

CREATING A REGIONAL JURISPRUDENCE

THE INAUGURAL DISTINGUISHED JURIST LECTURE

of the Trinidad and Tobago Judicial Education Institute

by

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Congratulations! Let that be the first word in this Series of Lectures – congratulations to the organizers of this event the legal profession in Trinidad and Tobago has long been a trail-blazer in the Region; so it is not surprising that so pioneering an initiative as this one should arise from among you. But, for much of the time, the light that illumined the legal landscape shone from the Bar; now, in a wholly modern and progressive way it is the Judiciary that lights the way forward. The entire Caribbean is the beneficiary; for in law as in so much else we are one land, one society; one people. In establishing the Distinguished Jurist Lecture as an annual event in the life of our Region’s legal fraternity, the Trinidad and Tobago Judicial Education Institute has acted with signal enlightenment. I praise all concerned. May the Lecture Series enjoy the infinity it deserves.

In inviting me to inaugurate the Series, the Institute has been generous beyond measure, and I am suitably humbled. This Lecture will be followed tomorrow by a Panel Discussion on the topic ‘Creating A Regional Jurisprudence’, and I look on this inaugural occasion as one at which I might help to set the stage for the Series of Distinguished Jurist Lectures that stretch ahead, no less than the Panel discussion tomorrow. Allow me, therefore, the scope which the occasion demands, including reflections on the pathways that have brought us here and the bearing of that journey on our present responsibility for ‘creating a regional jurisprudence’.

PART I - A SHARED LEGAL HERITAGE

Let me start with our bonding heritage of the Common Law, and with the Commonwealth which has been its gene pool. ‘Language’, ‘Learning’ and ‘Law’ are all gems of that Commonwealth heritage; but the greatest of them is Law. Of that I have no doubt, What we call today ‘the modern Commonwealth’ - the Commonwealth beyond Empire - confirmed the unbroken legacy of the Common Law, and it is fitting that we should remember that moment when the legal structure of our future was shaped, for it was a rare moment of creation embedded in law: a seemingly contradictory evolution of revolutionary change under law - managed by leaders acculturated to systems of law – systems that were part of the new Commonwealth’s inheritance - and therefore ours. Duty – Wordsworth’s ‘stern daughter of the voice of God’ – bids us as lawyers to celebrate the richness of this legacy, both its amplitude and its vibrancy, and to sustain and enhance the inheritance by being ourselves creative. It is a duty to ensure that this unique association is not just one of like-minded nations and people, but a Commonwealth of Laws - with all that implies for member states living under the rule of law.

Much of our lives – personal and national - are the blooms of plants whose roots have meandered in mysterious ways below our gaze and beyond our reach. Hamlet was right when he mused: (through Shakespeare’s quill) *‘there are more things twixt heaven and earth, Horatio, than this world dreams of’*. Among those undreamt consummations was the emergence of the modern Commonwealth in 1949 – 62 years ago,

Nearly two years ago in 2009, this City of Port of Spain was host to that Commonwealth's latest Summit – a Summit Meeting of 53 countries living under the rule of law and working together with a shared ambition for its practical fulfillment. As we recall today that notable co-mingling of a quarter of the world's countries in our Caribbean corner of it, it is pertinent to reflect on how a creative jurisprudence made the modern Commonwealth possible and how that continuum has made inevitable the regional character of our Caribbean jurisprudence.

In April 1949, Britain's post-war Prime Minister, Clement Atlee, hosted his Commonwealth colleagues (then barely 7) at a special meeting at No 10, Downing Street. It was the end game of Britain's withdrawal from the Indian sub-continent, and so, for practical purposes, the end game of Empire. The 'British Commonwealth of Nations' was being challenged. Did it have the creativity to respond to the palpable need for change? And could that change be seamless?

India, Pakistan and Ceylon had already become independent Dominions; but for India, in particular, independence on 15th August 1947 (independence by virtue of an Act of the British Parliament) was not the end of change. Before 1947 began, the Indian Constituent Assembly had already met to draft a Constitution for the proposed new Dominion. In February 1948, barely six months into independence, the draft of India's home-made Constitution was published. As expected, it provided for India to be an "Independent Sovereign Republic". Alive to the implications of this intent, the Constituent Assembly acknowledged with great delicacy that the relationship between the new Republic and the British Commonwealth of Nations was a matter "to be subsequently decided".

It was in furtherance of this that on 22nd April 1949 (and for six days thereafter) the leaders of the still 'British' Commonwealth laboured to find a consensual way forward. With Atlee, were the Prime Ministers of Australia, Ceylon, India, New Zealand, Pakistan, South Africa and Canada's Foreign Minister. It was not an easy task that faced them; and had it not been for men of the very special quality of Atlee and Nehru and Lester Pearson (then Canada's Foreign Minister) – and the potential of law to constructively facilitate change - that way forward might never have been found, nor anything like the present Commonwealth ever have emerged – nor, of course, that Meeting at the Summit in Port of Spain ever happened! And, vital to our purposes today, the Caribbean's legal heritage could have ended.

Fortunately for the Commonwealth, and I believe for the post-war world, wise political counsel prevailed, and (and this is my essential point) an entrenched legal orthodoxy was not allowed to stand in the way of progress. Great vision characterised the Declaration that issued from Downing Street on 28 April 1949 – assuredly, not without the concurrence of the King. The critical paragraph was the second, which stated that India is soon to become an Independent Sovereign Republic, but that she still desires to retain her membership of the organization – now described as 'the Commonwealth of Nations' – and is prepared to continue to accept "(the) King as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth". It was a supreme example

of creative constitutional law and consummate political skill – and a masterpiece of drafting.

But not everyone shared that judgment. Writing in the *Times* the next day L.S. Amery suggested, predictably, that the effect of the Declaration was that “it has changed in respect of India alone the historic conception of allegiance as an element of our unity”. How often those timid of creative change minimize great moments of transition when they come? They still do.

I am glad to recall my own instincts in 1949. With these momentous events unfolding, I was a stripling law student at King’s College, London; and with all the brashness of youth I offered an article on the ‘April Declaration’ for *King’s Counsel* – the Journal of our Faculty of Laws. It was written as a constitutional law answer to the ‘Amery’ view; welcoming the end of ‘allegiance’ and the new constitutional norms that had creatively emerged. I called my article “The Second Commonwealth of Nations” – not ever dreaming of how involved I might personally become 25 years later in the unfolding of this modern Commonwealth. What took no dreaming, however, was that law, creative constitutional law, a creative jurisprudence, was the midwife at its birth.

Of course, the Commonwealth’s legal heritage goes back much further – to the very beginnings of Empire. For centuries imperial unity was symbolized and functional authority assured by what began (as far back as the 14th century) as ‘the Court of Review of the courts of His Majesty’s possessions beyond the seas.’ As those possessions spread – whether by conquest, cession or settlement (we in the Caribbean exemplified all three systems of expansion) – so extended the reach of the common law.

That ‘review’ jurisdiction was formalised in 1833 when the Judicial Committee of the Privy Council was created by a Statute of the Imperial Parliament charged “*with the duty to hear appeals from the decisions of the courts in the East Indies and the Plantations, Colonies and other Dominions of His Majesty abroad*”. A century later, by the 1930s, the jurisdiction of the Judicial Committee extended to appeals from more than a quarter of the globe in area and from every quarter of the globe in variety. And so, in a qualified sense, did the common law. But, let nostalgia not dim our judgment; it was not for us always a pure stream.

Incongruously, in the Empire, slavery flourished – if one can describe so evil a system as flourishing. The rule of law was espoused; but the law itself served ignoble ends. Not everywhere in the Commonwealth, not for everyone, was ‘law’ a glorious charter. For a hundred years before the Abolition of Slavery Act of 1833, slavery had subsisted, sanctified under English law, Magna Carta notwithstanding. Lord Mansfield could assert, as he did in *Somerset’s Case* in 1772, that ‘the black must be discharged’; but that was more a commentary on life and the law in England than on life which English law ordained elsewhere. Half a century after *Somerset’s Case*, in 1827, Lord Stowell could assert in the High Court of Admiralty, in the *Case of the Slave ‘Grace’*, that Mansfield’s judgment “looked no further than to the peculiar nature, as it were, of our own soil; the air of our island is too pure for slavery to breath in”. Not so the air of the island of Antigua to which

Grace was sent back enslaved – Caribbean air polluted by slavery’s legitimation - also under English law.

Mansfield’s judgment, of course, was of great moment for Somerset, freed on the return to a writ of *habeas corpus*. But, in another sense, it confirmed, as one commentator put it, that “English law was wonderfully flexible in accepting systems that were fundamentally different inside and outside the metropolis”. In the end, the Anti-Slavery Movement recognized that it was the legal framework, both metropolitan and colonial, which sustained slavery. What the Abolition of Slavery Act did was to change the law of England, and by extension the law of our Caribbean countries. It gave Magna Carta a reach beyond the banks of Runnymede – creative change whose need English lawyers had ignored as they proudly viewed the legal order within its domestic space, imperial spread notwithstanding.

It is intriguing that the establishment of the Judicial Committee of the Privy Council and the abolition of slavery were accomplished by Acts of Parliament in the same year – almost as if they were quietly complementary. What is clear is that they each ushered in a new era of enormous long term significance for us in these distant parts. The ‘Privy Council’, as the Judicial Committee is now generally described, rendered great service to the development of law throughout the Commonwealth, more particularly in the evolution and ‘unification’ of the common law throughout Commonwealth jurisdictions – a service perhaps more greatly needed by smaller Commonwealth countries like our own than larger ones. I pay tribute to that service; and nothing I say hereafter qualifies that. But I believe more could have been made of the Judicial Committee as a Commonwealth institution had the will to transform it from an essentially ‘British’ judicial body been more robust and sustained. When that will emerge; it was too late.

As a young Attorney General in 1965 (yes, all of 46 years ago!) I attended the ‘Commonwealth and Empire Law Conference’ in Sydney, Australia - a Conference whose all round excellence remains a cherished ‘Commonwealth Law’ memory – as ‘Hyderabad’ recently would be for some of you. 1965 was a long time ago, and there are perhaps not many around who were with me there. Prominent in my memory of that Conference in Sydney is H.O.B. Wooding, then Chief Justice of Trinidad and Tobago and the flag bearer of all Caribbean lawyers there. I remember the pride I felt when at the Opening Ceremony he represented the West Indies on stage.

It is forgotten now; but, prominently addressed at the Conference was the issue of a Commonwealth Court of Appeal as a final Court of Appeal for all Commonwealth countries, including Britain. In a background Paper prepared for the Conference on this subject, Edward Gardner, QC and R. Graham Page of the English Bar put the case for ‘a Supreme Court of the Commonwealth’ in terms which may surprise you today. One paragraph urged:

With such a court, Commonwealth countries would influence each other in the development of commonwealth law. All countries submitting to the jurisdiction would in every way, be treated on an equal basis, subordinating their own final

courts of appeal to the overriding appellate jurisdiction of the Supreme Court of the Commonwealth. Thus in Great Britain, the appellate jurisdiction of the House of Lords would have to be replaced by the jurisdiction of a Commonwealth Court of Appeal....Whatever domestic advantages may be lost will be more than counterbalanced by the advantages which will accrue to individual countries and to the whole concept of the Commonwealth of Nations.

It was not a wholly new idea; but at Sydney in 1965 it burned with a new intensity. Lord Denning had spoken favourably of a Commonwealth Court five years earlier, and at Sydney. Gerald Gardiner, as a widely respected Lord Chancellor, was known to favour the idea. In his opening speech at the Conference he said:

If I may say so, there are two subjects we are going to discuss in which I take a particular interest. One is the question whether or not it is too late to constitute a true Commonwealth Court of Appeal, staffed by the best legal brains in the Commonwealth, and to which, perhaps, we in the United Kingdom would go as our final court of appeal, on the same footing as any other member of the Commonwealth who choose to do so.

But, as I suppose Lord Gardiner himself had recognized, it was too late. While many small countries were for it, most of the larger ones were not. Having labored over decades to establish national Supreme Courts of which they were rightly proud and confident, countries like Canada and Australia and India were in no mood, either professionally or politically, to head back to what they were inclined to see as a revamped Judicial Committee – though that was quite clearly not what was being proposed. The truth is, it was too late; and for all its merits, I believe it still is – at least today. If the Commonwealth itself prospers; some such collective judicial forum may one day become more generally acceptable – but I doubt it. I well remember how strong was the resentment in Canada of the Privy Council's jurisdiction in interpreting the British North America Act – Canada's Constitution – with its judges being wholly ignorant of the federal culture that Canadian courts were creatively molding into law, And the same was true of Australia and later India.

But even for others still using the Privy Council, that rejection of a Commonwealth Supreme Court at Sydney in 1965 did not mean there was satisfaction with the status quo. Quite the contrary, the exodus from the Privy Council, almost as an adjunct of decolonization, had already begun and was to continue, so that today only a handful of countries, most of them very small jurisdictions, still cling to it. Of the Commonwealth's 53 member countries only thirteen still use the Privy Council as their final court of appeal – and of these (can you believe it?) 8 are independent Caribbean countries. The Judicial Committee continues to exist for us and 4 others – like Tuvalu. All the other 40 Commonwealth jurisdictions, including all in Africa and Asia and, of course, Canada and Australia as well, have their own final Court of Appeal.

PART II - A CARIBBEAN SUPREME COURT

But hope for creative change was not all lost. In an act of enlightenment, 11 Caribbean countries decided, as you know, in 2001, that they would abolish appeals to the Privy Council and establish their own Caribbean Court of Justice serving all the countries of the Caribbean Community with both original jurisdiction in regional integration matters and appellate jurisdiction as the final court of appeal from individual CARICOM countries. As of now, 10 years later, only Guyana, Barbados and Belize (3) have conferred on the CCJ that appellate jurisdiction.

Despite appearances, and assertions in some quarters, this is now not just a matter of choice. For a country like Trinidad and Tobago that choice was made years ago when the Government signed and ratified the regional 'Agreement establishing the Caribbean Court of Justice'. There is a legal obligation arising under that Agreement of 14 February 2002. Trinidad and Tobago could have entered a reservation under art. XXXIX (39) of the Agreement (with the consent of the others) as some OECS countries did. Needless to say, as a country seeking the Headquarters of the Court it hardly could. And it did not.

But matters went further. On the question of the location of the Court, the then Prime Minister of Trinidad and Tobago gave an unqualified assurance to Caribbean Heads of Government in the context of the discussion on location (at the 19th HoG meeting) that Trinidad and Tobago would withdraw its proposal for locating the Court here if the country did not fulfill its obligations to confer on the Court both original and appellate jurisdiction. It was on the strength of that assurance that the location decision was taken. The official record of that assurance is:

“(Heads of Government) Noted the offer, and continued willingness, of the Government of Trinidad and Tobago to host the seat of the Court and the undertaking of the Government to withdraw its offer in the event of its inability to secure the required Parliamentary approval for full participation of Trinidad and Tobago in the Court”.

I say no more. I like to believe that Trinidad and Tobago with its long-standing fidelity to legal process will fulfill its Treaty obligations, and that issues of location will not arise.

A constitutional amendment is required for the abolition of appeals to the Privy Council, and in practical terms that means bipartisan political support. In Jamaica and Trinidad and Tobago it seems that political consensus has not been secured; although in Jamaica, inter-party talks are understood to be in progress. In St. Vincent and the Grenadines, a referendum 2 years ago rejected the transference of appeals to the CCJ; but that was in a context of other constitutional amendments. In some OECS countries inter-party consensus on the Court's jurisdiction exists and the idea is being explored of conducting a single issue referendum on the same day in all the islands that need it. As a new President of the Court ushers in a new era in the Court's history, it is time for the region to put its legal house in order and act in a mature and creative way. Our reputation as an enlightened region of the common law world requires no less – and will not be sustainable without it.

The situation has been complicated by the issue of the death penalty on which the Privy Council, reflecting contemporary English (and European Union) mores and jurisprudence, has been rigorous in upholding Caribbean appeals in death sentence cases. *Tot homines, tot sententie*; but in a situation of heightened crime in the Caribbean it is the regional mores that matters, and it is not for abolition. Yet, the jurisprudence imposed by the Judicial Committee in Caribbean cases is unequivocally abolitionist. Regional popular sentiment against abolition has been reflected in political reticence to abolish the death penalty; yet, the same political establishment (with limited exception) allows the Privy Council's jurisdiction to persist, and the Caribbean Court of Justice to remain hobbled in pursuing its enlightened role of creatively molding Caribbean jurisprudence closer to Caribbean sentiment and needs. Why the oxymoron?

Asking 'why' is unavoidable; for is it not almost axiomatic that the Caribbean Community should have its own final Court of Appeal in all matters? Can a century old tradition of erudition and excellence in the legal profession of the Region leave any honorable room for hesitancy? I am frankly ashamed that we should be a major reason for the retention of the Privy Council's jurisdiction within the halls of the new Supreme Court in London. We have created our own Caribbean Court of Justice and done so in a manner that has won the respect and admiration of the common law world. Surely it is an act of egregious contrariety that we have withheld so substantially its appellate jurisdiction in favour of that of the Privy Council.

Do I need to remind you that from our Caribbean shores we have sent Judges to the International Court of Justice, to the Presidency of the United Nations Tribunal on the Law of the Sea; to the International Criminal Court and the International Court for the former Yugoslavia and, of course, to the International Criminal Tribunal for Rwanda- from which the new President of the CCJ comes after two terms of distinguished Presidency. From our lands have sprung in lineal descent the current Attorney General of the United States and the former Attorney General of England. And still we dither about resort to our own Caribbean Court! West Indian judges have sat on the Judicial Committee of the Privy Council; but when they sit in Port of Spain they are unacceptable. Why?

As I said here in Port of Spain two years ago, this paradox of heritage and hesitancy must be resolved by action, those countries that are still hesitant must find the will and the way to end the anomaly. The truth is that the alternative is too self-destructive to even contemplate.

Let us be in no doubt that the demise of the Court itself is not an improbable danger when in both Jamaica and Trinidad and Tobago the creation of a local final Court of Appeal is being canvassed. Loss of the CCJ will almost certainly frustrate progress on a Single Market and Economy - the vision of Grand Anse and the commitment of the Treaty of Chaguaramas. We will have begun tearing up the Treaty whose Preamble recites "*that the original jurisdiction of the CCJ is essential to the successful operation of the CSME*". If West Indian lawyers, in particular, remain complacent about this

absurdity much longer – and as we all know, some are - we may in the end dismantle even more than the Court.

So grave and present is this danger that a year ago (in August last), five West Indians to whom the Region has given its highest honour, the Order of the Caribbean Community, took the unprecedented step of warning publicly “*with one voice of the threat being posed to the Caribbean Court of Justice and the Community’s goals more generally*”. I was among them. “*We warn against these developments*” we wrote, “*which, as in an earlier era, could bring down the structures for advancing the interests of the people of CARICOM ... carefully constructed and nurtured over many decades by sons and daughters of all CARICOM countries*”. We were warning of the mire of despond we would stumble into if in this matter the West Indies ceased to be West Indian.

But let me add what we all know, though seldom say: to give confidence to our publics in their adoption of the CCJ as the ultimate repository of justice in the West Indies, our Governments must be assiduous in demonstrating respect for all independent West Indian constitutional bodies (like the Director of Public Prosecutions) lest by transference, Governments are not trusted to keep their hands off the CCJ. And Courts themselves, at every level, must be manifestly free from political influence and be seen to be sturdy custodians of that freedom. In the end, the independence of West Indian judiciaries must rest on a broad culture of respect for the authority and independence of all constitutional office holders – for the Rule of Law.

We must not forget that the structure of the CCJ goes further than does that of any court in the Region, and most courts in the Commonwealth, in securing independence from political influence, much less political control. It is at least as free of such local control as is the Judicial Committee of the Privy Council; and freer than any national or sub-regional Court. West Indian people who want such a Court that is beyond the reach of politics must understand – and must be helped to understand – that they have it in the CCJ. The question, therefore, cannot be avoided: is a regional political leadership that conjures with rejecting the CCJ doing so because it is beyond political reach? I cannot believe that; but, in my own judgment, with the Privy Council no longer a realistic option, the CCJ is the most reliable custodian that West Indians could have of the Rule of Law in the region.

Our embarrassment in this matter should have been compounded by the observations by the eminent President of the new Supreme Court of Britain., Lord Phillips, deploring how the time of his country’s highest judges - now Justices of the new Supreme Court - will continue to be taken up with appeals to the ‘Privy Council. ‘In an ideal world’, Lord Phillips is reported to have said, ‘former Commonwealth countries – including those in the Caribbean - would stop using the Privy Council and set up their own final courts instead’. Many a Caribbean lawyer, many Caribbean persons, and at least some Caribbean governments, welcomed the President’s urging. The new Supreme Court of Britain would have sturdier and healthier relations with counterpart courts of final jurisdiction in the Commonwealth were some of our countries to stop loitering on the doorstep of colonialism. If we continue to loiter, the interests of the law in the Commonwealth will

almost certainly require removal of the doorstep. Must we wait for such eviction when we have already built for Caribbean law so fine a dwelling here?

PART III – THE CHALLENGE OF CREATIVE CHANGE

Creating a regional jurisprudence is inseparable from the issue of the Caribbean Court of Justice; but there is more besides that needs to be said; more about philosophy than about structures. Alluding to the fact that the law is sometimes called ‘the government of the living by the dead’, the great American jurist of the last Century, Oliver Wendell Holmes, once asserted that “*the present has a right to govern itself so far as it can; and it ought always to be remembered that historic continuity with the past is not a duty, it is only a necessity*”. Holmes, of course, was right; and, as lawyers – of Bench and Bar and of every stripe – we all too often make a virtue of that necessity, ignoring our duty to be creative social engineers of the present and enlightened architects of the future.

The truth is that the lawyer is forever caught between the basic need of society for stability and the imperative of change. In more leisurely times, with less demanding publics, lawyers could afford to move sedately – to be used to implement the law and as a tool of the law. The pace of change was slow – not yet quickened by the explosion of rising expectations. Lawyers rested comfortably, for the most part content with the status quo which served them well. It provided a handsome living; and, as only the well-to-do could afford them, market forces ensured that legal education was slanted to their service. I generalize, of course, but I do so consciously. The few mavericks that kicked against the traces made little headway, and inspired few imitators.

The tempo of change has now quickened. This is an age of rapid and often bewildering transition. The social scene has altered everywhere beyond recognition; but the response of law and lawyers to the demands of change is ever hesitant and without conviction. Meanwhile, those demands from better educated publics are as clamant as they were predictable: legal services are a right, not a privilege; legal jargon is an unnecessary and intolerable mystique; the lawyer has no more right to exploit the need for his services than a doctor to exploit the misfortunes of the sick.

Caribbean lawyers – heirs to a great tradition of fashioning a new equity jurisprudence out of the rigidities of the old common law need to be confident that regional law is responding with adequacy to the new challenges at hand. But are we? By disposition and by training we tend to be custodians rather than developers. Yet this is a role of questionable value if unenhanced in times which demand new ideas, new approaches, new measures. As mere guardians we could be left watching over concepts and systems which, however excellent in the past, have lost relevance and utility. We live in such times of change, and they demand more of our profession than being passive keepers of the seals.

Most fundamental perhaps is our continuing failure to face up to the reality of legal systems that are generally inaccessible to the ordinary person. In many of our countries the

expression ‘freedom under the law’ can be as much an affront to West Indians as were the words on Marie Antoinette to the poor of Paris. The escalating costs of legal services and the added burden of intolerable delays of the justice system everywhere tell us (when we choose to listen) that the law is day by day failing to serve our publics; that an aura of adequacy is only sustained by the resigned acceptance of the greater part of our societies that injustice is endemic.

And that, in essence, is my point: a plea for lawyers throughout our Commonwealth Caribbean to eschew the smug complacency that a view of the legal order within cloistered professional walls all too readily encourages in us: a plea that we look to a broader jurisprudence. Were we to do so we would find that the field for reform is vastly greater, both qualitatively and geographically, than our lawyer’s eye ordinarily surveys. Our political leaders now like to say that we are not an economy, we are a society. I believe we are both. But by ‘we’ I mean the Caribbean - in this context, the Commonwealth Caribbean. We are a regional society. And that broader jurisprudence which must be within our vision is a regional jurisprudence: the jurisprudence to which the title of this Lecture speaks.

This is not a good time for regionalism in the Caribbean; but another time will come, because there is no worthier – perhaps, no other - destiny to which we can aspire than a regional one. And law is one of our most reliable bonding agents. We do not have to contrive it; it bonds us now. Many years ago an Attorney General of Jamaica expressed felicitously the legal melding of the Commonwealth when he said at a Commonwealth Law Ministers meeting: “*We in Jamaica are like honey bees in the Commonwealth legal garden; we flit from flower to flower, drinking nectar where we find it*”. Our regional Caribbean is a specially cultivated part of that garden in which our legal systems fertilise each other without need of pollinating agents. From legal education to our highest Judiciaries we are genetically one. Creating a jurisprudence that is regional is a natural process in the Caribbean.

Law in most of our countries was never just a home grown plant. Its roots lay in the Common Law of England. Its transplantation was simply one of the incidents of imperial spread; and for the most part one of its better legacies. From the beginning, our law was interlaced with the legal culture of England; and beyond England as the Common Law put down roots in a far flung Empire and flourished in and was enriched by its new environments in each of our countries. A decade ago Prof. James Read wrote:

More common than other elements - more permissive than political systems or forms of government, and applicable to all citizens of the Commonwealth, many of whom do not speak the English language in which it is generally treated – the law provides the main unifying factor which links member-states of the Commonwealth and their peoples in a body of shared principles and practices.

And not only Commonwealth lawyers alone. We must not forget that as members of the common law family we are part of a larger jurisprudential clan which brings both benefits and responsibilities. We are of Commonwealth stock. The United States is not now so endowed; but its common law roots bind us together. What better demonstration of this than when not, so long ago, ((in 2004) the Commonwealth Lawyers Association filed an amicus brief in the United States Supreme Court in *Rasul and Hamdi cases* testing the Bush Administration's policies in the 'War on Terror'. In delivering the opinion of the Court allowing *habeas corpus* to run to the 'legal black hole' of Guantanamo, Justice Stevens drew expressly on the case law addressed in the CLA brief in tracing the history of the writ back to *Magna Carta* and referring to common law authorities going back over four centuries. The CLA was of course acting for Caribbean lawyers as well; and demonstrating the true breadth of our jurisprudence.

The era of globalization and the inseparable yet anomalous era of an American imperium together provided the dominant environment of our time and the one in which Commonwealth legal systems have had to function. These realities simply smother the instinct to think narrowly. Our largely two dimensional world has gone global, affecting all countries and people and all systems on the planet. Basic to those changes is law. That is the essential truth our profession must grasp: and to do so requires creativity; requires in our regional jurisprudence the will to be innovative, responsive to the ever evolving newness of the needs of our present..

From all I have said it would be surprising if such well-springs of creativity were not flowing in our Region; maybe not as strongly as they can; and maybe not everywhere; and assuredly not beyond reversal. However, when recent judgments like those of your own Court of Appeal in *The Attorney General of Trinidad and Tobago and Miguel Regis* (exemplified by the Court's assertion that "*It is vitally important for the local courts to robustly dialogue about, develop and pay due regard to their local jurisprudence in the context of procedural law*") and of the CCJ in *Marin & Coye and The Attorney General of Belize* (exemplified by Justice Anderson's allusion to "*causes of action hitherto frozen in their historical crypts and now animated by judicial imprimatur*" in the Court's allowance of the tort of 11 malfeasance in public office at the suit of the State) – when such judgments are part of our legal landscape, who can argue that the process of creating a Caribbean jurisprudence is not underway in our region?

It is; but it needs a sustaining environment from all: from judiciaries, from practitioners, from academics, from political establishments very specially, from our societies in general. A regional jurisprudence needs nurture from within and beyond the law. Its creation will be the work of many hands comingled – and many minds like those that inspired this Series. It could be the destiny of Trinidad and Tobago to give our Region such leadership in the law.

What all that means is that Caribbean lawyers must eschew the smug complacency that a view of the legal order within narrow domestic walls too readily encourages; a message that we must look to a broader jurisprudence. Were we to do so we will find that the field for reform is a vastly greater one than our lawyer's eye ordinarily surveys, and that the

perspective of change cannot be confined within normal jurisdictional limits. Lawyers must not be the last to recognize that the duty of care we owe to our neighbor now imposes new imperatives as the concept of neighbor is itself being transformed in our closely-knit, inter-linked, interdependent world.

We grew up on a jurisprudence which taught us, in terms of Sir Henry Maine's famous epigram, that 'the movement of the progressive societies has hitherto been from status to contract'. Maine's proposition was challenged as not necessarily being a universal law of legal history. But how true it is that most national societies have indeed made their progression through eras of slavery, of feudalism, of the beginnings of social and economic reform, to the flowering of just consensual societies. Our own societies, in particular, did move from status to contract; and as we saw law helped the progression. Over the wider common law, equity mellowed the harshness and softened the rigidities of a legal order that was in danger of being out of tune with its times. The challenge we face today is not one of separate feudal societies but of a human society that bears too many of the attributes of a feudal state; not one state and two people, but one earth and two worlds.

This is what the Brandt Commission meant 30 years ago when it summed up its perspectives for the future in this way:

"We are looking for a world based less on power and status, more on justice and contract; less discretionary, more governed by fair and open rules".

Caribbean lawyers have a great contribution to make in encouraging their societies to accept that power and status are the old enemies of freedom; that from justice and contract they have nothing to fear and much to gain. And this responsibility rests with all lawyers: corporate lawyers, trial lawyers, judges, magistrates and law officers, general practitioners and specialists; all can help our generation reach to higher levels of perception and attainment within the wider framework of the one nation, one region, one world that we must share. Creating an enlightened regional jurisprudence is the mission that summons us all.

Thank you.