were somewhat muted 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.<sup>74</sup> 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.

### **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’. For then prime minister Michael Manley and the ruling PNP the civil service was perceived a conservative institution whose traditional emphasis on ‘neutrality’ was incompatible with their ambition (and what they saw as their democratic mandate) to transform society. Civil servants, it was contended, interpreted their role as ‘protector of the society from the whims, the fancies and the extravagancies of the politicians’.<sup>75</sup>

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

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<sup>74</sup> E.g. the Urban Development Corporation Act 1968.

<sup>75</sup> Document submitted to the 1973 Peoples National Party Conference, ‘Jamaicanise Jamaicans’; see also Michael Manley *The Politics of Change: A Jamaican Testament* (Andre Deutsch, 1974), 205–6.

Ministry of Public Service, which would transform the civil service through the introduction of modern administrative techniques. 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, by individuals more sympathetic to the ‘politics of change’ that Manley had sought to pursue, while its Chairman 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. 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 involved successive government re-organisations. This involved 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.<sup>76</sup> In addition, the government of Manley pursued a number of strategies aimed at making public policies more responsive to what it saw as its popular mandate.<sup>77</sup>

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 in an attempt to ensure that key civil

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<sup>76</sup> Government of Jamaica (1977) *The Ministry of National Mobilisation and Human Resource Development: Its Nature, Structure and Functions*. Ministry Paper 17 of 1977.

<sup>77</sup> Quoting Arnold Bertram, Patrick Bryan (n 69, 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.

servants had not only the competence but 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.”<sup>78</sup> The appointment of these ‘irregulars’ (as they were known) who had adopted different attitudes, mannerisms and even dress to traditional civil servants, often proved the antipathy of senior civil servants within.<sup>79</sup> However, by the mid-1970s, there was also a growing stress on the importance of ‘competence’ among these ministerial advisors.

Finally, the PNP government ramped up the strategy that started with Edward Seaga as Minister for Development and Welfare in the 1960s of creating statutory boards as vehicles for carrying out public policy. Again, however, by 1977, this strategy had been identified as problematic as these boards were diagnosed to have become unresponsive to political initiatives and ‘bureaucracies in their own right’.

Overall, the experience of the Manley Government in the 1970s reflects the concerns initially flagged by the United Nations 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, go beyond familiar grumbling about civil service intransigence. Instead, the very idea of ‘neutrality’ was seen as incompatible with attempts at the mass mobilisation of society in pursuit

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<sup>78</sup> 1977 PNP document

<sup>79</sup> Michael Kauffman *Jamaica Under Manley* (Zed Books, 1985). Incidentally, the language is almost identical to what Edwin once said to me, so either he read the book, or he was the source of the quote. Hope Sussex library reopens so I can track down spot cite.

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) 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).

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.

## **Conclusions**

In his classic study of the political sociology of Jamaica in independence, Carl Stone links what he identifies as the key features of Jamaican politics, its organisation a series of patron-clientelistic relations, with the paradoxical nature of political leadership, in which political leaders are seemingly all powerful, and yet uniquely vulnerable.

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.<sup>80</sup>

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.

If the argument of this paper is correct, then such similarities are more than superficial. It suggests that an important constitutional legacy for Jamaica has been an ongoing tension between the competing constitutional principles of responsible and representative government. 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. In particular the process of decolonisation gave rise to a ‘mutually suspicious bargain’ between national political and administrative elite.

This persistence of a mutually suspicious bargain can be seen in a number of ways. First, it 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 bound to be responsive to

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<sup>80</sup> Stone (n 5), 97–8.

select powerful interests, whether economic or electoral. 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 that was also 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 are classically clientistic.

Informal institutions are widely seen to stand side-by-side formal institutions. In this paper, we focus on the importance of informal institutions as enablers of formal constitutional rules and principles. We have highlighted the importance of informal institutions in providing for a degree of shared understanding regarding contested constitutional principles. Such an emphasis raises two wider issues. One is that formal constitutional systems are open to considerable degrees of change given changes in the way actors understand the 'rules of the game' and, in particular, the underlying informal understandings regarding tensions between constitutional principles. 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 governing that supposedly established the basis for subsequent infrastructures of administrative power. Instead, the legacy of (Crown colony) colonial government was ambiguity about how to govern, and the lack of 'mutually beneficial understandings' across actors in the political system created a persistent setting which disabled political, economic, let alone social development.