Emancipation Betrayed: Social Control Legislation in the British Caribbean (with Special Reference to Barbados), 1834-1876 - Freedom: Beyond the United States

Anthony De V. Phillips

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Part of the Law Commons

Recommended Citation


Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol70/iss3/14

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.
EMANCIPATION BETRAYED?: SOCIAL CONTROL LEGISLATION IN THE BRITISH CARIBBEAN (WITH SPECIAL REFERENCE TO BARBADOS), 1834-1876

ANTHONY DE V. PHILLIPS*

INTRODUCTION

The dismantling of the legal regime which had sanctioned slavery for some two hundred years, 1636-1838, in the British Caribbean colonies converted masters and slaves into employers and labourers. The burden of this paper, however, is that market forces were not allowed to prevail in the labour market in the post-emancipation decades. The planters and the political elite generally legislated new forms of labour coercion in an effort to counteract freedom and maintain the viability of the plantation enterprise.¹ This area of labour arrangements will be the main focus of this paper.

Bearing in mind that "la vérité se trouve dans les nuances" ["truth is found in nuances"] it is increasingly clear that the stark contrast between unfree labour and free labour needs to be adjusted. It is necessary to examine the processes by which individuals and groups sought to establish their autonomy, often despite formidable hurdles erected by powerful men who sought to control their labour.²

The racial assumptions of the slavery era were not abandoned with the end of the slavery system. Indeed, the pigmentocracy which

* Professor of History, University of the West Indies, Barbados.

1. For discussion of the interplay between chattel slavery and wage slavery, see From Chattel Slaves to Wage Slaves, The Dynamics of Labour Bargaining in the Americas (Mary Turner ed., forthcoming 1995); Marcus Cunliffe, Chattel Slavery and Wage Slavery: The Anglo-American Context, 1830-1860 (1979); The Wages of Slavery: From Chattel Slavery to Wage Labour in Africa, the Caribbean and England (Michael Twaddle ed., 1993). For a most perceptive article in comparative history, see Rebecca J. Scott, Defining the Boundaries of Freedom in the World of Cane: Cuba, Brazil, and Louisiana after Emancipation, 99 Am. Hist. Rev. 70 (1994). In this article, Id. at 71 n.4, a comprehensive bibliography is announced: Societies after Slavery: A Select Annotated Bibliography of Printed Sources on the United States, Africa, Brazil, and the Caribbean (Leslie Rowland et al. eds., 1995).

was the basic feature of the creole white/brown/black pyramidal social structure survived intact, including the small group of poor whites as the exceptions who proved the rule. The main element of racial accommodation was the coaptation of brown politicians into the political arena in Jamaica. But their prominence in the public sphere did not extend into the private social sphere. The colonies were segmented societies, and territories with large numbers of new immigrant workers from India, China, Madeira, and elsewhere were plural societies.

Recognising that there was a wide spectrum of views concerning labour policies and practices, it is useful to juxtapose two contrasting and influential formulations about what was to be done in the existing context of white capital and black labour.

The pre-eminent and most notorious polemic of the time in favour of coercion as the basis of labour relations is Thomas Carlyle's *Occasional Discourse on the Nigger Question*. He wrote:

To state articulately, and put into practical lawbooks, what on all sides is *fair* from the West-Indian White to the West-Indian Black; what relations the Eternal Maker *has* established between these two creatures of His; what He has written down with intricate but inef-faceable record, legible to candid human insight, in the respective qualities, strengths, necessities and capabilities of each of the two: this . . . will be a long problem . . . . What are the true relations between Negro and White, their mutual duties under the sight of the Maker of them both; what human laws will assist both to comply more and more with these?

Carlyle concluded that:

[W]ith regard to the West Indies, it may be laid-down as a principle . . . That no Black man who will not work according to what ability the gods have given him for working, has the smallest right to eat pumpkin, or to any fraction of land that will grow pumpkin, how-

4. Gad Heuman, Between Black and White: Race, Politics, and the Free Coloreds in Jamaica, 1792-1865, at 4-5 (1981); M.G. Smith, The Plural Society in the British West Indies 326 (1965). Smith points out that "The common value system of the ruling group [dominant minority] in a plural society is not commonly shared by the subordinates." *Id.* at 326 n.11; see also David Lowenthal, West Indian Societies 81-89 (1972); Philip Mason, Patterns of Dominance 281 (1971). Mason concludes, "When the legal barriers go down, the psychological defences go up. We should expect, and do in fact find, that when slavery came to an end there would be an increase in discrimination based on shades of colour." *Id.*
5. Imperialism 161-62 (Philip Curtin ed., 1971). Carlyle's work was first printed in Fraser's Magazine, Dec. 1849. It was reprinted as a separate pamphlet in 1853 and among the Miscellany of Carlyle's works. It is accessible in, e.g., Imperialism, supra, at 135-65. Curtin comments that "the essay is chiefly famous as one of the most vitriolic pieces of racist writing in nineteenth-century England, and the most prominent statement of the conclusions that might be drawn from the myth of tropical exuberance." *Id.* at 135.
ever plentiful such land may be; but has an indisputable and perpetual right to be compelled, by the real proprietors of said land, to do competent work for his living.6

Anthony Trollope thought and wrote similarly: “when white men and black men are together the white man will order and the black man will obey.”7 His summary of the transition to freedom was as follows:

The negro’s idea of emancipation was and is emancipation not from slavery but from work. To lie in the sun and eat breadfruit and yams is his idea of being free. Such freedom as that has not been intended for man in this world; and I say that Jamaica, as it now exists, is still under a devil’s ordinance.8

These were avowedly illiberal effusions, and must be distinguished from the strand within the abolitionist school of thought represented, for example, by Buxton, one of the main abolitionist spokesmen. Giving evidence before a House of Lords committee in 1832, he started from the general proposition that “it may be extremely necessary for the state to introduce laws for protecting persons from living in idleness to the detriment of the state.”9 The limitation on the freedom of action of the individual was deemed to be justified by the line of thought that the public good (the general good) should take precedence over individual desire. Robert Steinfeld has traced the persistence of this idea: “In early modern England, labor was viewed as a common resource to which the community had rights.”10 This paternalist perspective was concerned to maintain a form of social order—“if it is good for the plantation, it must be good for the whole community.”

English abolitionism, however, also contained a strand of thought which laid stress on the autonomy of the individual. This may be illustrated by the response of Lord John Russell to petitioners complaining about the spread of peasant-type activities:

It is not to be expected that men who can subsist in comfort without hard labour, will continue to devote themselves to it. . . . A few acres of ground will produce provision for a family, with some surplus to sell at market, and bring home manufactured goods; the Ne-

6. Id. at 141-42.
8. Id. at 152 (citing Trollope, supra note 7, at 92).
groes who earn high wages buy or hire plots of land, and refuse to let their daily labour for hire. . . . There is nothing in this singular or culpable. No man in this country [England], who has capital sufficient to keep a shop, or rent a farm, will follow the plough as a day-labourer, or work from morning till night as a hand loom weaver.11 This strand of thought within the Colonial Office acted as a brake on the rival tendency which aimed to regulate and coerce the blacks. Clearly, Russell was insisting that the labourers were making rational choices.

Attitudes within the Colonial Office were of central significance since representative democracy was so limited in the colonies. Lowenthal established the clear link: “non-white exclusion from political power paralleled their economic subordination.”12 After brief attempts at constitutional advance, by 1866 Jamaica and most of the other colonies had become Crown Colonies. In that system, the people were shut out from formal political participation, but the elite continued to be nominated to sit on the Councils, exerting influence despite the fact that control of public affairs rested with the Governor as representative of the Crown.13

In the body of this paper there is some discussion of a range of adjustments to the systems for the administration of justice. In extreme cases the people created their own courts.14

From a legal perspective, the abolition of slavery in 1838 in a society such as the British West Indies, where most of the people were enslaved, necessarily marked a fundamental divide. The old legal regime had to be replaced by a new legal system in which the rule of law would require a theoretical equality before the law.

The dismantling of the old order sprang from multiple causes which continue to be actively debated.15 The British Parliament outlawed the slave trade in 180716 and again legislated for the Empire in July 183317 by the Act of Abolition of Slavery. London had to seek to balance imperial interests and the claims of diverse interests in each

12. Lowenthal, supra note 4, at 63.
13. Humphrey H. Wrong, Government of the West Indies 71-80 (1923).
16. 47 Geo. III, c. 36 (Eng.).
17. 3 & 4 Will. IV, c. 73 (Eng.).
colony. Decisions were the outcome of lobbying, negotiation, and compromise.18

One notable compromise was the Apprenticeship System, best regarded as an extension of slavery, as part of the compensation to the planters for the loss of property. This system lasted from 1 August 1834 to 31 July 1840 for praedial apprentices.19

From 1 August 1838 all persons in the British Caribbean colonies were free, with a paper equality20 before the law. But developments over the next few decades lead us to argue that the laws relating to postemancipation society (like those relating to slavery) “allow us to test as clearly as with any other area of jurisprudence the contention that law has traditionally reflected the socio-economic needs of the law-making class.”21

The concept of modernization of law provides one possible theoretical basis for the following discussion, which will be necessarily selective. The categories (adapted from Galanter)22 will provide guidance for the analysis of particular clusters of ‘laws of freedom’. A brief summary follows of the eleven distinctive characteristics identified:23

1. Modern law consists of rules that are uniform and unvarying in their application, with a territorial incidence. The differences among persons that are recognized by the law are not differences in intrinsic kind or quality, but differences in function, condition, and achievement in mundane pursuits.

19. Praedial apprentices were those who were directly involved with the growing of the export crops. Those who worked with the livestock, household workers, and factory workers were not praedials. Richard Frucht, From Slavery to Unfreedom in the Plantation Society of St. Kitts, W.I., in Comparative Perspectives on Slavery in New World Plantation Societies 379, 379 (Vera Rubin & Arthur Tuden eds., 1977); see also William A. Green, British Slave Emancipation: The Sugar Colonies and the Great Experiment, 1830-1865, at 121 (1976); Woodville Marshall, The Termination of the Apprenticeship in Barbados and the Windward Islands: an Essay in Colonial Administration and Politics, 2 J. Caribbean Hist. 1 (1971); Alex Tyrrell, The “Moral Radical Party” and the Anglo-Jamaican Campaign for the Abolition of the Negro Apprenticeship System, CCCXCI Eng. Hist. Rev. 481, 482 (1984).
20. In the words of David Lowenthal, “Emancipation removed civil barriers of race, but in every West Indian territory political equality was a legal fiction.” Lowenthal, supra note 4, at 63.
23. Id. at 168-70.
2. Modern law is transactional. Rights and obligations are apportioned as they result from transactions (contractual, tortious, criminal) between parties rather than aggregated in unchanging clusters that attach to persons because of determinants outside the particular transactions. Such status clusters of rights and obligations as do exist are based on mundane function or condition (for example, employer, a business enterprise, a wife) rather than on differences in inherent worth.

3. Modern legal norms are universalistic. The application of law is reproducible and predictable. Cadi justice is replaced by Kant's Categorical Imperative.24

4. The system is hierarchical, uniform, and predictable, with a network of courts of first instance, and layers of appeal and review.

5. The system is organized bureaucratically, impersonally, and with written rules. In order to permit review, written records in prescribed form must be kept in each case.

6. The system is rational. Rules are valued for their instrumental utility in producing consciously chosen ends.

7. The system is run by full-time professionals, not persons who engage in it sporadically or avocationally.

8. The system develops technicality and complexity, requiring specialized professional intermediaries between the courts and the persons who must deal with them. Lawyers replace general agents.

9. The system is amendable, with regular and avowed methods for explicitly revising rules and procedures. Legislation replaces the slow reworking of customary law.

With regard to the relation of law to political authority.

10. The system is political. Law is so connected to the state that the state enjoys a monopoly over disputes within its cognizance.

11. The task of finding law and applying it to concrete cases is differentiated in personnel and technique from other governmental functions. The legislature, judiciary, and executive are separate and distinct.

The above schema is in the nature of a model, attempting to isolate certain common salient features of legal systems which began to

24. There are many editions of Immanuel Kant's works. T.K. Abbot's 1873 translation of *Kant's Second Formulation of the Categorical Imperative: Humanity as an End in Itself* is as follows: "Accordingly the practical imperative will be as follows: So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only."
be developed in the West increasingly from the period of the American and French Revolutions. The British Empire was in the vanguard of this movement, and one feature of the developing postemancipation situation was that London was decidedly more liberal with regard to social policy and its legal expression than the reactionary planters-legislators-magistrates who dominated Jamaica, Barbados, Antigua, and the other Chartered Colonies. But even the Colonial Office accepted as a given that the plantation system had to be preserved, practically at all costs.

The result was that similar tendencies were to be found throughout the British West Indies, despite the fact that there were two categories of colonies, with distinct constitutional differences. The Chartered Colonies, those settled or acquired in the seventeenth century and up to 1763, possessed the Old Representative System. The legislature consisted of: the Governor (usually an Englishman appointed by the Crown and sent out from London); an upper chamber, the Legislative Council (nominated by the Governor); and an entirely elected lower chamber, the House of Assembly. Consideration will shortly be given to the franchise question. The executive government was vested in the Governor, who, in most colonies, in 1838 was also head of the judiciary. The system was inefficient, with a number of inherent weaknesses. There was a separation between power and responsibility, and the Governor could neither make laws nor administer public affairs without the Assembly's cooperation. Notably, the Assembly could frustrate executive designs by its control of finance. However, by convention London could regulate an internal matter within a Chartered Colony only by Act of Parliament. The inefficiencies and occasional deadlock of the Old Representative System, along with other factors, had led to the British preference for a Crown Colony System after 1763. In those colonies there was usually a single chamber, the Legislative Council, in which the Crown had an assured majority. In addition, legislation could be imposed on those colonies by executive authority, notably by Order in Council. It may be helpful to note here that the three main Crown Colonies — Trinidad, British Guiana, and St. Lucia — had been conquered so that their legal

25. Most of the thirteen North American colonies also had such constitutions up to 1776. For the West Indies, see F.G. Spuridle, *Early West Indian Government* 28-32 (1962).
27. Wrong, *supra* note 13, at 36-47.
systems included elements of Spanish, Dutch, and French law. In the Crown Colonies the Colonial Office was able to put in place laws such as it wanted made, and these were recommended to the other colonies as model laws, with varying results.

In anticipation of Emancipation (either gradually or rapidly) the Legal Department of the Colonial Office, led by the enormously energetic James Stephen, undertook a preliminary review of the legal situation. This was part of the amelioration exercise. Commissioners, led by Sir Fortunatus Dwarris, were sent out to the colonies and issued a number of reports which were the basis for legislation.

An area of fundamental significance which also received attention during this preparatory stage was the question of the franchise and civil rights. The slave society was an essentially oligarchic one in which race and colour were social determinants. In Barbados the main Franchise Act of 1721 was framed "to keep inviolate, and preserve the freedom of Elections, and appointing also who shall be deemed Freeholders and be capable of electing, or being elected Assemblymen or Vestrymen, or to serve as Jurors to try actions within this Island." Voting rights went to any man who was free, white, Christian, British, 21 years old or older, and possessed ten or more


W.K. Marshall distinguishes between (a) the West Indians' Amelioration, from the 1780s — an attempt to head off the abolitionist attack by increased food and clothing allowances, guarantees of holidays, limitation on punishment, and access to religious instruction; (b) West Indians' and Abolitionists' Amelioration, 1808-1823 — a response to the abolition of the slave trade, marked by the just-mentioned improvements and the Slave Registration process, a periodic census; and (c) Official Amelioration, 1823-1831 — preparation of the slaves for freedom, notably by abolition of Sunday markets, of the use of the whip, and of restrictions on manumission. Colonial Office disappointment at the meagre results of Amelioration helped to convert official opinion from gradualism to immediatism with regard to Emancipation.

32. Sir Fortunatus Dwarris, *The Substance of Three Reports into the Administration of Civil and Criminal Law in the West Indies* (1827).
acres of land. It was expressly laid down that no person "whose original extraction shall be proved to have been from a Negro" was to count as a freeholder or to cast a vote or give evidence in a court of law, "excepting only on the trial of Negroes and other Slaves." So the doors of the Council and of the Assembly were slammed shut against free black and free coloured persons, who thereby became second class citizens.

Repeated petitions attest to the fact that those excluded clung to the prevailing orthodoxy that political participation was a function of property. Persistence and the upsurge of abolitionism produced full civil rights for the excluded groups before Emancipation. A law of 1830 extended "benefit of testimony." On 25 May 1831 an Act repealed all legal disabilities "on white persons . . . professing the Hebrew religion"; on 1 June all restrictions were removed from slaves' testifying in the courts; and on 9 June manumission fees were eliminated.

On that same day the Governor assented to a law which had been popularly referred to as the "Brown Privilege Bill." This repealed "all acts and such parts of acts as impose any restraints or disabilities whatsoever on His Majesty's Free Coloured and Free Black subjects . . . to which His Majesty's white subjects . . . are not liable." But it was not a *bona fide* benefit. Its effect had been diluted by the arrangement that the existing white freeholders would continue to enjoy the franchise if qualified by ownership of a house or houses in town of an annual taxable value of at least £10. Those categories of persons just admitted to the franchise, however, had to possess urban property to the value of at least £30. There was renewed protest against this discrimination which isolated Barbados as "the only island in the whole archipelago which keeps up any distinction amongst the King's free subjects."

Samuel Jackman Prescod, who rapidly became the main coloured spokesman, maintained pressure in Barbados and London and the Assembly was forced to yield some of the disputed ground. The Act passed on 6 June 1840 was not at first approved by the Colonial Office, but that passed on 12 October 1841 was assented to. It is notable that high qualifications were required from candidates, effectively reserving membership in the Assembly for planters, merchants, doctors,

34. *Id.* at 102.
35. *Id.* at 103-05.
lawyers, clergymen, and high public officials. But Bridgetown was made into a separate constituency for which Prescod emerged as one of two representatives at the election in June 1843. Not more than five other coloured and black men were elected to the Assembly of 24 members over the rest of the nineteenth century, despite annual elections.  

JAMAICA

A different pattern emerged in Jamaica where political and constitutional confrontation was such as amply to justify the title of Curtin's famous book, *Two Jamaicas.* For our purposes, it is necessary to note that the white political elite there held basically illiberal and reactionary views. The grant of civil rights to the Free Coloured and other second class subjects had preceded Emancipation. Also immediately, however, even during Apprenticeship when the black majority was not fully free, the whites feared that their dominance might be under threat. In the 1835 general election the Free Coloureds won five seats, and then five more in 1837. The Assembly tried to raise the £6 franchise, alarmed that two more general elections would "throw every white member out of the House" unless the franchise qualifications were trebled. The Colonial Office refused to assent to such a Bill. As a result, since significant numbers of black men bought freehold land after 1838, the electoral trend became increasingly stressful for the white oligarchy.

Gad Heuman has made a detailed study of this postemancipation period. He demonstrates that the brown politicians were uneasily poised between the dominant whites and the majority blacks. The browns therefore calculated that their interests would be best served by supporting electoral changes in 1852 and 1859. The 1852 measure was designed to reduce the number of small freeholders on the voting lists by restricting registration to those who had paid their taxes. The 1859 Act required the payment of a ten shilling stamp duty as part of the registration process—"an actual penalty" on the exercise of the

40. See Heuman, supra note 4.
vote. In addition, the planters secured a further boon for themselves by the enfranchisement, for the first time, of men with an annual salary of at least £50. Clerks, bookkeepers, and other salaried personnel were under an implicit or explicit obligation to vote according to their employers' wishes, especially since there was not a secret ballot. The upshot was that "whereas freeholders had made up almost 60% of the electorate in 1858, the percentage fell to barely 30 . . . only two years later."

Heuman concludes with regard to this strategy: "The result of the change in the franchise was predictable: the number of colored and black representatives in the Assembly declined after reaching a peak in the early 1850s. . . . The planters and the leading coloreds had succeeded in reducing the threat from the small freeholders of radically altering the composition of the House of Assembly." Finally, as crisis followed crisis, the 1865 Morant Bay Revolt precipitated the "self-immolation" of the Assembly, preferring rule by Englishmen over the possibility of black rule.

**Colonial Office Proposals**

Some of these developments had been anticipated by Sir Henry Taylor, the most influential of the bureaucrats in the Colonial Office. He had written a work entitled *The Statesman* and in his minutes within the Office he articulated a clear line of policy. Taylor was essentially a paternalist and he liked to think that his study of Machiavelli and his life experiences had made him a realist. The Jamaica Assembly's legislative strike of 1838-39 had been the occasion for Taylor's elaboration of views in his famous "Memorandum Submitted to the Cabinet on the Course to be taken with the West Indian Assemblies.'

Taylor strongly recommended that the old legislatures were absolutely incompetent and unfit to deal with the necessities of the new free society and that they should all therefore be abolished. This judgement was based on the consideration that the state of society in the colonies did not provide an adequate basis for a representative system. The recently emancipated population, "still in the depth of

---

41. *Id.* at 130.
42. *Id.* at 131.
ignorance and by their African temperament highly excitable” could not be expected to participate at once in political life. Those coloured and black men who had been free before the general emancipation had little formal education and were not politically sophisticated, though some were quite articulate. Finally, the small elite of white planters and merchants was still “possessed by all the passions and inveterate prejudice growing out of the slave system.” Any attempt at a representative system in such a community would therefore result in the installation of an oligarchy.

Further, as a result of the financial irresponsibility allowed by the Old Representative System, the revenues of the colonies were being diverted from their proper goal and the government was left without the necessary resources for administering justice, spreading education, preventing crime, and ministering to the public welfare. The planter-dominated Assemblies were not willing to undertake the task of providing the social amenities necessary for the education and general uplift of the people. Taylor’s view, in short, was that it would be a “political solecism” to alter the nature of the West Indian society so radically by emancipation and yet leave the political framework unchanged. The Imperial Parliament in London had effected the emancipation, and ought as a corollary to abrogate the old constitutions.

In addition, the Imperial Parliament’s 1839 session would be a most favourable opportunity for introducing this measure since Parliament was out of sympathy with the patent ill-will of the Jamaica Assembly. Moreover, looking to the future, the franchise was so low that it was possible that sooner or later a coloured and black majority would dominate the colonial Assemblies. In Taylor’s vivid expression, “that would change the complexion of the evil to be dealt with, but not reduce its magnitude.” Good government would be equally far away, and the Imperial Government might be less at an advantage in dealing with such Assemblies, which would present the appearance of being representative.

Taylor’s memorandum proposed that the Government should send a Bill to Parliament abolishing all the Assemblies and substituting Councils based on the model of those already existing in the Crown Colonies, in which the Crown’s power remained paramount. The memorandum was discussed at three Cabinet meetings, but Lord

45. TAYLOR, supra note 44, at 250.
46. Id. at 251.
47. Id. at 257.
Glenelg, the Secretary of State for the Colonies, failed to push the proposal sufficiently strongly on the general principles outlined, and the Government decided instead to suspend only the Jamaica Assembly for five years. Sir Robert Peel led the opposition to this proposal in the Commons, the Melbourne Government was virtually defeated and had to resign (7 May 1839), returning shortly to office owing to the "Bedchamber Crisis." Taylor was bitterly disappointed.

The hopes and expectations of the West Indian masses were also seriously blighted. This turned out to be so despite the fact that the officials of the Colonial Office propagated the idea that their role was to act as trustees on behalf of the newly-freed black population. What was envisaged was clearly not a legal trust, but an extension of the idea to the moral realm. The trustee Colonial Office would seek to advance the interests of the beneficiary Caribbean working class, deemed to be in need of care and protection. The clear implication was that they were incapable of identifying and looking after their own interests.

Ideas of racial equality were central in this debate. The Old Representative System had originated in colonies settled by Englishmen, and it had been assumed that they possessed some special 'genius' for the operation of such a system. Its extension to other national or ethnic groups had not originally been envisaged. India, Ceylon, Mauritius, and Sierra Leone were all under Crown control and the fact that the West Indies of 1838 were not, was an accident of history.

Presenting the conventional wisdom, Sir C.B. Adderley, writing in 1869, stated that Crown Colony government was appropriate only

48. Peel (1788-1850) was then leader of the opposition Conservative Party. He was Prime Minister in 1834-35 and again in 1841-46.
49. TAYLOR, supra note 44, at 261. WRONG, supra note 13, at 58 n.1, mentions Peel's reference to the authority of the British Parliament to intervene in the colonies: "That transcendental power is an arcanum of empire, which ought to be kept back within the penetralia of the constitution."

The "Bedchamber Crisis" developed when the Whig government's majority in the Commons sank to only five in a vote on the Bill for the suspension of the Jamaican Assembly. Prime Minister Melbourne decided to resign. Queen Victoria, however, then not quite twenty years old, would not consent to dismiss her Whig ladies in waiting. Peel would not accept office in such circumstances, and so "dear Lord M" (Melbourne) again became Prime Minister. NORMAN GASH, ARISTOCRACY AND PEOPLE: BRITAIN, 1815-1865, at 174 (1979).
51. See GEORGE R. MELLOR, BRITISH IMPERIAL TRUSTEESHIP, 1783-1850 (1951).
52. As defined, for instance, in PHILIP H. PETTIT, EQUITY AND THE LAW OF TRUSTS 22-23 (5th ed. 1984).
53. See CHRISTINE BOLT, VICTORIAN ATTITUDES TO RACE (1971).
for stations merely occupied for war, depots of trade, and "subjects of
inferior race." Adderley, who had been Under-Secretary of State
for the Colonies, identified efficient and economical administration as
the main need of the Caribbean colonies. Obstacles to representative
institutions and any degree of self-government included "the large
numbers of an inferior race, and the baneful effects of slavery." He
did, however, express the hope that any constitutional retrogression
would be reculer pour mieux sauter, implying that with training and
education the people might be prepared for operating representative
institutions in the (possibly far distant) future.

The upshot was that the modernization of legislation was skewed.
"Ordinary" legislation sought to implement measures based on ex-
isting English norms, while "legislation of control" deviated radically
from English principles. In the first category, for example, reference
may be made to the cluster 5 William IV, cap. 7-cap. 12:

An Act for improving the administration of justice in criminal cases
of this island;
An Act for the prevention and punishment of larceny and other
offences connected therewith;
An Act for the prevention and punishment of offences against the
person;
An Act for the prevention and punishment of malicious injuries to
property;
An Act to prevent a failure of justice by reason of variances be-
tween records and writings produced in evidence in support thereof;
An Act for amending the laws of evidence in certain cases.

With regard to the modernization of the judicial system, on the
other hand, there were mixed outcomes. A legally qualified profes-
sional was required to be appointed as Chief Justice of Barbados for
the first time in 1841, but into this century most of the magistrates
were amateurs, and often of the planter class.

**The Apprenticeship System, 1834-38**

The intricacies of the period of the Apprenticeship System, 1834-
1838, are beyond the scope of this paper, but mention must be made
of the appointment from London of Special Magistrates, also known

54. C.B. Adderley, Review of "The Colonial Policy of Lord J. Russell's Adminis-
tration" 1853: and of Subsequent Colonial History 13 (1869).
55. The French phrase may be interpreted as "to step back in order to take a better jump."
Id. at 222.
56. Robert H. Schomburgk, The History of Barbados 462 n.1 (1971) (originally pub-
lished in 1848).
57. Id. at 210-11, 491-92.
as Stipendiary Magistrates (abbreviated in both cases to SMs).\textsuperscript{58} The Colonial Office appointed the SMs in the teeth of opposition from the planters who resented the slur on their reputations. The SMs had “effectual superintendence” over the apprentices and all the legislation designed to carry emancipation into effect, and exclusive jurisdiction (subject to the Supreme Court in each colony) in all cases arising out of relations between employers and apprentices. Operating with the view that “justice must not only be done, but must be seen to be done,” the Colonial Office had chosen as SMs men, mostly from Britain, “respectable persons wholly unconnected with the colonies,” “men uninfluenced by the local assemblies, free from local passions.”\textsuperscript{59}

Although some SMs became labelled as pro-planter and others as pro-apprentice, on balance they tried to be fair.\textsuperscript{60} After the premature termination of apprenticeship on 31 July 1838, however, the British government lost its enthusiasm for continuing to pay the salaries of the SMs. Much of the summary jurisdiction therefore reverted to the local planter-connected Justices of the Peace and police magistrates. Some form of equilibrium would have to be arrived at according to the social dynamics of each colony.

NEW COURTS OF LAW

The disparity between planter and labourer in Barbados, however, was so great that Samuel Jackman Prescod and others were able to wage a successful campaign for the establishment of a number of strikingly effective innovations.\textsuperscript{61}

\begin{footnotes}
\item[58.] W.L. Burn dedicated his book, \textit{Emancipation and Apprenticeship in the British West Indies}, to the SMs. \textit{See} BURN, supra note 30, at 6. The Latin dedication reads: Magistratum extraordinarium qui in Indis Occidentalibus servorum liberandorum curae praefecti invicem invidiam amicitiam temeritatem invidiam lauros injurias contemperunt mortem ipsum aequo animo obierunt virorum oblivionem minime meritorum memoriae sacrum hunc librum scriptor esse voluit. Thanks to Colin Reid for this elegant translation: The author wishes to dedicate this book to the memory of the Special Magistrates who were assigned the task of emancipating the slaves in the West Indies. Tenacious of purpose, they neither succumbed to the malice of their detractors, nor did they countenance the reckless actions of their supporters. They treated as of no importance inadequate pay, hard work, and insults, and met death itself with equanimity. Such men do not deserve to be forgotten.


\item[60.] W.L. Mathieson, \textit{British slavery and its abolition}, 1823-1838, at 278-79 (1926).

\end{footnotes}
Established in 1840, the Courts of Reconciliation (also known as Courts of Arbitration or as Courts of Reconciliation and Arbitration), were the first of these novel institutions. These were 'grass-roots' courts, staffed by black jurors, and they proved so successful in resolving family disputes and other minor controversies that Lord John Russell, Secretary of State for the Colonies, recommended the introduction of such courts throughout the Caribbean colonies.62

This suggestion was not acted on, but as the socio-political crisis mounted in Jamaica in the 1850s and 1860s some men took matters into their own hands. In some areas the black community engaged in a process of self-empowerment.

In the words of Robert J. Stewart:

It was these [lower] courts that the vast majority of the ex-slaves had to face with problems of vagrancy, recovery of petty debts, contract, trespass, and tenancy. Moreover, even if there had been little anti-black bias on these courts, the demands of the judicial system on both plaintiffs and defendants, e.g. costs and fees, paperwork, travel, etc., were objectively unjust. As a result, in many districts, the black people simply gave up taking any cases into court and instituted a private court system composed of their own community leaders, who were usually religious leaders, to handle disputes among themselves. These people's courts were of two kinds: those . . . based in religious congregations to settle disputes before the saints (black Christians) rather than the unjust (planter magistrates); and mock courts, especially prevalent before the 1865 rebellion, to rehearse for the inevitable confrontation with the official judicial system.63

Inevitable or not, confrontation did occur. The flash point was Morant Bay and its hinterland. The main leader was Paul Bogle who was active in a range of affairs in his area. According to Robotham,

In 1863, as is well known, Bogle and his comrades set up their own judiciary as well as their own police force, electing a Judge, a Clerk of the Peace, an Inspector, Sergeant and 'Private' . . . These courts issued summons, tried cases and imposed fines in the whole Serge Island-Plantation Garden River area, even as far as Manchioneal.64

62. LEVY, supra note 61, at 86.
The state reacted with oppression and terrorism to this overt challenge to the royal prerogative.65

A similar bloody outcome was avoided in Barbados by the establishment and successful operation of an intermediate mechanism, the Assistant Court of Appeal. This was a most valuable tribunal which lasted into the twentieth century. It derived from the following considerations. The Colonial Office wanted to professionalize the magistracy (an aspect of modernization)66 and at the same time to introduce expatriates who could be expected to offer the appearance of an impartial administration of justice. This latter objective clashed fundamentally with the Barbadian view that remunerative official posts in Barbados should fall to Barbadians. ("Jobs for the boys.")

The Colonial Office and the Barbadians arrived at a compromise. Planter-magistrates would continue to be appointed, but the minds of the labourers would be put at ease by a special appeal mechanism. A panel of three judges, amateur and professional, often including a black or coloured judge, originally drawn from among the Stipendiary Magistrates, had a role of oversight in relation to the decisions of the magistrates' courts. This oversight operated in one of two ways. Firstly, at the conclusion of any case, the defendant or complainant, or both, could say "I appeal" and the appeal had to go forward without one cent being pre-paid by either party.67 Secondly, every fortnight the panel received the returns of all the decisions by the Police Magistrates and subjected them to review, often on technical points.

This smooth operation was secured after the Colonial Office had successfully ridiculed the first cumbersome proposal from the Assembly:

A person aggrieved by a decision of a justice of the peace is to appeal to this tribunal; but the appellant is to perform so many conditions, and is to be subject to so many restraints, that when the ignorance and poverty of the great body of them is remembered, it is not possible to suppose that they can really overcome the many impediments with which they will have to contend in seeking the redress of injuries. In the first place the appellant must, on the very

---

65. See Bernard Semmel, Jamaican Blood and Victorian Conscience: The Governor Eyre Controversy (1963). About 85 people were killed without trial, 354 were executed after trial, mostly under Martial Law, about 600 were flogged, and some 1,000 cottages and other buildings were destroyed by government agents. Green, supra note 19, at 389.

66. See supra text accompanying notes 22-25.

67. Gittens, supra note 61, at 49-75. The Assistant Court of Appeal relieved the Governor of the burden of considering a large number of petitions and appeals.

Amendments were also made to the ordinary courts. See, e.g., An Act to Amend the Laws Relating to the Courts of Common Pleas, Exchequer and Grand Sessions of this Island, 5 Vict. No. 14; and An Act to Amend the Laws Relating to the Court of Error, 5 Vict. No. 23.
day of the decision, declare his purpose to appeal, although he may be ignorant, till long afterwards, of the illegality of the order pronounced against him. Then he must give to the other party a written notice of the appeal, stating the cause and the matter of it, and this must be done in two days from the date of the order. Yet the injured party may be unable to write, and will scarcely ever be able to draw up a legal document of this kind without professional assistance, which the poor have no means of obtaining. The appellant must then, within two days, enter into a recognizance, with two sureties, for prosecution of the appeal within ten days, and also for abiding the sentence of the court, and for payment of whatever costs the court may award. But, if these difficulties be overcome, the appellant is then to apply to the justices from whom he appeals for a written copy of the proceedings, which copy he is, within three days, to lodge with the court of appeal. Upon these various and burthensome proceedings fees are to be paid.

The Assembly was forced to amend the legislation to meet the objections, and the new-model Assistant Court of Appeal earned general confidence.

The Colonial Office also exercised considerable vigilance concerning prison conditions and the flogging of convicts. Officials were particularly sensitive about the flogging of women and juveniles, a practice so roundly condemned during the later stages of the slavery period. As late as 1875-1876 Governor John Pope-Hennessy found savage floggings in the Barbados prisons, and labelled them "a grave scandal" which "showed that in Barbados of all Her Majesty's Colonies, some of the worst practices of the days of slavery still prevailed." He immediately set about to ameliorate the conditions.

LABOUR CONTROL LEGISLATION

In fact, as previously indicated, an elite consensus marked the views of the Colonial Office and the West Indian planters. Both groups saw the colonies as basically "factories in fields" for the production of sugar at a good profit for the benefit of the (often English) investors. Each group favoured the continuation of the existing socio-economic hierarchy—in short, the maintenance of the plantation system.

68. C.O.28/123, Secretary of State for the Colonies, Lord Glenelg, to Governor Sir Evan M. MacGregor, 15 Oct. 1838.
71. See supra text accompanying note 25.
In pursuit of that goal, the decision-makers devised a series of inter-locking tactics. Once this perspective is appreciated, the clusters of legislation which will be discussed fall into place. In the first place, control of labour was to be attempted by fixing the existing labourers *in situ*—on the plantation, in the parish or locality, in the colony—and in a position of dependency in relation to the plantation. Secondly, terms concerning wages and conditions of work must favour capital rather than labour. Thirdly, where the local labour force needed to be supplemented, immigration from as far away as China and India was to be sponsored. As much as possible of the financial burden of immigration was to be shunted onto the general revenue, mostly provided by the masses because of the class bias in the incidence of taxation.

The first move was to attempt to coerce the labourers to remain in the estate houses on estate land—on terms which most labourers regarded as oppressive.\(^72\) Indeed, the freedmen widely expressed the view that "it was all nonsense that the Queen made them free without giving them a free house and land."\(^73\) Instead, they faced novel demands from the planters. Across the region, rent was demanded for houses and land, and some planters sought to impose conditional tenancies. In a conditional tenancy, the tenant was eligible to occupy the property only if he (and sometimes all able-bodied people living in the house) offered labour to that plantation every working day, or as often as required. These 'located' labourers received a lower wage than non-resident labourers.\(^74\)

These arrangements reached their fully articulated form in the tenantry system of Barbados, made possible by the planters' "monopoly of both the state apparatus and the island's land resources."\(^75\) The tenant faced a battery of penalties (including fines and imprisonment) for breaches of the tenancy agreement, but the most dreaded was ejectment. In a letter addressed to the *British Emancipator*, Samuel Jackman Prescod protested: "Ejectment is the grand instrument of co-

\(72\). Many postemancipation issues are opened up in a series of articles, papers, and chapters compiled into a volume: *Caribbean Freedom Society and Economy from Emancipation to the Present*, (Hilary Beckles & Verene Shepherd eds., 1993) [hereinafter *Caribbean Freedom*]. The relevant sections are: Section One, *Expectations of a New Beginning*; Section Two, *Emancipation in Action*; and Section Three, *Peasants and Planters*.


ercion which has succeeded the cowhide [whip].” The planter had the power to decide the fate of the growing crops of evicted tenants. In cases of disagreement, the value of the crops had to be appraised by three experienced planters chosen by Justices of the Peace or police magistrates. This arrangement led to unfair valuations. Altogether, the system “played a vital role in circumscribing labour’s freedom, prevented it from bargaining effectively with the plantation management, and forced it to accept the lowest possible remuneration.”

The labourer, male and female, rural and urban, praedial and domestic, found himself/herself hemmed in by labour legislation that reminded that the planter still wielded political and economic power in the colonies. The law was therefore used as a form of power to control both the movement of labour and its productive use. For over one hundred years after Emancipation, until the riots of the 1930s, labour legislation in the colonies expressed an asymmetrical balance of power between free labour and capital.

On the approach of full emancipation, the Colonial Office, under the guidance of the legal expert James Stephen, Permanent Under-Secretary of State from 1836, had addressed the question of law reform. Compilations were made of the ‘State of the Law in the West Indies, as it now Exists’ and of the ‘New Laws proposed to meet the new Relations of Society.’ Stephen scrutinized these laws with a determination to point out cases of oppression. He was not always supported by his political superiors. He recognized the dilemma in which he found himself in the following terms (concerning his general distrust of West Indian officialdom):

To frame laws on the principle of a general distrust of those by whom they are to be carried into execution, is manifestly absurd. To yield much confidence in the ordinary administration of the law in the West Indies, under the peculiar circumstances of the present time is, I believe, scarcely less so.

76. Id. at 35.
77. Bruce Hamilton, Barbados & The Confederation Question, 1871-1885, at 4-6 (1956).
80. Knaplund, supra note 30, at 117-30. Knaplund cautioned that “[m]uch of . . . Stephen’s work was negative—he sought to block positive injustice.” Id. at 129.
81. Id.
It is clear, however, that from the mid-1840s there was a less consistent support for the interests of the masses as the Colonial Office adopted a policy of conciliating the planters.  

Official attention focused, to varying degrees, on the following concerns:

- the franchise
- the militia
- licences to hawkers and other groups
- Master and Servant legislation
- the Poor law
- Vagrancy legislation
- Poll Tax
- corvee
- treason
- squatting on public lands/private lands
- prisons
- periodical reports from Stipendiary Magistrates.

It is clearly impracticable to deal here with all these issues.

The centerpiece of the labour legislation was the Master and Servant Act, the Act to Regulate the Hiring of Servants, and to provide for the Recovery and Security of their wages. This law was based upon English models, but the nuances of English hiring practices in agriculture and domestic service were not matched in the West Indian context.

The colonies all submitted acts to regulate the making of contracts of employment between the planters and other employers and their employees. The freedmen, disappointed that 1834 had brought apprenticeship and not full freedom, refused to sign contracts lest they lead to re-enslavement. Stephen, recognising that the checks and balances operating in English society did not exist in the Caribbean colonies, in the end drew up a series of model laws which were applied in the Crown Colonies and recommended for adoption in colonies with independent legislatures.

Stephen’s line of reasoning was adopted by the Secretary of State for the Colonies, Lord Glenelg, in a dispatch of 31 August 1838 to...
Governor MacGregor of Barbados. The Bill from Barbados proposed that a formal writing was not necessary for the formation of a binding contract between any master and servant. Every general hiring for service was to be taken to be a hiring for one year, unless a shorter time had been agreed on between the parties, in the presence of at least one witness, or unless there was a written agreement read over and signed in the presence of at least one witness who was to subscribe his name. In the absence of any witness or written agreement, an entrance into service and continuance therein beyond the term of one week without objection was to be deemed a general hiring for one year. Either party might give to the other one month’s notice of his intention to dissolve the engagement.

Glenelg took issue with the central aspects of these proposals: “The continuance in service without objection for a week, cannot reasonably be construed into an implied contract to serve for a year.” Further, every contract for a period of more than a month was to be reduced into writing and signed by the parties in the presence, if possible, of a stipendiary magistrate. The magistrate was to be required to subscribe the contract and to state that the servant correctly understood the meaning and effect of the agreement.

In the same despatch Glenelg also commented critically on the differential penalties. The master was liable only to a fine, “the justices have no power of committing an employer who refuses to pay the wages.” On the other hand, “they may punish the offending servant by commitment, with or without hard labour, for one month, or by an abatement of his wages, or by discharging him from his employment.” A similar application of criminal sanctions to indentured labourers will be discussed below.

The cluster of coercive legislation also included the Vagrancy Act. Again, there were English models, but Stephen in this case also stressed the very different social contexts. The Act for the Suppression and Punishment of Vagrancy may be considered along with the Act for the better Government and Ordering of the Poor of this Island, and the Prevention of Bastardy. Both Acts aimed at controlling the seeming poor. Police Acts, Militia Acts, Prison Acts, and the regaining of dominance by the planter-magistrates as the stipendiaries declined in number, all served in addition for the implementation of the law-and-order agenda of the white power structure.

The Act just identified for the better ordering of the poor was justified as follows: “Whereas doubts and difficulties frequently occur to the Vestries, Churchwardens, Overseers of Poor and Justices in and out of Sessions, respecting the proper home, settlement and parish of the poor of this island, which is a great hindrance to the good government and regulation of the said poor . . . .” Accordingly, Churchwardens and the police were empowered to apprehend roving and suspicious persons and return them to their parish of settlement.

Similarly, the preamble to the Vagrancy Act stated that “Whereas it is necessary to make provision for the suppression of vagrancy, and for the punishment of idle and disorderly persons, rogues and vagabonds, incorrigible rogues, or other vagrants in this Island. . . .” and the Act proceeded to provide definitions of the categories of undesirables. For example, the focus was on the man or woman who was able-bodied but did not have an occupation which satisfied the court. The penalty always included imprisonment with hard labour, pour encourager les autres [to encourage the others].

Finally, in colonies such as Barbados and the Leewards, legislation was resorted to in order to discourage the emigration of able-bodied labourers to Trinidad and British Guiana which had the dual attractions of higher wages and freehold land. Stephen took the libertarian view: “No British subject inhabiting the West Indies ought, I presume, to be prevented from transferring his labour from one Colony to another if he shall be desirous of making a change.” But on the pretext of maintaining the integrity of labourers’ families and of shielding the would-be emigrants from disease and exploitation, the legislation was put in place. For example, in Barbados on 22 September 1840 an act amending earlier enactments concerning the clandestine deportation of young persons and “to regulate the Emigration of labourers . . . and to protect the Labourers in this Island from impositions practised on them by Emigration Agents.” The legislature, with straight faces, claimed to have no other motive than the welfare of the newly-free workers.

88. KNAPLUND, supra note 30, at 125.
89. See SCHOMBURGK, supra note 56, at 495-96.
CONCLUSION

There is no reason to suppose that there was any significant number of anarchists or nihilists in post-emancipation Caribbean societies. The blacks recognized the necessity for fundamental rules: "We could never live widout de law; we must have some law when we free. In other countries where dey are free, don’t dey have de law? Wouldn’t dey shoot one another if they didn’t have law?"90 The whites took advantage of their political position to manipulate the law in order to thwart the masses’ aspirations of autonomy.

After an extensive tour through the region the American journalist, William G. Sewell, arrived at the dispassionate conclusion that "Freedom, when allowed fair play, injured the prosperity of none of these West Indian colonies . . . . It was a boon conferred upon all classes of society; upon planter and upon laborer; upon industry and education—upon morality and religion."91 The critical phrase is "When allowed fair play"—a concept often expressed in the nineteenth century as "a fair field and no favour" and expressed today as "a level playing field".

There was no level field during the post-emancipation decades. Policy-makers and legislators held a blinded or one-dimensional view of the masses as units of labour. Colonial Office opinion had to be taken into account, but the balance of power in each colony favoured the planters and other elite groups. Unfortunately, many labourers were led to conclude that "only de chains take off."92

90. W.K. Marshall, “We be wise to many more tings”: Blacks’ Hopes and Expectations of Emancipation, in CARIBBEAN FREEDOM, supra note 72, at 15. See also id. at 12-20.
91. James M. McPherson, Was West Indian Emancipation a Success? The Abolitionist Argument During the American Civil War, 4 CARIBBEAN STUD., July 1964, at 28, 33.
92. Michael Craton, "Only de chains take off": The Transition from Slavery to Free Wage Labour: The Example of Worthy Park, Jamaica, 1834-1846, in SOME PAPERS, supra note 29, at 95-129, 144-47.