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Conference
Challenging the Death Penalty in the Caribbean
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The Death Penalty in the Commonwealth Caribbean and the connection to slavery

In 2001 in the case of *R v Secretary of State for the Home Office ex p Daly*, Lord Steyn concluded his opinion with the words, "In law, context is everything." Similarly, when it comes to the laws that permit judicial execution, context is everything. I will examine the context that leads the Commonwealth Caribbean to cling to the barbaric notion that a state must have the power to execute its own citizens. Violence, political attitudes, religious influences, and other important factor are not sufficient to explain the death penalty. I venture to suggest that any study of the death penalty is incomplete without looking at the deep structure of Caribbean societies, in particular British colonialism and the impact of slavery.

There are 12 Caribbean Commonwealth countries: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Lucia, Saint Kitts and Nevis, St Vincent and the Grenadines and Trinidad and Tobago. All 12 have the death penalty. However, since 2017, Grenada has been regarded by Amnesty International as abolitionist in practice.

From a global perspective the Caribbean Commonwealth is an outlier, a group of states that is increasingly detached from the rest of the democratic abolitionist world. Some would say, left behind. By the end of 2017, 142 countries had abolished the death penalty in law or in practice. Roughly 72% of the world's states. 11 out of 12 Caribbean Commonwealth countries are in the retentionist 28%. This isolation is even more marked when you consider the community of Latin American and Caribbean States.

Belize sits in central America, surrounded by abolitionist countries. Guyana is completely isolated in South America as the only country with the death penalty. Our western neighbour Venezuela abolished the death penalty in 1863, the first country in the world to do so. All of the former Spanish, French, Portuguese and Dutch colonies are abolitionist except Cuba. Even among the Caribbean islands the English speaking group is a death penalty aberration.

Amnesty International suggests that the death penalty is a symptom of a culture of violence not a solution to it. In other words, countries with the death penalty are also countries that tend to be violent. This is plausible.

Jamaica's murder rate is 40 per 100,000 people. Belize is 37. St Kitts 34. (In comparison the UK murder rate is 1.3). On further examination the Amnesty International suggestion does not hold up. Abolitionist countries can have very high murder rates such as Honduras: 42 per 100,000; Mexico: 19 per 100,000 and Venezuela: 56 per 100,000. A high murder rate and the death penalty are really 2 different things. Linking them does not take us much further.

More relevant is the attitude of Caribbean politicians who generally support the death penalty. For example in Trinidad both the current prime minister Keith Rowley and the former prime minister Kamla Persaud Bissessar openly support the death penalty. In Guyana over 1,000 people have signed a petition asking parliament to set up a select committee to look at replacing the death penalty with restorative justice. Signatories include the Roman Catholic and Anglican bishops, Muslims and Hindus, captains of industry, and people from all walks of life. However, so far no MP, whether government or opposition, is willing to present the petition. There is the element of trying not to upset the whip or the evangelical groups who are funded out of the southern United States. These groups believe in “an eye for an eye, and a life for a life”. They don’t care that the death penalty is not a greater deterrent than prison. They believe in vengeance.

The United States of America also interferes directly to preserve the death penalty. When President Granger of Guyana said that he would not sign any death warrants, the American Charge d’Affaires had the arrogance to criticise him in the national press. The USA is the only country in the Americas to carry out executions in 2017 or even in the previous 8 years. Compared to the USA the Commonwealth Caribbean is more civilised and democratic but it is vulnerable to the pernicious influence of a country that executed 8 people last year alone.

Surprisingly, many lawyers and judges believe in the death penalty, even in jurisdictions that cannot guarantee a fair trial. Bar associations have not taken a stand against the death penalty. The judiciary continue to sentence people to death. Earlier this year 2 women in Guyana were sentenced to death. Trinidad has also handed out death sentences. What could be the reason?

I turn now to the impact of colonialism and slavery. In order to construct a coherent narrative I will use examples from Guyana but the principles are applicable more or less across the Caribbean. I would ask that we treat the numbers as good enough for this purpose while acknowledging that there has been bitter debate about how many people we are talking about.

Between 1519 and 1867 the Atlantic slave trade took 11 million African men, women and children to slavery in the Americas. Another 1.5 million are estimated to have died in the Middle Passage. Great Britain with its powerful navy was at one point the biggest trader of enslaved Africans. An article in the British Yearbook of International Law 2007, entitled “The Nineteenth Century law of the Sea and the British Abolition of the Slave Trade” by Jean Allain, states that, “Between 1660 and 1807 when the slave trade was at its height, the British and their dependencies carried every second slave that arrived in the Americas.” These Africans went to the southern United States, the British Caribbean islands and briefly to Cuba. It is no wonder that Eric Williams, the former prime minister of Trinidad and Tobago stated in his magisterial work on “Capitalism and Slavery” that, “Slavery made the American South and the Caribbean Islands.” The numbers are simply staggering. Schombergk’s study of Guyana written in 1840 stated that in 1832, the year before the legal termination of enslavement, there were 84,837 slaves out of a total population of 100,175.

Slavery in this context means the enslavement of Africans. In the British Caribbean islands the native Indians had been mostly exterminated by previous colonial powers such as the Spanish. In Guyana, there was no such extermination. Amerindians were treated as friends and allies. From the beginning of colonisation the Dutch prohibited the enslavement of Amerindians. Why? Because the Dutch and then the British needed the Amerindians to protect them against the enslaved Africans. On 17th October 1812, Bentinck, the Governor of Guyana, wrote to the British Colonial Office stating that the “Amerindians have been the

saving of the colony at 2 different revolts of the negroes for which they have been paid as well as receiving presents.”

The history of slavery is also the history of resistance. A few examples will illustrate the point. In Barbados in 1816, 1,000 enslaved Africans were killed during an uprising and 214 more executed. Jamaica was the scene of several revolts by enslaved Africans. In Jamaica over 750 enslaved Africans were hanged following the Christmas Rebellion. Henry Dalton's History of British Guiana written in 1855, records that the Africans had no fear of being hanged. Capital punishment failed as it will always fail.

In his 2018 book, "Slavery and the Death Penalty, a study in abolition" Bharat Malkani concludes that, "Capital punishment was a vital component in the machinery of slavery." And Malkani continues, "Even today it is widely recognised that capital punishment in the United States continues to be imbued with the legacy of slavery."

Ron Saunders, Ambassador of Antigua and Barbuda to the OAS recently wrote that, "The subjugation, oppression and exploitation of African peoples as 'sub-human' was justified by colonial powers based on race and colour." Indeed chattel slavery was introduced by Europeans. It was a form of slavery in which an African ceased to be regarded as a human being and was treated as a piece of property by the slaveholder. Enslaved Africans and their children were bought and sold like cattle, from which the word chattel originates.

The era of colonialism was also paradoxically the era of the Enlightenment of which Europe is so proud. The philosopher John Grey argues in his most recent book entitled "Seven types of Atheism," that modern racist ideology is actually an enlightenment project and cites David Hume and Kant, those 2 great enlightenment figures, as advocates of the idea that Africans were inferior. The misuse of Darwin's theories also provided the moral and philosophical justification for the treatment that so-called enlightened Europeans meted out to enslaved Africans. The historian Daly describes the beatings and torture but even he says, "in the case of rebellion they were made to undergo a more terrible chastisement which cannot be mentioned here." It is enough to make the angels weep.

In practice the life of the enslaved African was treated as if it was worth nothing. In Guyana Amerindians hunted down escaped African slaves and were paid, not for bringing back the slave, but for each right hand severed from the dead body. Contrast this with the treatment of Amerindians. In 1831, Billy William an Amerindian was indicted for murder. The First Fiscal informed the court that Billy William maliciously with a certain knife did strike and thrust at Hannah an Indian woman in and upon the back giving the said Hannah one mortal wound of which she did languish and die the same day. A clear case of murder. Billy was tried and sentenced to death. But, this was a time when the British still needed Amerindians to help them. The sentence was commuted. Billy William was transported to Trinidad and lost to history.

Adam Smith, writing in 1776, in the Wealth of Nations argued that slavery would never be as profitable as free labour and that plantation owners continued with slavery because of their love of domination and tyrannising. Eric Williams argues that slavery was abolished because it was no longer profitable. Either way, in 1833 the Slavery Abolition Act was passed.

In Guyana the Amerindians were no longer necessary as allies. By 1853 the editor of a local newspaper was arguing that Amerindians were savages and he would do his best to convince

readers that to reclaim the savage it was necessary and proper to hang him. The indentured Indians from India were also regarded as uncivilised and inferior to the British.

Malkani sums it up neatly when he writes that “Capital punishment, like slavery, is predicated on the notion that some people do not belong to the political and moral human community.”

The division between the British colonist and the British colonial subject is where the line is drawn. Witness the case of the slave Grace who was in England in 1820 then returned to Antigua. An action in the High Court in 1825 failed to secure her freedom on the grounds that a slave becomes free in England but ceases to be free when returned to the colony from which she came.

Why did a slave become free in England? In 1772 the enslaved African John Somersett was apprehended in England. A writ of habeas corpus was issued. History tells us that Lord Mansfield concluded his judgement with the ringing declaration that, “the Air of England is too pure for a slave to breathe. Let the Black be discharged.” There could be no slaves in England.

Except it did not quite happen like that. Tom Bingham, in his book on the rule of law, says that the phrase about the air of England was in the submission of counsel who borrowed it from a judgement in the Star Chamber. What is not in doubt is that there were 2 regimes. No slaves in Britain but a British colonial empire powered by slavery and the ‘slave trade’.

In 1965, 193 years after Somersett’s case, the UK abolished capital punishment. Once again the line was drawn between people in Britain whose lives were protected against the State and people in the colonies with the death penalty. Jamaica and Trinidad became independent in 1962 before abolition in the UK. But the remaining 10 countries gained independence after 1965. Why was capital punishment put into their constitutions? Because Caribbean people, by and large the descendants of enslaved Africans, indentured Indians and native Americans, were regarded as inferior.

Perhaps, too many people in Caribbean society have internalised that sense of inferiority. It only takes a few. Certainly it is not unreasonable to argue that the retention of the death penalty is a visible symbol of self-contempt. Perhaps we see some of that self-contempt when 8 out of 12 Commonwealth Caribbean countries still have the Privy Council as their final appellate court. As Ron Saunders has written, “The very notion that Caribbean people would be treated more fairly and justly by foreigners than by their own, smacks of an unjustifiable, and frankly, unacceptable self-contempt.

Today the Caribbean Court of Justice is transforming the region. The development of an indigenous Caribbean jurisprudence is a bright shining light. In the Nervais case our apex court has recently struck a solid blow against colonial inequality and the death penalty. We are honoured to have Sir Dennis Byron, the former president of the Caribbean Court of Justice with us today and it is with great pleasure that I now hand over to Dr Caroline Morris to introduce Sir Dennis.