



The Death Penalty in Barbados: Reforming a Colonial Legacy

Lynsey Black

Maynooth University, Ireland

Lizzie Seal

Sussex University, United Kingdom

Florence Seemungal

University of the West Indies Open Campus, Trinidad and Tobago

Bharat Malkani

Cardiff University, United Kingdom

Roger Ball

University of the West of England, United Kingdom

Abstract

This article explores the death penalty in Barbados. Drawing on the historical context and the punishment's colonial origins, we seek to make sense of its more recent history, particularly a 2018 landmark legal judgment that has finally forced reform of the sanction in Barbados. The article explores the bifurcated penological history of the death penalty; while laws enacted in London were extended to colonial nations such as Barbados, suggesting a continuation of norms, the tools of criminal justice were wielded for different purposes in the metropole compared with the periphery. We consider the trajectory of this colonial imposition and the retention of repressive punishments after independence, the Caribbean resistance to international abolitionist pressure from the 1990s and the recent reform. The role of the death penalty as a political and symbolic tool is examined, considering especially the colonial legacy of capital punishment in Barbados and the extent to which this factor has shaped contemporary public debates on punishment.

Keywords: Death penalty; Caribbean; Barbados; colonial; postcolonial, punishment.

Introduction

This article examines the status of the death penalty in Barbados. Drawing on the sanction's historical context and examining its uses and meanings through the nineteenth and twentieth centuries, we seek to make sense of the more recent history of this punishment in light of its origins. The article explores the trajectory of capital punishment in the context of a rarely considered nation of the 'Anglophone' Caribbean. The work investigates the legislative framework for capital punishment, tracing how this differed from Britain and the extent to which the shape of death penalty law reflected Barbados' position as a colony, both as a slave society as well as post-emancipation. Historically, criminal justice laws and practices operated differently in the peripheries of empire compared with the metropole. Although the legal transfer of penological statutes suggested a continuation of norms, in practice, the roster of punishments was put to different uses in different regions. In addition to consideration of this differential application of punishment through the pre-independence period, the article further considers the retention of the mandatory death sentence for murder on independence in 1966. Taking a long view that extends the analysis to the present-day, the article then explores recent developments in Barbados. Crucially, the past few years have seen the first significant reform of the law on the death penalty in this jurisdiction and the abolition of the mandatory death sentence for murder in favour



Except where otherwise noted, content in this journal is licensed under a [Creative Commons Attribution 4.0 International Licence](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use with proper attribution. ISSN: 2202-8005 (Online)

of a discretionary model. The role of the death penalty as a political and symbolic tool is examined, considering especially the colonial legacy of capital punishment in Barbados and the extent to which this factor has shaped contemporary public debates on punishment.

Historical Context

Barbados was a British colony from 1627 until its independence in 1966. For two centuries from colonisation Barbados was a slave society until the abolition of slavery across the British Empire in 1834. For over a century after emancipation the nation remained a colony until, in the 1960s, it was one of a number of Caribbean nations that achieved independence (Beckles 2006). For much of this period the economy of Barbados was dominated by sugar production, and the country persisted as a plantation society into the twentieth century (Beckles 2006).

As a British colony, Barbados experienced the legal transfer of many legislative provisions first enacted in Britain, which were then exported throughout the empire. The reach of the British Empire, as Finnane et al. (2022) noted, has shaped much of the globe's criminal justice landscape. With regard to the status of the death penalty post-1627, the position was overviewed by Lord Hoffman in 2004 (*Boyce v The Queen (Barbados)* [2004] UKPC 32: para. 8):

Since the island of Barbados was colonised by the English in the seventeenth century, death has been the mandatory sentence for the crime of murder. That was the common law of England and it became the law of Barbados. In the nineteenth century it was codified in English statutes ... Each of these statutes was followed a few years later by a similar statute in Barbados.

However, this statement belies a number of distinctions. For one, Barbados was subject to shifting penal landscapes throughout the various eras of its history, from slave society to post-emancipation society. The literature has graphically illustrated the violence of the colony and the distinct nature of state control and repression in colonial regions compared with the metropole. In the Caribbean, as Bogues (2002: 13) argued, the exercise of colonial governance was 'structured around brute force and command'. Prior to the abolition of slavery, different penal practices were applied to slaves and 'free' persons. Anderson (2015) wrote on the use of separate 'slave courts' in Barbados, while 'free' persons were tried in the ordinary criminal courts. Anderson also highlighted further distinctions such as the refusal to extend the 'benefit of clergy' provision to enslaved persons. The distinction between enslaved and free was similarly felt in the different due process considerations. An 1827 report noted that upon capital conviction in the slave courts and in cases in which slaveowners did not appeal, there was no procedure for either review or, indeed, the carrying out of the death sentence. The report (Parliamentary Papers 1827: 90) observed:

There being no assigned place, or appointed time, for the execution of slave malefactors, the wretched convict as soon as sentence is passed, is fastened to the nearest tree; unless, which frequently happens, the owner of the soil is at hand to prevent it. In such case, the miserable culprit is dragged, from tree to tree, from estate to estate, and in one case, of then recent occurrence, the constable was at last forced to throw the exhausted sufferer off the Town Bridge, securing the rope by a lamp-post.

The report (1827: 116) continued: 'The common law of England has little or no relation to a state of slavery, as it exists in the British Colonies in the West Indies'. Instead, the island's criminal justice agents acknowledged that slaveowners held an almost absolute power over enslaved persons. The differentiation in the law and the use of violence to emphasise and ossify racial and class hierarchies (Harris 2017) survived the end of slavery and persisted into the post-emancipation period. Again, in these decades, criminal justice lawmaking was undertaken in specifically racialised ways. This is evident in the fact that much of the Caribbean criminal justice legislation of the nineteenth century was introduced following the abolition of slavery, when, as Anderson et al. (2020: 338) noted of Guyana, 'punishment passed from private hands to the colonial state'. In these years, 'racial thinking ... propelled these law and order reforms to top priority' (Patterson Smith 1994: 141). As Paton (2004) cautioned, we should not imagine a stark binary between the slavery and post-emancipation periods, as modes of punishment and control traversed this dateline. Nevertheless, significant change occurred across these eras, and new laws dealing specifically with crime and punishment were enacted for the purpose of imposing repressive state control on the formerly enslaved.¹ White planters called for a more robust criminal justice apparatus, including the establishment of police and militia in Barbados in 1840 (Green 1974). In the years following the end of slavery, criminal justice statutes proliferated, all enacted by the White minority to assert continued control over a potentially 'unruly' population. Anderson et al. (2020) wrote, on Guyana, that there was limited use of formal state criminal justice sites such as prisons under slavery, as enslaved persons were punished by slaveowners. However, following emancipation, new prisons and jails became necessary, especially as the number of persons imprisoned increased significantly in the 1850s and 1860s, increases often attributed to the prosecution of labour law breaches against indentured workers. Indeed, Green (2012: 263) wrote that through the late-nineteenth century and into the 1920s:

penal practice [in Barbados] was shaped by the hegemonic imperative of controlling a seasonally employed, ‘superabundant,’ and entrapped labor force with few of the nonwage, nonplantation livelihood options available elsewhere in the British West Indies. Interdictions (and hence criminalization) were focused against a free domestic labour market, labor emigration, the pursuit of independent subaltern livelihoods, and ‘vulgar’ and potentially disruptive and competitive black presences in ‘civilized’ and exclusive white spaces.

Following the ending of slavery, practices of punishment continued to serve the plantocracy through their control and coercion of labour. In particular, Patterson Smith (1994) considered that after the 1865 Morant Bay rebellion in Jamaica, there was a commitment in London to retaining the West Indies, with an allied fear that such control was precarious, and a very concerted effort to exert forms of coercion and repression based on racialised thinking. Two options were open to London, to more fully democratise these nations ‘or adopt the authoritarian Crown Colony solution’, with the latter emerging as the preferred course (Patterson Smith 1994: 135). Underpinning the differential punishment regimes, Patterson Smith (1994: 131) argued that British politicians in the decades after emancipation shied away from full enfranchisement, offering instead ‘an instructive example of Victorian era racial categorization constricting the application of what were held to be universal principles of human governance’.² The notion of ‘universal’ was applied strictly according to what Gould (2003) termed ‘zones of law’ and ‘zones of violence’. Under this distinction, brutality that would not have been tolerated in Britain was accepted as a necessary measure by colonial authorities.

Crucially, the number of capital statutes increased significantly in these years in Barbados. Levy listed the passing of ‘An Act for the Prevention and Punishment of Malicious Injuries to Property’, ‘An Act for the Punishment and Prevention of Larceny’ and ‘An Act for the Prevention and Punishment of Offences Against the Person’ (cited in Harris 2017: 41). Further demonstrating the bifurcation of law between the ‘metropole’ and the ‘periphery’ and Gould’s ‘zones of law’ and ‘zones of violence’, the classification of property offences as capital offences occurred during a period in which the reverse was happening in Britain, as the death penalty was being gradually restricted until it remained a punishment for only murder and serious subversive offences. The mere fact of these capital statutes does not mean that they were routinely used, and Anderson (2015) suggested that capital punishment was actually not frequently used in the Caribbean in these decades while also acknowledging the symbolic importance that the potentiality of punishment held. Death worked as just one tool in a ‘coercive network’ that could be deployed in the colonies (Sherman 2009). In Barbados in particular, Green (2012: 270) noted the very high levels of persons ensnared within the criminal justice system well into the early twentieth century, citing ‘the disciplinary panoptic of the Barbadian state’. Criminal justice was integral to the maintenance of colonial order. In the decades after slavery’s end, the formal state criminal justice system expanded to create a system of control over formerly enslaved persons. Without the imprimatur of slavery, a concerned plantocracy enacted a series of reforms, many related to crime and punishment, in response to a newly emancipated population.

Independence

In 1966, Barbados achieved independence from Britain, becoming one of a host of Caribbean nations to do so in the post-war period following decades of anti-colonial activism. On independence, Barbados adopted a written constitution. Although Lord Hoffman (*Boyce v The Queen* [2004] UKPC 32: para. 10) held that ‘once the constitution had come into effect, its British origins became no more than a matter of historical interest’, this statement somewhat obscured the continuing effects of colonisation in the postcolonial period. Further, in light of the retention of the Privy Council in London as the final court of appeal (from which position Lord Hoffman spoke), it is a strangely counterfactual claim. Of note, many colonial-era aspects of the penal code were retained post-1966. Among them, the mandatory death sentence for murder.

State-imposed criminal justice measures were enacted to meet the perceived needs of post-slavery society, namely, the maintenance of order. This prioritisation of order continued to inform political thinking post-independence. Thame (2014: 14) asserted that: ‘As a function of the Caribbean state’s concern with its survival, it sought legitimacy, control and power over its own populations.’ In the arena of crime and punishment, this meant that the death penalty was retooled as a sovereign symbol, one that spoke to the continuity of order. Thame noted that this prioritisation of order and continuity was predicated on a continued subordinate position for much of the Afro-Caribbean population. In this way, and as noted by Brown (2017) writing on India, independence rarely brings universal liberation from the structures prevailing under colonialism. Certain groups that had been marginalised prior to independence continued to experience marginalisation in the years subsequent. Instead, as Thame (2014: 2) wrote, post-independence Barbados ‘did not definitely prioritise freedom, caught as it was in a colonial understanding of power as authoritarianism’.

While the mandatory death sentence is of particular interest to this article, it was not the only colonial law preserved in the decades after independence that garnered controversy and international attention. Other preserved colonial laws included punishment by flogging and the criminalisation of sodomy. Kanna (2020: 414) has written that these colonial legacies are

‘among the most tangible and persistent institutions of British colonial control’, often surviving in their original form in the penal codes of former colonies and presenting postcolonial governments with a tool with which to repress and abuse. Not only in the Caribbean but across the former British Empire, traces of colonial punishments persist (see, e.g., Novak, 2014, on the case of Africa). As Pascoe and Novak (2022: 45) stated, ‘former colonies are more likely to be retentionist, as are countries with common law legal systems and a British colonial legacy’. However, Robinson (2019) recently argued that despite the colonial inception of such provisions, they had nonetheless assumed the status of ‘loved law’, generating an affective connection with the public. Rather than being viewed as an alien imposition, longevity had ensured a sense of ownership. This phenomenon can be considered under a process of the indigenisation of law in postcolonial countries, which enmeshes the law within the concepts of ‘the nation’ and ‘the people’ (Maurer 1997). As Thame (2014) noted, in Barbados, this coincided with a period of political conservatism. Robinson et al. (2015: 48) argued that this conservatism was not unique to Barbados: ‘Modern Caribbean constitutionalism, especially in the independent states, has been marked by strong traditionalism, highly valuing the continuity of political institutions and practices that developed during the colonial period’. This trend was pronounced in Barbados, a jurisdiction considered by Lewis (2000: 234) to be ‘intractably English’, where politicians viewed continuity with the past as a marker of political maturity. Thus, although Barbados’ independence Constitution contained expansive rights protections, it also preserved and protected existing colonial punishments in its savings clause. On independence, Barbados retained a penal landscape that had been used to ‘emphasise racial difference and to maintain racial subordination during the colonial period’ (Robinson et al. 2015: 51).

Somewhat paradoxically, the survival of the mandatory sentence of death represented a break with developments in Britain. Following the Royal Commission on Capital Punishment, the *Homicide Act 1957* made the first distinction in Britain between capital and non-capital murder. In 1965, the Murder (Abolition of Capital Punishment) Act suspended the death penalty for a period of five years, at the end of which time, should the legislation lapse, the status quo created by the 1957 Act would prevail. Ultimately, this period of suspension called into question the necessity of capital punishment in any form, and in December 1969, both houses of parliament passed legislation to remove murder from the list of capital crimes.³ The final execution in the United Kingdom took place in 1964 (Seal 2014). At the time of Barbadian independence, as many newly independent Caribbean nations preserved the mandatory death sentence for murder, in Britain, it was becoming a thing of the past.

The Death Penalty Debate

While independent Barbados saw its death penalty regime diverge considerably from Britain, the post-1966 legal status of this punishment continued to feel influence from beyond, from the surviving British influence of the Privy Council, through to the emergence of supranational institutions in the Caribbean and the Americas. Like many other former British colonial nations, on independence in 1966, the Privy Council in London became the final appellate court of Barbados.⁴ Beginning in earnest in the 1990s, the Judicial Committee of the Privy Council (JCPC) began to hear death penalty cases from the Caribbean (Lehrfreund 2001). Young (2019) noted a particular increase in such cases from 1992 to 2002, alongside a greater likelihood that the death penalty would be set aside in individual cases.⁵ Such interventions often prompted backlash from Caribbean governments, particularly as they began to bear fruit for abolitionists. In the 1993 case of *Pratt and Morgan (Pratt and Morgan v Attorney General for Jamaica* [1993] UKPC 1), the JCPC found that the appellants’ 14 years under a death sentence was inhuman or degrading punishment or treatment. The JCPC ([1993] UKPC 1: para. 73) stated that retentionist countries held a ‘responsibility of ensuring that execution follows as swiftly as practicable after sentence allowing a reasonable time for appeal and consideration of reprieve’. Subsequently, persons sentenced to death were to be executed within five years from the passing of sentence. *Pratt and Morgan* demonstrated the ongoing influence of British lawmaking in the Caribbean penal sphere and the form this would take within an evolving human rights landscape. As Young (2019: 68) observed, the actions of a London-based court in the arena of Caribbean death penalty jurisprudence was ‘a sensitive political issue’.

However, despite the JCPC’s misgivings and concerns about the death penalty regimes of Caribbean nations, this Court also found itself barred from drastic action by the presence of various savings clauses within the independence constitutions of these countries. In Barbados, the inability to declare the law unconstitutional related to the general savings clause at Section 26 of the Constitution. As a result, in the case of *Boyce and Joseph*, while all members of the JCPC found the mandatory death sentence to be contrary to Section 15(1) of the Constitution of Barbados (a section within the ‘Fundamental Rights and Freedoms’ chapter which states that: ‘No person shall be subjected to torture or to inhuman or degrading punishment or other treatment’), the majority also held that the savings clause prevented them from making that declaration. In *Matthew v The State* ([2004] UKPC 33: para. 68), Lord Nicholls, speaking on the changing norms of the death penalty issue, lamented the effect of the savings clauses and argued forcibly: ‘Despite these constitutional and international guarantees the governments of these countries [Trinidad and Tobago, Jamaica, Barbados] insist on continuing to inflict on their citizens a form of punishment which, by today’s standards, is inhuman.’ Rather than facilitating the smooth transition from the colonial to the postcolonial, Nicholls argued that these provisions had frozen the law, allowing no admittance of emerging human rights norms. Robinson et al.

(2015: 46) argued that this is perhaps unsurprising, as post-independence Caribbean constitutions prioritised ‘seeking order more so than realizing justice’. A strong preference for traditionalism ensured significant continuation of colonial institutions. In this vein, the Barbadian savings clause protected punishments from any scrutiny that could be brought to bear under the rights guarantees of the constitution, effectively maintaining authoritarian laws that had been premised on violence and coercive control.

The rulings of the JCPC in this period represented a broader international move towards abolition, a move resented in many retentionist nations. In 1999, for instance, the Governor-General of Barbados (cited in Knowles 2009: 304–305) stated that:

the will of the Governments and people of the Caribbean generally, have been frustrated by decisions of the Judicial Committee of the Privy Council ... The rule of law which is the foundation upon which civil society is organised and regulated is being imperilled by judicial decisions in England. It cannot continue.

In an attempt to subvert plans to impose minimum human rights standards, Barbados passed the *Constitution (Amendment) Act 2002*. This was a pre-emptive attempt to protect its death penalty law from challenge (Burnham 2005). In 2005, and partly in response to unwelcome JCPC interference, Barbados removed itself from the jurisdiction of the Privy Council for the Caribbean Court of Justice (CCJ).⁶ While the survival of the JCPC had been viewed by many as a ‘vestigial incongruity’ (McIntosh 2002), decisions such as the move to the CCJ, and attempts to legislate against potential human rights challenges, demonstrated a willingness to protect the capital punishment regime of Barbados against international challenge. Writing as late as 2006, Morrison (2006: 407) referenced the failure of the international abolitionist trend to make headway in the Caribbean and argued that abolition remained a ‘remote possibility’ in the region.

Until a recent landmark 2018 CCJ judgment, Barbados remained one of very few countries internationally that held on to a mandatory death sentence.⁷ This meant that on conviction, a death sentence was the only permitted sentence. However, despite this, the country was de facto abolitionist. Death sentences had not been carried out since the executions of Noel Jordan, Melvin Inniss and Errol Farrell on 10th October 1984 (Amnesty International 2002). Nevertheless, death sentences continued to be handed down, as each murder conviction necessarily attracted a sentence of death. From 2000 to 2017, 31 persons were sentenced to death, and 27 persons who had been sentenced to death had their sentences commuted by the Privy Council for Barbados to life imprisonment. Of these 27 persons, 24 were subsequently released from prison (*Nervais and Severin v The Queen* [2018] CCJ 19). In line with this pattern of commutation and the country’s de facto abolitionist status, the Barbados government had seemingly been committed to abolishing the mandatory death sentence for murder and had given assurances to the CCJ on this as early as 2009.

Public Opinion—Considering Post/Coloniality

As the issue of the death penalty gained momentum and attracted increasing attention from the 1990s, Barbadian governments often referenced the will of the public as justification for its retention. Hood and Seemungal (2020) reported that when asked why their governments had failed to support abolition, most interviewees believed that politicians either cited public support or feared that openly supporting death penalty abolition would be unpopular. However, despite seeming trends that supported retention, public opinion is a notoriously difficult phenomenon to capture (Hutton 2005), and there was little empirical research on which to draw. Some Caribbean Development Research Service (CADRES) surveys seemed to demonstrate retentionist views (Thompson 2010), but Peter Wickham (2010), the director of CADRES, cautioned that the 1999 poll was conducted in the run-up to an election, during which time issues of crime and punishment had become highly politicised. Further caveats must be extended to the 2010 survey figure of 79% support for the death penalty shown in Table 1, which can be broken down to 50% support in some cases of murder and 29% support for death penalty in all cases.

Table 1: Public Opinion on the Death Penalty in Barbados (Wickham 2010)

Year	Support	Don’t Support	Don’t Know
1999	82%	12%	6%
2004	65%	16%	19%
2010	79%	17%	4%

Public support expressed in binary polling can often be hard to interpret. Recent research has elaborated the nuances within death penalty support. This complexity has been noted in research both with ‘elites’ and members of the general public. Hood and Seemungal (2020) conducted research with 100 ‘opinion formers’ across the Eastern Caribbean and Barbados to explore the political meanings of the death penalty and examine the twin fact of many countries’ retention of capital punishment alongside a de facto abolitionist status. Framing this, they noted that at the time of writing, nine of 12 Commonwealth Caribbean countries had either no one or only one person on death row. Across this region, in which the last execution occurred in St. Kitts and Nevis in 2008, Saul Lehrfreund and Parvais Jabbar (cited in Hood and Seemungal 2020: 7) observed that there was a ‘regional status quo ... whereby the death penalty remains on the statute books but is hardly ever imposed and executions almost never carried out’. Of 100 persons interviewed, while 48 were in favour of retaining the death penalty, only 18 of these considered themselves as strongly retentionist. Of those favouring retention, three-quarters held the view that the public would accept abolition of the death penalty if this was undertaken. Meanwhile, 52 interviewees were in favour of abolition, of which 30 were strongly in favour of abolition. Those who favoured abolition were asked to consider and rank reasons for their position. Of these 52, 6 per cent considered that the punishment was an ‘outdated colonial legacy’ as a main reason for abolition, while 23 per cent chose this as an additional reason (71 per cent did not consider this a reason in their thinking). While the punishment’s colonial origins, therefore, figured as an important consideration for a number of interviewees, it was dwarfed by key considerations related to the death penalty’s failure to exert a deterrent effect, the issue of human rights abuses and the possibility of wrongful conviction.

In their recent focus group research into these questions, Black et al. (2020: 303) found that participants generally framed death penalty support within ‘law and order’ concerns; however, the findings also ‘demonstrate the importance of the post-colonial frame in interpreting attitudes’. Despite its colonial origins and historical association with repression based on racial identity, participants tended to view the death penalty as a Barbadian matter rather than a colonial imposition. Further, there was noted ‘ambivalence about human rights norms’ (Black et al. 2020: 304) and a sense of hostility at the interventions of supranational courts and the JCPC. Despite this, and as noted in earlier research conducted in Trinidad and Tobago by Hood and Seemungal (2011), support for the death penalty was contingent support only. While, as Hood and Hoyle (2009) suggested, even retentionist countries have come to some degree of acceptance of a place for human rights within death penalty regimes, focus group participants nevertheless identified human rights as a point of contention. Key within these concerns was an awareness of the role of outside bodies, and participants variously cited ‘international pressure’ and ‘treaties and things that we signed’ in their discussions of the Barbados death penalty law (Black et al. 2020: 313). International pressure was also noted by Hood and Seemungal (2020: 38) as a factor very unlikely to persuade death penalty supporters, with some interviewees citing ‘sovereignty’ and their own country’s ‘internal dynamics’ as reasons why international trends were largely irrelevant. Tellingly, interviewees who favoured abolition argued that the best strategies to achieve this were the creation of an influential civil society pressure group, challenging the punishment’s constitutionality and through a government-established commission. These preferred strategies are, crucially, all vested within the Caribbean region and rely on internal and sovereign routes to abolition, in contrast to the imposition of outside influence. This demonstrates the perceived futility of relying on external bodies to achieve reform and further reflects arguments of neo-colonialism, or ‘cultural imperialism’ (Knowles 2009), which have been made with regard to human rights norms and their international reach. However, in contrast to a perception that abolitionist pressure has always come from ‘beyond’ the domestic sphere in the Caribbean, Campbell (2017, 2015) took issue with the argument that the restriction of the death penalty had been an alien neo-colonial intervention in the Commonwealth Caribbean. In particular, he pointed to the homegrown resistance to capital punishment in Jamaica in the 1970s and Caribbean abolitionist activism.

Recent Reform

For decades, then, Barbadian politicians and commentators had considered the question of punishment in cases of murder, not least because of the JCPC’s moves to curtail the use of the death penalty. Against the possible hopes of Barbadian politicians that the CCJ would offer a more sympathetic hearing to its death penalty regime, the Court made a decisive break with the colonial past in the 2018 *Nervais and Severin* case, in which the CCJ declared that the country’s mandatory death sentence was unconstitutional. This judgment has been the impetus for historic law reform in the country. In autumn 2018, politicians debated a bill before the Barbados House of Assembly that would see the mandatory death sentence for murder abolished. The CCJ (citing Robinson et al. 2015: 237–238), in its ruling, stated that: ‘With these general savings clauses, colonial laws and punishments are caught in a time warp continuing to exist in their primeval form, immune to the evolving understandings and effects of applicable fundamental rights.’ In the wake of this ruling, Barbadian politicians were compelled to reform by a Caribbean court that grounded its judgment in concerns about the legacy of colonialism. Kanna (2020: 414) argued that a law’s colonial origin *should* be a matter for consideration before the courts, writing that ‘critiques of colonial influence should be an operationalized element of postcolonial constitutional review’. The judgment demonstrates how conflicting interpretations of historical legacy can provide an interesting space in which to consider postcolonial developments (Cunneen 2011).

On foot of *Nervais and Severin*, the *Offences Against the Person (Amendment) Act 2018* introduced a discretionary death penalty regime. This Act amended Section 2 of the *Offences Against the Person Act 1994* to remove the mandatory sentence of death for all persons convicted of murder. Section 2(1) now reads: ‘A person who commits the offence of murder may be liable on conviction on indictment to a) suffer death; or b) imprisonment for life.’ There then follows a list of nine factors that, if present, mean that the judge can sentence the offender to death. The aggravating factors are extensive and not exhaustive. These factors, at Section 2(2), are:

- a) *the murder was committed with a high level of brutality, cruelty, depravity, or callousness;*
- b) *the murder involved calculated or lengthy planning;*
- c) *the deceased was a Judge, a Magistrate, the Director of Public Prosecutions or a legal officer in the Department of Public Prosecutions and the office of the deceased was a factor in the commission of the offence;*
- d) *the deceased was a member of the Royal Barbados Police Force, a member of the Barbados Defence Force, a member of the Special Constabulary or a prison officer and the office of the deceased was a factor in the commission of the offence;*
- e) *the deceased was a member of a group of persons who have a common characteristic such as race, nationality, ethnicity or religion and this was a factor in the commission of the offence;*
- f) *the deceased was a witness or a juror in a pending or concluded trial and this was a factor in the commission of the offence;*
- g) *the deceased was particularly vulnerable because of his age, health or disability or because of any other factor;*
- h) *the person convicted was convicted of 2 or more offences of murder, whether or not arising from the same circumstances or*
- i) *in the opinion of the Court, there are any other exceptional circumstances which must be taken into account and which justify the imposition of a sentence of death.*

Following the enactment of this legislation, the *Constitution (Amendment) Act 2019* made the necessary constitutional changes, including making significant changes to the general savings clause.⁸ It remains to be seen how judges will respond to the newly discretionary death penalty, especially considering the very wide number of aggravating factors that can be considered at sentencing. To date, no guidelines have been published beyond the expansive list of death-eligible categories. Yet despite the significant scope for capital murder convictions, since reform of the law, cases of murder have been dealt with by the offence of non-capital murder. Amnesty International (2020, 2021) reported that there were no new death sentences handed down in either 2020 or 2021, and there have been no reports of capital murder convictions since the reform.⁹

One immediate consequence of the reform of the death sentence regime in Barbados has been evident in the calls for lengthy custodial sentences and comprehensive sentencing guidelines, which will ensure fitting punishment is handed down to persons convicted of non-capital murder (Wedderburn 2020). In this way, both the mandatory sentence and the parameters of debate following the abolition of this sanction suggest the very tangible consequences of empire. Increasingly, studies of crime and punishment are looking beyond an Anglophone or Western ‘core’ and adopting a ‘Southern’ or Global South perspective. Within this, the role of empire is an essential lens of analysis. As Carrington et al. (2016) have argued with respect to the approach of ‘Southern criminology’, it is an inescapably political, as well as a theoretical and empirical project, the scope of which must necessarily consider the differential possession of power at a global level. However, even within this, Ciocchini and Greener (2021: 3) considered that ‘Southern criminology’ still neglects the concept of empire and the legacies of imperialism, remaining ‘relatively limited in its theoretical interrogation of the nature of colonialism’. In particular, they argued that contemporary forms of colonialism and empire are neglected and that there is no move to explore ‘colonialism as continuing to reshape global social relations and sustain geographies of inequality and oppression’ (Ciocchini and Greener 2021: 3). Crucially, ‘seeking explanations through history downplays the racialized and class-based functions of carceral power today’ (Ciocchini and Greener 2021: 4). In the context of Barbados, the legacy of a colonial punishment has only found recent remedy in a Caribbean court. In the wake of the first substantial reform of the death penalty regime since independence, it is worth considering the resulting debates about the ‘appropriate’ quantum of punishment when persons convicted of non-capital murder are being sentenced. Within this discourse, there is a perceptible need to substitute the seeming severity of a death sentence (even though such sentences were never carried out) with a punishment that ‘fits’ the crime. The long retention of a mandatory death sentence for murder, therefore, continues to colour discussions of how a discretionary sentencing regime should operate. Thus, a remnant of the punitivism of colonial penalty survives in contemporary assumptions about suitable levels of severity. As Paton (2011) noted, despite a developing sociology of state violence in the Caribbean and increasing academic interest in crime and responses to crime, it remains the case that the historical situatedness of such phenomena remains underexplored and, more specifically, the processes and trajectories of punishment from the edifices of slavery and colonialism to present-day are not understood.

Conclusion

This article has considered the legacies of colonial punishment frameworks, specifically the mandatory death sentence in Barbados. Historically, processes of colonialism relied on penalty and the imposition of violence and coercion to maintain the position of the coloniser against that of the colonised. Within expressions of punishment, clear distinctions were made between these groups. As Harris (2017) wrote, punishment was instrumental in demarcating race and social positions during slavery and post-emancipation. Such legacies remain evident in the more contemporary punishment landscapes of postcolonial nations. Anderson et al. (2020: 345) wrote that the embeddedness of pre-independence penalty across many former British colonies has led to ‘the ongoing coloniality of modern-day policy’. In Barbados, this was starkly demonstrated by the intense debates that erupted around the retention of the mandatory death sentence for murder against the international movement towards abolition. When it came, reform of this punitive colonial legacy saw its colonial foundation explicitly named by the CCJ as it struck down the law.

The landmark legal judgment that saw the removal of the mandatory death sentence for murder occurred at a time when other remnants of colonialism were likewise receiving renewed attention. At the opening of the Barbados Parliament on 16th September 2020, Governor-General Sandra Mason read the speech of Prime Minister Mia Mottley, which announced the country’s intention to remove Queen Elizabeth II as head of state (Office of the Prime Minister of Barbados 2020). She declared:

Barbados’ first prime minister, The Rt. Excellent Errol Walton Barrow, cautioned against loitering on colonial premises. That warning is as relevant today as it was in 1966. Having attained Independence over half a century ago, our country can be in no doubt about its capacity for self-governance. The time has come to fully leave our colonial past behind. Barbadians want a Barbadian Head of State. This is the ultimate statement of confidence in who we are and what we are capable of achieving. Hence, Barbados will take the next logical step toward full sovereignty and become a Republic by the time we celebrate our 55th Anniversary of Independence.

Crucially, however, the ongoing ramifications of colonialism remain, even as vestiges of colonial rule fall away. In the context of the recent death penalty reforms in Barbados, the legacy of the mandatory death sentence persists in the observed need to ensure ‘fitting’ punishments within a discretionary punishment regime.

Correspondence: Dr Lynsey Black, Lecturer/Assistant Professor in Criminology, School of Law and Criminology, Maynooth University, Ireland. lynsey.black@mu.ie

¹ While the present article explores the case of Barbados, the links between histories of slavery and the retention of the death penalty have been explored elsewhere and provide an important means of understanding contemporary punishments in their historical contexts. Writing on the US, Banner (2006: 123) noted that: ‘When we think about the death penalty, we think, in part, in race-tinged pictures—of black victims lynched by white mobs, of black defendants condemned by white juries, of slave codes and public hangings.’

² At a time when the policy was being reversed elsewhere, British military regiments were stationed throughout the Caribbean, as a bulwark against internal unrest rather than external threat (Patterson Smith 1994).

³ The legislation applied to England, Wales and Scotland. Northern Ireland took this step in 1973. The death penalty remained for serious political offences, such as treason, and for fire in a naval dockyard for some time after this, although no one was sentenced to death under these provisions.

⁴ Morrison (2006) writes that on independence, each of the former British colonies except for Guyana chose to allow appeals to continue to go to this external court rather than abolishing this system.

⁵ Young (2019) cites the role of ‘The Death Penalty Project’ in this period as especially influential in bringing such cases. From independence in 1966, until Barbados replaced the JCPC with the Caribbean Court of Justice, seven cases had been heard by the JCPC, of which all were death penalty cases.

⁶ The CCJ was created in 2001 and inaugurated in 2005. It sits in Trinidad and Tobago. The CCJ was part of a move towards a Caribbean jurisprudence. The Court settles disputes between Caribbean Community (CARICOM) countries, but to date is the final court of appeal for Guyana, Barbados, and Belize only. In this capacity, it considers various human rights issues such as the death penalty. Recent moves across the Caribbean, such as Barbados becoming a republic, may see more countries shift from the British Judicial Council of the Privy Council to the CCJ as a final court of appeal, including recent moves from Dominica and St Lucia.

⁷ In 2021, mandatory death sentences were imposed in Cameroon, Ghana, Iran, Malaysia, Nigeria, Pakistan, Sierra Leone, Singapore, Trinidad and Tobago and Zambia (Amnesty International 2022)

⁸ The Act passed on 4th April 2019. This Act also removed the Governor-General’s ability to impose time limits after which appeals for mercy would be disregarded.

⁹ *The Offences Against the Person (Amendment) Act 2020* further provided for the re-sentencing of persons already convicted of murder and sentenced to death or those whose capital sentences had been commuted to life imprisonment. Amnesty International (2022) reported that at the close of 2020, six persons were known to be under sentence of death in Barbados. This figure is down from seven persons under sentence of death at the close of 2019.

References

- Amnesty International (2002) *Barbados: Proposed executions could constitute murder*. <https://www.amnesty.org/en/documents/amr15/001/2002/en/>
- Amnesty International (2021) *Global report: Death sentences and executions 2020*. <https://www.amnesty.org/en/documents/act50/3760/2021/en/>
- Amnesty International (2022) *Global report: Death sentences and executions 2021*. <https://www.amnesty.org/en/documents/act50/5418/2022/en/>
- Anderson C (2015) Execution and its aftermath in the nineteenth-century British Empire. In Ward R (ed.) *A global history of executions and the criminal corpse*: 170–198. London: Palgrave.
- Anderson C, Ifill M, Adams E and Moss K (2020) Guyana's prisons: Colonial histories of post-colonial challenges. *Howard Journal of Crime and Justice* 59(3): 335–349. <https://doi.org/10.1111/hojo.12382>
- Banner S (2006) Traces of slavery: Race and the death penalty in historical perspective. In Sarat A and Ogletree Jr CJ (eds) *From lynch mobs to the killing state: Race and the death penalty in America*: 122–142. New York: NYU Press.
- Beckles H (2006) *A history of Barbados: From Amerindian settlement to Caribbean single market*. Cambridge: Cambridge University Press.
- Black L, Seal L and Seemungal F (2020) Public opinion on crime, punishment and the death penalty in Barbados. *Punishment & Society* 22(3): 302–320. <https://doi.org/10.1177/1462474519881989>
- Bogues A (2002) Politics, nation and postcolony: Caribbean inflections. *Small Axe* 6(1): 1–30. <https://doi.org/10.1353/smx.2002.0003>
- Brown M (2017) Postcolonial penalty: Liberty and repression in the shadow of independence, India c. 1947. *Theoretical Criminology* 21(2): 186–208. <https://doi.org/10.1177/1362480615625762>
- Burnham MA (2005) Saving constitutional rights from judicial scrutiny: The savings clause in the law of the commonwealth Caribbean. *University of Miami Inter-American Law Review* 36(2): 249–269.
- Campbell J (2015) Murder appeals, delayed executions, and the origins of Jamaican death penalty jurisprudence. *Law and History Review* 33(2): 435–466. <https://doi.org/10.1017/S0738248015000103>
- Campbell J (2017) Death row resistance, politics and capital punishment in 1970s' Jamaica. *Crime, History and Societies* 21(1): 55–77. <https://doi.org/10.4000/chs.1715>
- Carrington K, Hogg R and Sozzo M (2016) Southern criminology. *British Journal of Criminology* 56: 1–20. <https://doi.org/10.1093/bjc/azv083>
- Ciocchini P and Greener J (2021) Mapping the pains of neo-colonialism: A critical elaboration of southern criminology. *British Journal of Criminology* 61(6): 1612–1629. <https://doi.org/10.1093/bjc/azab041>
- Cunneen C (2011) Postcolonial perspectives for criminology. In Bosworth M and Hoyle C (eds) *What is criminology?*: 249–266. Oxford: Oxford University Press.
- Finnane M, Sato M and Trevaskes S (2022) Death penalty politics: The fragility of abolition in Asia and the Pacific. *International Journal for Crime, Justice and Social Democracy* 11(3): 1–3. <https://doi.org/10.5204/ijcisd.2470>
- Gould EH (2003) Zones of law, zones of violence: The legal geography of the British Atlantic, circa 1772. *The William and Mary Quarterly* 60: 471–510.
- Green CA (2012) Local geographies of crime and punishment in a plantation colony: Gender and incarceration in Barbados, 1878–1928. *New West Indian Guide* 86(3/4): 263–290.
- Green WA (1974) James Stephen and British West India Policy, 1834–1847. *Caribbean Studies* 13(4): 33–56.
- Harris DP (2017) *Punishing the black body: Marking social and racial structures in Barbados and Jamaica*. Athens, GA: University of Georgia Press.
- Hood R and Hoyle C (2009) Abolishing the death penalty worldwide: The impact of a 'new dynamic'. *Crime and Justice* 38(1): 1–63. <https://doi.org/10.1086/599200>
- Hood R and Seemungal F (2011) Public opinion on the mandatory death penalty in Trinidad. <https://deathpenaltyproject.org/knowledge/public-opinion-on-the-mandatory-death-penalty-in-trinidad/>
- Hood R and Seemungal F, with Athill A (2020) Sentenced to death without execution: Why capital punishment has not yet been abolished in the Eastern Caribbean and Barbados. <https://deathpenaltyproject.org/knowledge/sentenced-to-death-without-execution-why-capital-punishment-has-not-yet-been-abolished-in-the-eastern-caribbean-and-barbados/>
- Hutton N (2005) Beyond populist punitiveness. *Punishment & Society* 7(3): 243–258. <https://doi.org/10.1177/1462474505053828>
- Kanna M (2020) Furthering decolonization: Judicial review of colonial criminal laws. *Duke Law Journal* 70: 411–449.
- Knowles JB (2009) Capital punishment in the Commonwealth Caribbean: Colonial inheritance, colonial remedy? In Hodgkinson P and Schabas W A (eds) *Capital punishment: Strategies for abolition*: 282–308. Cambridge: Cambridge University Press.
- Lehrfreund S (2001) International legal trends and the 'mandatory' death penalty in the Commonwealth Caribbean. *Oxford University Commonwealth Law Journal* 1(2): 171–194. <https://doi.org/10.1080/14729342.2001.11421392>

- Lewis GK (2000) *The growth of the modern West Indies*. Kingston: Ian Randle.
- Maurer B (1997) *Recharting the Caribbean: Land, law and citizenship in the British Virgin Islands*. Ann Arbor: University of Michigan Press.
- McIntosh SCR (2002) *Caribbean constitutional reform: Rethinking the West Indian polity*. Kingston: Caribbean Law Publishing Company.
- Morrison M (2006) The Judicial Committee of the Privy Council and the death penalty in the Commonwealth Caribbean: Studies in judicial activism. *Nova Law Review* 30(3): 403–424.
- Novak A (2014) *The death penalty in Africa: Foundations and future prospects*. New York: Palgrave Macmillan.
- Office of Prime Minister of Barbados (2020) Opening of Parliament and the Throne Speech. <https://pmo.gov.bb/2020/09/15/opening-of-parliament-and-the-throne-speech/>
- Parliamentary Papers (1827) *Substance of the three reports of the commission of inquiry into the administration of civil and criminal justice in the West Indies*. London: Joseph Butterworth and Son.
- Pascoe D and Novak A (2022) Holdouts in the South Pacific: Explaining death penalty retention in Papua New Guinea and Tonga. *International Journal for Crime, Justice and Social Democracy* 11(3): 43–56. <https://doi.org/10.5204/ijcjsd.2475>
- Paton D (2004) *No bond but the law: Punishment, race and gender in Jamaican state formation, 1780–1870*. Durham, NC: Duke University Press.
- Paton D (2011) Revisiting no bond but the law. *Small Axe* 15(1): 176–186.
- Patterson Smith J (1994) The Liberals, race, and political reform in the British West Indies, 1866–1874. *Journal of Negro History* 79(2) 131–146.
- Robinson T (2019) Loving law: Criminalization and decriminalization of same-sex sex in the Anglophone Caribbean. Law and Society Association Conference, Washington, DC. 30 May–2 June.
- Robinson T, Bulkan A and Saunders A (2015) *Fundamentals of Caribbean constitutional law*. London: Sweet and Maxwell.
- Seal L (2014) *Capital punishment in twentieth-century Britain: Audience, justice, memory*. Abingdon: Routledge.
- Sherman TC (2009) Tensions of colonial punishment: Perspectives on recent developments in the study of coercive networks in Asia, Africa and the Caribbean. *History Compass* 7(3): 659–677. <https://doi.org/10.1111/j.1478-0542.2009.00597.x>
- Thame M (2014) Disciplining the nation: Considering the privileging of order over freedom in postcolonial Barbados and Jamaica. *Social and Economic Studies* 63(2): 1–29.
- Wedderburn F (2020) Crown says punishment must fit crime. *Barbados Today*, 10 December. <https://barbadostoday.bb/2020/12/10/crown-says-punishment-must-fit-crime/>
- Wickham P (2010) To hang or not to hang. *Nation News*, 12 September. <https://www.nationnews.com/2010/09/12/to-hang-or-not-to-hang/>
- Thompson R (2010) Hang them! *Nation News*, 10 October. <https://www.nationnews.com/2010/10/10/hang-them/>
- Young H (2019) The death penalty: The law lords alter course in the Commonwealth Caribbean. *Journal of International and Global Studies* 10(2): 64–85.