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The Doctrine of Reception and the Legal Systems of Guyana and St. Lucia in the Commonwealth Caribbean

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Abstract

Legal Practitioners in the Commonwealth Caribbean have perfected a practice based on a legal system inherited. This system built primarily upon European jurisprudence and now evolved with Caribbean Jurists influencing a Common law that is facilitating a path to being bespoke. Guyana and St. Lucia are unique in their hybrid legal system which has been formed as a result of the Doctrine of Reception.

Keywords: Reception; Commonwealth Caribbean Legal Systems; Historical Context.

The doctrine of reception involves the legal conventions of one society being transferred or disseminated to another country for the purpose of regulating behaviour of the people of that new state among themselves and their interactions with the state[1].Within the context of Guyana and St. Lucia, this entailed the mixing of legal systems[2]. As a result of this transplantation as defined in Nyali v AG[3], in Guyana and St. Lucia which are conquered and ceded territories, there is a hybrid legal system. Guyana has some aspects of Roman Dutch Law that is practiced alongside the English common law and St. Lucia has retained certain aspects of the French Civil Code which is practiced together with the English common law.

When the Europeans arrived in the West Indies, they brought with them their laws, traditions and ideologies and imposed them on the indigenous peoples they met in these islands. This was further enforced on the slaves and later indentured servants throughout the region. Laws that were previously known to these groupings of people were replaced with the European laws. In Guyana, the Civil Law Act-Cap 6:01 allows for the reception of the English Common Law in 1917 with no general reception of statutes and the retention of some areas of Roman Dutch Law. St. Lucia had more of an imposition of the English common law than a legal definition of reception as discussed in this paper. It was in 1957 that the common law and statute was partly received[4].

Understanding how reception works is important to understanding our Commonwealth Caribbean Legal Systems because it provides the foundation and genesis of this system which regulates our society today over the many hundreds of years of existence.

Guyana has assimilated to the common law with the remnants of Roman-Dutch Law being related to land, while St. Lucia has resisted through holding on to its French civil code[5]. The

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Europeans introduced as much of the common law as would have been appropriate to the colony they occupied[6]. Such a position demonstrates that reception, transplantation, and imposition had significant impact on the formulation of law and in turn our justice system which was critical to order and governance of the Commonwealth Caribbean territories including up to the independence era.

The savings clause which preserve existing law or pre-independence common law applies to Guyana and St. Lucia although in the case of Guyana it is only applicable to the written law[7]. St. Lucia had a disjointed approach to incorporating English law while not specifically introducing common law and a reception date for English statutes[8]. In De Lasala v De Lasala[9], it was seen that the divergent development of the law was still impacted by the reception of the common law and equity as while the decision of the House of Lords may be persuasively only, its decision in this matter would have the same effect as if it were binding.

In Ramdass v Jairam and others[10] we can review how the Roman-Dutch law informs on the current law in relation to immovable property. The Caribbean Court of Justice (**CCJ**) affirmed that it was stated that the English common law of real property was not applicable to immovable property in Guyana. This is an example of the juxtaposition of the Roman Dutch law and the doctrine of reception and how it has unfolded in modern day laws in Guyana. As the CCJ is the final court of appeal for Guyana, this decision is binding in this Commonwealth Caribbean territory.

The legal system in the Commonwealth Caribbean has evolved over the centuries. Specifically, with the introduction of written constitutions and reception in these territories we have a legal system that is dynamic. A lawyer would be more effective if he or she is able to comprehend the legal system with which he or she operates to achieve desired results particularly in litigation. There are many lawyers who are technicians of the law, in that they rigidly follow practice and procedure with limited knowledge and/or understanding of the legal system in being able to develop novel arguments based on a critical assessment of our legal system to advance ingenuous opinions.

Both Guyana and St. Lucia operate in a hybrid legal system which intuitively would suggest an evolutionary process in based on more than one legal tradition. The recent CCJ cases inform on the tension that exists between different legal traditions which over a period could be challenged to amalgamate into one legal system based on this writer’s view. In Chang v Yokkei[11], we further see the impact of Roman Dutch Law in Guyana and its impact in the modern context that history impacts the way judgements are made. The CCJ indicated that the reason Roman Dutch law continues to govern the immovable property is because of assimilation.

Colonialism has had a tremendous effect on the Commonwealth Caribbean with these two territories of Guyana and St. Lucia and the fusing of two legal systems is its heritage. I argue that the maturation of the legal systems in these jurisdictions has not been achieved.

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Moreover, as Judiciaries grapple with complex decisions that are being appealed to the Judicial Committee of the Privy Council (**Privy Council**) for St. Lucia and the CCJ for Guyana, there may be opportunity to capitulate to a strict common law tradition due to reception.

Conflict of laws arise with the legal systems of both territories particularly where advocates are trained in the common law with limited exposure and training in civil law. As has been observed in countries where customary law was the tradition but over time the common law became the dominant legal tradition based on training of lawyers and society's acceptance, the changing times could have the same impact in Guyana and St. Lucia regarding their hybrid systems being dominated by the common law. This is directly attributable to reception and its significant power of the legal system in the Commonwealth Caribbean territories.

There has been a view in the United States that the legal system of the Commonwealth Caribbean was deteriorating[12]. This outlook suggested that should the legal system in the Commonwealth Caribbean not be supported to improve in law reform and revision, and receive technical assistance from outside of the region, the rule of law and democracy would be weakened. It has been argued that there was never a clear 'interpretation' of the St. Lucia civil code[13]. This is indeed an insightful view because if we apply this argument to both Guyana and St. Lucia, it may be posited that 'interpretation of the law is governed by two regimes of interpretive rules'[14].

I argue that with this potential for conflict of laws and with the development of the legal system in these two jurisdictions as they move toward maturation, the doctrine of reception still has a firm grasp in dominating the outcome in relation to justice. The resolution to this problem lies with both the political directorate and judiciary of these jurisdictions. With the establishment of the CCJ there has been an opinion that the savings clause could be a hindrance to the formation of clear jurisprudence[15]. It may be that Commonwealth Caribbean territories such as Guyana and St. Lucia should examine their hybrid legal system with a view of either making a choice as to a strictly common law system.

In Poliniere and Others v Felicien[16] the Privy Council stated that the civil code in St. Lucia is derived from the civil code in Quebec which was developed from the civil code in France and the civil law is important to St. Lucia. Belle-Antoine (2008) paints the picture that this hybrid system in St. Lucia is harmonious and illustrative of unity of the different legal traditions. The doctrine of reception in the Commonwealth Caribbean embraced concepts of human rights that would be ultra vires to human dignity in the 21st century. It is critical to our understanding of the hybrid legal system of Guyana and St. Lucia of how these territories have come from the reception period. I argue that historically there was no respect for human dignity or equality before the law and the doctrine of reception facilitated this violation of what is termed fundamental human rights. There should be equal treatment of all persons in terms of the law so that people in the Caribbean can realize their potential and achieve their self-actualized goals[17].

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As the legal system in these two territories evolve, 'fusion' of the laws may not be required[18]. From this perspective, it may have been inferred that the conflict of laws between the legal traditions in the hybrid system may have posed a problem for the courts. However, the CCJ ably demonstrates its ability to make decisions as in *Ramdass*[19] that considers the pluralistic legal traditions which comprise the Hybrid legal system in Guyana.

While the 'common experience' for the Caribbean was colonialism[20], the doctrine of reception was part and parcel to this reality. More specifically to conquered territories such as Guyana and St. Lucia, the doctrine of imposition had applicability[21]. The Slaveowners and UK authorities used the imposition of the common law which included 'the death penalty and corporal punishment' to advance their economic agenda and control the Commonwealth Caribbean[22]. The development of legal systems in the Commonwealth Caribbean were inextricably linked to the meting out of penalties including cruel and unusual punishments. This happened because of the doctrines of reception and imposition which inform on the jurisprudence of the region which continually evolves as in Attorney General of Barbados v Joseph and Boyce[23].

Colonization has impacted every aspect of life in the Caribbean and one cannot exclude the legal system from this reality. The maturation of the St. Lucian hybridization has yet to be seen and may not be realized for at least another 200 years[24]. Guyana and St. Lucia are two countries in the region which have 'appropriate laws' with respect to discrimination[25]. They are the only countries in the Commonwealth Caribbean who have kept portions of the civil law[26]. This is yet another illustration of how the historical basis upon which the legal system in Guyana and St. Lucia informs in how the law is operationalized today.

Bernard J states that St. Lucia through Article 917A of the Civil Code of St. Lucia, Cap. 242 made accommodation of the British common law to apply to specific laws in the colony[27]. This makes the point clearly that the doctrine of reception impacted this territory and through application in case law[28] it provides evidence for the reasonable observer of the relevance to an understanding of Commonwealth Caribbean legal systems.

When looking at Kaadesevaran v AG[29], it is stated that the British common law was imposed on the colonies. This further supports the view of how significant an impact the doctrine of reception was to the development of the legal system in the Commonwealth Caribbean. Having established the interconnectedness of this doctrine of reception with the legal system employed in Guyana and St. Lucia, we shall now turn to relevance and/or importance moving forward in the jurisprudence of the Commonwealth Caribbean.

I argue that it is necessary for our judiciaries to continue to evolve through examining jurisprudence that is more relevant to our context rather than simply applying the colonial vestiges of legal doctrines which demonstrates the lack of ingenuity of the Commonwealth Caribbean legal system. An example that positively affirms this is found in the *Joseph and*

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Boyce case[30], where the CCJ elevated the doctrine of legitimate expectation to a level that had never been heard of before in the Caribbean.

Despite the beginning of our legal system with its ties to the English common law and reception establishing how society is regulated, it is the 'retention of ties' to this colonial past[31] that stymies our ability to be transform our jurisprudence to a bespoke and progressive field that is still for the most part interpreted by the British as was the case hundreds of years ago. The reliance on the Privy Council and reluctance of the Commonwealth Caribbean Governments to fully transition to and adopt the CCJ as the final court of appeal in the region is a testimony of the still strong influence of reception on our legal system today.

While Guyana has made great strides in recognizing the CCJ as its final court of appeal, St. Lucia still relies on the Privy Council as its highest court. When one understands the doctrine of reception in relation to the Commonwealth Caribbean Legal Systems, it is likely that there should be a proclivity to delve into how one can improve our current system and transform it to a more integrated legal system that considers the origins of the peoples who comprise the Caribbean. There are some who anticipate the switch from the Privy Council to the CCJ by Caribbean Jurisdictions in the future[32]. The CCJ has demonstrated that it is a bold court willing to take on complex issues including areas of law that the Caribbean through reception in our history, have been accustomed to emboldening, which is the breach of human rights.

In McEwan v. A.G[33] the CCJ recognized transgenderism in law. The fact that jurisprudence from the Caribbean, by Caribbean jurists which are progressive and has the potential to place this region on even footing of first world countries in court decisions that comply with rule of law augurs well for our transformation from reception to independence.

As legal practitioners become more awakened in their appreciation for our legal heritage in a manner that I theorize that Guyana has embraced because of its willingness to move beyond the past Privy Council to the CCJ, the jurisprudence of the Caribbean will be enhanced. It should be clarified that the preceding statement does not vitiate the substantive race relations issues between the Indians and Blacks that exist in Guyana. Academics referenced in this paper have indicated that the St. Lucian experience whose history of the imposition of the English common law with the French civil code continues to evolve.

Unlike some Pacific Island States such as Papua New Guinea whose legal system and culture recognize customary law which connects the heritage of the indigenous peoples to the jurisprudence in meaningful ways that reflect their identity, the Commonwealth Caribbean Legal systems in Guyana and St. Lucia more aptly reflect that of the British in the hybridization specific to each jurisdiction. Perhaps a more 'homogeneous legal order' is what is anticipated in the future[34]. Guyana was one of the countries that led the way to independence in the Commonwealth Caribbean. As such it should be no surprise that they were among the first in the region to accept the CCJ as its final court.

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Examining Jamaica Carpet Mills v First Valley Bank[35] it is seen how precedent operates in the Commonwealth Caribbean for jurisdictions which still use the Privy Council as their final court. Moreover, this is evidence of the impact of the doctrine of reception in how the legal system operates in relation to the Privy Council. Further, the usual approach historically was for the Privy Council to place the common law in a position that was superior to constitutions[36].

As we look at the jurisprudence of the Commonwealth Caribbean today, the CCJ and other Caribbean courts have now placed the common law as subordinate to the constitution. This would have taken place in a post-independence era marking the transformation of the territories from colonies to independent countries. With Guyana having a new constitution post-independence,[37] it is indicative of the workings of a country seeking to advance its jurisprudence among other things in its national development.

The two jurisdictions that we have focused on in this paper are unique in the Commonwealth Caribbean because of their hybrid legal system, however, like the other territories embraced or were forced to adopt the reception of the English common law. There have been significant changes with respect to both jurisdictions as their jurisprudence is changing. Judicial officers are aware of changes in the law[38]. There are some who are desirous of the development of our legal system to become more 'indigenous with a Caribbean legal philosophy and Caribbean common law' that would be distinct from the colonial past[39].

Conclusion

The doctrine of reception brings certainty and continuity with how the Commonwealth Caribbean Legal systems function. It also represents a horrific and cruel history which cannot be excluded from our ancestors' experience. The very practice of law today is based on the principles and procedures which have come through this tradition with its good and bad. Being able to navigate this legal system which is not a part of the majority ancestral customs of the people in the Caribbean is challenging but manageable. Those in the Judiciary, legal profession, academics and students in the Caribbean would be best served in gaining a full grasp of these doctrines which spawned the Commonwealth Caribbean legal systems in order to improve its effectiveness and strengthen its relevance in pursuit of ensuring that there is access to Justice for the region.

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