

## None but ourselves can free our minds

*The full text of Judge Patrick Robinson's address to the Cornwall Bar Association Annual Banquet and Awards in Montego Bay, St James, Jamaica on December 4, 2010*

Like Caesar's Gaul, Jamaica is divided into three parts: Just as Caesar admired the Belgae, who were furthest from the civilization of Rome and to its West, as "the bravest" among the Gauls, so too would Caesar admire the people of the county of Cornwall, furthest from — dare I say it — "the civilization" of Kingston and to its West, as "the bravest" among the Jamaicans.

I am also confident that, were he fully briefed, Caesar would describe Cornwallians as the most resourceful and industrious, the most resilient, the most independent, and the most innovative among the Jamaicans. And again, were he fully briefed, he might also say they were the most clannish. I leave it to anthropologists and sociologists to determine whether it is the remoteness from the capital that explains why the people of the county of Cornwall are so distinctive, so inventive and so fiercely proud of their region.

It is little wonder, then, against the background of those traits, that while there is a Cornwall Bar Association, there is no Surrey Bar Association and no Middlesex Bar Association, although there are on record a Northern Jamaica Law Society and a Southern Bar Association; that the Westmoreland Building Society gave birth to the Jamaica National Building Society, the largest of its kind in the country; that Montego Bay is frequently referred to as "the Republic". In that regard, it is my understanding that in light of the recent ruling of the International Court of Justice that the secession of Kosovo from Serbia and its declaration of independence did not violate international law, the authorities in Kingston are no longer treating light heartedly, as they used to and should continue to, these Montegonian Republican references.

That Sam Sharpe's Christmas Rebellion of 1831 started in St James and quickly spread to other parishes, and was a critically important event leading to the abolition of slavery three years later; that in the 1938 Labour Riots the Frome Sugar Factory in Westmoreland — the largest in the island — featured prominently; that those latter two events: Sam Sharpe's Christmas Rebellion and the Labour Riots, along with the 1865 Morant Bay Rebellion stoked the furnace in which our independence was forged — a seminal Cornwallian contribution to our nationhood that should not go unnoticed; that the Windward Maroons in St James, St Elizabeth and Trelawny fought the British for years and along with their Leeward Maroon allies in Portland and St Mary, forced the imperial power to enter into a treaty in 1738, granting them their own lands and a form of autonomy; that the people of St Elizabeth have perfected dry farming techniques that make that parish the bread basket of Jamaica, thereby setting an example of industry and innovativeness for the rest of the country; that Trelawny has produced the best athletes in Jamaica, including two of the most distinguished, Veronica Campbell-Brown and Usain Bolt.

But I have to pause to question the claim, not that the explanation for this phenomenon is the high quality of the yams in that parish, but that Trelawny has the best yams in Jamaica. For that distinction has traditionally belonged to Hanover, the neighbour of my own parish, Westmoreland, but still in the family of the Cornwall county; that three of the five native governors general of Jamaica have come from parishes in the county of Cornwall.

The Cornwall Bar Association, therefore, serves a people whose history locates them in the best tradition of leadership, independent thought and progressive defiance in this country.

And so, may I present to you, ladies and gentlemen, the Cornwall Bar Association, an institution, serving a people and a region that can take pride in the contribution of their forebears to the emergence of this country into nationhood, and in the contribution they continue to make to the growth and development of an independent Jamaica. And I also see an institution which, sensitive to the rich history of the county, must have a clear concept of how best it can, in the field of law, serve Cornwallians, and by extension Jamaica.

One issue in which you, as heirs to Sam Sharpe's spirit of self-determination, independence and self-reliance, and as successors to the legacy of the combativeness and defiance of the Maroons, should become involved is the destination of Jamaica's final appellate process.

My thesis is that the abolition of the Privy Council as Jamaica's final appellate body and its replacement by the Caribbean Court of Justice are both long overdue.

In my view, when Jamaica became independent in 1962 the Constitution should have provided for a final appellate body in Jamaica. The failure to do so, and the concomitant retention of the UK Privy Council have only served to nourish the seed of unfitness, incapacity and inferiority planted in our heads by three hundred years of colonisation: It may have been alright for the British to think that we were not good enough to be masters of our own destiny in matters judicial. But did we have to agree? What the British did in 1962 was wholly consistent with the graduated, step by step approach they adopted to freedom and independence of the colonised. Thus the abolition of slavery in 1834 did not become effective until the slaves had been 'prepared' for their freedom through a four-year period of apprenticeship, and internal self-government was a required stage before colonies proceeded to independence.

As so 48 years after its independence, Jamaica remains in the imperial embrace of the UK Privy Council, a body established in 1833 to hear appeals from the 'plantations and colonies,' when judicial independence, a natural companion of political independence, could and should, have been ours in 1962.

We are still reeling from the ill-effects of this vicious, dehumanising aspect of colonisation that has left ingrained in the psyche of our people the feeling that they are not good enough, that what they look like is not good enough and that what is foreign, especially if it is white, English, European or American is better. For heaven's sake, there are Jamaicans who bleach their black skins to attain a lighter, whiter shade!!!

Don't underestimate the importance of symbols, especially in a country with a history like ours, and as young as we are. In Jamaica the symbols at the apex of our political and judicial systems are all wrong. The Monarchy and the Privy Council, comprised of foreigners, ignorant of our culture, living thousands of miles away, many of whom have never set foot in our country, and who have precious little in common with the Jamaican people, are rather like obsolescent growths on our nationhood, impatient for excision.

The time has come for a national conversation on colonialism and slavery and their impact on the Jamaican psyche. The argument is not that they explain all the ills of this country. But that they have a continuing impact on our thinking and behavioural patterns is beyond question. I do not share what appears to be the conventional view in Jamaica that it is negative to discuss slavery. The wall of silence that we have built around slavery must be dismantled and replaced by a robust, open and informed discourse. Absent such a discourse, healing and reconciliation with the past will be difficult to achieve.

In Jamaica and the Caribbean, and in the USA for that matter, slavery should be memorialised through films, plays and documentaries in the same way that the Holocaust is. And we shouldn't wait for others, like Hollywood, to do this; we can, and should, do this ourselves. For slavery was a historical reality, and its aftermath, in terms of our identity as a people, is felt by everyone in this country — whether black, brown, white, or any other hue. But slavery must not be a burden on the shoulder of each and every one of us. Rather, the experience of slavery should be seen as providing an opportunity for us to celebrate the struggles and valour of our ancestors, and to be inspired by their determination and indomitable spirit.

And so, some 200 years after Emancipation we remain trapped in the vice-like grip of the historical psychopathology of the colonial slave society. The modern media, particularly television and film, contribute to the negative image that Jamaicans have of themselves. But, by far the more potent explanation of our lack of self-esteem, our self doubt and mistrust of, and lack of confidence in, each other is the 300-year colonial experience. And if you want an explanation for the opposition to the abolition of the Privy Council and its replacement by a Caribbean Court, this is it: the feeling that we are not good enough and cannot be depended on to be just and fair and deliver justice in the way that an English court can.

If it were true that we are a nation of incompetents and dullards, then anyone who proclaimed the stellar achievements of Jamaicans like Marcus Garvey, Norman Manley, TP Lecky and Bob Marley would be guilty of a scandalous falsehood. Today the achievements of our athletes at the global level give the lie to the claim that we can't think, plan and manage to the highest international standards. For, if you are unsure of many things, of this one thing you can be sure: what we have achieved in global athletics is not an accident: it is, rather, the result of a system that has been patiently developed, tried and tested over the past century: a system of athletic instruction, management and administration that is now well established. Yes, we have the natural talent, but so do others. Without the system to harness and develop that talent, we would not be the success story we are.

The same intellect, the same thoughtfulness, the same tenacity, the same ingenuity that has enabled us to build a system that produced in Usain Bolt (a Cornwallian) the fastest sprinter in the world at the senior level; in Dexter Lee, (another Cornwallian) the fastest sprinter in the world at the junior level; and in Odean Skeen, the fastest sprinter in the world at the New Youth Olympic Games level, can be applied to the development of our final court and enable us to produce or contribute to a final appellate body of the highest international standard.

Let the self-reliance and the indigenisation that have catapulted our athletes to the top of the world propel our law to the same level of achievement. I refuse to believe that we can't produce lawyers and judges of the same high calibre as Glen Mills and Stephen Francis — athletic coaches who are at the very top of their profession in the world. If we are independent in sports, in music, in education, and in every other facet of national life, why shouldn't we also be independent in law?

Jamaica and the Caribbean have always produced lawyers of the highest calibre — Norman Manley of Jamaica, is an example, and so too Hugh Wooding of Trinidad and Tobago. It wasn't surprising, therefore, that the Federal Court of Appeal, that was in existence for four years from 1957 to 1961, functioned at the highest level of professionalism, producing judgements of the highest quality. I spent almost the entire first year of my tenure in the DPP's Office, 1968-1969, appearing in the Court of Appeal and had to study the decisions of that Court. It was an enlightening experience.

Can it be seriously contended that judges of the calibre of Telford Georges, Hugh Wooding, Ken Smith and Jim Kerr, and lawyers of the calibre of Norman Manley, Ken Rattray, Ian Ramsay, Frank Phipps, Lloyd Barnett, Shirley Miller and Ralph Carnegie were or are not fit enough to be judges in a final second tier appellate body? And if there are lawyers and judges from that era fit enough, there

will be even more today and tomorrow, because the lawyers coming out of the Norman Manley Law School and the Hugh Wooding Law School are, in my view, better trained than those of us who studied in England, and, certainly, better equipped for practice in Jamaica and the Caribbean.

And if, perchance, it is conceded that our lawyers and judges are competent, the next impediment offered by the naysayers is that they can't be trusted to be impartial. Does that surprise you? We have been told for so long that we are all blackguards, liars, dishonest and dishonourable that we actually believe this falsehood.

The proclivity to look for signs of unreadiness, induced by the retention of the Privy Council, has led some to set phantom hurdles to be overcome and phantom Elysian standards to be attained before we can dispense with the services of that institution. For example, it is said that we can't abolish and replace the Privy Council because the physical facilities in our courts are lacking; we have to upgrade our law libraries and law reports before we get rid of the Privy Council; it would seem that the existence of any shortcoming in the judicial and legal system is a barrier to the abolition of the Privy Council.

This is a silly approach because surely we can, and must, do both at the same time: upgrade the Courts' facilities and law libraries and replace the Privy Council. We have no test to pass to achieve judicial independence. Whatever test there might have been was passed on the 6th August, 1962.

The mistrust that prevents us from believing that our judges can't be fair is part of a wider pathology of suspicion evident in the failure of the political parties to achieve a bipartisan approach in so many areas critical to national development, e.g., education and the threat to security from violence. Our leaders must be told that on this and so many other issues we want the bells to ring and the trumpets to sound, not in a 'jangling discord' but in a glorious harmony for the betterment of all Jamaicans. Then we will begin the release from the centuries old malignancy of mistrust, suspicion and self doubt, and secure for ourselves a deliverance that will enable each Jamaican to repeat with conviction the "I CAN" in "Jamaican", signifying our nationality, our spirit, and our capacity. I CAN because I am Jamaican.

But why is the Privy Council to be replaced, and why with the Caribbean Court of Justice.

First, the Privy Council does not function as an appellate body that is available to the vast body of Jamaicans.

From 1962 to 2009 the Court of Appeal has determined about 13,000 appeals at an average of 270 per year. But the average annual per cent of those appeals that have gone to the Privy Council is just about three per cent.

Now, it has to be acknowledged that it would be unrealistic to expect appellate activity in our highest court to match appellate activity in the court below. That does not happen in any country I know of with a two-tier appellate body. When you have been brushed off once, you take the hint. Moreover, you need permission to access the Privy Council in some cases. But three per cent is low, especially for a country as litigious as ours.

In my letter to the Daily Gleaner of March 11, 1991 I said that "the reason for the paucity of appeals to the Privy Council is obviously economic: litigants cannot afford the 4,000 mile trek for justice" and that "what these figures mean is that the remedy of a right of appeal to the Privy Council is simply not available to the vast majority of litigants in the country". Regrettably, in the intervening years, nothing has happened to oblige me to change this conclusion. There is every reason to believe that

Jamaicans would, by virtue of the lower economic cost, utilise the CCJ in Trinidad and Tobago to a far greater degree than the Privy Council in London.

In effect, there are only two categories of litigants who appeal to the Privy Council. First, those who are wealthy or relatively wealthy, and secondly, appellants in capital murder cases, who benefit from the pro bono services of lawyers in the UK. This is a phenomenon that reinforces the divide in the wider society along economic lines, but it is not one for which, I submit, there should be any room in the halls of justice.

Secondly, the worst consequence of the retention of the Privy Council is that it has deprived Jamaica and the Caribbean of the opportunity (in our case we have lost 48 years) to develop our own jurisprudence — a development that I'm sure would, nonetheless, have been influenced by the law of many other countries, including the UK. Abolition of the Privy Council will, therefore, allow our own to serve at the apex of our judicial system and to fashion a law that meets our peculiar needs as well as the highest international standards.

Thirdly, in the research done the discovery that would, perhaps, most startle those who berate our judges is something that I have instinctively known all along; that is, in terms of reversals of their decisions our judges compare favourably with their UK counterparts. The percentage of appeals allowed by the Privy Council from decisions of the Jamaican Court of Appeal is roughly the same as it is for appeals allowed by the House of Lords from decisions of the UK Court of Appeal — between 30 per cent and 40 per cent. Our judges would, therefore, seem to be as good, or as bad, as the UK judges.

Fourth, we should leave the Privy Council, because, like the tardy guest, we have overstayed our welcome. It's clear that we are not wanted and that if we had any pride and self-respect, we would leave. In 2009, Lord Phillips, president of the new UK Supreme Court that has replaced the Law Lords in the House of Lords, complained that his judges had to spend too much time on cases from the Commonwealth — 40 per cent of their working hours. He said that Caribbean countries should utilise the Caribbean Court of Justice. In what anyone familiar with the UK would recognise as a classic English put down, he said that "in an ideal world" former Commonwealth countries would stop using the Privy Council and set up their own final courts of appeal. You see how we have allowed people to "tek liberty" and "tek step" with us. It is, of course, not an ideal world when sovereign, independent countries feel obliged to rely on others to discharge judicial functions that are properly theirs, especially when those others come reluctant to the job.

The good Lord Phillips also indicated that to cope with the heavy workload resulting from the Privy Council Commonwealth cases, he was considering utilising judges from the UK Court of Appeal. He also questioned whether it was necessary for some Privy Council cases to be heard by five of the UK's most senior judges. I am not sure whether UK Court of Appeal judges have determined Jamaican Privy Council cases. But if they have, it is another blow to Jamaican and Caribbean independence and pride. For it would mean that appeals from decisions of judges in Jamaica's Court of Appeal would be determined by judges of a co-ordinate jurisdiction — British Court of Appeal Judges; an outcome not envisaged by our Constitution which clearly requires that such appeals are to be determined by judges of a higher jurisdiction.

But I don't suppose that matters to those who object to the abolition of the Privy Council. For all they care, Lord Phillips could utilise a magistrate or justice of the peace, or the 'man on the Clapham bus' to sit in appeal on a decision of our Court of Appeal judges. And that would be fine as long as the magistrate, justice of peace or bus rider is British.

In the meantime, it appears that the good Lord Phillips is ensuring that his judges spend more time on appeals from the UK Court of Appeal than on Privy Council cases; and he has every right to. Up to the 9th November, for the year 2010, the Privy Council had hearings in only two Jamaican cases, and these were carried over from cases filed in 2009 or earlier.

In the current year up to November 9, the Privy Council has received 12 applications for leave to appeal. It has granted five, refused five, and is yet to make a decision on the grant of leave in respect of the remaining two applications, which are both criminal cases. Bear in mind that all of this judicial activity relates to applications for permission to appeal and not to decisions resulting from a hearing.

The single case, in respect of which permission to appeal was granted and a hearing has been fixed, was filed in March 2010, permission granted in July 2010 and the hearing fixed for May 2011, that is, 14 months after it was filed. I am informed that no cases will be heard before the end of 2010 as the term list is fully booked. It would seem unlikely that the four other criminal cases in respect of which leave has been granted would be heard before May 2011; that is, at a minimum, 14 months after the first case was filed in March 2010.

No clearer indication could be given than is offered by these statistics that while the Privy Council remains Jamaica's final appellate body, it will take a long time to determine our cases, thereby adding to the difficulties in adhering to the five-year limit in Pratt and Morgan set by the Privy Council itself.

Have we no sense of shame and embarrassment? Immediately after Lord Phillips' statement, Jamaica should have started the process of abolishing appeals to the Privy Council and acceding to the jurisdiction of the CCJ. If we can't find the 40 members of Parliament needed to effect the change, I would move that the entire Parliament be banished to the Pedro Cays. But with the recent news of oil in the Cays not far from exploitation, they might welcome such an exile.

Finally, and this is by far the most important reason, we should leave the Privy Council because National Hero Marcus Garvey was right when he said "It is far better to be free to govern or misgovern yourself than to be governed by anyone else". The failure on our part to seize the plenitude of sovereignty available to us is a betrayal of the hopes and aspirations of our oppressed and disadvantaged forebears and constitutes a misuse of the independence and freedom, now ours, through their struggle and sacrifice.

In the meantime, the Caribbean Court of Justice has been up and running for five years, and performing at the highest international standard. Read the decision in Joseph and Boyce [2006] 69 WIR 104. Considering that, up to four months ago, only two countries, Barbados and Guyana, had accepted the Court's appellate jurisdiction, it has done a fair volume of work — 19 appeals from Guyana, 18 civil and one criminal, and 12 from Barbados, comprised of seven civil and five criminal. (Belize recently accepted the CCJ's appellate jurisdiction). Compared to those figures, the European Court of Human Rights only heard 10 cases in its first 10 years, but it now has about 130,000 cases filed. All new Courts take time to build up a volume of work. My own Tribunal was established in 1993, but did not hear its first case until 1995. And when the other Caribbean countries, led by Jamaica, accept the Court's appellate jurisdiction, the caseload will increase as exponentially as did the European Court's.

But why a Caribbean Court, and not a Jamaican Court, as our final appellate body. I give a simple answer: we want our own and we want the best. The West Indies Federation failed. But there's no denying that Jamaica shares with other Caricom members a common history of colonialism, slavery, struggle, freedom and independence; and that common history makes them part of us, and us of them. Moreover, the path to the CCJ and a Caribbean jurisprudence has been prepared by the

common legal training provided to Caribbean students over the past 40 years under the auspices of the General Legal Council. As good as a final Jamaican appellate body would be, a final appellate body with judges from our sister Caribbean countries and Jamaica, would, by reason of the deeper pool to draw from, be better and stronger, and better serve Jamaica's national interests.

In this entire discourse about the Jamaican society, about our identity as a people, and our will to manage our own affairs and institutions, let us remember that it is up to us, and not to anyone else, to take action. If, as the Honourable Robert Nesta Marley sang to the words of Marcus Garvey, we are to “forward in this generation triumphantly” we must recognise that “none but ourselves can free our minds”. Let us together show this country by our leadership on this issue that for us “The West is Best” is not just a slogan; it is a reality.

Source: The Jamaica Observer, December 7, 2010, [http://www.jamaicaobserver.com/news/Judge-blames-colonisation-s-effects-for-failure-to-accept-CCJ\\_8214292](http://www.jamaicaobserver.com/news/Judge-blames-colonisation-s-effects-for-failure-to-accept-CCJ_8214292)

**Patrick Lipton Robinson** (born 29 January 1944, in Jamaica) is the President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), a position he was elected to by his on 4 November 2008 and re-elected to on 26 October 2009. He was first elected to the Tribunal in 1998. In 2004, he presided over the trial of former Yugoslav president Slobodan Milošević, the first former head of state to be tried for war crimes.

Judge Robinson began his long and distinguished career in public service working as a graduate teacher of English from 1964 to 1966, after which he spent three decades working for the Jamaican government. From 1968 to 1971, he served as a Crown Counsel in the Office of the Director of the Public Prosecutions. Between 1972 and 1998, he served briefly as Legal Adviser to the Ministry of Foreign Affairs, and subsequently in the Attorney General's Department as Crown Counsel, Senior Assistant Attorney-General, Director of the Division of International Law, and Deputy Solicitor-General.

Judge Robinson's long-standing experience in UN affairs dates back to 1972, when he became Jamaica's Representative to the Sixth (Legal) Committee of the United Nations General Assembly, a position that he held for 26 years.

Judge Robinson is a Barrister of Law, Middle Temple, United Kingdom. He holds a B.A. in English, Latin, and Economics from University College of the West Indies (London), an LLB with honours from London University, and an LL.M. in International Law from King's College, University of London, in the areas of the Law of the Sea, the Law of the Air, Treaties, and Armed Conflict. He also holds a Certificate of International Law from The Hague Academy of International Law.

He is the recipient of the national award, Order of Jamaica, awarded by the Government of Jamaica for services to International Law, and of honorary doctorate degrees from the University of the West Indies, Jamaica and the Christian Theological Seminary in Indianapolis, USA.

Positions held:

1988-1995: Commissioner, Inter-American Commission on Human Rights (Chairman in 1991)

1991-1996: Member, International Law Commission

Since 1996: Member, International Bioethics Committee, UNESCO (Vice-Chairman from 2002- 2005)

1995-1996: Foreign member, Haiti Truth and Justice Commission

1997: Chairman, United Nations Commission on Transnational Corporations

Since 1998: Judge, International Criminal Tribunal for the Former Yugoslavia

Sources: [http://en.wikipedia.org/wiki/Patrick\\_Lipton\\_Robinson](http://en.wikipedia.org/wiki/Patrick_Lipton_Robinson), <http://www.icty.org/sid/149>

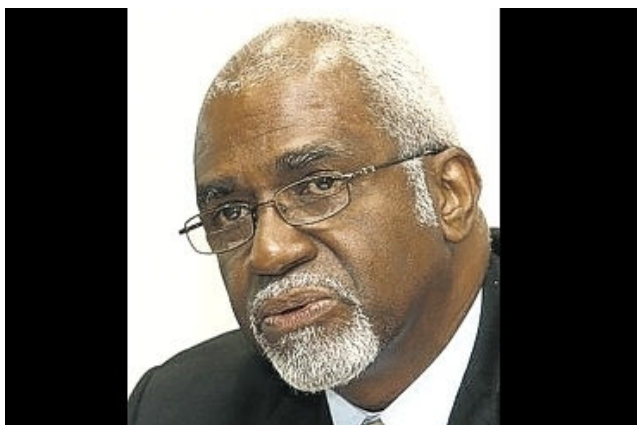


Photo source: Jamaica Observer