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CONSTITUTIONAL FORM AND CIVIL SOCIETY: THE CASE OF JAMAICA

HAROLD A. MCDUGALL*

“Always place development in the context of nation building and not as monuments to the cult of personality and narrow self-interest.”

—Patrick Anderson¹

INTRODUCTION

The nation of Jamaica began a new process of considering amendments to its constitution in 1999.² Many of the proposals would introduce separation of powers and other similar features of the United States Constitution into the Jamaican constitutional system.³

I visited the Norman Manley Law School in Kingston in 1999 as the first law professor in Jamaica on a Fulbright scholarship. While there, I was asked to teach a course in Comparative Constitutional Law, and the proposed constitutional changes sparked lively discussion. During my lectures, I compared Jamaican constitutional arrangements and civic culture with those of the United States. My general view was that the answers lie not in constitutional structures, but in civic culture. Subsequent outbreaks of political violence in Jamaica have only strengthened my convictions in this regard.

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2. See F.S.J. LEDGISTER, CLASS ALLIANCES AND THE LIBERAL AUTHORITARIAN STATE 77 (1998); *Constitutional Amendments for Parliament*, JAM. GLEANER, Feb. 23, 1999, at F2, available at <http://www.jamaica-gleaner.com/gleaner/19990223/f2.html> (last visited Mar. 31, 2004) [hereinafter LEDGISTER].

3. See *Jamaica's Election Politics*, PHILADELPHIA CARIBBEAN TIMES, Oct. 10, 2002, at 1; Carl Wint, *Law to Expand Rights, Freedom Before House*, JAM. GLEANER, July 23, 1999, at F2, available at <http://www.jamaica-gleaner.com/gleaner/19990723/f2.html> (last visited Mar. 31, 2004); Carl Wint, *Cliff Stone Against Executive Agencies*, JAM. GLEANER, June 10, 1999, at F4, available at <http://www.jamaica-gleaner.com/gleaner/19990610/f4.html> (last visited Mar. 31, 2004); *PNP's Proposal for Justice and Constitutional Reform*, JAM. GLEANER, available at <http://www.jamaica-elections.com/parties/manifestos/pnp0003.html> (last visited Mar. 17, 2003); *JLP'S Proposals for Justice and Constitutional Reform*, JAM. GLEANER, available at <http://www.jamaicaelections.com/election2002/parties/manifestos/jlp0003.html> (last visited Mar. 18, 2004).

WHAT'S THE PROBLEM?

OVERVIEW

The revenue base of the national government in many Caribbean countries is quite narrow.⁴ In addition, the Caribbean in general is experiencing heavy out-migration of skilled and unskilled labor and finance capital,⁵ resulting not only in a decline in the national economy, but also in the growth of systematic corruption and an informal economy driven in part by drug trafficking.⁶ Material scarcity generates even more demand against the limited supply of public resources, precipitating a further downward spiral.⁷

Jamaica was singled out for especially scathing treatment in a 1999 issue of *The Economist*. According to the article, there were 953 murders in 1998, and 145 suspected criminals were shot and killed by police during this period; most of the murders occurred in the capital, Kingston.⁸ Debt interest eats up almost two-thirds of government revenue,⁹ and according to U.S. Customs, thirty-seven percent of all drug-carrying passengers (known as "mules") arrested at American airports are from Jamaica (though not all are Jamaican nationals).¹⁰ The article noted that because of "economic difficulties, the drug trade and criminal violence," Jamaica has become a country in "relentless decline."¹¹

Based on my conversations with a few, Jamaicans are very sensitive about the bad press they have been getting. In fact, they are mortified, given their reputation for a strong spirit and, certainly among their expatriate community, a reputation for thrift, hard work, punctuality, and discipline that is hard to match. Jamaica itself, however, has some

4. See JAMES FERGUSON, FAR FROM PARADISE: AN INTRODUCTION TO CARIBBEAN DEVELOPMENT 1, 15 (1990); Bonham C. Richardson, *Caribbean Migrations*, in THE MODERN CARIBBEAN 10 (Franklin W. Knight & Colin A. Palmer eds., 1989); Hedy Isaacs, Inter-American Development Bank, Regional Policy Dialogue, Public Policy Management and Transparency Network, *Evaluation of Civil Service Systems – Case Study: Jamaica*, at 6, available at http://www.iadb.org/int/DRP/ing/Red5/Documents/BID_Jamaica11-02eng.pdf (last visited Mar. 19, 2003) [hereinafter Isaacs]. See also Franklin W. Knight & Colin A. Palmer, *The Caribbean: A Regional Overview*, in THE MODERN CARIBBEAN 17 (Franklin W. Knight & Colin A. Palmer eds., 1989) [hereinafter Knight & Palmer].

5. See Isaacs, *supra* note 4, at 18-20, 22, 32, 34.

6. Knight & Palmer, *supra* note 4, at 18.

7. *Id.*

8. *The Caribbean's Tarnished Jewel*, THE ECONOMIST, Oct. 2, 1999, at 37-38.

9. *Id.* at 37.

10. *Id.*

11. *Id.*

problems left over from plantation days that have been exacerbated over time, increasingly so in modern times.¹² Even before the slaves were freed, a class system was already in place.¹³ The lower-class peasantry emerged from the slaves who were permitted to cultivate and market food crops¹⁴ and from runaways such as the Maroons.¹⁵ Maroons were slaves who escaped from the Spanish plantations and founded communities high in the mountains where British slave owners could not find them, or if they found them, could not ferret them out.¹⁶

The house servants were, as in the United States, the foundations of the later-emerging black middle class.¹⁷ Unlike in the United States, however, some of these people, especially the offspring of plantation owners, were sent to school in Britain and returned to become leaders of black society.¹⁸ The emerging black middle class prized white-collar work over agricultural work, successfully navigated authoritarian-submissive patterns in work and social relations and was rewarded with access to the resources necessary to achieve their goals.¹⁹ Success was a function of command over wealth, policy-relevant information, technical skills, infiltration of the decision-making structure, formal organizational power, and the prestige of the leadership of one's community, firm or organization.²⁰

Planters, large farmers, commercial and industrial businessmen, senior bureaucrats and technical advisors, thus, not surprisingly, most successfully navigated the system.²¹ The middle group was (and still is) comprised of the professionals (*e.g.*, lawyers, teachers), unionized workers

12. See CARL STONE, CLASS, STATE, AND DEMOCRACY IN JAMAICA 52 (1986) [hereinafter STONE I]; see also ANTHONY J. PAYNE, POLITICS IN JAMAICA 15-16 (1995).

13. TERRY LACEY, VIOLENCE AND POLITICS IN JAMAICA 23 (1977).

14. See PAYNE, *supra* note 12, at 17-18.

15. See Richard Frucht, *A Caribbean Social Type: Neither "Peasant" nor "Proletarian,"* in PEOPLES AND CULTURES OF THE CARIBBEAN 195 (Michael H. Horowitz ed., 1971); see also LACEY, *supra* note 13, at 22-23 (1977).

16. See Suzette Benitez, *Maroons in Jamaica: Their Origins and Development*, at http://www.library.miami.edu/archives/slaves/Maroons/individual_essays/suzette.html (last visited Mar. 21, 2004) (noting that these fugitive slaves were given the name "maroons, which was taken from the Spanish word 'cimarrones'" because they were "unruly, fugitive, and wild").

17. See LACEY, *supra* note 13, at 26.

18. See, *e.g.*, OBIKA GRAY, RADICALISM AND SOCIAL CHANGE IN JAMAICA, 1960-1972 26 (1991).

19. See Carl Stone, *Stratification and Political Change in Trinidad and Jamaica*, in 3 SAGE PROFESSIONAL PAPERS IN COMPARATIVE POLITICS 14-15, 24, 37 (1972) [hereinafter Stone II].

20. See GLADSTONE MILLS, WESTMINSTER STYLE DEMOCRACY: THE JAMAICAN EXPERIENCE 200 (1997).

21. See STONE I, *supra* note 12, at 13.

and representatives of the established church.²² The losers in this race were the peasants, small farmers, unorganized workers (such as domestics) and the unemployed.²³

The lower classes were pushed to the periphery,²⁴ and denied access to government largesse, and learned to express their displeasure with periodic rebellions, covert as well as open, in a kind of passive-aggressive mode that strangely complemented the social pattern of authoritarianism and submissiveness.²⁵ According to Professor Edwin Jones of the Mona (Jamaica) Campus of the University of the West Indies (“UWI”), these developments laid the foundation for “a culture of popular distrust, in which rebelliousness became the predominant style of transmitting demands to the government.”²⁶ So, rebellion or recalcitrance has become a classic response to authority.²⁷ As in many Caribbean islands, the peasant class makes only marginal distinctions between the white slaveholders who once ran the state structures and the brown or even black elites who have succeeded them.²⁸

They only trust the people they know, and as a result, a kind of “tribalism” has ensconced itself in Jamaican politics.²⁹ This tribalism intensified somewhat after independence, when the people’s allegiances were divided between a conservative political party, ironically called the Jamaica Labor Party (“JLP”), and a left of center party called the People’s National Party (“PNP”).³⁰ Both parties are “middle-class-led and mass-based.”³¹ Additionally, “the bottom 40 percent of income earners make up some 75 percent of the two parties’ hard core membership, with 23 percent from the middle 40 percent of income earners and 2 percent from the top

22. LACEY, *supra* note 13, at 26; STONE I, *supra* note 12, at 23.

23. Stone II, *supra* note 19, at 15; STONE I, *supra* note 12, at 25.

24. See Stone II, *supra* note 19, at 15.

25. See PAYNE, *supra* note 12, at 20-31; see also LACEY, *supra* note 13, at 23-25.

26. Interview with Edwin Jones, Professor at the Mona Campus, University of West Indies (July 10, 2001).

27. See *Caribbean Islands - Political Violence*, at <http://reference.allrefer.com/country-guide-study/caribbean-islands/caribbean-islands61.html> (last visited Mar. 17, 2004); GRAY, *supra* note 18, at 27-30; PAYNE, *supra* note 12, at 15-31.

28. See Bridget Brereton, *Society and Culture in the Caribbean: The British and French West Indies, 1870-1980*, in THE MODERN CARIBBEAN 85 (Franklin W. Knight & Colin A. Palmer eds., 1989).

29. See Ian Boyne, *Tribalism – the Ultimate Corruption*, JAM. GLEANER, Oct. 13, 2002, available at <http://www.jamaicelections.com/election2002/articles/20021013-2.html> (last visited Mar. 31, 2004); STONE I, *supra* note 12, at 49-54.

30. CARL STONE, POLITICS VERSUS ECONOMICS: THE 1989 ELECTIONS IN JAMAICA VI (1989) [hereinafter POLITICS]. See also STONE I, *supra* note 12, at 49-54.

31. LEDGISTER, *supra* note 2, at 61.

20 percent of income earners.”³² The JLP’s primary support came from members of the business class, workers and the unemployed, while the PNP’s support came mainly from the upper-middle and upper class, educators and professionals as well as white collar workers.³³

The PNP’s leadership traditionally “exhibited all the symbols of an Anglicized, Oxford-educated, colonial intellectual whose lifestyle, speech pattern, and social rank as an elite legal advocate have [garnered] him . . . strong and emotional middle class support,” while the leader of the JLP “is a populist demagogue whose style and symbolic appeal is distinctly lower class.”³⁴ Neither had a majority, so both needed support from the floating voter to win elections.³⁵ The allegiance of these classes was primarily secured through patronage.³⁶

Tribalism received another dramatic boost during the Cold War. When the PNP came to power in 1972, Prime Minister Michael Manley developed closer ties with Cuba and other leftist Third World states.³⁷ The Reagan Administration responded and showed its disapproval by “drastically reduc[ing] aid to Jamaica, encourag[ing] US companies to withdraw . . . investment . . . [and] discourag[ing] tourists and businesses from going there.”³⁸ When the PNP was voted out of office, the JLP, under Edward Seaga, restored close links with the U.S. and received material support from the Reagan administration.³⁹ Seaga was the first Head of State received at the White House by President Reagan.⁴⁰

Seaga initiated a privatization scheme in 1981 when he was elected.⁴¹

32. STONE I, *supra* note 12, at 50.

33. *Political Dynamics*, at <http://www.lupinfo.com/country-guide-study/caribbean-islands/caribbean-islands50.html> (last visited Mar. 17, 2003).

34. See Stone II, *supra* note 19, at 11; see also STONE I, *supra* note 12, at 51-52 (noting that Edward Seaga, leader of JLP, is a paternalist populist leader who channels his power toward meeting the poor peoples’ needs, and that Michael Manley, former leader of the PNP, is the militant who generates political energy by engaging in mock battles with the powerful classes on behalf of the poor—neither of these two are trusted by the rich, the privileged, or the middle class).

35. LEDGISTER, *supra* note 2, at 61.

36. PAYNE, *supra* note 12, at 2.

37. FERGUSON, *supra* note 4, at 36; see also STONE I, *supra* note 12, at 152-53.

38. FERGUSON, *supra* note 4, at 36.

39. See *id.* at 38.

40. Corey Gilkes, *Jamaica: A Little Known Secret about Edward Seaga (JLP)*, July 16, 2001, available at <http://www.trincenter.com/Gilkes/16072001.htm> (last visited Apr. 3, 2004).

41. Richard L. Bernal & Winsome J. Leslie, *Privatization in the English-Speaking Caribbean: An Assessment*, Oct. 28, 1999, at 13, available at <http://www.csis.org/americas/pubs/ppPrivAssessment.pdf> (last visited Apr. 3, 2004) [hereinafter Bernal & Leslie].

Privatization in developing countries is usually motivated by a desire to: 1) improve company performance and efficiency in terms of reliability of delivery, quality, and

However, the policy continued through to the 1990s because of Michael Manley, who upon returning to power, felt that creating a market-oriented economy would relieve some of the problems Jamaica encountered during his previous administration, particularly in terms of its ties with Cuba.⁴² As a consequence of this early “bipartisan” support, Jamaica has been the most aggressive of all the Caribbean countries at privatization.⁴³

But as time has demonstrated, the privatization’s schemes and implementation of certain structural adjustment programs (mandated by the World Bank and International Monetary Fund) have resulted in “rising maternal mortality and child malnutrition rates, soaring food prices, rapidly decaying health care systems, destruction of rainforests and depletion of mineral resources.”⁴⁴ The failure of many privatization programs is directly linked to “structural adjustment measures . . . which often contradict sound economic principles of investment and growth.”⁴⁵

Since the early 1990s it has been clear to most observers that the “‘free market’ policies, developed by . . . [the Reagan and Bush administrations] have ‘failed to keep their promises of increased employment and sustainable economic growth in the Caribbean.’”⁴⁶ More to the point, Jamaica, one of the first countries to undergo major adjustment, has an economy that is as weak now as it was fourteen years ago, has greater foreign debt, crumbling public services and infrastructure, disastrous social conditions and a weak government.⁴⁷

There was an appearance of success when Jamaica first embarked

price; 2) introduce competition in areas long monopolized by government; 3) raise income as an alternative to raising taxes or incurring further debt; 4) reduce the burden on the government’s budget; 5) settle foreign debt; 6) expand or develop the local equity market; 7) encourage industrial development; 8) attract foreign investment; 9) promote growth; and 10) increase equity by narrowing gaps in income and access to resources.

Id. at 2.

42. *See id.* at 14; *see also* Jamaica: Manley Reiterates Commitment to Privatization, INTER PRESS SERVICE, Nov. 19, 1990, at 1; Jamaica: Deregulation is the Only Way, Finance Minister Says, INTER PRESS SERVICE, Feb. 28, 1991, at 1.

43. Mark Baker, *Privatization in the Developing World: Panacea for the Economic Ills of the Third World or Prescription Overused?*, 18 N.Y.L. SCH. J. INT’L & COMP. L. 233, 236 (1999) [hereinafter Baker].

44. *Caribbean: U.S. Policies Have Had “Disastrous Results,”* INTER PRESS SERVICE, Oct. 7, 1991, at 1 [hereinafter *Caribbean*].

45. Baker, *supra* note 43, at 266.

46. *See Caribbean, supra* note 44, at 1; *see also* Michael Cornell Dypski, *The Caribbean Basin Initiative: An Examination of Structural Dependency, Good Neighbor Relations, and American Investment*, 12 J. TRANSNAT’L L. & POL’Y 95 (2002).

47. *See Caribbean, supra* note 44, at 1.

upon its privatization scheme.⁴⁸ Jamaica's privatization of commercial enterprises was described as "bearing fruit" because the country had "made substantial progress towards repaying its loans, and [was] satisfy[ng] its International Monetary Fund Targets."⁴⁹ Richard Bernal and Winsome Leslie concluded that in Jamaica's case "the benefits of privatization have far outweighed the difficulties."⁵⁰ They cited "increased employment in agriculture, hotels, and telecommunications has offset job losses in other areas," and "widespread public support for privatization."⁵¹ They concluded that "[t]he Jamaican experience demonstrates the value of public education and transparency in the initial stages of privatization for individual transactions and the program as a whole to be successful."⁵² Such benefits of privatization have typically been short-lived in the developing world,⁵³ however, to say nothing of the side-effects.

In Jamaica, privatization has greatly widened the gap between rich and poor.⁵⁴ Benefits and direct gains go to the wealthy and to foreign investors, while few benefit the poor.⁵⁵ Moreover, privatization, despite claims of economic efficiency and growth,⁵⁶ has led to job losses and wage cuts for workers and higher prices for consumers. Privatization of key services in the areas of health, education and security has made social inequities still worse.⁵⁷ Urban community residents in particular have seen

48. See *Jamaica: Island Reaping Fruits of Economic Programs*, INTER PRESS SERVICE, Aug. 14, 1992, at 1; see also *Caribbean-Economy: Privatization Still High on Regional Agenda*, INTER PRESS SERVICE, Jan. 27, 1995, at 1.

49. Lee Goodwin & R. Thomas Hoffman, *Project Finance: Easy Going in Jamaica*, 133 NO. 1 PUB. UTIL. FORT. 38, 38 (1995).

50. See Bernal & Leslie, *supra* note 41, at 17.

51. See *id.*

52. See *id.* at 18.

53. See, e.g., Bert Wilkinson, *Finance-Carib: Guyana Rethinking Power Privatization*, INTER PRESS SERVICE, Feb. 27, 2003, at 1 [hereinafter Wilkinson].

54. See *Caribbean*, *supra* note 44, at 1; *Jamaica-Economy: Poverty Rises Despite State's Economic Victories*, INTER PRESS SERVICE, Oct. 18, 1994, at 1.

55. See, e.g., Robert Macedo, Carnegie Endowment for International Peace, *Privatization and the Distribution of Assets*, July 2000, available at <http://www.ceip.org/files/publications/pdf/14macedo.pdf> (last visited Mar. 16, 2004).

56. See generally Mary M. Shirley, *The What, Why, and How of Privatization: A World Bank Perspective*, 60 FORDHAM L. REV. 23 (1992); see also Juliet D'Souza et al., *Determinants of Performance Improvements in Privatized Firms: The Role of Restructuring and Corporate Governance*, Mar. 2000, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=243186 (last visited Mar. 16, 2004); William L. Megginson & Jeffrey M. Netter, *From State to Market: A Survey of Empirical Studies on Privatization*, 39 J. ECON. LITERATURE 2 (2001), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=262311 (last visited Mar. 16, 2004).

57. See Sanjeev Gupta et al., International Monetary Fund, *Privatization, Social Impact, and Social Safety Nets*, May 1999, available at <http://www.imf.org/external/pubs/ft/wp/1999/wp9968.pdf> (last visited Mar. 16, 2004); see also Wilkinson, *supra* note 53.

a relentless climb in their costs of living, as well as skyrocketing unemployment, since the 1970s.⁵⁸ Their quality of life is marred by violence, lack of work, lack of education and training, lack of adequate housing and more.⁵⁹

The PNP and JLP have divided these urban, low-income Jamaicans into two opposing, armed camps.⁶⁰ The large number of votes in poor areas determines the outcomes of elections, and these wards and precincts are controlled by a combination of patronage and violence.⁶¹ Armed with high-powered M-16 and AK47 assault rifles and sub-machine guns, organized political gangs, loyal to one party or the other, establish and control “garrison communities,” in inner city poor areas, headed by sinister figures called “dons.”⁶² The dons turn the community out to vote, and no one votes the wrong way or faces the consequences.⁶³ In return, inner-city dwellers (primarily in Kingston) receive some meager benefits as well as protection from the forces of law and order.⁶⁴

“With increasing debt in the 1980s and 1990s, the traditional basis of mass support meant that political leaders could not easily abandon their expected . . . patronage networks . . .”⁶⁵ The dons and their garrison communities are still intensely loyal to their respective political parties, but the source of their financing has changed as Jamaica’s governmental coffers declined in the new era of Third World debt. Revenues from drug trafficking and gang-related criminal activities now supplement government largesse, the dons grow more independent and more powerful, and inner-city communities rapidly deteriorate.⁶⁶

Though the beach resort areas of the North Coast are very safe, the

58. See generally HORACE LEVY, *THEY CRY ‘RESPECT’! – URBAN VIOLENCE AND POVERTY IN JAMAICA* 10, 32 (2001).

59. See *id.* at 46.

60. See Mark Figueroa, *Garrison Communities in Jamaica 1962-1993: Their Growth and Impact on Political Culture*, at 1 (1996) (unpublished manuscript) (on file with author); *Behind Jamaica’s Garrisons*, *JAM. GLEANER*, July 19, 2001, at A10, available at <http://www.jamaica-gleaner.com/pages/politics/kerrfull.pdf> (last visited Mar. 16, 2004) (containing excerpts of the July 1997 Report of the National Committee on Political Tribalism, chaired by Political Ombudsman, the Hon. Justice James Kerr); see also Garwin Davis, *Garrison Dominance Continues*, *JAM. GLEANER*, Oct. 17, 2002, at F4, available at <http://www.jamaica-elections.com/news/20021017-4.html> (last visited Mar. 16, 2004).

61. See *Behind Jamaica’s Garrisons*, *supra* note 60.

62. See *id.*

63. See *id.*

64. See *id.*

65. See Canadian Urban Institute & ARA/KPMG, LLP, *Civil Society and Local Government in Jamaica*, at 12 (on file with author).

66. See *Behind Jamaica’s Garrisons*, *supra* note 60.

garrison communities of Kingston are boxes of dry tinder.⁶⁷ Whenever an issue arises which might bring down the existing government, riots are likely to occur, all the more devastating and widespread because they are typically organized, or at least facilitated, by the party out of power.⁶⁸

To try to bring some stability to this situation, Jamaica, like many another Third World countries, has looked to the constitutional model of the United States—a relatively stable, prosperous country. The grass looks very green from there. These changes, if adopted, would install an Executive President, increase the independence of their courts, assign fixed terms to their legislature, and create greater local government autonomy.⁶⁹ These changes would make the Jamaican constitution more like our own, with its separation of powers, judicial independence, and federalism.⁷⁰

PARLIAMENT, PRIME MINISTER AND POLARIZATION

Unlike the U.S., the Jamaicans follow the British system of parliamentary democracy.⁷¹ To distinguish the U.S. from the British system, let us take a cue from Professor Selwyn Ryan of the St. Augustine (Trinidad) Campus of UWI, and call the first the “Philadelphia” model, and, the second the “Westminster” model.⁷²

The Philadelphia model creates a “separation” of legislative and executive powers by establishing an “Executive Presidency.”⁷³ Under this arrangement, the chief executive is elected independently of the Legislature, and his or her Cabinet is not comprised of members of the Legislature.⁷⁴ Another important difference between the two systems is that the Westminster model bifurcates the executive into the Head of Government (The Prime Minister) and the Head of State (The Crown—in

67. See *supra* notes 41–45 and accompanying text; see also, e.g., *West Kingston Violence Not Benefit Parties*, JAM. GLEANER, Sept. 14, 2001, available at <http://www.jamaicagleaner.com/gleaner/20010914/news/news1.html> (last visited Mar. 10, 2004).

68. See *West Kingston Violence Not Benefit Parties*, *supra* note 67.

69. See *supra* note 3 and accompanying text.

70. See *id.*

71. STONE I, *supra* note 12, at 48.

72. Selwyn Ryan, *Caribbean Political Thought, from Westminster to Philadelphia*, in *CONTENDING WITH DESTINY: THE CARIBBEAN IN THE 21ST CENTURY* 248 (Kenneth Hall & Denis Benn eds., 2000) (on file with author); see also LACEY, *supra* note 13, at 45 (noting that the main features of the Westminster Model are: “prime-ministerial power, the cabinet system, the supposed distinction between ‘administration’ and ‘policy’ in the administrative-political relationship, the bicameral Parliament with an upper house acting as a break on popular opinion, institutional continuity, inbuilt bias in favour of a two-party system and against the emergence of a third party”).

73. See Ryan, *supra* note 72.

74. See *id.*

the Caribbean, the Crown's representative, the Governor-General).⁷⁵ In contrast, the Philadelphia model combines the functions of Head of State and Head of Government in a single office, that of the President.

The most important feature of the Westminster model is that it does not practice "separation of powers."⁷⁶ We often think of "separation of powers" as separating the executive, legislative and judicial authority. But its focus is actually narrower—it is to separate the executive from the legislative authority.

The party winning a majority of constituencies in parliamentary elections forms the new government, comprised of the ministers who head various government departments.⁷⁷ The government's chief executive officer is the Prime Minister, whom the victorious party has selected as their candidate before the elections take place.⁷⁸ In turn, he selects the other Ministers, or Department Heads, to form a Cabinet.⁷⁹ This concentration of executive power exclusively in the hands of the party winning a majority of seats in Parliament renders the opposing party virtually powerless.

Under the British system, then, the winner of a majority in parliamentary elections selects the executive to carry out its legislative program, approved by the people in the election.⁸⁰ There is no such thing as "gridlock" between the Prime Minister and Parliament, say, because the P.M. will not sign off on a bill. If the Prime Minister and his party cannot agree on an issue, it is likely to bring down the government. Perhaps the P.M. will call for new elections, or for a "vote of confidence," giving the people the opportunity to elect new representatives who agree with him, or turn to the opposing party.⁸¹

The courts are separate, as they are in our system.⁸² The difference is that the courts are much more deferential to the legislature because of a doctrine called "Parliamentary Supremacy."⁸³

75. See *Government and Politics: The Governmental System*, at <http://reference.allrefer.com/country-guide-study/caribbean-islands/caribbean-islands49.html> (last visited Mar. 1, 2004) [hereinafter *Government and Politics*].

76. See *id.*

77. See *id.*

78. See *id.*

79. See *id.*

80. See *id.*

81. See *id.*

82. See *id.*

83. See generally Wikipedia, *Parliamentary Supremacy*, at http://www.wikipedia.org/wiki/Parliamentary_supremacy (last visited Mar. 21, 2004).

Parliamentary supremacy is the principle that parliament of the United Kingdom is supreme to all

In Jamaica, the intense concentration of power in the legislature has exacerbated the “garrison” mentality, because patronage will go exclusively to the followers of the party that wins the elections.⁸⁴ The opposition, not having the ability to choose any executive officers, has no control over policy or patronage and can only criticize in Parliamentary Debate, hoping to bring the government down and replace it.⁸⁵

In some cases, sitting P.M.s have called new elections when their popularity was high, for any reason, to establish momentum for three or four or five more years in office.⁸⁶ General elections are held every five years,⁸⁷ unless the government collapses or a vote of confidence is held.⁸⁸

In 1997, when the Reggae Boyz soccer team qualified for the World Cup Soccer Tournament for the first time,⁸⁹ the government’s popularity soared, even though polls taken very recently before the event gave the government very low ratings.⁹⁰ P.J. Paterson, Prime Minister of the PNP, then the ruling party, moved quickly to take advantage of the unexpected popularity surge and called a general election for December 1997.⁹¹ The PNP won by a landslide.⁹² The PNP won again in the October 2002 elections.⁹³ As it is, the JLP, which is associated with the austerity of the 1980s, has not been in office for over twelve years.⁹⁴ There is real power in incumbency in Jamaica!

other governmental institutions including the monarch and the courts. The principle of parliamentary supremacy was established over the 17th and 18th centuries during which time parliament asserted the right to name and depose a king.

Id.

84. See Figueroa, *supra* note 60.

85. See *Government and Politics*, *supra* note 75.

86. See *id.*; see also *Voters Want Early Election*, JAM. GLEANER, Jan. 28, 2002, available at <http://www.jamaica-gleaner.com/gleaner/20020128/lead/lead1.html> (last visited Mar. 18, 2004).

87. See WIKIPEDIA, *Politics of Jamaica*, available at http://www.wikipedia.org/wiki/Politics_of_Jamaica (last visited Mar. 17, 2004).

88. See *Government and Politics*, *supra* note 75.

89. See *A Look Back at World Cup 98*, available at <http://www.thereggaebboyz.com/worldcup98.htm> (last visited Mar. 17, 2003).

90. Author assertion.

91. See Lloyd Williams, *The Elections Over the Years*, JAM. GLEANER, Oct. 16, 2002, at F6, available at <http://www.jamaicaelections.com/election2002/articles/20021014-6.html> (last visited Mar. 31, 2004).

92. See *id.*

93. See *Jamaica Local Election 2003*, JAM. GLEANER (2002), available at <http://www.jamaicaelections.com/results.php> (last visited Mar. 17, 2004).

94. See Williams, *supra* note 91.

PUBLIC SERVICE

In the Caribbean, public administration is called the “public service,” rather than the “civil service” as in the U.S. and the U.K. The Ministry of Public Service (“MPS”) and the Public Service Commission (“PSC”) share the task of managing public employment and human resources.⁹⁵ And as with all other ministries, the MPS is a multifunction unit, and the “responsibility for the administration of several areas of public policy” rests with one minister.⁹⁶ The PSC is to do the Minister’s bidding, impartially and enthusiastically, regardless of the party to which the Minister belongs.⁹⁷ It is the Minister, not the PSC, who is accountable to parliament.

Problems in the application of the Westminster/Whitehall model of public administration have become quite common in the Caribbean. These problems are a function both of the form of public administration received, and of the history and culture of the area, but they have been exacerbated over time.⁹⁸

As the “delivery arm” of government, the PSC is expected to impartially serve the entire country while it is simultaneously expected to accommodate the patronage needs of an extremely polarized party system.⁹⁹ These demands have become more and more serious as the general population experiences the pain of economic crises and structural adjustments and increasingly looks to the central government for relief.

Politicians are quick to use the bureaucracy to attain or retain a competitive edge vis-à-vis the Opposition Party. Many politicians thus see public institutions as agents of social control, as funnels for patronage, or as instruments for reward and reprisal.¹⁰⁰ Faced with this conflict, many bureaucrats simply identify themselves with the party in power, some to protect themselves and a few out of sheer opportunism. Others are regarded in the community at large as agents of the majority party regardless of what the bureaucrats themselves intend.¹⁰¹ This is a special

95. See Isaacs, *supra* note 4, at 6. The MPS has been criticized as a highly centralized, inflexible body not providing the services for which it was designed. *Id.*

96. See Canadian Urban Institute, *supra* note 65, at 11.

97. See Isaacs, *supra* note 4, at 10, 11.

98. *Id.* at 10.

99. See *id.* at 10, 12. Even in Britain, civil servants are no longer viewed as policy or intellectual “eunuchs” – erosion of these myths is similar to the erosion of the myth of U.S. Supreme Court Justices’ impartiality. MILLS, *supra* note 20, at 16.

100. See Canadian Urban Institute, *supra* note 65, at 10-12.

101. See *id.*; see also Keith Miller, *Advantages & Disadvantages of Local Government Decentralization, Presentation to the Caribbean Conference on Local Government and*

risk in small communities such as the developing nations of the Caribbean.¹⁰²

If the bureaucrats do resist, the politicians have ways of getting around them. There is a perception that a “certain amount of political interference in the exercise of the public sector’s functions prevail[]” because of the pressure exerted on civil servants to move ahead with certain programs or make certain decisions while they attempt to observe due process.¹⁰³ This has disastrous results, adding to the interminable delays for which local bureaucracies are already legendary, because fewer and fewer people actually have the authority to make a decision.

In other instances, the party leaders appoint “special advisors”—a local advisory machinery within every ministry that guides policy.¹⁰⁴ Unfortunately, they influence the morale of public agencies because they gain deferential treatment, and influence policy, salary and its market value.¹⁰⁵ There are great disparities in the salaries paid to the heads of some agencies as compared to the salaries of central government employees at comparable levels. Entire public-private agencies, sometimes called “parastatals”¹⁰⁶ have also been created to outflank the bureaucrats.¹⁰⁷

COURT SYSTEM

Unquestionably, party politics also affects the administration of justice—not by corruption of judges, but by draining resources for

Decentralization, (June 25-28, 2002), available at http://www.ndi.org/worldwide/lac/guyana/localgov_conf/materials/papers/miller_doc.pdf (last visited Mar. 31, 2004) [hereinafter Miller]; Trevor Munroe, *Voice, Participation and Governance in a Changing Environment: The Case of Jamaica* 9-10 (Mar. 25, 2000), available at [http://lnweb18.worldbank.org/External/lac/lac.nsf/c3473659f307761e852567ec0054ee1b/1ffdd81022fb1f66852568dd00761c03/\\$FILE/Voice%20Participation%20and%20Governance%20-%20Jamaica.pdf](http://lnweb18.worldbank.org/External/lac/lac.nsf/c3473659f307761e852567ec0054ee1b/1ffdd81022fb1f66852568dd00761c03/$FILE/Voice%20Participation%20and%20Governance%20-%20Jamaica.pdf) (last visited Mar. 17, 2004) [hereinafter Munroe]. Perhaps because of their “impartiality” in zealously implementing policies proposed by the party in power, as they have, after all, been trained.

102. See generally Miller, *supra* note 101.

103. See Isaacs, *supra* note 4, at 22.

104. See *id.* at 12.

105. See *id.*

106. See *id.* at 6 (for use of word ‘parastatals’). Among Jamaicans, there exists a negative perception of the public sector, including “persistent concerns relat[ing] to government’s size, capacity, lack of customer-centered orientation, and lack of transparency [and trust].” See *id.* at 18, 19. A modernization initiative, the Public Sector Modernization Program (“PSMP”), attempts to improve this situation through decentralization, creating a higher profile of the human resource management function, “including employing persons competitively to fill positions . . . providing relevant training, and ‘examining a more integrated approach . . .’” *Id.* at 20.

107. “Improving the Jamaican Public Service is considered a pre-requisite for achieving the vision and national goals for sustainable development.” See *id.* at 21.

patronage purposes that might otherwise be spent to maintain and operate the courts.¹⁰⁸ The parish courts clearly need an upgrade of physical facilities. Parish court buildings have been refurbished or modernized in the corporate area of Kingston and St. Andrew, as well as some of the larger settlements such as Montego Bay. But courts in the rural areas are generally relics of the Colonial Era. In many cases they have been so poorly maintained that they are beyond repair.¹⁰⁹

Lack of confidence in the system goes beyond physical appearances and environment, however. Another great obstacle to respect for the system is interminable delay. One of the most important reasons for the delay is the difficulty of producing a record. At every level of the judicial system there are insufficient resources to get that job done.¹¹⁰

Reporters for courts of original jurisdiction typically transcribe judicial proceedings in longhand. Typewriters, not word processors, are used, and there are too few typists for the great volume of work that needs to be done.¹¹¹ In many cases, the judge him or herself takes notes, and these must be transcribed. If the judge's handwriting is illegible, the judge must be found to interpret or at least proofread the transcription, causing more delay.

This type of resource limitation exists, albeit in somewhat milder form, at the appellate level as well. As a result, the reasons for judgments at each level of the system are slow to emerge, making appeals very difficult.¹¹²

In the criminal arena, the extremes to which this can go are summed up by a stark anecdote provided by Jai Mangal, Senior Tutor of the Norman Manley Law School (Kingston):

[I]t is not unknown for appeal papers in criminal cases to arrive at the registry of the Court of Appeal [the nation's highest court] after the appellant has served the term of imprisonment imposed. Nor is it unknown for papers to arrive years after conviction and the appellant long forgotten that he has appealed. . . . [T]he law states that such materials are to be delivered within fourteen days after receipt of notice of the appeal. . . . No record has ever been known to arrive in

108. *See Government and Politics, supra* note 75.

109. *See id.*

110. *See id.*

111. The courts are not divided into criminal and civil divisions. *Id.* Rather, the same courts typically handle both types of matters. *Id.* The great increase in the volume of criminal cases due to a rise in the incidence of violence and drug trafficking on the island has placed an intolerable strain on an already fragile system. *Id.*

112. *See id.*

that period. Perhaps the law should be repealed.¹¹³

To meet this problem of course requires a commitment of resources, just as is the case with respect to physical facilities. Word processors, Dictaphones and tapes, and more personnel are needed. Resources are also needed for a better-educated class of clerks and court support staff. With violence and drug trafficking cases clogging the courts, there is more and more pressure on an already fragile system.¹¹⁴

Sr. Tutor Mangal perhaps said it best, when he commented that:

No civilized society can hope to have its citizens respect its laws, or have a feeling or sense of confidence in their justice system when the vindication of rights is often so attended by protracted delays. The aggrieved citizen can only throw up his arms in absolute disgust and frustration *and* seek redress by self-help: lynching of persons whom a mob conceives to be suspect is its grossest violation.¹¹⁵

Such conditions cannot encourage the confidence of the public in the justice system. Under these circumstances we should be less and less surprised when the Jamaicans show disrespect for law as well as the system and the officials, “big and small,” who purport to administer it. And we cannot be surprised if non-Jamaicans, who might think of investing in the country or supporting it in other ways, would hesitate to do so under these conditions.

Ultimately, the issue of judicial independence is also bound up in the question of resources. Justice Patton feels judicial independence is unrealizable as long as there is a Ministry that controls the courts’ budget, particularly given the extreme conditions in which judges already operate.¹¹⁶ The Ministry of Justice and National Security controls the purchase of every item—decides if a toilet is to be fixed or a fan is to be bought. The bureaucrats there do not answer telephone calls from the judges or answer their memoranda.¹¹⁷

All these factors add up to a case for more resources allocated to the system for the administration of justice—few of the government’s other priorities can meaningfully be achieved without confidence in the courts.

113. Interview with Jai Mangal, Senior Tutor, Norman Manley Law School, in Kingston, Jam. (Sept. 15, 1999).

114. Author assertion.

115. Mangal, *supra* note 113.

116. *Id.*

117. *Id.* The answer is to place the Chief Justice in charge of the budget for the courts. The Constitution also ought to stipulate a certain percentage of the budget dedicated of the court system. See *Legal System of Jamaica*, 40 ST. LOUIS U. L.J. 1381 (1996) (giving a full description of the legal system).

But the courts, like the roads and many other basic infrastructural needs, are neglected in favor of patronage priorities and the demands of the IMF.¹¹⁸

THE “LOCALLY GOVERNED”— CLIENTS, CONSUMER, OR CITIZENS?

Local government is where the “rubber meets the road” for most Jamaicans—many more so than those who encounter the judicial system in either criminal or civil form. “A parochial council, which exercises limited self-government is elected in each parish . . . at times other than those at which general elections are held.”¹¹⁹ The parish councilors are underpaid, and although the parish councils were “established to provide basic amenities for local populations,” they “became increasingly dependent on financial assistance from the central government.”¹²⁰ Local government has responsibility for parochial roads and bridges, minor water supplies and garbage disposal; it also supervises cemeteries, markets and abattoirs, and manages local health authorities and poor relief.¹²¹ In addition, the local government is responsible for national functions such as disaster preparedness, community and economic development, and land use planning.¹²²

Local government is, of course, also a contender for resources, and thus a victim of the partisanship and polarization already discussed.¹²³ It is quite far down the line, possibly even farther down the line than the courts. In this sense, the question of local government—who gets what, when, and how—is inherently political and cannot be separated from the political process.¹²⁴ It is this political process that Jamaicans hope to change by changing their constitution to one more closely approximating our own. What are the prospects?

118. Mangal, *supra* note 113.

119. *See Government and Politics, supra* note 75.

120. *Id.*

121. *See* Christopher Tufton, *Why the Cynicism Towards the Next Polls?*, JAM. GLEANER, Mar. 16, 2003, at F3, available at <http://www.jamaica-gleaner.com/gleaner/20030316/focus/focus3.html> (last visited Apr. 4, 2003) [hereinafter Tufton]; *see also* Anne-Marie Blackman, *Local Government, Communitarianism and the Citizen: Opportunities and Challenges*, available at http://www.upd.oas.org/lab/Documents/publications/local_government/local_government.pdf (last visited Mar. 1, 2004) [hereinafter Blackman]. A few of the challenges faced by local government include the unsanitary conditions of markets, congestion in major centers, roads in constant disrepair, and markets and cemeteries requiring constant maintenance. *See* Tufton, *supra*.

122. *See* Tufton, *supra* note 121; *see also* Blackman, *supra* note 121, at 13.

123. *See Government and Politics, supra* note 75.

124. *See id.*

THE “PHILADELPHIA” CONSTITUTIONAL MODEL – SUITABLE FOR EXPORT?

The drafters of the U.S. Constitution certainly tried to minimize the impact of party politics and the kind of polarization they wished to avoid, the kind of polarization Jamaica now experiences. Their key strategy was separation of powers, to remove incentives for the kind of patronage and spoils system that bedevils—and bankrupts—Jamaica today.

Separation of Powers

James Madison, chief architect of the American Constitution, was fearful of the influence of special-interest politics—of “faction”—in the legislature.¹²⁵ His chief concern was not that the population would be splintered into small factions, but rather that it would unite into one big one.¹²⁶ Madison worried that such a majority “faction” might rise to control the government and interfere with the rights of the minority—property rights.¹²⁷

However, though Madison opposed parties during the Constitutional Convention, he himself joined one when governance began.¹²⁸ Political parties, the principal means of creating majority factions, proved indispensable to effective government in the United States. The irony is that to govern effectively in the United States, the constitutional separation of executive and legislative power must be overcome by electing a President and a Congress from the same party.

A combination of legislative and executive power is probably more important in a developing country than a developed one, just because of the need to marshal resources for the country’s development needs. Certainly, in our history as a developing country separation of powers was the exception rather than the rule. It was not until after Franklin Roosevelt’s administration that ticket-splitting—electing a President of one party and a Congress of the other—became common practice in the U.S.¹²⁹

Parties have begun to weaken in the U.S.¹³⁰ The revolt against House

125. See THE FEDERALIST No. 10 (James Madison).

126. See *id.*

127. See *id.*

128. *The White House, History & Tours: Past Presidents, James Madison*, available at <http://www.whitehouse.gov/history/presidents/jm4.html> (last visited Mar. 1, 2004).

129. See generally Barry C. Burden & David C. Kimball, *A New Approach to the Study of Ticket Splitting*, 92 AMER. POLITICAL SCIENCE REV. 533, 533-44 (1998).

130. Causative factors include popular primaries; the use of television in campaigning, with commensurate increases in campaign finance costs; the rise of well-financed special interest groups; and the loss of power of legislative party leaders. See Lloyd N. Cutler, *Address: Party*

Speaker Joe Cannon in 1910 began the process, reducing the power of the Majority party to organize the House to cohere along party lines.¹³¹ The various committee chairs, though more decentralized than the Speaker, filled some of the power vacuum, but they were curbed in turn by the reforms recommended by the Democratic Study Group of the 1970s.¹³² In general, these reforms resulted in further decentralization of power on the Hill, to subcommittee chairs and to individual Members.

As the parties weakened, their ability to capture both the executive and legislative branch, and thus approximate the Westminster model, declined. The result has been “divided government,” in which different loci of power in the U.S. are controlled by opposing parties (only possible in a system of separation of powers). From 1968 to 1992, the Democrats typically held the House of Representatives, the Republicans the White House, and the Senate was closely contested.¹³³ Yet after 1992, the Republicans and Democrats had for the time being traded the White House and the House of Representatives, this divided government had introduced a strong political culture of gridlock.¹³⁴ One commentator describes the situation as follows:

[Divided government produces gridlock], the evident inability of the President and Congress to get together on a coherent program for

Government Under the American Constitution, 134 U. PA. L. REV. 25, 34 (1985).

[D]ependence on the party for campaign funds and career advancement has been replaced by dependence on the many single-issue interest groups to whom they must turn to raise the constantly increasing amount of money needed to win and hold their seats. They now owe loyalty not to a party with a reasonably coherent view of the right mix of national policy, but to a variety of narrowly focused pressure groups with disparate and conflicting views.

Id.

131. See generally Margaret Sanregret Shockley, “Canonizing” Under Newt Gingrich: *The Speaker’s Consolidation of Power in the House of Representatives: Not since Joe Cannon’s Reign from 1903 to 1911. Has a Speaker of the House Consolidated Power as Effectively as Newt Gingrich*, 9 STAN. L. & POL’Y REV. 165 (1998).

132. In 1971, Congressional Democrats adopted a party rule prohibiting any member from chairing more than one subcommittee. By means of a subcommittee “bill of rights” adopted in 1973, subcommittee chairs were given powers similar to those previously exercised only by chairs of full committees. Subcommittees were assured adequate budgets and staff, and given first crack at new legislation. See Albert R. Hunt, *In Defense of a Messy Congress* (1982), reprinted in GOVERNING: READING AND CASES IN AMERICAN POLITICS 272-73 (Roger H. Davidson & Walter J. Oleszek eds., 1992).

133. See James L. Sundquist, *Needed: A Political Theory for the New Era of Coalition Government*, in GOVERNING: READING AND CASES IN AMERICAN POLITICS 152 (Roger H. Davidson & Walter J. Oleszek eds., 1992).

134. See Cutler, *supra* note 130, at 32-33 (finding an increase in voters identifying themselves as independents, and a rise to 50% in voters splitting their presidential and Congressional ballots between the parties). Party government prevailed 70% of the time between 1796 and 1945, less than 50% of the time between 1945 and 1968, and less than 30% since 1968. See *id.* at 33.

governing, and to stand accountable to the voters for the results of that program. With divided government and the lack of cohesion among each party's members of Congress, national policy has to be made one issue at a time. Each issue is decided by a cross-party coalition whose makeup shifts from one issue to the next. The result is a hodgepodge of ad hoc policy decisions that are usually inconsistent with one another, and a sum of outcomes that most voters condemn. Neither the President nor any legislator defends this sum of conflicting outcomes or accepts responsibility for bringing it about.¹³⁵

Ironically, a by-product of the weakening of parties in the U.S. has been to increase the access points to which special interest money can be funneled, maximizing the opportunities for corruption.¹³⁶ With less to deliver, the parties' ability to finance campaigns declined. Into the vacuum stepped special interest money, permitting individual legislators to finance their own campaigns.¹³⁷ These separately-financed legislators have remarkable staying power as well, making a significant number of elections to the House of Representatives and the Senate functionally noncompetitive.¹³⁸

The "war chest" that an incumbent is able to extract from special interests makes it virtually impossible for a new candidate to win.¹³⁹ (These special interests, of course, expect favorable consideration of their legislative proposals from the candidate after the election, or at least preferred "access.") The great expense of American electoral campaigns is due primarily to the need for television advertisements, the costs of which are generally very high. In large metropolitan areas such as New York or Los Angeles, they are astronomical.¹⁴⁰

The need for television as a campaign strategy is also a function of the decline and weakness of the parties themselves. Parties, particularly the Democratic Party, previously notified voters of their proposed programs by

135. *Id.* at 27.

136. See generally Susan P. Fino, *Perspectives: Federal Jurisprudence, State Autonomy: De Tocoqueville or Disney? The Rehnquist Court's Idea of Federalism*, 66 ALB. L. REV. 765 (2003); Eric L. Richards, *Federal Election Commission v. Colorado Republican Federal Campaign Committee: Implications for Parties, Corporate Political Dialogue, and Campaign Finance Reform*, 40 AM. BUS. L.J. 83 (2002); Symposium, *The Brennan Center Jorde Symposium on Constitutional Law: Reforming Campaign Finance Reform: A Review of Voting with Dollars*, 91 CAL. L. REV. 643 (2003); Symposium, *The Brennan Center Jorde Symposium on Constitutional Law: The New Paradigm Revisited*, 91 CAL. L. REV. 743 (2003).

137. See *supra* note 136 and accompanying text.

138. See *id.*

139. See *id.*

140. See generally Richard L. Berke, *Spending Limit Up 14% for Primaries*, N.Y. TIMES, Feb. 6, 1988, at 9.

means of door-to-door canvassing.¹⁴¹ The parties recruited political operatives to carry this on with the promise of patronage positions if their party won. This practice, so much like the present procedure in Caribbean parliamentary democracies, was terminated by legislation passed all over the U.S. beginning in the 1920s. These laws curbed the power of political “machines,” which ironically provided access to the political process for many low-income and working-class people who today show little interest in the process.

Separation of powers was very attractive during the early years of the United States, when it was considered important that the national government be somewhat limited in its power. But as the size, complexity and heterogeneity of U.S. society increased, and as its world stature grew, the need for positive government action became more and more important. The U.S. legislature, without the power to control the executive branch and deliver on its promises to the people as in a parliamentary system, appeared increasingly impotent to the American people. Under these circumstances, the inability of the Legislature to act created a vacuum into which the other branches stepped. Congress lost more and more influence over policy making to the Executive Branch, the Judiciary Court and to the bureaucracy.

There have been times in the history of the United States when the desire for positive government action has spread widely throughout the public, creating enormous pressure on the system. During such crises as the Great Depression of the 1930s, the Cold War or the race conflicts of the 1960s and 1970s, a power vacuum was created into which immensely popular or simply power-hungry Presidents stepped, creating fears, in retrospect, of an “Imperial” Presidency. The pressure for positive governmental intervention is likely to be even greater in a developing country, and thus adoption of the Philadelphia model can yield an extraordinary concentration of power in the hands of the executive. The case of President Hugo Chavez of Venezuela provides an example.

An “Independent” High Court

The Supreme Court, considered by Hamilton to be the “least dangerous branch” because its power resides in persuasion rather than coercion, is no such shrinking violet today. As the Court policies are debated, as opposed to issuing law automatically, the facts are applied. The

141. See generally Rick Pearson, *Political Ads on TV Early and Often*, CHI. TRIB., July 31, 2003, at C1.

Justices decide cases by filling in gaps in the law and resolving ambiguities about what the law is. In doing so, they inevitably draw upon their own viewpoint and outlook. And, in recent years, their outlooks have been more and more aligned with the Democratic or Republican Party, and typically with the ideology of the President who appointed them.

The present political composition of the court is the result of a practice Professor Bruce Ackerman has labeled “transformative appointments.”¹⁴² By this process, Presidents change the course of Constitutional Law by changing the personnel of the Supreme Court. Between 1968 and 1988, a succession of Republican Presidents transformed the Supreme Court from a center of liberal Democratic power to a center of conservative Republican power. During this period, there was only one Democratic President, Jimmy Carter, and he failed to place anyone on the Supreme Court.

At present, alert to the strategy of “transformative appointments,” Senate confirmation hearings try to peg down a nominee’s approach to constitutional issues. As judges increasingly assume political roles, we should not be surprised that their selection has more and more taken on the tenor of a political campaign. Now we are hearing calls for twenty-year limits on the terms of Supreme Court Justices. Is this a model to recommend to Jamaica?

The U.S. Bureaucracy

Administrative agencies in the United States are institutionalized breaches of the principle of separation of powers. Through administrative rulemaking, they exercise legislative power delegated to them by Congress. They also exercise judicial power, applying the rules in specific cases that arise within the scope of their charter from Congress.¹⁴³ Finally, they have executive power to enforce their judgments by applying various sanctions specified in the enabling legislation. They thus partake of all three “branches” of government and overcome the separation of powers specified in the Constitution by blending them together in one unit.

It should be no surprise that these branch-crossing instrumentalities are the chief means by which the business of the U.S. government is carried on. This is precisely the reason for which most of them were created.

142. See generally Bruce A. Ackerman, *Essay on the Supreme Court Appointment Process: Transformative Appointments*, 101 HARV. L. REV. 1164 (1988).

143. There is a whole platoon of “administrative law judges” who perform this function for each agency

Franklin Roosevelt's New Dealers saw the new "fourth branch of government" correctly as their opportunity to overcome separation of powers in the interest of implementing a positive program of government action to respond to the Great Depression. They created a plethora of agencies to achieve these objectives.

In the United States today, administrative agencies produce public goods, transfer wealth, subsidize activity, regulate the economy, administer public resources, establish rules for other decision processes, promote health, safety, and other important social values, and perform internal oversight.¹⁴⁴ As a consequence, control of the bureaucracy is the ultimate aim of many a U.S. political contest. It is through control of the bureaucracy that separation of powers can be overcome and "the spoils" can be distributed—the products, services permits, contracts, and more that comprise government largesse. Control over the agencies means control over the operational end of government.

The primary techniques by which agency control is achieved are congressional oversight, executive oversight, and judicial review. Incidentally, it is special interests, not political parties, that have most effectively used these channels.¹⁴⁵

Special interest lobbyists have considerable influence in the executive and the legislature, stemming from extensive campaign contributions in both Presidential and Congressional elections. To round out their strategy, they exert influence in the federal courts by paying top dollar for high-powered legal counsel to effectively represent their point of view in administrative law cases.

The anti-machine, anti-corruption acts of the 1920s establishing the Civil Service ended the old spoils system in the U.S. that functioned much as Jamaica's does today. But we appear to have developed a new spoils system. We have reduced "partisan" corruption but created "special interest" corruption in its place, the latter involving even less political accountability than the former.¹⁴⁶

144. See generally James V. DeLong, *The Administrative Procedure Act a Fortieth Anniversary Symposium: New Wine for a New Bottle: Judicial Review in the Regulatory State*, 72 VA. L. REV. 399 (1986).

145. *Id.*

146. In response, the U.S. has not gone towards the Westminster model of agency control, but rather towards private sector models. Vice President Albert Gore launched a massive "Reinventing Government" effort, introducing performance standards to evaluate the work of civil servants and to hold them accountable. He also had town meetings in many of the agencies, in an attempt to change the agency's culture. It is too soon to evaluate the results.

CIVIL SOCIETY¹⁴⁷/CITIZEN PARTICIPATION—A SOLUTION

U.S. attempts to “export” democracy in the form of U.S. constitutional mechanisms have often foundered in countries with concentrations of power and wealth, political traditions and citizen expectations, which vary sharply from the U.S. experience.¹⁴⁸ Efforts to enhance transparency and accountability by simply deploying new tools have been thwarted in a number of countries by leaders who have little interest in sharing power.¹⁴⁹

Established political forces, for example, have easily manipulated changes that are purely formal—separating legislative and executive powers.¹⁵⁰ Therefore, Professor Edwin Jones, of the University of the West Indies, cautions against “tool” approaches to administrative reform—the notion that the importation of novel constitutional or bureaucratic forms from developed countries can be successfully transplanted in the political and civic culture of developing Third World countries.¹⁵¹

Moreover, constitutional change has been the rhetoric of all Jamaican regimes since the 1920s,¹⁵² and the general view is that Jamaicans are rather weary of it. Typically, what occurs instead of real constitutional adjustments is “name-changing” (to escape the demands of solving problems) and “personnel shifting” (senior staff in the public service phased out or rotated).¹⁵³ The result is institutional instability, administrative inertia and insecurity at the senior or strategic levels, weakened public service morale and a sharper partisan orientation among

147. One way to sum up the concept of “civil society” would be to see it as a social infrastructure, comprised of reciprocal, peer-based relationships developed among citizens. Such an infrastructure can provide opportunities to learn appropriate trust in others and confidence in oneself in all phases of human interaction, including business dealings and government operations. See Douglas North, (Nobel Laureate in Economics, Kettering Foundation) (on file with author) (“Civil society” relationships reduce transaction costs in business, and make government’s work easier, as social trust redounds to the benefit of all social institutions).

148. T. Rosenberg, *America Finds Democracy a Difficult Export*, N.Y. TIMES, Oct. 25, 1999, at A26.

149. *Id.*

150. *Id.*

151. See Blackman, *supra* note 121, at 12. Procedures, norms, and organizational specifications, which have proven successful outside the developing world/Third World cultural contexts, are often ineptly utilized (few supporting management interventions, unclear definitions and/or communications of proposed changes, failure to make synergistic linkages between ministries and mismanagement of imported technology). Gladstone Mills, *Government and the Public Service Commission* 13, in Selwyn D. Ryan & Deryck R. Brown, ISSUES AND PROBLEMS IN CARIBBEAN PUBLIC ADMINISTRATION (1992).

152. See LEDGISTER, *supra* note 2, at 67, 74, 77.

153. *Id.* at 10.

bureaucrats who may be affected.¹⁵⁴

The public engagement necessary to demand, much less force, change is often absent because of authoritarian traditions.¹⁵⁵ Competitive politics and clientelism has replaced the public mobilization needed to elicit diligent, demanding and inquisitive or caring approaches necessary to render the carrying on of public business transparency and accountability.¹⁵⁶ You need broad social engagement to get transparent public administration.¹⁵⁷

Indeed, today's consultants to American efforts to "export" democracy have more recently begun to concentrate on changes which strengthen democratic forces—focusing on grass-roots organizations, women's groups, and more autonomy for local government.¹⁵⁸

STRONG LOCAL GOVERNMENT AS THE U.S.' MOST VALUABLE CONSTITUTIONAL EXAMPLE

Let us consider the focus on local government, because it is this arena that many students of Caribbean government identify as the key to lasting change. One of the most important and promising aspects of the changes to Jamaica's Constitution is the proposal to "entrench" local government—amending the Constitution to ensure its primacy for resources vis-à-vis other contenders.¹⁵⁹ Entrenchment means a devotion of resources to the quality of life and day-to-day needs of the masses of Jamaican people.

But what kind of "entrenched" local government do citizens of Jamaica want?¹⁶⁰ What kind do they expect?¹⁶¹ Do they see themselves as consumers who want efficiency and services, but not involvement? Do

154. See Munroe, *supra* note 101, at 9-10.

155. See *id.* at 15-16.

156. LEDGISTER, *supra* note 2, at 83.

157. See Munroe, *supra* note 101, at 16.

158. *Id.* at 25.

159. See Robert Buddan, *Local Government and Local Democracy*, JAM. GLEANER, Mar. 16, 2003, at F2, available at <http://www.jamaica-gleaner.com/gleaner/20030316/focus/focus2.html> (last visited Apr. 3, 2004).

160. There are two models of local government, said Hurley Taylor, Parish Councilor for Port Maria in 1997. One is a technocratic local bureaucracy that makes and enforces its own rules and regulations, performing efficiently to serve the needs of local communities as defined by the bureaucracy itself through scientific surveys. (This, in the U.S., is called the "city manager" form.) The other is a local political directorate that tells the bureaucracy what to do. (This is called the "Strong Mayor" form in the U.S.).

161. The Caribbean profile is one of the local government systems that is plagued with corruption, controlled by the center and operated in a weak civil society. Increased public participation can combat this tendency and is needed to sustain democratic development. See Miller, *supra* note 101, at 2, 4-6.

they see themselves as clients of partisan organizations, with local officials serving merely as patronage-distributing representatives of national government? Or do they see themselves as actively involved citizens, helping design, implement, monitor and evaluate local government programs?

Entrenchment can only take place if consensus has been achieved in the country about which of the three models (singly or in combination) the people prefer. Once entrenched, differences in economic conditions or different partisan outcomes at the national level, would not affect the form which local government assumes.¹⁶²

Clearly, raising these questions at different periods in history, under different economic conditions¹⁶³ or even in different local communities will result in different answers. Because prevailing ideology favors the consumer model,¹⁶⁴ and prevailing political reality reinforces the client/partisan model, I will not discuss them here. Rather, I will elaborate on the model of the active citizen, because though it is the most difficult to implement, I believe it is the more meritorious of the three. Like Professor Jones, I see local government as a “building block” of democracy.¹⁶⁵

“The community is alert,” says Professor Trevor Munroe of UWI, through talk shows and community-based organizations.¹⁶⁶ Local residents do not just want to be consulted; they want to be part of the process, a fact that authorities ignore at their peril.¹⁶⁷

162. See Buddan, *supra* note 159 (entrenching local government is the best guarantee of democratic participation of citizens). “[A] vigorous local government system is essential for the flourishing of a strong civil society and equally, a strong civil society is critical for the existence of a creative democratic local government system.” See Blackman, *supra* note 121, at 12.

163. In times of scarce resources, where does local government stand in the food chain, as opposed to, say, the judicial system?

164. Market or market-surrogate models are quite fashionable nowadays, but “market mechanisms do not necessarily resolve the central problems of politicization, accountability, participation and capacity building.” See Blackman, *supra* note 121, at 13. In my view, it is a mistake to encourage people to think of themselves as consumers rather than as citizens. Their self-identification as clients cannot be far away. Further, market mechanisms are not necessarily good for development—in fact, just the reverse could be argued.

165. Blackman, *supra* note 121, at 12.

166. The Jamaican talk show has in substantial measure become a means through which “the voice and the concerns of the disadvantaged are brought to public attention and to the notice of authorities who would otherwise remain distant and unreachable.” Munroe, *supra* note 101, at 23. In addition, Youth Clubs, Parent Teachers Associations, Neighbourhood Watches and Citizen Associations are very active in facilitating community awareness, and the number of these organizations has grown substantially during the 1990s. See *id.* at 24-25.

167. Roadblocks, community based-protests, and other examples of disaffection are not all motivated by partisan politics; they constitute non-conventional methods of seeking redress to injustice, which demonstrate a “conviction that less aggressive forms of representation [like a

Citizen involvement focuses on many local government processes. Not only does citizen participation improve planning and decision-making, it improves implementation, monitoring and evaluation of policy as well. Citizens can enhance local government activity in areas as diverse as water supply, markets, contracting, employment in productive enterprises and tourism. Not only is democracy served, but also better results for development emerge when the people are involved because their resources and energy come into play.¹⁶⁸

Citizens are grown, however, not born, through a series of experiences that begin with the family, the church, the school, civic and social organizations and the nongovernmental organizations,¹⁶⁹ which increasingly impact on national programs and policies.¹⁷⁰ These “empower” us to continue to be involved despite initial difficulties. It is a real challenge to move from the passive recipients of the fruits of development into the active creators of it.¹⁷¹ It is especially challenging to facilitate the participation of women and children.¹⁷² Local focus groups are one vehicle for citizen engagement.¹⁷³

It is also a challenge to confront the lack of political will at the top needed to make the necessary changes and see local government reform through to its conclusion.¹⁷⁴ This political will must come not only from the Minister with portfolio responsibility, but also from his parliamentary colleagues and from local political representatives.¹⁷⁵

This means these politicians must be willing to see themselves in a new, and not necessarily less powerful light: “as partners and facilitators rather than as the proverbial Santa Claus.”¹⁷⁶ The prevailing relationships

letter to the Councillor] are ineffective and go unanswered.” Munroe, *supra* note 101, at 23. “Failure to empower the citizenry through institutions to which political authorities and service providers are obliged to respond shall undoubtedly sustain the ‘road-block’ as a popular means of non-conventional participation.” *Id.*

168. See Miller, *supra* note 101, at 2.

169. For more on Jamaican NGOs and their potential, see Harold A. McDougall, *Sustainable Development in Jamaica: New Tasks for Civil Society* (article in progress, Apr., 2003).

170. See Blackman, *supra* note 121, at 14 (some NGOs “do not have the resources or capacity to undertake major projects on a sustained basis [and] [a]s such . . . must be regarded as co-partners with State and local government bodies rather than as their competitors”).

171. See *id.* at 13.

172. See Miller, *supra* note 101, at 2.

173. Jamaican citizens might join community or focus groups so that they may become unified as well as informed of government actions and their impact on the daily lives of Jamaican citizens. *Where are the Leaders?*, JAM. GLEANER, July 23, 2001, at B8, available at <http://www.jamaica-gleaner.com/gleaner/20010723/news/news5.html> (last visited Apr. 1, 2004).

174. See Munroe, *supra* note 101, at 29-30, 33; Blackman, *supra* note 121, at 17.

175. See Munroe, *supra* note 101, at 29-30; Blackman, *supra* note 121, at 15, 17.

176. Author assertion.

of clientelism and patronage are untenable and inimical to sustainable development, if only because structural economic adjustments mean that there are fewer and fewer favors to dispense.¹⁷⁷ Unless things change, local government will simply become an anachronism.

At present, many members of the “old guard” in government ministries are resistant to reform.¹⁷⁸ Although there are some “change-oriented MPs and councilors who support the reform process” there are negative attitudes towards the new, non-conventional modes of participation on the part of others, resulting in lagging community empowerment because it “is bound to involve some power-sharing with non-party interests at the local level.”¹⁷⁹ Even during the local government-strengthening experiments of the Manley regime of the 1970s, this was a difficult process.¹⁸⁰ A more typical pattern is intransigence and “symbolic manipulation” from the top levels.¹⁸¹

Moreover, many local authorities are themselves institutionalized hierarchies whose excessive formalism and bureaucratization establish very effective barriers to participation.¹⁸² In other cases, local authorities are merely opaque conduits for national patronage.¹⁸³

In the absence of a challenge, the old ways prevail. Thus, we see a pattern of under-funded local government, financed with outdated budgeting techniques.¹⁸⁴ In other cases, local government operations are so micro-managed as to discourage initiative. Ironically, it is pressure from the local community that may be the only means of ensuring that the political will develops at the top.

In the past, the inability of national governments to respond to the

177. *See id.* at 16-17.

178. *See* Munroe, *supra* note 101, at 33.

179. *Id.* at 33-34.

180. *See* LEDGISTER, *supra* note 2, at 78.

181. *See* Munroe, *supra* note 101, at 33.

182. *See* Earl Bartley, *Up the Down Escalator*, JAM. GLEANER, Mar. 16, 2003, at F1, available at <http://www.jamaica-gleaner.com/gleaner/20030316/focus/focus1.html> (last visited Apr. 2, 2004); Blackman, *supra* note 121, at 19.

183. *See* Blackman, *supra* note 121, at 19.

184. *See id.* An important question, once resources are available, is the form which local government finance should take. Property taxes will reinforce differences between communities, and can result in gross inequities that can negatively affect development at the national level. This has certainly been the American experience. A better approach is to collect the taxes nationally, and redistribute them according to a “revenue sharing” formula, which reflects not just the wealth paid in, but the relative development needs of different communities. The use of the funds is determined by the local government recipient. Another option is the “block grant” approach, which involves less discretion in the local authorities than revenue sharing—the grants are for specific purposes.

aspirations of local communities for self-governance resulted in some communities carrying on development projects on their own. They have at times been aided by lender or donor organizations from the Northern Hemisphere or by multilateral organizations.¹⁸⁵ In such cases, it has not been unusual for the outside funders to pressure national governments to support these local efforts by embarking on local government reform.

To begin any process of reform, local citizens must mature beyond the notion that all good things come from outside, and from above. One of the principal means by which the transition from client to citizen can be facilitated is by bringing people's organizations to the table to resolve problems and defeat tribalism, through "discourse and action."¹⁸⁶ Process here becomes very important; it is an integral part of development itself. However, even if parish officials and staff are willing to engage in collaborative relationships, and even if local citizens are willing to get involved, the capacity may not yet be there to successfully carry on citizen-led development.¹⁸⁷ Resources are needed for success, community organizing staff, and community workers, for example.¹⁸⁸

Only by holding politicians accountable at the polls can the needed initiatives of decentralization, democracy and development proceed. An example of such accountability took place in the 2003 Local Government elections, in which the Opposition won all but one parish constituency, creating a *de facto* divided government (a PNP national government and a JLP local government).¹⁸⁹

Held June 17, 2003, it had been five years since the last local government elections.¹⁹⁰ The JLP has been notoriously unsuccessful in the national elections, despite significant popular dissatisfaction with the PNP,¹⁹¹ because of an unfavorable image and impression the JLP has made

185. See Munroe, *supra* note 101, at 36.

186. Blackman, *supra* note 121, at 17; see also Munroe, *supra* note 101, at 36-37.

187. See Blackman, *supra* note 121, at 19.

188. See Munroe, *supra* note 101, at 36-37.

189. See, e.g., *Lee Confident About Braeton By-Election*, JAM. GLEANER, June 30, 2003, available at http://www.jamaicelections.com/view_article.php?ArticleID=8 (last visited Mar. 16, 2004).

190. Author assertion.

191. As one newspaper reporter indicated, "[T]he results of the Local Government Elections demonstrate that people are unhappy with the way things are going." Garth Rattray, *Sober Up Now, or Else*, JAM. GLEANER, June 24, 2003, at A4. With the PNP in power on the National level, "many politicians have benefited from the unrest and displacement which are features of communities with high levels of unemployment, a proliferation of unskilled and virtually unemployable youth, pervasive poverty of pursue and spirit." *Behind Jamaica's Garrisons*, *supra* note 60. The citizens of Jamaica currently live in "deplorable conditions," such as inadequate sanitation, housing, and water supply. Moreover, an increasing number of Jamaican

since 1980.¹⁹² That unfavorable impression seems to extend most directly to the Opposition leader, Edwin Seaga, who would be made Prime Minister should the JLP win the national elections. However, Mr. Seaga did not stand for any local office, and so the population could elect the JLP to local offices without fear of restoring Mr. Seaga to national power. This conjecture seems borne out by national and local voting patterns.¹⁹³

Ironically, neither JLP or PNP has ever before made local government a priority¹⁹⁴ and it is certainly possible for local government to become a political football, with the PNP withholding resources from local government and the JLP bashing the PNP for foot-dragging. But Mr. Seaga stated that he did not want the Parish Councils, which are now controlled by his party, to be used to harass the National Government.¹⁹⁵ Rather, Mr. Seaga asserted that the Parish Councils will make presentations to the Government for support and projects in a forthright manner.¹⁹⁶ He also declared that party committees would be appointed to oversee the Councilor's work, including a performance committee, a planning and policy committee, an oversight committee, and a department committee.¹⁹⁷ It is too soon to tell how the politics will play out, but the JLP victory has

youth are without education or skills in order to obtain employment. *Where are the Leaders?*, JAM. GLEANER, July 23, 2001, at B8. Furthermore, the last budget did not expand the Jamaican economy, as suggested by the PNP, but instead, resulted in a devaluation of the Jamaican currency and increased interest rates. Moreover, while Jamaica had a total public debt stock of \$43 billion in 1991, this figure dramatically rose to over \$600 billion in 2002. This high-figure debt has severely undermined Jamaica's ability "to maintain roads, schools, and hospitals." Chris Tufton, *Season of Discontent*, JAM. GLEANER, June 29, 2003, at G3.

192. "Four consecutive terms in office certainly seem impressive but some assert that it was less of a vote of confidence in the PNP and more of an expression of a lack of confidence in a JLP riddled with disunity and sporadic well-publicized complaints of an autocratic leadership." Rattray, *supra* note 191.

193. In 1998, the JLP lost the Local Government Elections by nineteen percentage points. *Id.* In 2002, the JLP lost the General Elections by 5 points. *Id.* However, the JLP won the popular vote in the June 19, 2003 elections by obtaining 52% of the votes, while the PNP obtained 48% of the votes. *Id.* D.K. Duncan, *Analyzing the Local Government Elections*, JAM. GLEANER, June 24, 2003, at A4.

194. Peter Espeut, *Very National Local Elections*, JAM. GLEANER, June 18, 2003, at A4. [N]either party really supports profound Local Government, which requires power to be located at the local level (not just a "voice). Both parties firmly believe in concentrating power at the top, especially fiscal power, and with that approach, Local Government will never be more than a convenience. Both parties are completely confused about the roles of Councillors and MPs and where the division of labour between them should begin and end.

Id.

195. Balford Henry, *Parish Councils Must Not Be Used to Harass Government*, JAM. GLEANER, July 1, 2003, at A7.

196. *Id.*

197. *Id.*

certainly raised the profile and possibilities of local government in the minds of Jamaicans. That is a good thing.

CONCLUSION

The United States has achieved remarkable prosperity, productivity, and growth during its history as a nation. It has certainly achieved remarkable stability as well, despite tremendous racial, ethnic, and class division. While the United States Constitution has been amended, it has not been rewritten in its two hundred-year existence. In the world today, the majority of the constitutions are less than fifteen years old.¹⁹⁸

But it should be clear from this article that the positive aspects of U.S. society may well have occurred as much in spite of the operation and design of its government as because of it. In general, Americans have not demanded much of their government, and so a government that is hobbled from pursuing positive programs out in the open works well. But the government is still under intense pressure to provide, not just engage in “noninterference.”

Special interests—typically people with the money and access to get their way with government—are increasingly able to do so, out of the public view, working “iron triangles” that involve the staff of federal agencies, Congressional committees, and at times White House staff.¹⁹⁹ This results in a tremendous drain on the American fiscal system, and it is only because of the huge amount of resources at the nation’s disposal that so little of these misappropriated funds are actually missed. We might truly debate what better purposes to which these funds could be devoted.

Special interest corruption in the U.S. could stand a healthy dose of “civil society” itself, particularly in the form of grass-roots organizations. Common Cause,²⁰⁰ the nonpartisan, anti-corruption organization on whose board of directors I serve, has recently launched a new initiative to increase

198. Robert A. Goldwin, *We the Peoples: A Checklist for New Constitution Writers*, THE AMERICAN ENTERPRISE, May/June 1990, at 70-72 (“[O]f the 160 or so written constitutions, more than 80 have been adopted since 1975. This means that in the last few decades, on average, more than five new national constitutions have come into effect every year”).

199. See <http://www.c-span.org/questions/weekly77.asp> (last visited Mar. 16, 2004): Iron triangle refers to the alliances among congressional committees, federal agencies, and lobbyists who share an interest in getting the same policy goals enacted. . . . ‘Iron triangle’ implied that if a congressional committee supported a program, along with the federal agency that administered the program, and joined by special interest group lobbyists, a bond as strong as iron formed among the three, creating a juggernaut for passage of legislation that could not be stopped.

Id.

200. See, e.g., <http://www.commoncause.org/> (last visited Feb. 24, 2004).

the level and effectiveness of citizen participation, concluding that a strategy of getting money out of politics must be complemented by a drive to get the citizens back in.²⁰¹ Perhaps this is a case of “physician, heal thyself.”

Without resources, proper approaches, and attention, the processes of transformation and development in Jamaican society cannot be expected to reach a successful conclusion.²⁰² This requires a real commitment from the political directorate, and such a commitment is unlikely to emerge without pressure from below.

The obstacle to the public engagement necessary to demand, much less force change in Jamaica, is a historical pattern of authoritarian/submissive social and political traditions.²⁰³ In the U.S., in contrast, the chief obstacle to more transparent and accountable government is a breakdown in the personal relationships that undergird civil society itself. This breakdown has been fueled by the physical isolation of suburban living, the social isolation of television, and the racial, ethnic, and class tension with which we are all so familiar.

In the Jamaicans’ case, and in our case, the prospect of developing civil society to balance a lack of transparency and accountability in the public sphere is indeed a daunting one. As if that were not enough, some argue that civil society can produce thugs and warlords (or drug lords) as easily as it can produce upstanding citizen leaders. In fact, they maintain that the future of world history is now being written in the struggle between these two forces—an almost “millennial” metaphor, we might say.²⁰⁴ If that reference is even remotely appropriate, those of us who seek a positive outcome need to get engaged. It promises to be a long and difficult struggle. And we cannot afford to lose.

201. See Just Watch, <http://www.commoncause.org/justwatch/> (last visited Feb. 24, 2003).

202. See Blackman, *supra* note 121, at 19-21; Munroe, *supra* note 101, at 19-21.

203. See Munroe, *supra* note 101, at 9-10, 15.

204. One key to the differences between “positive” civil society and “negative” may be the way the two sides differ in their definition of power. On the “positive” side, Paul DuBois and Frances Moore Lappe in their book, *The Quickening of America*, describe power as something you build in relationship with other people, not a scare commodity over which you fight with them. See PAUL DUBOIS & FRANCES M. LAPPE, *THE QUICKENING OF AMERICA* (1995). Power in this sense is infinitely expandable and does not countenance domination, but stresses collaboration and cooperation instead. For one thing, this means an absence of the hierarchical set-up with which we associate entities which are organized first to dominate their own members and, succeeding there, proceed in their quest to dominate all others with whom they come in contact. Cf. Harold A. McDougall, *Social Movements, Law, and Implementation: A Clinical Dimension For The New Legal Process*, 75 CORNELL L. REV. 83, 111 (1989) (“imperial” communities).

The only question may be where do we pick our battles? Where do we stand and fight? Let me leave you with this insight from Gladstone E. Mills, a Jamaican gentleman in his nineties, in all ways qualifying as an elder. Professor Mills holds an Emeritus Chair at UWI's Mona Campus, was one of Jamaica's first Rhodes' Scholars, in the 1930s, founder of the Departments of Government and Public Administration at UWI, and a career civil servant. Asked to comment on many of the questions on which I have touched, in a 1997 lecture for the Grace Kennedy Foundation in Kingston, he ended his talk with the following anecdote:

“When I was in London during the War, I studied under the late Professor Harold Laski, who provided his class one day with the following story:

About a fortnight following the abolition of slavery in the United States, an erstwhile slave-owner encountered one of his ex-slaves on the road.

The former master exclaimed, ‘Sam, up to two week ago, you had shelter, food and clothing all provided. Now look at you, nowhere to live, starving and in rags! Wouldn't you like to come back to me?’

In reply, Sam: ‘What you say may be true, boss; but there's a kind o' looseness about dis 'ere freedom that I likes.’

Take your choice.”²⁰⁵

205. See Mills, *supra* note 20, at 56.