

Her majesty — the arguments

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HOLNESS... willing to have referendum on royalty

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Prime Minister Mia Mottley of Barbados has raised in characteristically firm terms the question whether Caribbean countries should remove Her Majesty the Queen as our head of State.

Guyana, Trinidad and Tobago, and Dominica have done so, but others have remained under the monarchical umbrella even after years of independence. What is the role of the Queen in our constitutional order? Why did we retain the Queen at independence? And what are the arguments concerning the Queen's status in Jamaica today?

Legislature

Within Jamaica's current constitutional order, the Queen plays a central, though, indirect role in arrangements concerning the legislature and leadership in the country. By definition, the Queen,

together with the Senate and the House of Representatives, constitutes the Parliament. And, importantly, the Queen, acting through her representative in Jamaica, the governor general, is responsible for the appointment of the prime minister and the leader of the Opposition: this arises through the operation of sections 70(1) and 80(1) of the constitution.

It is important, however, not to overstate the Queen's role in this appointments process. The selection of the prime minister and the leader of the Opposition is largely a matter of form placed in the hands of the governor general. The prime minister will be the person best able to command the support of the majority in the House of Representatives while the leader of the Opposition will be the person best able to command the support of the minority group in the House. Save perhaps in the unlikely case of a tied election result, the Queen's representative has little scope for the exercise of discretion in the selection of local parliamentary leadership.

Governor General

It should be noted, too, that although the Queen appoints the governor general as her representative and her serves at her pleasure, by convention this appointment is made by the Queen on the advice of the prime minister. Also, although all bills in Parliament are enacted in the name of "the Queen's Most Excellent Majesty", the Queen has no independent powers in relation to legislation.

Legislation is subject to the assent of the governor general, again as the Queen's representative, but in practice the governor general is required to approve legislation as presented from the House of Representatives and the Senate.

Executive

Thus, the Queen has a place within the structure of the legislature, but this is a matter of form, not substance. Similarly, while the Jamaican Constitution stipulates, in Section 68(1), that "the executive authority of Jamaica is vested in Her Majesty", this authority in practice is implemented through the prime minister, the Cabinet or "ministers acting under the general authority of the Cabinet": Section 32.

On a variety of matters, including, for example, the appointment of the chief justice, president of the Court of Appeal and the Director of Public Prosecutions, the Queen's representative is mandated to follow the advice of the prime minister in consultation with the leader of the Opposition. In some instances, too, the Queen's representative will be required to follow the advice of entities such as the Judicial Service, Public Service and Police Service Commissions. The governor general then, and through him, the Queen, has very few discretionary powers at the executive level.

Judiciary

With respect to the third branch of Government, the judiciary, royal authority is similarly constrained. True, appeals to the Privy Council are denominated as appeals to “Her Majesty in Council” in Section 110 of the Constitution; but again, in practice this does not give final authority to the Queen in judicial matters. Decisions of the Privy Council, a body comprising independent judges, are characterised as “advice” to the Queen, but they are in fact binding prescriptions not amenable to adjustment by the monarch.

In view of the limited authority held by the Queen over Jamaican decision-making, policy and implementation, it is fair to suggest that the removal of Her Majesty as the Queen of Jamaica would not necessarily prompt fundamental or even significant change in the local constitutional order, for the present roles of the monarch, whether through the governor general or otherwise, are essentially formal or ceremonial.

Historical Factors

Why then have we retained monarchical status? Perhaps the arguments could begin with the long historical view. From the time of Jamaica's first Columbine encounter in 1494 to the present, Jamaica has had a monarchical form of Government, except for one short period. The exceptional period was between the capture of Jamaica by the British in 1655 by the British under Cromwell and the restoration of the Crown in 1660. In the period of British colonialism, therefore, Jamaica was subject to royal control for over three centuries.

Naturally, independence in 1962 prompted questions about continuity and change. On the side of continuity, the long history had ensured that the monarchical form was familiar to local political leaders and public officials who were likely to step into the departed shoes of the British. This familiarity – strengthened by socialisation, education, respect for British values and a degree of Anglophile sentiment – pointed generally in support of retention of the Queen as head of State.

To this, one could add the idea, taken from distinguished historian Douglas Hall, that colonialism encourages an imitative spirit: it “breeds a tendency to imitation rather than creativity”, Hall noted in his article on “The Colonial Legacy in Jamaica” in the *New World Quarterly* (1968).

Forces of Change

On the other hand, independence, even when derived through the process of peaceful decolonisation, implies significant change, and especially change in the location of sovereignty away from the colonial power to the new nation State. On this line of reasoning, an independence process which begins with sovereign authority vested in the Queen of the United Kingdom but ends with sovereign authority nominally located in the same person qua Queen of Jamaica must surely be incomplete.

Not surprisingly, therefore, at the time of independence, some support was offered for republican status. In his leading work, *The Politics of Constitutional Decolonisation, 1944-62*

(1972), Trevor Munroe reported, for instance, that there was a proposal for republicanism from The University of the West Indies, while a joint committee of Parliament was said to have received numerous proposals in this direction.

Rejected Republicanism

Jamaica, however, appears to have rejected republicanism in 1962 for various reasons. As noted above, familiarity with British governmental structures was a factor; but, in addition, it was also plausible that alternative models to the monarchy seemed problematic. For example, in India and Pakistan, which had assumed republican status, there was sectarian division and unrest at the time of independence – these would not have been attractive paradigms for Jamaica. In addition, it appears that Jamaican political leaders implicitly accepted the notion that, in order to obtain independence, they needed to show “readiness” for the new status. One indicator of this readiness was presumably willingness to retain the monarch for the country. On a closely related point, some Jamaican leaders may have wanted to retain the monarchy as a sign that the new Jamaica remained committed to policy positions within the traditional Western sphere: staying with the Queen was a manifestation that we were “with the West”.

Regal Popularity

Another argument which supported retention of the Queen at independence was the genuine popularity of both the institution and the incumbent. For Jamaica's independence activities, the Queen's sister, Princess Margaret, represented her. She was welcomed by enthusiastic crowds and many persons, it was said, displayed royal photographs in their homes. And, as a sign of the popularity of the institution, the JLP, at the onset of independence, provided in its constitution that the party aimed at instilling “in the hearts of the people reverence for God, loyalty to the Queen and respect for lawful constitutional authority” (quoted by Lloyd Barnett in *The Constitutional Law of Jamaica*).

Not Communist

At independence, the PNP did not, it seems, profess loyalty to the Queen in its constitution. Norman Manley was, however, a strong admirer of the British constitutional order and did not oppose retention of the Queen. In this regard, an entry in Edna Manley's diary concerning the Queen's visit to Jamaica in 1953 is instructive. Mrs Manley recalled that her husband had been ill and was, for this reason, unable to meet the Queen. There were, according to Mrs Manley, “the wildest rumours that he wasn't really ill, but being a 'communist' he wouldn't shake the Queen's hand”. Mrs Manley added that she represented her husband at all the functions (Rachel Manley (ed), *Edna Manley: The Diaries* (1989)). This was possibly a way of ensuring that the rumours would have no adverse political impact.

“Gi We Free”?

One factor explaining the Queen's popularity at independence was folk memory. From the time of the abolition of slavery, some previously enslaved persons were said to be of the view that Queen Victoria had given them freedom (see, eg. RN Murray, *Nelson's West Indian History* (1971)). As a matter of historical record this is not quite right, but it influenced popular perceptions of the monarchy. This folk viewpoint was reinforced by socialisation processes. Subjects of the monarch were encouraged to express community solidarity, patriotism and national pride through professions of loyalty to the Crown. In times of stress, this socialisation intensified. Thus, for example, at the onset of World War I, Marcus Garvey's UNIA declared “its loyalty and devotion to His Majesty the King and Empire” and proclaimed: “Thrice we hail! God Save the King! Long Live the British Empire!”

Post-Independence

Since independence, arguments based on statehood and national pride have been marshalled against the monarchy. It is argued that the monarchy, a quintessentially British institution, does not serve the purposes of modern Jamaica. And it is suggested that the installation of a local head of State would serve to relocate the symbolic features of sovereignty in Jamaica. The removal of the Queen would also provide a psychological break from the history of superiority and inferiority associated with colonial relationships.

Moreover, while there may arguably have been good reasons to retain monarchical status at independence, history has marched on: as former Prime Minister Simpson Miller intoned, “time come”. In advancing this position, Mrs Simpson-Miller built on the work of prime ministers PJ Patterson and Michael Manley as agents of change.

Heredity

Other arguments have also exercised influence in the debate. For one thing, the hereditary principle of the monarchy is evidently inconsistent with the country's meritocratic tradition. At least some Jamaicans believe that the Divine Right of Kings and leadership by birthright belong to another place and another time. For another, principles of egalitarianism should also come into play: why, it may be asked rhetorically, should a distant foreign monarch reign over citizens who do not perceive themselves as “subjects”? Thirdly, pointing to the aforementioned examples of Guyana, Trinidad and Tobago, and Dominica, some persons argue that Caribbean states may remain within the Commonwealth and retain good relations with the United Kingdom as republics.

Status Quo?

But some counterarguments in favour of the status quo persist. It is said, for instance, that the monarchy continues to promote stability and democracy in post-independence Jamaica, and that, in contrast, republican governments in neighbouring Latin American countries have been

vulnerable to sudden governmental change by force of arms. This line of commentary is not convincing. Some republican countries in our broad region have had coups d'etat for sure; but this may be attributable to underlying sociopolitical circumstances in the countries concerned rather than to the republican form. And, of course, it bears noting that the United States is an exemplar of enduring republicanism – sans coups – in close proximity.

In defence of the status quo it is also said that the Queen remains popular and that foreign and local investors respect Jamaica's link to the monarchy. On the former point, Jamaica cannot terminate existing royal relations without a referendum. So, the impact of the popularity point may come to be tested among the voters. On the latter, it is likely that Jamaica's standing as a host for foreign or local capital turns much more on the treatment of investors under law than on the presence or absence of a distant monarch.

“Time Come” Again

Finally, some policy-makers share the view that the Queen should be allowed to take her leave, but differ on the regime that should replace the monarchy. The competing alternatives include an executive presidency, a ceremonial presidency and no presidency at all. And Prime Minister Holness seems willing to have a referendum on royalty but wants to wrap it up with other issues.

To me, these are distractions. It is time to decide, by a single-issue referendum, whether the Queen should go. Other issues, whether consequential, tangentially related, or unrelated, can be resolved subsequently through parliamentary action. “Time come” again and again.

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