BIOGRAPHY: Dr. Leighton Jackson
(Excerpt from the Honourable Mr. Justice Gregory Smith, J.A.’s introduction)

I want to welcome Dr. Leighton Jackson to our distinguished lecture today. Dr. Jackson is a graduate of the University of the West Indies and the Norman Manley Law School, Jamaica. He is also a graduate of the University of Sydney, Australia and Osgoode Hall Law School, Canada. Dr. Jackson is called to the bar in both Jamaica and the United States and still conducts a very active practice in both jurisdictions. Currently, he is Deputy Dean of the Faculty of Law at the University of the West Indies, Mona Campus and engages in research, writing and presentation in a diverse area of public and private law. His keen interest is in the development of Caribbean Jurisprudence and good governance through constant review of our constitutional systems.

Most recently, he spent ten (10) months at the Caribbean Court of Justice on secondment from the UWI and while there acted as Registrar of that Court. In the United States of America, he was Principal Law Clerk to the Deputy Chief Administrative Judge in the Office of Court Administration in New York City. Dr. Jackson has also worked in the Appellate Division of the Supreme Court of New York where he was responsible for researching and drafting the opinions of the Court. He has repeatedly been an invited presenter at the Judicial Education Institute of Trinidad and Tobago as well as several Industrial Court Judicial Education fora.

Tonight his topic is a mouthful: “The Yin and Yang of Commonwealth Caribbean Constitutional Social Democracy: Change for Stability and Progress.” It invites a lot of speculation as to what exactly Dr. Jackson is going to speak about. When you hear Yin and Yang, it arouses visions of subliminal bliss and harmony, but then we go on to the rest of it: “The Ying and Yang of Commonwealth Constitutional Social Democracy.” It suggests that we will leave the realms of subliminal bliss and harmony to enter into the more worldly and esoteric realm of academia. At this point one would expect – for all of those who have been to UWI, the more mature students – Professor Carnegie to walk through the door with a smile on his face to his student. Yet at the end of this, we have the rest of the title, that is, “Change for Stability and Progress,” and this arouses conflicting perceptions as to what he is going to talk about. With all this heightened stimulation that this title has aroused, I feel sure that Dr. Jackson will harmonize these concepts for us in the true philosophy of Yin and Yang and leave us all in a state of intellectual bliss and harmony. I welcome Dr. Jackson to the podium.
LECTURE: The Continuing Relevance of the Jury System in the English-Speaking Caribbean

First, let me say how honoured I am to be asked to be the speaker at the Fourth Annual Distinguished Jurist Lecture of the Judicial Education Institute of the Judiciary of Trinidad and Tobago. I am anything but. I note, however, and this may be a matter of serendipity, that two of the three previous speakers were my classmates in the Faculty of Law at Cave Hill: Sir Marston Gibson, Chief Justice of Barbados, and Justice Adrian Saunders, Judge of the Caribbean Court of Justice and a former Acting Chief Justice of the Eastern Supreme Court. Of course, they immediately qualify as distinguished jurists not only for their office but their outstanding judicial work. I am still wondering why I am here.

I must tell you that I tried to extricate myself from the task, as I think that there are more eminent persons than myself who more adequately fit the bill. But it is testament to my lack of the power of persuasion that I was not successful. I have always preferred to remain in the background because I have a tendency to speak strongly that may not always find favour with some people, so I may say something that I should not.

I am not guaranteeing such may not occur on this occasion; but then, whether I should or should not say what I say is a verdict which each of you illustrious persons is entitled to come to and I stand chastened to accept the sentence that may be imposed.

There is yet another warning that I should issue. I recall the note under my photograph in my high school yearbook at Wolmer’s, written by my not so admiring fellow students: “He confuses class discussions with statements which begin, “Well, I think...” I hope not to subject you to the same reflection as you listen to me today.

Prologue: Speaking Out

Ten years ago, almost to the day, I wrote to the then Vice Chancellor of the University of the West Indies, the late Professor Nettleford, expressing to him that I had come to the view that I was not an academic and that I really do not belong in the University. I had arrived at that conclusion because I thought that academia in itself demanded a dispassionate engagement with knowledge and ideas, but I have always seen the world through the lens of emotions – passion, sentiments and feelings. Professor Nettleford responded:

I do not agree with you that you are not an “academic”. In fact it is precisely because you are why the academic institution that the UWI
is supposed to be, deserves to have in black and white and through your teaching and research the vision of the teaching of Law and the preparation of the region’s jurists. I, for one, would hate for the Faculty and the University to be deprived of that vision.

I have kept that letter on every desk that I have occupied for the last 10 years, hoping that it would serve as inspiration to do its bidding. I have seen much, thought much, but have not had the courage to write much because I want to write something that is read. Too many academics write what no one, except their captive students read. Henry Louis Gates, Jr. in an essay at the beginning of the Penguin re-publication of Solomon Northup, 12 Years a Slave, remarks: “Let me state bluntly what should be obvious: writers are read for how they write, not for what they write about.” This gives me comfort that my passion will make up for any lack of substance in my lecture.

But Nettleford is right. We ought not to be selfish in our thoughts, hide them under a bushel in fear. Thoughts shape the individual and individuals shape the society. Our thoughts therefore must be brought to light that they may be reflected on and analysed because they are integral to the social and political discourse as we search for, in Nettleford’s words, “the protracted quest, for not only self but also for the central, positive and constructive role of that self in shaping a civilized and habitable society”.2

Are We the New World?

We were denoted the “New World”, albeit by persons of the “Old World” who were merely ignorant of the fact that this geographical space existed. But the designation is an appropriate challenge to demonstrate that we can achieve radical change from the dysfunctional social and political arrangements that we inherited to promote progress and yet achieve stability. This is no easy task for our young democracies which are, in a sense still emerging like hatchlings freeing themselves from the colonial and imperial egg of internment with all the emotional psychoses and dependencies which come with such imprisonment.

Note well that these Old World societies in Europe which now boast of stability did not have easy passages and their histories are marked by catastrophic confrontation built on the Power Model

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of feudal societies which governed by fear, fighting, killing and devouring each other, a legacy that we have been left. Indeed, today the once modernising states in the Middle East and Africa which were historically conservative traditional societies are in political cataclysm which has set back their social, economic, and democratic progress, causing so much human suffering and social, environmental and infrastructural destruction. The irony of what is happening in the Middle East and Africa is caused by social and political exclusion, the very elements that modern states seek to address through democratic processes and institutions.

How does the Commonwealth Caribbean maintain stability and yet progress? And of course, what is this thing called “progress”? Have we defined it for ourselves or has it been defined for us? Is it the same definition and methodology that created the ‘failed states’ of the Old World now seemingly annihilating themselves? How do we avoid the old way of progress through violence and disruption? Can we find a formula for stable democratic governance in which paradigms shift takes place without violence? How do we demonstrate that we are the “New World”?

The Power Model

Power defines all relationships, whether it is social, political, intimate, family, or friends. Weber defines power in terms of those who are able to realise their own will even against the resistance of others. Another writer goes further and includes the ability to prevent oppositional agendas from even being raised. The Power Model of society believes in polarities and does not aim to give voice to all. Thus the “Tolerance” in the Trinidad and Tobago national motto and the “Out of Many One” in the Jamaican, speak to a cosmopolitan view but are in reality mere shams unless we ourselves first understand what they mean for change for progress and stability, and then, strive to make them real. What those in power or who seek to be in power forget is that every being, including the natural forces of the geographic environment and without which we cannot survive as a nation, is a focal point of power and every such focal point creates its own world.

Worlds and sub-worlds become the hallmark of our society. Look around and count them. You see the individuals of these sub-worlds as you go about your daily business. You see them as you drive through the streets of the city and the by-ways of the country. You do not have to go looking for the extreme forms in the so-called ghettos. Right before us daily are the “vagrants” and mentally ill in the streets and, very sadly in Jamaica on an almost pandemic level, the children who live on the
streets and in general, people whose lives we cannot even begin to comprehend from our own places of comfort.

Even more dangerous to the stability of national society is when the individuals of these sub-worlds form themselves into collective groups, for example, the so-called garrison communities in Jamaica; and “with envious eyes, and slowly and surely drew their plans against us”. Thus the “War of the Worlds” becomes the reality of our societies that adherence to the Power Model finds expression symptomized in increased criminal activity, and violence, corruption and extortion, poverty, economic set back and disillusioned youth. Overwhelmingly negative and pessimistic news become the grist for the mass media.

We must not be fooled by the trappings of the modern state. On one level these are merely cosmetic. Democratic elections, constitutions, Bills of Rights and a free press when guided by a perception of power, not as shared values and felt oneness, but as ego and separation; the society becomes a threatening place and a habitation of despair to those not holding power, and society as a whole does not progress. Extreme disparity in the distribution of wealth and resources creates differentiation and the society becomes more stratified and thus given to conflict and violence. Society becomes an unending cycle of point and counter point – a battle to identify differences rather than to expand on similarities. Compassion is not a common commodity.

The gospel truth is that no one has ever been able to use ego perception of power to achieve stability and real progress. Ego perception of power is a false sense of self-importance above all others and all else – primus inter pares - first among equals – that phrase that is so reminiscent of George Orwell’s dystopian novel published in 1945, recalling the Stalinist Ego Power revolution which devoured so many lives – ‘All are equal, but some are more equal than others’. Our national mottos which promise equality must not become a similar insincere slogan of deception.

We must move from the Power Model of society to creating the real New World based on a unified consciousness, and, collaterally, human relationships in which human beings communicate rather than egos combatting with each other – being in communion, with compassion – the awareness of the deep bond between oneself and others in society.

\[\text{Wells, H.G. The War of the Worlds. Plain Label Books, 1898.}\]
The caution is that one must not take the burden of creating that New World by oneself. History, even in our small space of the world, is littered with the bodies that were destroyed by that well-intentioned singular effort that created more chaos than resolution. I can mention the dramatic heralded entrance of Michael Manley and the sudden departure of democratic socialism, leaving a society in chaotic identity crisis. The Grenada ‘Revolution’ appears now a punctuation mark of history on which nothing in the present seems to depend – yet there was so much human anguish and sacrifice.

One Han’ caan clap, say you hass have two
One han’ fe me, and another one fe you
Tell it to the worl’ and dat is a fact
Dat one han alone can clap.

Some people in dis worl’ believe is dem alone
Can carry every burden, can lift up every stone
But when the macka juk and de prekke fall pon dem
Is then dey know dat one han’ caan clap.

This is a song from the National Pantomime in Jamaica commenting on the governing style of Edward Seaga who succeeded Michael Manley and who made the same mistake.

The individual contribution, no matter how intuitive and well-intentioned, must be based on a cooperative construction which strives to heal, in the first takes place, and then to build – like Nelson Mandela showed us – not based on our personal ego-propelled belief that we alone know best. It is not a matter of the adversarial selling one’s personal ideas – realising one’s own will against the resistance of others, and then being unable to resist the temptation of annihilating even the hint of opposition to one’s views – that is Old World; but instead facilitating the development of the ideas for the way forward.

The Yin and Yang: Balancing Power

Development economics and people-centred polices will only succeed if the citizens of our states subjectively experience improvement in their human well-being and are contributors to the effort. Objective economic and social indices, the language of economic and international agencies which has become the linguistic accoutrements of our rulers, may measure change and indicate
progress of a kind but will not ensure stability. Only a subjective assessment by the people whose lives are affected will ensure social and political stability and real progress.

The co-catalyst for all solutions is empowerment at the constitutional level and human rights; constitutional empowerment and not merely a document outlining the field on which the battle for power is to be waged. Not just individual human rights, but human rights that find context in a society to which the citizen subjectively identifies his or her human destiny as being capable of being fulfilled. I use the expression “empowered dignity” to define this concept.

By way of background, while I was Acting Registrar at the Caribbean Court of Justice, I took on the task of attempting to realise the vision of the President to get JEMS, the court software, fully populated. There was a member of staff in the Registry who felt side-lined and generally kept out of any endeavour because of the commonly held view that she was difficult to work with. I discovered that this conclusion was based only on the fact that she was very opinionated and outspoken about her views. She was a bright and well-qualified woman, yearning to make a difference. I asked that she be trained in the project, and once equipped – she took it to its successful completion with zest and enthusiasm; a project, I am told, that was years behind schedule. Her disposition in the office changed once she knew she could make a difference.

You see people want to make a difference. In making a difference they feel empowered. The difference, quite auspiciously, is when they can help another. Examine the change in suspicious disposition when you are lost and you approach someone who appears to be quite ordinary in your superior assessment and ask for directions, and they so generously assist you in finding your way. Analyse what has happened there. Take it to the national level.

Human rights are worthless without human dignity and human dignity is an empty phrase without empowerment. It is through empowered dignity that we feel that we have some worth which gives us the inclination to forgo insisting on our rights every time which is a necessary mechanism for the smooth operation of a rights-based culture. An example of such an empowerment is a driver with the right of way, yielding to a driver who does not have the right of way. The decision not to insist on one’s right is empowering because it demonstrates a commitment to a higher ideal and it gives a sense that one’s action has importance.

The challenge is to develop a legal formula that can give full measure to rights as dignity – rights in the Kantian sense that are justified by their own moral energy and not from the approval of others. This is based on nothing other than the right to be – I AM –, of which the only qualification is to be human, and which is connected to the whole, the community, and the State which protects and supports that right to be.
The Yin and Yang, fundamental opposing concepts in Chinese Medicine going back 700 years BC, signifies the balance of polarities that are relative, which is that they cannot be separated or even spoken of except together but are in constant dialogue to form the whole. Their interdependence ensures that although one may be out of sync, the other moves to compensate. This is a metaphor for our constitutional inclusiveness, not merely on paper or in court action, but in an on-going discourse to and for resolution.

**Education for Participation**

Sir Hugh Wooding once said that what we need (and, as I think, most urgently) is a commission to inquire into the whole matter from the grassroots up. We need change, radical, almost revolutionary change, if we are to have a juridical system to meet the needs of our social order. This new way of seeing rights as a way of living rather than a field of battle, a connectedness with each other and an affirmation of our humanity, is the revolution but it has to be grounded in education.

Education that enables us to understand the dynamics of our power, to engage in the dialogue necessary for the balancing the yin and the yang of that power in the shared space and with the shared resources. This education draws out the ‘I AM’ into community. We live from the inside out, rather than from the outside in. Too many of us live totally consumed with the Old World style of what is out there and pay precious little to what is ‘in here’ – what we can contribute to the balance. This brings us back to the Power Model, where everyone vies for control over the perceived limited materials and opportunities that exist and strive for imbalance of more rather than balance of what is.

The education I am advocating is a new spirituality where expression comes from the creative intellect – the I AM human – rather than being something on the outside. Thus, increased materialism is not the solution. We have to be stable within to stabilise the without. We must change within through reflection on self so that we can change the without. This is the absolute formula for success. Success is handmaiden of progress. No progress can happen from without. It is when the Yin and Yang of the within is balanced that the Yin and Yang in the society will find its exquisite balance and ensure that through change, there is not only stability but progress.

As a teacher at the University for over 35 years, I am increasingly seeing the devaluation of what passes for an education. Recently, I had the occasion to review a student transcript, and it read as follows:

CAPE Economics Unit 1
CAPE Economics Unit 2
CAPE Accounting Unit 1
CAPE Accounting Unit 2
CAPE Computer Science Unit 1
CAPE Computer Science Unit 2

CSEC Office Administration
CSEC Information Tech Tec
CSEC Principles of Business
CSEC Principles of Accounts
CSEC English A General
CSEC Mathematics General

In my view, this is not the kind of certified foundational education that I believe will prepare a citizen for the kind of participation in the discourse concerning balance in society. The student may well graduate with the skills to execute a job but, isn’t that bringing back to the prediction that we are merely hewers of wood and drawers of water?

Furthermore, what prepares this student for reflection on the issues in society? The Caribbean Examination Council, under pressure, continues its expansion of offering ‘technical’ courses, and has abandoned the humanities – philosophy, comparative religion and so on.

We also know that power opposes education. Women know that historically and still today there are places where education of girls is violently opposed. In Solomon Northop’s chronicle, *12 Years a Slave*, he could not let his enslavers know that he could read and write. He was also punished for being the one to design and execute a better and cheaper way to transport timber, using his knowledge of water transportation. To accredit him with this success undermined the power of the master. Education and success are empowering and it is true freedom, and remember we are talking about “empowered dignity” as the route to the right working of a human rights culture. It is what Marcus Garvey meant when he spoke of emancipating oneself from mental slavery in order to truly enjoy freedom.

**Leadership and Governance**

I should also say something about leadership as it bears a critical role in this matrix. Leadership is an essential component of realising our human rights and human dignity because we live in community and it is relative to each other that we become conscious of our dignity.
Leadership of community, whether in the workplace, family, or in political governance, preserves our relationship with each other. Leadership is given power not for its own self but for the end, then, of human dignity. The role of leadership is to empower, not to put down. We must not shy away from the insistence that those to whom we entrust power exercise it without concern for their own compulsive need to be right and make all others wrong.

‘Good Governance’, is the complement of leadership. It speaks about respect for all, about tolerance of differing views in which getting it right is more important than being right.

A remarkable area of law that has been as integral to the common law as any other principle, and in this era of human rights and the constitutional state has bourgeoned, is Administrative Law in which good governance is the hallmark and it is defined and enforced by the courts by judicial review. Judicial review was described by Sir John Donaldson MR as “a relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration.”

The components of good governance are:

1. Participation
2. Transparency
3. Accountability

In this regard, it can readily be seen how the citizen is critical to good governance, through participation, and the insistence on transparency and calling on our leaders and each other to give account. But we must be educated to be able to participate. We must be able to think and articulate our personal views in the social and political space of society because it is the thought that counts.

Modern Labour Law and the Industrial Relations Act of Trinidad and Tobago, as well as the variations in the Commonwealth Caribbean, stand as a microcosm of what participation and good governance is and the rejection of the power model of leadership. Here workers no longer are regarded as mindless, unassenting factors of production without a voice, but instead an insistence through the term “good industrial relations practice”, which is the standard stated in the Industrial Relations Act, that workers have a voice in the workplace regardless of the entrepreneurial prerogative of the leader or owner. One’s human presence in that space in and of itself gives one a proprietary right in the business – a right to be treated with dignity. Additionally, it is interesting that it is collective organisation that has led to this acknowledgement and is responsible for all of the rights as workers of which we were deprived during our history of slavery and indentured servitude.

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4 R v Lancashire County Council, ex p Huddleston [1986] 2 All ER 941, 945c
and which we now take for granted, such as paid sick leave, paid vacation, occupational health and safety, and compensation for being treated unfairly – that is, non-recognition of your human dignity. But this warrants a more expansive treatment than we have time for in this lecture.

Conclusion

I think of Hamlet, Shakespeare’s immortal reflection on a subject that he repeats often in his plays; wrong, corruption and exclusion by those in power. I recall the cloud over Hamlet’s mental balance, the personal challenges which he faced as to how to effectively speak out against the wrong of fratricide and incest. A very remarkable scene was when his step-father, who had usurped his father’s throne and taken emotional control of his mother, recruited two of Hamlet’s friends from University as spies to attempt to discover precisely what Hamlet knows. The King is paranoid in his observation of Hamlet’s “antic disposition”. The conversation with these two ‘university friends’ – Rosencrantz and Guildenstern, who are not too bright – captures the power of critical thought through good education to one’s own conception of reality.

Hamlet:
What have you, my good friends, deserv'd at the hands of
Fortune, that she sends you to prison hither?

Guildenstern:
Prison, my lord?

Hamlet:
Denmark's a prison.

Rosencrantz:
Then is the world one.

Hamlet:
A goodly one, in which there are many confines, wards, and dungeons, Denmark being one o' th' worst.

Rosencrantz:
We think not so, my lord.
**Hamlet:**

Why then 'tis none to you; for there is nothing either good or bad, but thinking makes it so. To me it is a prison.

*(Hamlet Act 2, scene 2)*

The inability to think is the seed of blissful ignorance or conscious avoidance and makes one unable to uncover when others are indulging in ethical relativism in which the powerful engages to mask monopoly of power. We are fooled into thinking that our prison is a palace and our privations, pleasure. We have come too far in our history of slavery, indentured servitude, oppression, and patronisation to not realise that that was the Old World and this is a New World where we all matter and have a voice. If we continue down the road of the old Power Model of ego relationships, nothing will change.

Professor Francis Ssekandi of Colombia Law School and former Special Counsel on Good Governance to the President of the African Development Bank, in his paper: “Good Governance: The Way Forward”, began by quoting Gora Hyde who said:


Professor Ssekandi reported that despite the hopes raised by the emergence of the African people from colonialism:

At the dawn of this millennium, much of sub-Saharan Africa is devoured by warfare. Currently almost two-thirds of its countries are embattled and paralyzed. There are at least, 18 countries engaged in one armed conflict or another, or experiencing civil strife (Category 1); 13 countries under severe political crisis and turbulence (Category 2), if you add to this list two previously stable countries (Zimbabwe and Côte d’Ivoire). This leaves only 17 countries enjoying relative stable political conditions (Category 3). However, 12 of these have at one
time or another been classified under either Category 1 or 2. Furthermore, a large number of all the countries listed in all three categories have at some point undergone a violent change of Government. As is well known, without stable political conditions there can be no meaningful development.\(^6\)

Isn’t it amazing that there is an index for warfare and strife and none for the level of participation of the human being in his or her society?

What this tells us is that stability and progress are not automatic or one-man constructs. They must be intuited and constructed not only from the creative intellect but also from the spirit of compassion and equality which has previously been neglected in the Power Model. We in the Commonwealth Caribbean must strive to achieve the balance of the \(\text{yin}\) and the \(\text{yang}\) not only of the self but also for the central, positive and constructive role of that self in shaping a civilized and habitable society which does not resist change but which aims to progress with stability. Unless we all participate and we all are empowered to participate in the discourse, we are destined to repeat history and the events in the world around us.

The irreverent Oscar Wilde in his 1889 essay “The Decay of Lying” said:

“It is afraid that we are beginning to be over-educated; at least everybody who is incapable of learning has taken to teaching.”\(^7\)

I hope this is not the state of education in our societies, because education of our people is critical to the realisation of the spirit of our constitutional democratic societies that is more than what is written on paper and passes for a constitution or our default or conscious avoidance of participation the discourse in balancing the powers of \(\text{yin}\) and \(\text{yang}\) in our societies.

The responsibility of education is not to create conformity because ‘Tolerance’ in the motto of this great Republic of Trinidad and Tobago and the “Out of Many One” in my own country, Jamaica, is not equal to conformity. It is instead a continuous discourse which utilises the creative intellect to enable change: change with progress and progress with stability. That is what it means.

\(^6\) Ibid.