

A TRUE SENSE OF INDEPENDENCE: THE ABOLISHMENT OF UNITED KINGDOM'S INFLUENCE TOWARDS THE LEGAL AFFAIRS OF THE COMMONWEALTH CARIBBEAN

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I. INTRODUCTION

The Judicial Committee of the Privy Council ("Privy Council") sits in England and serves as the highest Court of Appeal for several Commonwealth Caribbean¹ countries.² When the United Kingdom colonized the Caribbean countries in the seventeenth century, death was the

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1. Encyclopedia of Latin American History and Culture, *Caribbean Sea, Commonwealth States*, ENCYCLOPEDIA.COM (2008), <http://www.encyclopedia.com/article-1G2-3078901165/caribbean-sea-commonwealth-states.html>. (The Commonwealth Caribbean refers to the twelve independent countries and six dependent territories of the Caribbean.).

2. Roget V. Bryan, *Toward the Development of a Caribbean Jurisprudence: The Case for Establishing a Caribbean Court of Appeal*, 7 J. TRANSNAT'L L. & POL'Y 181, 184 (1998).

mandatory sentence for the crime of murder.³ Therefore, because the death penalty was the common law in England during that time, it became the common law for its colonies.⁴ As the Privy Council refused to carry out the mandatory death penalty in the landmark case of *Pratt and Morgan*, the establishment of the long talked about Caribbean Court of Justice ("CCJ") was developed.⁵ Even though the idea of a court of last resort within the Caribbean has been discussed since the 1970s, the urgency to establish the Court did not surface until the citizens of the Caribbean felt they were not being heard by the Privy Council; and the judges of the court were not in touch with the culture that led to the decision in *Pratt and Morgan*.⁶ The CCJ is a multinational court and its jurisdiction is set out in the "Agreement Establishing the Caribbean Court of Justice,"⁷ which must be enacted into law by the Member States subscribing to the common law system to give it the force of law in their respective jurisdictions.⁸ Since the establishment of the CCJ, three countries have referred to it as their court of last resort.⁹ The United Kingdom's support for the CCJ would encourage the Caribbean community to utilize a court within its jurisdiction that is more convenient and less expensive, and it will also demonstrate the independence of many countries within the region.¹⁰

The objective of this article is to discuss the post-colonial effect that the United Kingdom has on the Commonwealth Caribbean and how the region can overcome the obstacles to move towards complete independence. The article will also discuss whether the Privy Council is the appropriate court to make legal decisions as to the handling of death penalty cases in the Commonwealth Caribbean. This article begins with a brief history of the Privy Council and how it became the final appellate court for the Commonwealth Caribbean. Additionally, this article will discuss the independence of the Caribbean territories and how they retained the mandatory death penalty in their constitutions despite the United Kingdom abolishing capital punishment. Next, the article will take a closer look at a few death penalty case holdings that were decided by the Privy Council

3. Boyce v. The Queen [2004] UKPC 32 [8] (appeal taken from Barb.).

4. *Id.*

5. See Bryan, *supra* note 2, at 197.

6. See *id.*; see generally *Pratt v. The Att'y Gen. of Jam.* [1993] 1 UKPC 37 (appeal taken from Jam.).

7. See generally Agreement Establishing the Caribbean Court of Justice.

8. DUKE E. POLLARD, CLOSING THE CIRCLE OF INDEPENDENCE: THE CARIBBEAN COURT OF JUSTICE 63 (Ian Randal Publishers 2004).

9. A comparison of the JCPC and the CCJ, JAM OBSERVER, Feb. 18, 2015, http://www.jamaicaobserver.com/business/A-comparison-of-the-JCPC-and-the-CCJ_18418109.

10. Bryan, *supra* note 2, at 187.

within the region. Then, the article will discuss the role of the CCJ and the point of view of the legal community and others as it relates to the CCJ and the reasons why more countries have not abolished the Privy Council and adopted the CCJ in its place. Finally, the article will discuss the Caribbean citizens' frustration with the Privy Council and moving towards a true sense of independence.

II. THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

The Judicial Committee of the Privy Council is comprised of various committees to which petitions are directed.¹¹ Prior to the Civil War¹² in England in the 1640's, the Privy Council was only a court in England, but since that time, it has become the highest court of appeal for all the countries that the United Kingdom had conquered.¹³

The Privy Council is derived from the residuary jurisdiction which the Sovereign possessed over all British subjects. For nearly three hundred years, the Privy Council has been 'the link between the legal systems of the Commonwealth countries and Empire and of the United Kingdom itself.' In its earlier years, the Privy Council played an important role in English government. Judicial disputes from the overseas empire were referred to the Sovereign, which, in turn, referred them to the Privy Council. During the Civil War in England in 1640, the Privy Council's judicial function was confined to 'determining petitions from the overseas possessions of the Crown.' However, as the British Empire expanded and courts were established in various colonies, it became common practice for these local courts to have the right of appeal to the Privy Council. The Judicial Committee of the Privy Council was formally established by legislation in 1833. This legislative act effectively transferred judicial powers from the Privy Council proper to its judicial branch, the Judicial Committee. The Judicial Committee has since operated as an independent court of law, separate from the rest of the Council. The Judicial Committee Acts of 1833, 1844, and 1871 delineate the composition of the Privy Council. Pursuant to these Acts, the Privy Council is to be comprised of selected members of the higher judiciary in England, as well as senior members of the judiciary of other Commonwealth countries.¹⁴

11. *Id.* at 183-84.

12. English Civil Wars, HISTORY.COM, <http://www.history.com/topics/british-history/english-civil-wars> (last visited Oct. 18, 2015) ("The English Civil Wars (1642-1651) stemmed from conflict between Charles I and Parliament over an Irish insurrection.").

13. HUGH RAWLINS, THE CARIBBEAN COURT OF JUSTICE: THE HISTORY AND ANALYSIS OF THE DEBATE 9 (CARICOM 2000).

14. Bryan, *supra* note 2, at 183-84.

The Privy Council was established to hear cases from all the Caribbean islands and other countries that the United Kingdom conquered.¹⁵ Post colonialism, most of the Caribbean territories continued to use the Privy Council as their final court of appeal.¹⁶

The idea of abolishing appeals to the Privy Council has been a hot topic within the region over the last decade, as such abolition would be the final step towards complete independence from the United Kingdom.¹⁷ With such passion for independence, the Commonwealth Caribbean remains subordinate to the United Kingdom jurisprudence and such ties has caused several problems both legally and politically within the region.¹⁸ Despite many advocates pushing for complete independence from the United Kingdom, a few countries have been debating whether they should have total or partial abolition of appeals in certain areas to the Privy Council.¹⁹ Nevertheless, in recent years, the number of independent countries that allow appeals to the Privy Council has been reduced, as those countries have established their own final court of appeal.²⁰

Even though the Commonwealth Caribbean has gained independence from the United Kingdom, many of the former colonies within the region retained the Privy Council as its final court of appeal in a right preserved in their respective Constitutions.²¹ Since the early 1990s, the urge to do away with the Privy Council and establish a Caribbean court of final appeal have been resurfacing due to the decisions of the *Pratt and Morgan* case from Jamaica.²² Since the ruling in that case, the Caribbean community have been criticizing the Privy Council; they have shared similar views stating that the Court is not in touch with the region because the judges on the committee know little about the Caribbean culture and should not be ruling on issues within the region.²³

15. RAWLINS, *supra* note 13, at 9.

16. Bryan, *supra* note 2, at 181.

17. *Id.* at 182.

18. *Id.* at 181-182.

19. *Id.* at 182.

20. *Id.* at 185.

21. LLOYD G. BARNETT, *THE CONSTITUTIONAL LAW OF JAMAICA* 2 (Oxford University Press 1977).

22. See RAWLINS, *supra* note 13, at 15.

23. *Id.*

III. THE INDEPENDENCE OF THE COMMONWEALTH CARIBBEAN

In the 1930s, the Commonwealth Caribbean countries were allowed to form political parties and the right to vote in political elections.²⁴ During that time, the United Kingdom had proposed a West Indies Federation which would serve as an introduction to self-governance and an independent Commonwealth Caribbean.²⁵ In 1958, the Federation was established to include all the Commonwealth Caribbean²⁶ with the exception of The Bahamas, Belize, and Guyana.²⁷ The federal negotiations were hindered during the progress of the Federation and as a result, Jamaica and Trinidad and Tobago opted for independence in 1962.²⁸ Other countries followed suit with the exception of those islands that were too small to manage their own affairs, the United Kingdom established an Associated Statehood.²⁹ Following the Associated Statehood, there was a wide acceptance for decolonization that led to the independence of these smaller islands.³⁰ As independent countries, the Commonwealth Caribbean maintained the Westminster political system, which had governed them when they were United Kingdom colonies.³¹

Countries within the Commonwealth Caribbean gained independence throughout the 1960s, 1970s and 1980s.³² Despite their independence, many

24. Jacqueline Anne Braveboy-Wagner, *English-Speaking Caribbean*, in THE OXFORD COMPANION TO POLITICS OF THE WORLD 265, 265 (Joel Krieger et al. eds., 2d. 1993).

25. *Id.*

26. *Id.*

The Commonwealth Caribbean is made up of twelve independent countries, Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago. The six dependent territories are Bermuda, British Virgin Islands, Cayman Islands, Anguilla, Turks and Caicos Islands and Montserrat.

27. *Id.*

28. *Id.*

29. *Associated Statehood*, COLLIN'S ENGLISH DICTIONARY COMPLETE AND UNABRIDGED (10th ed. 2010)

The semi-independent political status of various former British colonies in the Caribbean from 1967 until each became an independent state in the British Commonwealth, by which Britain retained responsibility for defense and some aspects of foreign affairs. The associated states were Anguilla, Antigua, Dominica, Grenada, St Kitts-Nevis, St Lucia, and St Vincent and the Grenadines.

30. Wagner, *supra* note 24, at 265.

31. *Id.*

32. Leonard Birdsong, *The Formation of the Caribbean Court of Justice: The Sunset of British Colonial Rule in the English Speaking Caribbean*, 36 U. MIAMI INTER-AM. L. REV. 197, 198 (2005).

of the countries retained appeals to the Privy Council as stated in their constitutions.³³ The establishment of the Bill of Rights in the Constitution paved the way for the subsequent attack on the death penalty.³⁴ The savings clause,³⁵ embedded in the constitutions of the newly independent countries, prevented each country from carrying out punishment that was contrary to the Bill of Rights' prohibition on cruel and inhumane punishment.³⁶ The Privy Council's movement towards the protection of human rights have led to decisions in cases that were adverse to what the people in the region expected.³⁷ After gaining independence from the United Kingdom, the constitutions of the Commonwealth Caribbean contained a right against cruel, inhumane and degrading punishment; thus it eventually lead to the effective abolition of the death penalty even when the sentence has not been repealed.³⁸ When many of these countries gained independence from the United Kingdom, their new governments did not appear to have enough confidence to maintain complete independence, and so they retained their appeals to the Privy Council.³⁹ Even though each country implemented its own local court system, the countries of the Commonwealth Caribbean collectively used the Privy Council as its court of last resort.⁴⁰

IV. THE MANDATORY DEATH PENALTY

When the United Kingdom colonized the islands in the Caribbean region during the seventeenth century, death was the mandatory sentence for the crime of murder.⁴¹ Consequently, the death penalty became the common law for the United Kingdom's colonies.⁴² Even though the United Kingdom abolished the death penalty in 1965, the Commonwealth Caribbean countries retained the death penalty in their constitutions through a "savings clause" adopted at independence.⁴³

33. *Id.*

34. Dr. Lloyd G. Barnett, *The Death Penalty in the English Speaking Caribbean: A Jamaican Perspective*, FOREIGN & COMMONWEALTH OFFICE, FOREIGN OFFICE BLOGS: UK IN JAMAICA (Oct. 10, 2013), <http://blogs.fco.gov.uk/ukinjamaica/2013/10/10/the-death-penalty-in-the-english-speaking-caribbean-a-jamaican-perspective/>.

35. *Saving Clause*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2015).

36. *Boyce*, UKPC 32 [8].

37. Barnett, *supra* note 34.

38. *Id.*

39. Birdsong, *supra* note 32, at 198.

40. *Id.*

41. *Boyce*, UKPC 32 [8].

42. *Id.*

43. *Id.*

In the controversial death penalty case of *Pratt and Morgan v. The Attorney General for Jamaica and Another* (1993),⁴⁴ the appellants⁴⁵ appealed to the Court of Appeal in Jamaica in 1980, but the Governor General at the time did not act swiftly.⁴⁶ The actions of the Governor General led to delays in the proceeding, which in turn caused the appellants to remain on death row for fourteen years.⁴⁷ Accordingly, the appellants' legal advisers pursued an application for special leave to appeal to the Privy Council and the leave was granted.⁴⁸ The Privy Council held that the prisoners were victims of cruel and inhumane punishment because the proceeding was not done in an expedited manner.⁴⁹ Consequently, the Privy Council ruled that their sentences should be commuted to life in prison as opposed to the death penalty because they had been on death row for more than five years.⁵⁰ As a result of the *Pratt and Morgan* ruling, the Privy Council set a precedent that all prisoners on death row for five years or more should have their sentences commuted to life imprisonment.⁵¹ Based on this ruling, the Commonwealth Caribbean countries were concerned that the Privy Council, which no longer has strong ties with the region, failed to understand the purpose of retaining the mandatory death penalty.⁵² On the other hand, human rights groups around the world were satisfied with the Privy Council's *Pratt and Morgan* ruling.⁵³ Needless to say, the Privy Council was no longer favored to be the court of last resort by many in the region after such ruling.⁵⁴ As a result, Member States of the Caribbean Community determined that the Privy Council should be terminated as the court of final appeal.⁵⁵ Besides, relying on a colonial institution was inconsistent with their status as sovereign states.⁵⁶ Following the *Pratt and Morgan* notable and controversial holding, the Member States of the Commonwealth Caribbean were urged to establish

44. See *Pratt*, 1 UKPC at 37.

45. *Id.*

46. See Delano Franklyn, *The Bungling of Pratt and Morgan*, JAM GLEANER (Nov. 26, 2008), <http://old.jamaica-gleaner.com/gleaner/20081126/lead/lead4.html>.

47. *Pratt*, 1 UKPC at 37.

48. *Id.*; see also Franklyn, *supra* note 46.

49. *Pratt*, 1 UKPC at 42.

50. *Id.* at 47.

51. David A. C. Simmons, *Conflicts of Law and Policy in the Caribbean-Human Rights and the Enforcement of the Death Penalty-Between A Rock and A Hard Place*, 9 J. TRANSNAT'L L. & POL'Y 263, 270 (2000); see also Dennis Morrison, *The Judicial Committee of the Privy Council and the Death Penalty in the Commonwealth Caribbean: Studies in Judicial Activism*, 30 NOVA L. REV. 403, 409 (2006).

52. Bryan, *supra* note 2, at 187-88.

53. Barnett, *supra* note 34.

54. POLLARD, *supra* note 8, at 62.

55. *Id.*

56. Bryan, *supra* note 2, at 187-88.

the CCJ to replace the Privy Council.⁵⁷ To date, *Pratt and Morgan* has been the leading case that gave the region a real sense of urgency to establish a Caribbean court of last resort.⁵⁸

Several international human rights groups and activists have recommended that the Commonwealth Caribbean countries abolish the death penalty.⁵⁹ For instance, the United Nations General Assembly has recommended moratoriums on the abolition of the death penalty but the Commonwealth Caribbean has not accepted the recommendations.⁶⁰ Since the number of executions have decreased, many Caribbean countries have faced an increase in serious crimes.⁶¹ Many in the region strongly believe that implementing the death penalty will deter such crimes.⁶²

A. *The Mandatory Death Penalty History in the Caribbean*

Prior to the 1930s, a delay in executions would not be a cause for concern for those in Jamaica as there was no appeal process.⁶³ During that period, prisoners who were on death row had no right to appeal their sentences and their only hope to survive the death penalty was through the clemency decisions of the Governor⁶⁴ and the Privy Council.⁶⁵ The clemency of the Jamaica Privy Council ("JPC")⁶⁶ was not based on due process or any form of justice, it was merely by judicial discretion.⁶⁷ The judges took into consideration the accused, the victim and any other factor such as the circumstances of the crime and made a decision.⁶⁸

As a result of the clemency powers and the lack of justice in the death penalty cases, due process became a concern to many in the legal field during

57. *Id.*

58. *Id.* at 188.

59. See *Abolish the Death Penalty, End Capital Punishment*, AMNESTY INTERNATIONAL, <http://www.amnestyusa.org/our-work/campaigns/abolish-the-death-penalty> (last visited Oct. 18, 2015).

60. *Id.*

61. Leonard E. Birdsong, *In Quest of Gender-Bias in Death Penalty Cases: Analyzing the English Speaking Caribbean Experience*, 10 IND. INT'L & COMP. L. REV. 317, 319-20 (2000) [hereinafter *Caribbean Experience*].

62. *Id.*

63. See GOVERNOR GEN. OF JAM., THE CONSTITUTIONAL STATUS AND ROLE OF THE GOVERNOR-GENERAL OF JAMAICA (2015), <http://www.kingshouse.gov.jm/index.php/roles-function-of-the-gg>. ("The Governor-General of Jamaica is appointed by Her Majesty The Queen on the advice of the Prime Minister, within the monarchical system of Government provided by the Jamaican Constitution.")

64. *Id.*

65. James Campbell, *Murder Appeals, Delayed Executions, and the Origins of Jamaican Death Penalty Jurisprudence*, 33 LAW & HIST. REV. 435, 440 (2015).

66. *Id.*

67. *Id.* at 441.

68. *Id.*

the 1930s.⁶⁹ The Court of Appeal was established in the 1930s and legal aid was offered to criminal defendants who were charged with murder.⁷⁰ Even though many in the legal field had advocated for the due process of the criminal defendants, there are those who fear the process as they believed that criminals would dodge just punishment on “legal technicalities.”⁷¹ The first case heard before the Jamaica Court of Appeal was *Frank Valentine*⁷² in June, 1936, where a split decision was given and eventually the punishment of death was upheld.⁷³ His sentence was later converted to life in prison by the JPC.⁷⁴ Since the establishment of the appeals process, cases were decided on a case-by-case basis and the facts of each case were analyzed—as opposed to before where a murderer would get the mandatory death penalty regardless of the reasons behind the killings.⁷⁵ In the 1940s, several defendants such as teenage murder convicts, self-defense killings and insane defendants escaped the mandatory death penalty as a result of the newly implemented Court of Appeal.⁷⁶

The death penalty remains legal within the Commonwealth Caribbean and there has been a resilient political support for its continuation.⁷⁷ The countries within the region preserved their existing laws from review through a savings clause, even though the clause prohibits inhumane punishment.⁷⁸ England abolished capital punishment shortly after decolonization of Jamaica and Trinidad and Tobago.⁷⁹ The outcome of the death row cases are not on a case-by-case analysis, it is solely the savings clause that allows the Privy Council to rule against the death penalty in those cases where the prisoners have been sitting on death row for a lengthy period of time.⁸⁰ The clause saved the death penalty, but the clause ruled against the means of how it was applied.⁸¹

69. *Id.* at 443.

70. Campbell, *supra* note 65, at 443.

71. *Id.* at 444.

72. See *id.* at 448 (Frank Valentine was convicted of shooting and killing his wife. When he was convicted, he claimed that the judge's summing up and directions to the jury at his trial were misleading on both the law and the facts of the case.).

73. *Id.* at 448–49.

74. *Id.* at 449.

75. Campbell, *supra* note 65, at 454–55.

76. *Id.* at 455.

77. *Id.* at 436.

78. Margaret A. Burnham, *Saving Constitutional Rights from Judicial Scrutiny: The Savings Clause in the Law of the Commonwealth Caribbean*, 36 U. MIAMI INTER-AM. L. REV. 249, 249–50 (2005).

79. *Id.*

80. *Id.*

81. *Id.*

The mandatory death penalty has been frowned upon by many people around the world, despite the savings clause that was put in place to eliminate inhumane treatment towards the prisoners.⁸² For many people within the Caribbean, the death penalty has been accepted as a punishment for crimes of murder and has been seen as too excessive for other crimes such as drug trafficking and burglary.⁸³ However, the Caribbean community strongly believe that the mandatory death sentence as a penalty for murder will reduce murders in the Caribbean because during the periods where the death sentences were carried out, the murder rate was lower compared to other times when the death sentences were commuted to life imprisonment.⁸⁴

B. The Death Penalty Cases in the Caribbean

1. Pratt and Morgan v. Attorney General of Jamaica

A landmark decision of the Privy Council is the case of *Pratt and Morgan*, where the appellants were on death row awaiting the death penalty for over fourteen years, which was unconstitutional in Jamaica.⁸⁵ The Privy Council held that execution should take place as soon as reasonably practicable after the death sentence is imposed on the defendant and that to carry out executions after fourteen years would constitute inhuman and cruel punishment which is contrary to the Jamaican Constitution.⁸⁶ This decision caused the Caribbean community to frown upon the Privy Council and they argued that the Privy Council was outside the region with inconsistent political decisions.⁸⁷ Coupled with such arguments, there is further concern that the members of the Privy Council are "unfamiliar with the interplay of social and political forces in the Caribbean which influence the customs psychology and indeed the total personality of the people within the region."⁸⁸ Based on the history of the death penalty, these affirmations are accurate because the decisions of the Privy Council in the death penalty cases are decided according to the laws of the United Kingdom.⁸⁹ It is widely debated that the *Pratt and Morgan* case that was decided by the Privy Council

82. *Id.*

83. Burnham, *supra* note 78, at 256.

84. Caribbean Experience, *supra* note 61, at 319-20.

85. See Pratt, 1 UKPC at 37.

86. *Id.*

87. Bryan, *supra* note 2, at 187-88.

88. *Id.*

89. *Id.*

in 1993 began the urgency for a Caribbean court of final appeal because the decision was out of touch with the Caribbean community's expectation.⁹⁰

2. Guerra v. Baptiste

In *Guerra*, the Privy Council held that less than five years was unconstitutional to carry out the death penalty.⁹¹ The holding in the case of *Pratt and Morgan* set a precedent that to carry out the death penalty after five years since the date the defendant was sentenced to death would be inhumane and cruel punishment;⁹² however, in the case of *Guerra*, the Privy Council held that four years and ten months was unconstitutional to carry out the death penalty and the Court commuted the death penalty to life imprisonment.⁹³ Also in *Guerra*, the Privy Council established the "reasonable notice of execution rule" for Trinidad and Tobago.⁹⁴ The Court in *Guerra* stated that a defendant should be given five days' notice prior to execution and anything less would "constitute cruel and unusual punishment."⁹⁵ The judges explained that the reason for adequate notice is to allow the defendant sufficient time to notify his family and to make necessary visitation arrangements.⁹⁶ Furthermore, adequate notice will give the defendant time to redress his sentence through legal advice.⁹⁷

In *Guerra*, many people were shocked by the Privy Council's decision to commute the sentence of death to life imprisonment because the appeals process was done within the five year rule that was established in the *Pratt and Morgan* case.⁹⁸ Nonetheless, the Privy Council interpreted their holding in the case of *Pratt and Morgan* explaining that the five years that was stated in *Pratt and Morgan* was not a rigid rule.⁹⁹ Besides, Jamaica's timeline of procedural events was drawn out for an unnecessary period of time and could be done more expeditiously to avoid cruel and inhumane punishment.¹⁰⁰

90. Rose-Marie B. Antoine, *Waiting to Exhale: Commonwealth Caribbean Law and Legal Systems*, 29 NOVA L. REV. 141, 152 (2005).

91. *Guerra v. Baptiste* [1996] 1 Cr. App. R. 533, 544 (appeal taken from Trin. & Tobago).

92. Simmons, *supra* note 51, at 273.

93. *Guerra*, 1 Cr. App. R. at 533.

94. *Id.*

95. Simmons, *supra* note 51, at 274.

96. *Id.*

97. *Id.*

98. *Id.*

99. *See generally id.*

100. Simmons, *supra* note 51, at 274.

3. Other Thoughts on the Death Penalty Cases in the Commonwealth Caribbean

Many citizens of the Commonwealth Caribbean have expressed similar views that the Privy Council has not been carrying out the wishes of the Caribbean community in their recent decisions.¹⁰¹ The landmark case of *Pratt and Morgan* has been labeled as the case that forced the Commonwealth Caribbean to establish the CCJ, but dating back to the 1940s, there were quite a few other cases where a delay in execution had resulted in the commutation of capital punishment to life imprisonment.¹⁰² For example:

In 1880, the JPC spared Edward Gordon after his scheduled execution for murdering an Indian fellow convict in Saint Catherine's District Prison was postponed to allow for an investigation into Gordon's mental state. Medical reports concluded that Gordon was sane, but the JPC noted 'it is not the practice to execute the capital sentence after a respite,' and Gordon's sentence was commuted. Four years later, Letitia Macdermot was 8 months pregnant when she was sentenced to death for murdering her young son, and the JPC commuted her punishment on the grounds that the necessary delay in implementing her execution to allow for the child's birth would be intolerably 'cruel.'¹⁰³

Delayed execution has caused many cases in the Commonwealth Caribbean to be commuted to life imprisonment prior to decolonization leading up to the well-discussed *Pratt and Morgan* case in 1993.¹⁰⁴ Prior to *Pratt and Morgan*, the following table outlines a list of cases that the Privy Council commuted from the death penalty to life imprisonment:¹⁰⁵

Case Name / Defendant	Country	Year
Edward Gordon	Jamaica	1880
Letitia Macdermot	Jamaica	1884
The Fulford case ¹⁰⁶	Jamaica	1940
Eric Foster	Jamaica	1941
Daniel Youth	Turks and Caicos Island	1942
Percival Wells	Jamaica	1943

101. Bryan, *supra* note 2, at 182.

102. Campbell, *supra* note 65, at 457.

103. *Id.*

104. Simmons, *supra* note 51, at 267.

105. Campbell, *supra* note 65, at 455, 457-58.

106. *Id.* at 455 ("Hubert Fulford was from Turks and Caicos Island, but at the time, Turks and Caicos Island was a Jamaican dependency and had been since 1873.").

V. THE CARIBBEAN COURT OF JUSTICE

A. *The Structure of the Caribbean Court of Justice*

The decision of the *Pratt and Morgan* case in 1993 set the stage for the establishment of the Caribbean's court of final appeal.¹⁰⁷ As the Privy Council refused to carry out the mandatory death penalty in that case, the establishment of the long-discussed CCJ was developed.¹⁰⁸ In 2001, several Independent Commonwealth countries gathered together and established the CCJ to utilize as their court of last resort.¹⁰⁹ The CCJ is a multinational court and its jurisdiction is set out in the "Agreement Establishing the Caribbean Court of Justice,"¹¹⁰ which must be enacted into law by the Member States subscribing to the common law system to give it the force of law in their respective jurisdictions.¹¹¹ The CCJ was first discussed in the 1970s but was abandoned when the federation failed.¹¹² After the ruling in *Pratt and Morgan*, the idea of the CCJ resurfaced as a more appropriate court of last resort.¹¹³

The Court has two jurisdictions, an original and an appellate jurisdiction.¹¹⁴ The Agreement Establishing the Caribbean Court of Justice is open to Member States of the Caribbean Community and any other Caribbean country which the Conference extends an invitation to so they can become a party to the Agreement as well.¹¹⁵ However, the CCJ has not been warmly received by all, due to the uncertainty about the hybrid nature of the Court juggling original and appellate jurisdiction, domestic and international law and even civil and common law.¹¹⁶ Further, some believe the Court will be less vigilant about human rights than the Privy Council.¹¹⁷

The Court consists of a President and a maximum of nine other judges, of whom at least three are experts in international law including international trade law.¹¹⁸ For an appointment on the CCJ bench, a potential judge has to apply to the Court, and such applicant must serve for at least five years on a

107. RAWLINS, *supra* note 13, at 6.

108. See Bryan, *supra* note 2, at 184.

109. POLLARD, *supra* note 8.

110. See generally Agreement Establishing the Caribbean Court of Justice.

111. POLLARD, *supra* note 8, at 63.

112. *Id.*

113. *Id.*

114. *Id.*

115. See Agreement Establishing the Caribbean Court of Justice art. II.

116. POLLARD, *supra* note 8, at 63.

117. *Id.*

118. See Agreement Establishing the Caribbean Court of Justice art. IV.

bench of a court of unlimited jurisdiction in civil and criminal matters within the territory of a Contracting Party.¹¹⁹ With the assumption that the applicant had five years standing at the Bar, and service in the lower judiciary; or in the aggregate, no less than fifteen years standing in the legal profession in the Commonwealth Caribbean or a State exercising civil law jurisprudence common to that of the Contracting Parties.¹²⁰ A candidate who is appointed to the court must have high moral character, intellectual and analytical ability, sound judgment, integrity, and have an understanding of people and society.¹²¹ The agreement establishing the CCJ has been carefully written with high standards to gain the support of the region.¹²²

B. *Political Support for the Caribbean Court of Justice*

The CCJ serves as the highest Court of Appeal for Barbados, Belize and Guyana.¹²³ Jamaica and Trinidad and Tobago—two of the original signatories to the establishment of the CCJ—have not abolished appeals to the Privy Council.¹²⁴ For instance, in Jamaica there is a Parliamentary Democracy, which has a constitutional monarchy which was based on the United Kingdom's Westminster System of Government.¹²⁵ There are two major political parties, the People's National Party ("PNP") and The Jamaica Labor Party ("JLP").¹²⁶ The Jamaican Parliament consists of two houses, the Senate or the Upper House and the House of Representatives or the Lower House, which is elected by the Governor General once every five years and dissolved before a general election is held.¹²⁷ While the Governor General appoints the members of the Senate, thirteen are recommended by the Prime Minister and eight recommended by the Leader of the Opposition Party.¹²⁸ Therefore, the approval of a bill requires a bipartisan decision because both political parties must vote to get a majority.¹²⁹ In 2012, the governing party,

119. Agreement Establishing the Caribbean Court of Justice art. IV (10).

120. *Id.*

121. Agreement Establishing the Caribbean Court of Justice art. IV (11).

122. POLLARD, *supra* note 8, at 63.

123. INT'L JUST. RESOURCE CTR., CARIBBEAN COURT OF JUSTICE, <http://ijrcenter.org/regional-communities/caribbean-court-of-justice/> (last visited Oct. 18, 2015).

124. *Id.*

125. *The Legislature*, JAM. INFO. SERV., <http://jis.gov.jm/government/the-legislature/> (last visited Oct. 18, 2015).

126. *Jamaica's Political Parties, The PNP, JLP and NDM*, JAM. LAND WE LOVE, <http://www.jamaica-land-we-love.com/jamaicas-political-parties.html> (last visited Oct. 18, 2015).

127. *The Legislature*, *supra* note 125.

128. *Id.*

129. Daraine Luton, 'Have We No Shame?' – PM Begs for Bipartisan Support for CCJ Bills, JAM. GLEANER (Nov. 30, 2014), <http://jamaica-gleaner.com/gleaner/20141130/lead/lead8.html>.

the PNP, announced its intention to establish the CCJ as Jamaica's court of last resort but also made mention that bipartisan discussions were necessary to move forward with such intentions.¹³⁰ The political system with the two major parties are similar across the board in the Commonwealth Caribbean.

As tension continue to rise among political parties in the region to establish the CCJ as a court of last resort, members of the judicial community began criticizing the CCJ's process in selecting its judges.¹³¹ For example, prominent attorney, R.N.A. Henriques, criticized the CCJ for not selecting judges of the same caliber as those serving on the Privy Council.¹³² He further reasoned that the criteria the CCJ employs in its requirements to apply for a judicial seat are substandard and that "persons of judicial excellence are not going to demean themselves and apply."¹³³ On the other hand, David Coore, a practicing Jamaican attorney before Jamaica gained independence has been a longtime advocate of the CCJ, and stated it is due time Jamaica establish the CCJ as its final court of appeals, and further stated that the quality of judges within the region should not be an issue.¹³⁴ Furthermore, the *Independent Jamaica Council for Human Rights* case has established the constitutional steps required to move towards adopting the CCJ as Jamaica's court of last resort.¹³⁵

VI. IMPACT OF THE INDEPENDENT JAMAICA COUNCIL FOR HUMAN RIGHTS CASE

In the *Independent Jamaica Council for Human Rights v. The Attorney General of Jamaica*, the Privy Council delivered an opinion in 2005 that has explained the reasons why Jamaica has not abolished its appeals to the Privy Council and established the CCJ as its court of last resort.¹³⁶ The Governor-General of Jamaica approved three bills to abolish the Privy Council as the court of last resort and to substitute it with the CCJ.¹³⁷ More importantly, the issue on appeal was: whether the procedure adopted in enacting the legislation complied with the requirements prescribed by the Constitution.¹³⁸

130. Alicia Dukley, *CCJ all the way*, JAM. OBSERVER (May 11, 2012), http://www.jamaicaobserver.com/news/CCJ-all-the-way_11438687.

131. Mark Beckford, *CCJ Judges: Quality, Method of Appointment Debated*, JAM. GLEANER (Dec. 7, 2009), <http://mobile.jamaica-gleaner.com/20091207/lead/lead7.php>.

132. *Id.*

133. *Id.*

134. *Id.*

135. See *Indep. Jam. Couns. for Human Res. v. The Att'y Gen. of Jam.* [2005] 41 AC 1 UKPC 2 (appeal taken from Jam.).

136. *Id.*

137. *Id.*

138. *Id.*

This appeal addressed two constitutional matters: (1) the Jamaican Parliament had the power to abolish the right of appeal to the Privy Council, but the procedural means of achieving it must conform to the procedure required by the Constitution; and (2) the steps taken to abolish the Privy Council as the court of last resort must be constitutionally appropriate.¹³⁹

Jamaica has to alter the provisions of its Constitution to abolish appeals to the Privy Council and replace it with the CCJ.¹⁴⁰ Section 110 of the Jamaican Constitution provides:

Decisions of the Court of Appeal can be taken on appeal to the Judicial Committee of the Privy Council in London in grave civil or criminal cases, for matters deemed of great public importance, or as decided by Parliament or the Court of Appeal itself. The Privy Council is given final jurisdiction on interpretation of the Constitution.¹⁴¹

Further, Section 110 is not absolute and can be repealed by a majority of votes.¹⁴² Nonetheless, the CCJ would not benefit from the absolute protection of the Constitution because such protection was for the Supreme Court of Jamaica and the Court of Appeal.¹⁴³ For the Jamaican Constitution to be amended, there must be a two-thirds majority of Parliament and a referendum submitted to the people.¹⁴⁴ The amendment of the Acts will not be given due to lack of constitutional procedures as set forth in the Constitution.¹⁴⁵ To explain, in the case of *Independent Jamaica Council for Human Rights*, Dr. Lloyd Barnett spoke for the appellants and he:

[R]oundly accepted that there could have been no objection to legislation supported by a majority of members of each House of Parliament which simply abolished the right of appeal to Her Majesty in Council and no more. He also accepted that the Parliament of Jamaica could validly have provided, in effect, for the CCJ to take the place of the Privy Council as the ultimate court of appeal from the courts of Jamaica. But this latter object, he submitted, could not, consistently with the Constitution, be achieved by ordinary legislation since it undermined certain provisions of the Constitution which were accorded special protection and could thus be

139. *Id.*

140. *Indep. Jam. Couns. for Human Res.*, 41 AC 1 at 2.

141. *Jamaica Government—The Governmental System*, PHOITUS (Mar. 27, 2005), http://www.photius.com/countries/jamaica/government/jamaica_government_governmental.html (last visited Oct. 18, 2015).

142. *Id.*

143. *Indep. Jam. Couns. for Human Res.*, 41 AC 1 at 2.

144. *Id.*

145. *Id.*

altered only by employing the procedure appropriate for altering such provisions. Thus the argument is not whether the Parliament of Jamaica had power to achieve the object it sought to achieve but whether the procedural means of achieving it followed the procedure required by the Constitution . . . Dr. Barnett further explained that . . . it would make a mockery of the Constitution if the safeguards entrenched to ensure the integrity of legal process in Jamaica could be circumvented by creating a superior court enjoying no such constitutional protection.¹⁴⁶

Since this case, Jamaica has been unsuccessful in securing a majority vote in parliament and a referendum to pass the three bills to establish the CCJ as its final appellate court.¹⁴⁷ Currently, Jamaica continues to refer to the Privy Council, and the governing Prime Minister, Portia Simpson-Miller, has been working assiduously with the opposition party to follow the procedural steps that the Jamaican Constitution requires to vote in favor of the CCJ as Jamaica's final court of appeal.¹⁴⁸

Jamaica's former Prime Minister, P.J. Patterson, who was involved in the establishment of the CCJ has criticized the government of Jamaica and Trinidad and Tobago for not establishing the CCJ as their final appellate court.¹⁴⁹ He further stated that "after 50 years of political independence, the two most populous and arguably most advanced social, political and economic states of CARICOM-Jamaica and Trinidad and Tobago-continue to hang on to that most colonial of vestiges, the British Privy Council, as their final court of appeal."¹⁵⁰ In conjunction, Mr. Patterson made it clear that his statement is not based on the fact that Jamaica and Trinidad and Tobago were signatories to the CCJ, but the decision to continue referring to the Privy Council shows lack of confidence and he is deeply disappointed.¹⁵¹ Also, he pointed out that the Caribbean has produced a number of prominent judges and jurists who have sat on the Privy Council and other International courts and are qualified to sit on the CCJ.¹⁵²

Similar to Jamaica, Trinidad and Tobago is lacking bipartisanship in its parliament and has not followed the procedural steps that are required to alter its Constitution to abolish appeals to the Privy Council.¹⁵³ As two of the most

146. *Id.*

147. *Luton, supra* note 129.

148. *Id.*

149. Tony Fraser, *Jamaica, Trinidad, and the CCJ*, CARIBBEAN INTELLIGENCE, www.caribbeanintelligence.com/content/jamaica-trinidad-and-ccj (last visited Oct. 18, 2015).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

influential countries within the region and two of the original signatories to the establishment of the CCJ, if Jamaica and Trinidad and Tobago were to abolish the Privy Council and refer to the CCJ as their final appellate court, such political acts would encourage other countries of the Commonwealth Caribbean to follow suit.¹⁵⁴ Nevertheless, the urgency to establish a regional Court of Appeal continues to surface among debates within the region, but the proper constitutional steps must be taken to achieve such goal.¹⁵⁵

VII. THE CARIBBEAN COMMUNITY'S FRUSTRATION WITH THE PRIVY COUNCIL

The decision of *Pratt and Morgan* demonstrates clearly that the Privy Council has a low tolerance for the death penalty and is not willing to make decisions based on the social conditions of the Caribbean.¹⁵⁶ The fact that a majority of Caribbean countries have retained the death penalty in their constitution as a deterrent to high crime rates, should signal to members of the Privy Council that they should tailor their judgments based on the laws of the Caribbean.¹⁵⁷ Currently, the decisions of the Privy Council benefit the United Kingdom or other human rights groups around the world.¹⁵⁸ For example, murder in the United Kingdom on a per capita basis is lower than in Jamaica and that is why the United Kingdom can abolish the death penalty law.¹⁵⁹ In small countries like Jamaica, scarcely do they have defendants on death row by accident compared to larger countries like the United Kingdom.¹⁶⁰

The Committee of judges who make the decisions on the Privy Council should have firsthand knowledge of the social structure and cultural climate of a country to make judicial decisions.¹⁶¹ The idea of abolishing the death penalty does not meet the needs of the Caribbean region; moreover, the establishment of the CCJ will be more effective because the judges will make decisions according to the current laws of the Caribbean coupled with their knowledge of the social conditions that exist.¹⁶² Even though the establishment of the CCJ replacing the Privy Council has been proposed

154. Fraser, *supra* note 149.

155. *Id.*

156. Bryan, *supra* note 2, at 201.

157. *Id.* at 202.

158. *Id.*

159. Charlotte Alfred, *These 10 Countries Have The World's Highest Murder Rates*, HUFF POST (Apr. 10, 2014, 2:44 PM), http://www.huffingtonpost.com/2014/04/10/worlds-highest-murder-rates_n_5125188.html.

160. *Id.*

161. Luton, *supra* note 129.

162. *Id.*

since the judgment in *Pratt and Morgan*, the idea of a Caribbean Court of Appeal is not just to make decisions that the region is in favor of; but the judges will continue to hear cases and make informed judgments based on the laws.¹⁶³ Further, these judges will have a closer connection with the social structure within the region.¹⁶⁴ The establishment of a regional court of appeal should not lead anyone to believe that such court would deviate from the Privy Council because every defendant will continue to have due process and the decisions of each case will be decided based on the law, similar to any other court.¹⁶⁵

VIII. OTHER COUNTRIES ABOLITION OF THE PRIVY COUNCIL

The Privy Council was Canada's court of final appeal until 1949 when Canada's relentless efforts to abolish appeals to the Privy Council was successful.¹⁶⁶ Even though Canada had established the Supreme Court of Canada since 1875, many significant appeals were referred to the Privy Council without Canada's Supreme Court input.¹⁶⁷ In 1949, Stuart S. Garson¹⁶⁸ addressed the United Kingdom to abolish appeals to the Privy Council. Shortly after, the Canada Supreme Court was established as Canada's final court of appeal because they did not feel a sense of true independence.¹⁶⁹ The Honorable Stuart S. Garson spoke and he said:

Thus, at the beginning of 1949, we Canadians still fell short of exercising full nationhood and sovereignty in only two respects. The first was that we had to petition the United Kingdom Parliament to pass the United Kingdom Statute which alone can amend our Canadian constitution. The second was that the ultimate interpretation of Canadian statutes and other laws was the responsibility of the judicial Committee of the Privy Council, a United Kingdom Court. It was for the purpose of removing these last two impediments to our full sovereignty that the Canadian Parliament this past autumn did two things. First, it passed a Statute amending the Supreme Court Act and abolishing appeals to the Privy Council. In this step it was exercising legislative powers affirmed by the Privy Council itself. Second,

163. See generally Bryan, *supra* note 2.

164. See generally *id.*

165. *Id.* at 203.

166. Judicial Committee of The Privy Council, HISTORICA CANADA, <http://www.thecanadianencyclopedia.ca/en/article/judicial-committee-of-the-privy-council/> (last visited Oct. 18, 2015).

167. *Id.*

168. Stuart S. Garson, *The Empire, Canada, and the Provinces, 1949 An Address by Honourable Stuart S. Garson, K.C. Minister of Justice and Attorney General of Canada*, EMPIRE CLUB OF CANADA (Jan. 19, 1950), <http://speeches.empireclub.org/60498/data>.

169. *Id.*

it passed a joint Address requesting the United Kingdom Parliament to pass an amendment to the British North America Act (which that Parliament passed in due course as requested) empowering the Canadian Parliament to amend our constitution in respect of those matters in it which are of purely federal concern.¹⁷⁰

The Privy Council was also New Zealand's highest court of appeal until December 31, 2003 when New Zealand established its own Supreme Court and ended appeals to the Privy Council.¹⁷¹ There were few appeals from New Zealand to the Privy Council and unlike Canada, there were no entrenched Bill of Rights in New Zealand's constitution, so the New Zealand government saw it fit to abolish appeals to the Privy Council and to establish its own supreme court.¹⁷²

Most Countries that maintained the right to refer to the Privy Council as their final court of appeal have now abolished such right and established their own court of appeal.¹⁷³ Countries such as South Africa abolished the right to appeal in 1950, Australia abolished all rights to appeal between 1975 and 1986, Hong Kong ended its appeal process in 1997 and the Commonwealth Caribbean is on its way with the newly formed CCJ.¹⁷⁴

IX. A SENSE OF COMPLETE INDEPENDENCE IN THE CARIBBEAN

The Commonwealth Caribbean has such deep urge to establish its own court of appeal and abolish all appeals to the Privy Council.¹⁷⁵ Political reasons are the focal point of why the Commonwealth Caribbean continues to refer to the Privy Council and has not accomplished its efforts to make appeals to the CCJ.¹⁷⁶ Members of the legal community criticized Jamaica and Trinidad and Tobago for not leading the way to abolish the Privy Council and adopt the CCJ as their court of last resort.¹⁷⁷ With all the money that the Caribbean has invested in the CCJ, the fact that the two main signatories, Jamaica and Trinidad and Tobago, continue to refer to the Privy Council,

170. *Id.*

171. COURTS OF NEW ZEALAND, THE HISTORY OF THE SUPREME COURT, <https://www.courtsofnz.govt.nz/about/supreme/history>.

172. Noel Cox, *THE ABOLITION OR RETENTION OF THE PRIVY COUNCIL AS THE FINAL COURT OF APPEAL FOR NEW ZEALAND: CONFLICT BETWEEN NATIONAL IDENTITY AND LEGAL PRAGMATISM*, 20 N.Z. L. Rev. 220, 221, 223 (2002).

173. OFFICE OF THE ATTORNEY GENERAL, DISCUSSION PAPER: RESHAPING NEW ZEALAND'S APPEAL STRUCTURE 2 ¶ 7 (2000).

174. *Id.*

175. Bryan, *supra* note 2, at 184.

176. *Indep. Jam. Couns. for Human Res.*, 41 AC 1 at 11.

177. Fraser, *supra* note 149.

shows a lack of confidence.¹⁷⁸ To overcome such low confidence, the parliament members of each country that show interest in abolishing appeals to the Privy Council should unite and commit themselves to a referendum for the benefit of their country and make the necessary amendments to their Constitutions.¹⁷⁹ As stated in Part VI, if the proper procedural steps are taken, a country can abolish the right to appeal to the Privy Council and establish the CCJ as the Caribbean's court of last resort.¹⁸⁰

X. CONCLUSION

After analyzing the details¹⁸¹ of crimes committed in the Commonwealth Caribbean where the death penalty was awarded, and its deterrence value on the murder rate during that time, one can understand why the Caribbean region wishes to preserve the death penalty regardless of its political and judicial polarization. The question asked by many is: Did these convicted murderers consider their victims' rights against cruel and inhumane punishment when they were murdering their victims? It is much easier for scholars to read articles and objectively form their opinions as to the appropriate penalty for criminals of inhumane crimes. Conversely, for family members and friends who have suffered and grieved the loss of loved ones who fell victim to inhumane crimes, the death penalty is subjectively perceived to satisfy both vengeance and justice within the Commonwealth Caribbean.

Some critics may point out that the extended delay in execution have caused some death penalty sentences to commute to life imprisonment long before decolonization, however, there were also many instances before decolonization where convicted murderers were sentenced to the death penalty and were actually executed. The fact that the United Kingdom has abolished capital punishment, the recent decisions of the appeals from the Commonwealth Caribbean seems to mirror United Kingdom's current law. The case of *Guerra*¹⁸² in 1996 is a clear example that the Privy Council does not only want to eliminate sentence by death for convicted murderers waiting for more than five years for execution, but rather they want to abolish the death penalty in general.¹⁸³ The facts of *Guerra* are as follows:

The murders for which Guerra and Wallen were convicted were heinous and abominable in the extreme. Quite apart from the fact that violent

178. *Id.*

179. *Id.*

180. *Indep. Jam. Couns. for Human Res.*, 41 AC 1 at 2.

181. *Guerra*, 1 Cr. App. R. at 533.

182. *Id.*

183. *Id.*

robberies and kidnapping were committed in the course of these murders, Leslie was raped and afterwards bludgeoned. Her infant baby, Gregg, was decapitated and her husband who was with them had his throat slit. Following their conviction and sentence the two men were placed in cells on death row in the State Prison at Port of Spain. On April 7, 1990 the appellant, together with other prisoners on death row, escaped from prison. After the escape a prison guard then on duty was found strangled to death. However on June 25, 1990 the appellant was recaptured and returned to death row.¹⁸⁴

The facts of *Guerra* provide a compelling example of why the convicted criminal should face the death penalty because even though he was in prison, during his escape he committed another murder.¹⁸⁵

The Privy Council should forthrightly abolish the death penalty in general and make the region aware of such decision instead of misleading countries within the Commonwealth Caribbean that a sentence of death is possible. Nonetheless, the death penalty should not be viewed similar to how it is viewed in developed countries such as the United Kingdom. Smaller and poorer countries such as the Commonwealth Caribbean may find it unfeasible to support convicted murderers in prison for the rest of their lives, but instead would prefer to create and develop a general fund for families who are left without breadwinners who were unfortunately murdered.

True independence entails a balance between the region's interest and the individual who seeks justice;¹⁸⁶ therefore, lawmakers should have actual knowledge of the community and culture when making judicial decisions.¹⁸⁷ Based on the recent decisions of the Privy Council, it is clear that the Court is not sensitive to the issues that the Caribbean community face and the reason for the region's continued attempts to carry out its death penalty laws.¹⁸⁸ The abolition of appeals to the Privy Council will end judicial decisions by judges who are out of touch with the social conditions of the Commonwealth Caribbean and will serve as a true sense of independence.¹⁸⁹

184. *Id.*

185. *Id.*

186. Bryan, *supra* note 2, at 204.

187. *Id.* at 207.

188. *Id.* at 199.

189. *Id.* at 200.