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## **Fashioning the Legal Subject: Popular Justice and Courtroom Attire in the Caribbean**

*Clothing, as has been shown in a growing body of anthropological research, not only reflects reality but also works to make it. This article uses the unique lens provided by fashion to focus on the populace in which popular courts stake their legitimacy. Much in the way that laws, processes, and procedures affect people's relationship to law, courthouse attire, too, subtly and perhaps more cunningly contributes to the creation of subjects that interact with and understand the law in specific ways. Specifically, the clothing worn in and required by a popular courthouse helps to make the very community in which that court claims its popularity. Ethnographic examples from fieldwork in a municipal tribunal in Cuba and in the Caribbean Court of Justice in Trinidad and Tobago show how fashion reflects the historical development of each court while it simultaneously works to transform populations into ideal legal subjects. [popular courts, fashion, legal subject, Cuba, Anglophone Caribbean]*

“Listen carefully,” *la Jueza Ynez* (Judge Ynez) instructed me over the phone.<sup>1</sup> “You are going to a court of law, and you must dress respectfully. No shorts. No short skirts. Nothing where your back is exposed. Nothing tight. You understand? Open-toe shoes, though, *está bien* (are fine).” She was very serious and spoke slowly so that I could fully comprehend her Cuban Spanish. “Yes, yes,” I assured her. I understood completely what it meant to dress appropriately for court; I had, as I reminded her, appeared in court many times before in the United States. Ynez seemed sufficiently convinced and gave me the necessary instructions for visiting her courthouse on the outskirts of Havana later that week. I took careful notes of where and when our meeting would take place, which would allow me my first opportunity to see the interior of a Cuban courtroom and to observe a Cuban trial.

When the day arrived, I awoke early and dressed confidently in a black knee-length skirt; a blue long-sleeve, button-down blouse; and black open-toe sandals. I hailed a taxi in the already warm Havana sun. I was filled with anxious anticipation of what the day would reveal. Very little had been written about lower-level trials or the practices and procedures of municipal courthouses in Cuba, so I was prepared for almost anything. I was not prepared, however, for Ynez’s reaction to me when she arrived, shortly after I did, at the courthouse. She laughed at me. She stood back, scanned me up and down, and exclaimed: “What are you wearing?” Underscoring the apparent absurdity of my wardrobe choice, Ynez called over two coworkers, mirthfully encouraging them to look (and laugh) at what I was wearing. All three women were far less buttoned-up. Ynez, for example, was quite fashionably attired in a well-above-the-knee-length skirt, a brightly colored and formfitting halter top, strappy gold high heels, and large gold hoop earrings. Her eye shadow artfully and colorfully complemented her outfit. The other two women were similarly *not* attired in Euro-American style business professional clothing. Unquestionably, I looked out of place, uncomfortable, and ridiculous. “You told me to dress respectfully,” I feebly interjected. “Yes, but it is far too hot for *that!*” Ynez explained. “And I have to wear a robe,” she further noted.

Ynez was right, of course. It was extremely hot in the courtroom, and there was little I could do to hide the obvious sweat marks that patterned my blouse by the end of the morning's trials. Ynez did wear a judicial robe during these hearings, left open in the front so that her stylish clothes were still visible. The robe was made of a thin black fabric and could be stashed in a hurriedly folded ball, as Ynez's was in her handbag. Her lay judges—the two women who joined the laughter earlier that day—also wore robes, also open at the front. Despite the oppressive reality of the heat and the robes, Ynez's explanation seemed too pat to fully explain the vast differences in our outfit choices and understandings of respectful court attire. Indeed, other societies, just as hot (or hotter), continued to require elaborate judicial robes and stifling formal clothing in court (Ng 2009, 84–89; Haque 2012). Additionally, clothes, as Terence Turner ([1980] 2012) has famously observed, amount to much more than heat-trapping fabric and ornate decoration; they are, more profoundly, man's "social skin." Thus, I have always believed, since that humiliating morning in 2010, that there was likely a social, and not so narrowly pragmatic, reason for my profound misunderstanding of appropriate courtroom attire in Cuba. This article, therefore, focuses on the social content of courtroom style, and asks what it might reveal about the relationship between law and the society so fashioned.

I draw from my distinct but related research projects on Cuban and Anglophone Caribbean law, in which I explore the role of legal institutions in crafting nations, states, and regions. During summers 2010 and 2011, I conducted fieldwork in and around Havana, Cuba, where I focused on the lowest tribunals of that state: municipal courts, such as Ynez's, that handled the least serious infractions in quick trials that did not require an attorney. I observed a half-dozen of these trials, as well as one larger, more serious trial at a provincial courthouse involving eight defendants accused of stealing twenty-two air conditioners. My research also included interviews with attorneys, judges, law professors, and everyday Cuban citizens, visits to a *bufete colectivo* (law office), attendance at two multiday legal conferences, and participation in a continuing legal education course for Cuban attorneys. In the Anglophone Caribbean, my data comes from the highest court in the region: the Caribbean Court of Justice (CCJ), a newly created regional tribunal designed to decide interstate trade issues and to serve as the final court of appeal for those countries that continue to use Britain's Privy Council for that purpose. I conducted research at the CCJ, headquartered in Trinidad and Tobago, for approximately fourteen months in 2012 and 2013, during which time as a legal intern I observed or participated in a wide array of the court's daily activities, from trials, to tours, and to everything in-between. I also conducted interviews with each of its seven judges; the majority of its employees; regional law professors; attorneys from Trinidad, Barbados, and Jamaica; and judges serving in those same nations' courts.

I should point out that the fluctuating research environment in Cuba largely explains the discrepancy in the amount of time I spent at each of my field sites. I was able to access courts and law offices in Cuba, and the judges, attorneys, and the Union of Cuban Jurists were, for the most part, inviting and warm, yet I was met with resistance and dissuasion when it came to gaining state approval for more extensive research. I was, at one point, issued a citation and required to attend a mandatory meeting with the Cuban Ministry of Interior. The officers were polite, but firm: I was not to continue my research. Also, as I detail later in this article, I was encouraged not to pursue research in Cuban courts by the institution that supported my visa application. Although I was eventually granted a long-term research visa from the Cuban government, it was for a topic quite unrelated to my research questions and limited my data collection to the archives. I decided at that point to shift my research to the Anglophone Caribbean.

What I came to learn through my fieldwork and accompanying archival research was that despite their apparent differences, Cuba's municipal courts and the CCJ similarly strive to create legal systems that are seemingly borne from the people of Cuba, in the case of the former, and from the region, with regard to the latter. They both, in other words, fall comfortably within Sally Engle Merry's (1992a) broad definition of popular justice: both are systems of law "characterized by a strong tie to local communities" (367; see also Merry 1992b). The social and historical particularities of Cuba and the Anglophone Caribbean, however, have left each court system with far more specified understandings of popular justice. In Cuba, a notion of popular justice developed through the creation of a new legal system in the wake of the 1959 revolution. Law, lawyers, judges, and the courtroom did not hold an exalted status, but were intended, instead, to be unremarkably ordinary, reflecting the collectivity and shared socialist morality. The CCJ, a new court still wrestling with the looming shadow of British (post)colonialism, instead carefully works to strike a balance between the recognizable authority of British law and the need for legitimacy as an indigenous court in order to sustain its claim as a court of the people. For this court, the extraordinariness of the law, lawyers, judges, and the courtroom is a necessity, as it draws on a long-established and positively valued legacy of colonial law and order.

As I elaborate below, these differing paths to populism can be read through the clothes worn in the courthouse. This same attire, I further demonstrate, works to craft the very populations in which these courts root their foundations. These "local communities" or "authentic communit[ies]," as Merry alternately calls them (1992a, 367; 1992b, 164), do not preexist and are not predefined. Instead, they are carefully crafted, and it is worth considering how the clothes worn by those working within and interacting with a self-described popular court, in fact, contribute to the making of these local communities and peoples. In other words, I show in this article how a popular court through a popular medium like fashion works to shape the very populace that gives it its name.

### **Clothes and the Courtroom**

The particularly pedestrian nature of fashion provides a unique vantage point from which to explore the relationship between courts of law and the people over which they have jurisdiction. Beyond the laws, processes, procedures, and distinctive legal registers that quite clearly affect people's relationship to law (Comaroff and Roberts 1981; Ewick and Silbey 1998; Merry 1990, 2000; Mertz 2007; Ng 2009; Richland 2008), courtroom attire, too, can subtly and perhaps more cunningly contribute to the creation of subjects who interact with and understand the law in specific ways and to the building of communities in which certain hierarchies, histories, and ideologies are reinscribed, respected, or replaced. Whereas laws and processes are rather explicit in their efforts to shape people and populations—prohibiting certain acts while proscribing others—I argue that clothes more quietly seep into the texture of social life, helping to craft legal subjects who begin to understand themselves and their relationship to law in ways that can advance particular political projects.

This assertion builds on a growing body of work on the anthropology of dress that has illuminated the value of paying closer attention to attire as a window into a greater understanding of societies and cultures. These works have shown in a wide variety of contexts—colonialism in India (Cohn 1996), Christian conversion in South Africa (Comaroff and Comaroff 1997), beauty contests in the British Virgin Islands (Cohen 1996), data processing in Barbados (Freeman 1993, 2000), schools in Japan (McVeigh 2000), and the Cultural Revolution in China (Steele and Major 1999)—how "dress readily becomes a flash point of conflicting values, fueling contests in historical encounters, in interactions across class, between genders and generations, and in recent global cultural and economic

exchanges” (Hansen 2004, 372). Indeed, clothes, not unlike the law, are increasingly recognized as sites in which the identities and subjectivities of people are negotiated, ideologies promulgated, and values inculcated. As Jean Comaroff and John Comaroff (1997) wrote in the chapter titled “Fashioning the Colonial Subject: The Empire’s Old Clothes” (from which the present article gleans its title), style in colonial South Africa “did not *reflect* existing realities. It was part of their very making” (273). Blue jeans, for instance, can manufacture a perceived ordinariness in a multicultural, multilingual North London neighborhood (Miller and Woodward 2012).

Given the similar potential of both clothes and legal mechanisms to shape new worlds, it is surprising that little academic attention has been paid to courtroom attire. Certainly, the judicial robe, most recognizably black, has elicited commentary by several academics (Kahn 1997; Ng 2009; Yablon 1995) and personal reflection on the part of US Supreme Court Justice Sandra Day O’Connor (2013). Horsehair wigs, famously worn by the British and their postcolonial brethren, have also attracted limited notice in academic writing (Ng 2009; Yablon 1995). There is, as well, some discussion of courtroom attire and its social role, but the scope of these discussions does not fully (and, to be fair, neither intends to nor purports to) interrogate the relationship between courtroom clothes and their potential to transform—not just reflect—societies through the formation of new legal subjects (Haque 2012; Isani 2010). This article seeks to initiate such a discussion.

### **Reflections of Things Past**

As many have observed, fashion offers a window to the past, and court fashion is no different (Haque 2012; Isani 2010; Ng 2009; Yablon 1995). Indeed, the horsehair wigs worn by the jurists of many Commonwealth countries speak volumes, divulging a British colonial past and suggesting lasting postcolonial allegiances (Ng 2009). This section does not reiterate this argument, but shows, instead, how the remarkably different socio-historic contexts in which Cuban municipal courts and the Caribbean Court of Justice arose led to similar aims of achieving populist justice and to the incredibly dissimilar courthouse clothing I experienced during my research in each location.

### *Rejection and Revolution*

As much as my clothes amused Ynez on that first visit to her courthouse, her outfit puzzled me. I knew that material items like clothing did not come cheaply or easily in Cuba, and that business attire familiar to Americans or Europeans was not reliably available there. However, I had attended a five-day conference hosted by the National Union of Cuban Jurists prior to observing Ynez’s courtroom. At that event, attended by an international crowd of attorneys, judges, and legal scholars, the Cuban participants (of which Ynez was one) wore more conservative clothing than Ynez had selected for her courthouse. In other words, Ynez’s fashionable courtroom attire was not a function of limited availability; Cubans could, as was demonstrated at the conference, adjust their wardrobe to fit a Euro-American version of “business professional.” Instead, her court clothes seemed more closely linked to the localized context of her courtroom, namely a national audience within a state institution. That is, of course, precisely the point. Cuban court attire captures the state’s socialist vision of the law as it developed after the revolution as much as it reflects its official rejection of capitalist norms.

The Cuban Revolution was never only about the replacement of one regime with another. Indeed, only two years after taking the helm of the Cuban government in 1959, Fidel Castro declared the revolution to be socialist in nature and dedicated his energy to transforming

nearly all aspects of Cuban society. A friend–enemy dichotomy largely guided these early changes, which at first reflected the division between counterrevolutionary and revolutionary sentiments in Cuban society and then morphed into a United States versus Cuba logic. On one side of the equation was the “New Man,” a figure, following the publication of “Che” Guevara’s treatise, *Socialism and Man in Cuba* ([1965] 1997), which Castro held out as the embodiment of Cuban socialism. On the other side were the *gusanos* (worms) to the North, who represented the capitalist and imperialist norms that had colonized the country. Pursuant to this binary logic, private businesses were nationalized, the wealthy were ostracized, and US sympathizers were driven out in droves.

The legal system, too, was profoundly affected by the revolutionary changes taking place, and its development also reflected Castro’s embrace of socialism and rejection of capitalism (Evenson [1994] 2003; Zatz 1994). The moral compass that the friend-versus-enemy divide might have offered, though, did not mean that the creation of a revolutionary Cuban legal system followed a straight trajectory. In fact, during the early years of the Cuban Revolution, the law was largely ignored. Laws, of course, were instrumental in the process of restructuring the economy, the state, and the distribution of public goods and services, but after this, Cuban law and the Cuban legal system were mostly left to languish (Zatz 1994). The state, guided by Castro, believed that the decimation of capitalist economic structures and the promotion of socialist values through these fundamental changes “would rid the society of crime and other social harms” (99–100). Civil and criminal laws received little attention, the legal practice, once a prominent occupation, fell into disrepute with lawyers and judges openly denigrated by Castro as useless, and the Faculty of Law at the University of Havana, the only law school in Cuba, lost its independent status and was subsumed as a school within the Faculty of the Humanities (101; Evenson [1994] 2003).<sup>2</sup>

However, crime and conflict did not disappear, prompting the state to reassess the role of law in Cuban society. By 1963 Castro offered a new vision: law could be used to educate society, and it could do so through *Tribunales Populares* (Popular Tribunals) (Castro 1963).<sup>3</sup> According to a judges’ manual published in 1966, these informal and unprofessionalized courts were viewed as mechanisms that could “edify and consolidate the new society of socialism and communism, to educate a new man, to secure and to perfect the rules of the socialist community” (quoted in Berman 1969, 1318). The state believed that people would learn to see themselves and their values reflected in the law through these low-level tribunals and took measures to make such identification possible (1318–19). The tribunals, for instance, were located in neighborhoods to serve neighborhoods, and, still wary of a professionalized class of legal practitioners, neither lawyers nor professional judges took part in the day-to-day proceedings (Berman 1969; Evenson [1994] 2003; Zatz 1994). Instead, part-time, unpaid lay judges—who were selected from the local neighborhood, vetted for proper ideological orientation, and provided with minimal training—served as the primary staff and adjudicators. They did not apply codified laws in making their decisions, but turned to general precepts of the new socialist society to determine whether a violation had occurred (Berman 1969, 1322; Evenson [1994] 2003, 51; Salas 1983, 590).

The Popular Tribunals, however, did not last long. Decision making based on standards that were new to all and known by few resulted in gross inconsistency and “arbitrary, puritanical, and sometimes corrupt” judgments (Salas 1983, 606), prompting the state to move toward the institutionalization and formalization of a legal system throughout the 1970s. This process included the development of a new penal code, a family code, and other statutory measures designed to reinforce the socialist revolution. It also led to the establishment of the formal three-tiered court system present in Cuba today, which, at all levels, utilizes a combination of professional judges and lay judges, a notable vestige of

the popular tribunals. Indeed, the continued use of lay judges for all trials suggests that the Cuban state remains dedicated to the notion of a justice system that is of, from, and for the New Men and Women of Cuba as much as it is devoted to the eradication of capitalism.

This understanding of popular justice that has undergirded the Cuban legal system since the revolution has, I argue, been literally woven into the fabric of the courts, making it unsurprising that Ynez would not, in 2010, wear stiff, dark, overly formal, and impractical clothes (such as those that I wore) that would set her apart from the local community she served and mark her as part of a bourgeoisie class most commonly associated with capitalist norms and practices. Instead, as I observed, Ynez and her lay judges wore fashionably tasteful clothes that any Cuban woman might wear. These were clothes that were respectful in their ordinariness, and reflected the populist spirit and historical circumstances of the Cuban legal system in which judges have always been ordinary people with whom other ordinary people could identify. In my first interview with Ynez, for instance, she noted that she rode the same *guagua* (public bus) as the criminals she convicted. I learned, too, that she was married to a taxi driver. Like her *guagua* commute and her taxi-driver husband, Ynez's courthouse attire reflected a socialist ethos wherein even the law is nothing more extraordinary than the socialist norms and common sense of everyday people. Her unremarkable clothing, which failed to distinguish her from the general population, conveyed this message perfectly.

Of course, Ynez wore a black robe in her courtroom, but it would be misguided to assign too much significance to this garment, given Ynez's less-than-ceremonial treatment of it; she crumpled it up into a loose ball and shoved it into her handbag at the end of the day. Rather, I suggest that Ynez's robe played a part similar to a uniform vest or smock that a waiter might wear over his clothes to indicate his role in a restaurant. That is, her robe merely identified her role in the courtroom rather than transformed her into the anonymous voice of disembodied, high, and mighty law. Notably, her robe remained open in the front, revealing her colorful clothing and, in doing so, her comradeship and equality with those appearing before her. So it was, as well, with her lay judges, who also wore black robes open in the front, and the same for the judges at the provincial courthouse who handled more serious matters in much longer trials. The Cuban judicial robe, in other words, is not a hallowed costume of adjudication worthy of special treatment and indicative of the anonymity and objectivity of the law, but a practical and efficient way to indicate a specific job in the courtroom. This is fundamentally different from the judicial robes at the Caribbean Court of Justice, as I discuss later.

### *Regionalization and Trepidation*

The ordinary clothes of the Cuban courthouse have no place in the halls of the Caribbean Court of Justice. Fortunately, I knew this before arriving to conduct my fieldwork in 2012. Hoping to avoid another fashion snafu, I had called the CCJ in advance and asked a series of pointed questions regarding appropriate attire. I came prepared. Other international legal interns, I observed, did not. Full suits in "sombre colors," such as dark gray or black, were expected in any courtroom in the Anglophone Caribbean, and, Ms. Paul, the manager of the internship program at the CCJ, spelled this out during the course of her introductory presentation to visiting summer interns. This revelation took fresh-off-the-plane Canadian and American interns by great surprise as they realized that their sleeveless, floral shift dresses, khaki pants, and polo shirts—wardrobe choices, the Canadian intern explained, prompted by the equatorial location of the Court and a perception of the Caribbean as casual—were entirely inappropriate. This intern sought the assistance of her roommate in

Canada, asking her to rapidly and very expensively ship several suits to Trinidad, while another intern opted to remedy the situation through a pricey emergency shopping excursion.

Ms. Paul's fashion advice, however, did not quite cover the extent of the CCJ's clothing expectations. In the absence of a written policy, I became aware of these additional rules and regulations through intermittent scolding by, most commonly, female court managers directed at female members of the permanent staff, a gender discrepancy that I return to later. There was endless gossip, for example, among my interlocutors at the court about who had been rebuffed (or "buffed," in local terms) for wearing a skirt that was too short or too tight, for exposing their arms, or for not wearing a jacket. A customer service representative at the CCJ explained to me that management often expected high heels, too. Using herself as an example, she told me of the time that her manager insisted she change out of her flat shoes and into her heels prior to interacting with visitors. Moreover, these wardrobe infractions and the "buffing" they incited were not limited to the courthouse. Any ID-wearing court employee walking within the general vicinity of the CCJ was at risk of eliciting a critical comment from certain members of the managerial staff should they be spotted wearing "inappropriate" attire. Pursuant to the advice of my coworkers, I, like them, kept my jacket on and buttoned even when venturing into the extremely hot Trinidadian sun for my lunch break. In short, it was demanded that those working at the CCJ spend extraordinary attention on their extraordinary clothing.

Not unlike the suits, high heels, and attentive grooming of professional Barbadian women observed by Carla Freeman (1993, 2000), the particular attire expected at the CCJ is very much intended to distinguish its workers from those employed in more rote occupations, from those with no occupation at all, and from everyday life in general. Given the important boundary that clothes create, deviations or suggested deviations from the Court's fashion expectations were roundly rejected. When the customer service rep mentioned above proposed the idea of "dress-down Fridays" at a staff meeting, her coworkers raised a bevy of objections, which included the seemingly self-explanatory statement, "We're in a courthouse," before quickly quashing her suggestion. Indeed, the extraordinary clothes of courthouse staff reflect a shared understanding of law as an extraordinary supra-social phenomenon. This is an idea of law, inherited from the colonial past, that dominates the legal landscape on which the CCJ was established and currently operates. I argue here that in its effort to position itself as a court that is uniquely connected to the people of the region—a popular court, in other words—the CCJ has had little choice but retain this extraordinary understanding of law.

The twelve Caribbean states that comprise the CCJ's jurisdiction are, like all Caribbean countries, former European colonies.<sup>4</sup> More specifically, eleven of these states, which together exert the greatest influence on the Court and its development, were British colonies for centuries before gaining their independence in the 1960s, 1970s, and 1980s. Independence, though, did not mean the severing of all ties to the United Kingdom. In fact, each of Britain's former West Indian colonies carefully preserved their legal relationship to the United Kingdom by retaining a constitutional right of appeal to the Judicial Committee of the Privy Council (JCPC), a centuries-old advisory committee to the sovereign. This is a link that perseveres today for many of these politically independent states. Once the highest court of appeal for nearly a quarter of the world (namely, the entire British Empire), the JCPC now serves as the court of last resort for Britain's only remaining Crown Dependencies and Overseas Territories, as well as a handful of independent Commonwealth countries that have chosen to retain it, such as much of the independent Anglophone Caribbean.<sup>5</sup>

The preservation of the JCPC as the highest court of appeal has numerous implications on the law and society of the Caribbean. While trials and first appeals are held in national

courts before local judges, final appeals can only take place in London at the JCPC before justices of the UK Supreme Court who take on the role of privy counsellors.<sup>6</sup>

Traveling to London is, of course, an extremely expensive and, thus, self-selecting possibility. The retention of the JCPC also means that privy council precedent is binding, and British law texts and authorities are persuasive. Moreover, it requires that Anglophone Caribbean law practitioners and judges train in the British common law tradition, with many of them pursuing portions of their legal education in the United Kingdom. Further, the continued allegiance to British law has led to an adherence to the pomp of formal British court apparel (sombre colors, frilly neckties, stiff waistcoats, silk robes, and, at least in The Bahamas, horsehair wigs) and practices (bowing and addressing the judges as My Lord or My Lady) throughout Anglophone Caribbean law courts. Such perceptible formality and deep historicity has helped to perpetuate a widely held understanding of law as distant, extraordinary, formidable, and unshakeable.

Indeed, the Caribbean's allegiance to British law has been incredibly difficult to shake. In the decades since achieving political independence, there have been several proposals within the region and within individual states to establish local final courts of appeal, and, repeatedly, these proposals have failed. It is not the many reasons for these failures that matter in this article; it is the fact that the region has exhibited a continued reluctance to let go of the privy council. It is hardly surprising, then, that the CCJ, even as it was being conceived, has proceeded with caution and conservatism when offering itself as an indigenous replacement to the JCPC.

The CCJ was created during the process of revising the foundational treaty for the Caribbean Community, a bloc of countries dedicated to regional economic integration within the Caribbean. The resulting Revised Treaty of Chaguaramas (Revised Treaty) and the Agreement Establishing the Caribbean Court of Justice (Agreement), both signed in 2001, outlined a regional court with sole and final original jurisdiction over "disputes concerning the interpretation and application of the Treaty" (Revised Treaty 2001), and further envisioned that it would "deepen the regional integration process" (Agreement 2001). The agreement also granted the CCJ an appellate jurisdiction in which it could replace the JCPC as the final court of appeal for those states that made the necessary constitutional changes. The appellate jurisdiction, though, while certainly an important component of the court's mandate, is often understood to take second billing; it was "kind of tacked on," one CCJ judge explained, a somewhat nervous step forward in the face of the historical unpopularity of the possibility of an indigenous final court of appeal. This hesitancy was well-placed, it seems, as the appellate jurisdiction of the CCJ is still not broadly embraced by the region. As of late 2017, only four of the CCJ's twelve member-states have amended their constitutions in order to use the court in its appellate capacity, and, as recently as November 2016, a public referendum in Grenada on whether to accede to the CCJ's appellate jurisdiction failed. The region's dedication to British law and order continues to run deep.

Given the ongoing disinclination of the region to leave the fold of the JCPC, it is hardly surprising that the CCJ defers to certain British legal traditions even as it promises to develop an indigenous jurisprudence. In fact, I argue that it is *because of* its intent, as captured in its Vision statement, to foster "jurisprudence that is reflective of our history, values and traditions," that the court continues to embrace aspects of a colonial legal system.<sup>7</sup> That is, it is because of the CCJ's aspiration to achieve a popular form of justice that it must, in some ways, reflect and respect the widely held understanding of justice as decidedly British, with its attendant formalism and extraordinariness. To the legal community, the court does this through its careful and respectful consideration of British precedent.<sup>8</sup> To the

broader public, the CCJ demonstrates its continued connections to British legal traditions in one of the most visible ways possible: extraordinarily formal courthouse attire.

### **Fashioning a Populace for a Popular Court**

While the ordinary clothes of Cuban courts and the extraordinary garb of the CCJ reflect the historically situated forms of popular justice that underlie these two legal systems, courthouse clothes also work to shape the subjects who interact with these courts. In the case of Cuba, it is the state's sense of what justice ought to be—a shared socialist common sense—that has guided the development of a revolutionary legal system, and, to some extent, it is the legal system's job to ensure that the public actually embodies this concept of justice. At the CCJ, it is a popularly held idea of justice—as colonial, exceptional, and monarchical—that demands a certain formalism and extraordinariness from the court's practices and apparel, but this is a court eager to nudge the region toward a noncolonial Caribbean future populated by a distinctly and proudly Caribbean people. In both scenarios, the courts rely, at least in part, on clothing to help effectuate these changes in the subjects they serve and to shape the very populace that undergirds their particular systems of popular justice.

#### *New Men and New Women*

Inescapably posted on the main door of at least one municipal Cuban courthouse is an *aviso* (notice) containing important information on what not to wear in the building. The sign advises visitors to wear *decorosa* (decent, or proper) clothing, and offers several examples of what does not fall into this category. Among other items, long or short spandex, short shorts, short dresses, and flip-flops are prohibited for women, and shorts, T-shirts, and tank tops are prohibited for men. As an interesting point of comparison, anthropologist Suzanne LaFont (1996, 70) describes a sign outside of the Family Court in Kingston, Jamaica, that advises court users to wear their “best clothes,” a recommendation that reflects the extraordinary location of law throughout the Anglophone Caribbean and contrasts with the far less exalted place of law in Cuba.

This notice on the Cuban courthouse (Figure 1), on its own, is unremarkable and reflected the wardrobe instructions that Ynez had provided to me over the phone before my first visit to her courthouse, but the sign includes more. Both sexes, reads a *nota* (note) marked with an asterisk at the bottom of the *aviso*, are prohibited from entering in clothes displaying USA signs or flags. It is this note that offers a glimpse into the ongoing efforts of the Cuban state to shape a new legal subject, one that fully aligns with its vision of a socialist future and a socialist-populist understanding of law. By regulating courthouse clothing, I am suggesting, the state continues its project of making the New Man.

While the note itself stood out, I was more taken aback by the fact that it was actually necessary. As I had observed, like others before and after me, clothes bearing US flags, symbols, and colors, or T-shirts that declared love of US cities—for example, “I [heart] NYC”—were a fairly common fashion choice in Havana and throughout Cuba (Archibold 2015; Hodge 2001, 2005; Ryer 2014, 2017). Anthropologist Paul Ryer (2017) has written about the popularity of such US-themed clothing and quintessentially American brands like Nike and Tommy Hilfiger. While such apparel are symbols of America, Ryer noted, “This fashion is not a political symbol per se” (287; see also Hodge 2001, 2005). Instead, Ryer argues that by wearing these clothes, Cubans index their location in the remittance economy, displaying the fact that they have family abroad who supply them with such coveted items. Importantly, though, Ryer acknowledges, “In some contexts, these marcas

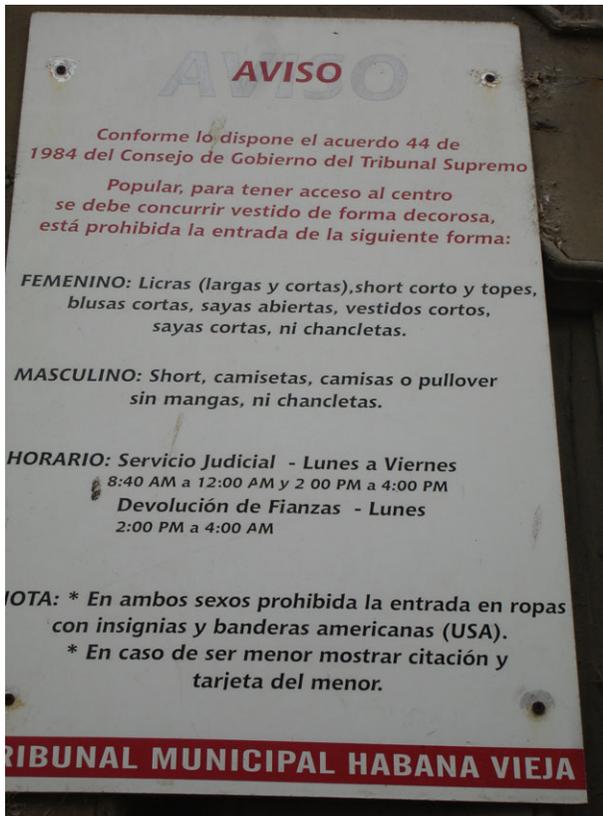


Figure 1: Notice posted on courthouse door. Photo by author, 2010. [Color figure can be viewed at [wileyonlinelibrary.com](http://wileyonlinelibrary.com)]

may signal defiance of Cuban aesthetic, political, and racial hierarchies” (288). He offers an example, told to him by one of his interlocutors, of a Young Communist League meeting in which Party members lengthily debated whether *militantes* (members of the Communist Party) should be banned from wearing US-flag-branded clothing (10–11). “Some leaders wanted to ban it,” his interlocutor explained, “but after several *militantes* suggested that wearing the flag of the enemy on one’s butt was hardly an unambiguous endorsement, the proposed ban turned into a ‘recommendation’” (11). In other words, the young Party members and leaders recognized that such clothing might merely be a fashion choice, but simultaneously, as indicated through their preservation of a “recommendation,” still worried about its symbolic potential as a pro-American political statement.

In the context of a Cuban courthouse, in which the laws of the state are enforced, socialism is advanced, and the New Man remains an ongoing aspiration, the balance, apparently, has tipped the other way. US-themed clothing worn in this politically charged context is more likely to be read as a political statement than an innocuous fashion choice. What was a “recommendation” for youthful Party members thus becomes a “prohibition” for those engaging in court business. Even if such clothes are not seen as overtly political and simply mark “one’s privileged access to increasingly important transnational remittance circuits”

(Ryer 2014), these clothes uncomfortably introduce inequalities, privilege, and reminders of capitalism into an institution devoted to quashing these very things (Hodge 2001, 2005). In short, while US-themed clothing might be a stylish fashion choice on the streets and even in Young Communist League meetings and demonstrations, there is simply no place for it and its disruptive potential in a Cuban courthouse.

My own observations in Cuba confirm that the very whiff of a US incursion into the space of Cuban law is too much. Ynez, for example, warned me on two occasions not to speak—once when I joined her and several other judges at the local police station cafeteria for lunch, and again as she flashed her ID card and ushered me into a trial at a provincial courthouse—telling me that it would be much easier if everyone thought I was Cuban rather than know (from my accent) that I was American. Additionally, the Cuban institutional sponsor for my research encouraged me to adjust my project proposal, which would be reviewed by Cuban state authorities. The instructions, which I received in Spanish, encouraged me to focus on “legislation, not courts,” because “that aspect [i.e., law courts] makes it difficult to approve the project.” Things American, whether people, symbols, or ideas, have no place in the Cuban concept of law and legality, and it is through a prohibition on particular clothing in the courthouse (as well as the dissuasion of US researchers from conducting research there) that this ideological stance is projected onto the general population, hopefully shaping them into ideal legal subjects who understand the law as coming from themselves, not from above, outside, or elsewhere, and who recognize rules as those determined by a Cuban populace, not influenced by a capitalist economy.

### *A Caribbean People*

Much like the Cuban courts’ work in shaping the very populace that undergirds its system of popular socialist justice, the CCJ is also at work crafting a Caribbean population that can sustain that court’s claim to popular Caribbean justice. As discussed earlier, the CCJ acknowledges the shared history and values of much of the population it serves. Through sombre-colored suits and stringently monitored courthouse attire, the CCJ respects and recognizes the common colonial experience of the West Indies, wherein law is historically understood as coming from the British sovereign and treated with according formality and conservatism. Nevertheless, the CCJ is decidedly not a British court. By serving as an indigenous final court of appeal, the CCJ and its supporters argue that it can sever, once and for all, the remaining link between the formerly colonized and the colonizer. The CCJ, in this sense, does not hold itself out to be a court for a colonial population or even a population defined by its past coloniality, but as a court for a self-consciously identified Caribbean people. “Our people, our region, our Court,” claims a rotating banner on the CCJ’s homepage.<sup>9</sup> Thus, it is not enough for the CCJ to merely respect the region’s British legal past and the colonial subjects who inhabited it. This cannot be the population that defines the popularity of the justice administered by an indigenous Caribbean court. Instead, the CCJ seeks to construct a Caribbean people, to borrow the words of Deborah Thomas (2004), who “look back, take pride, but move forward” (66). It does this, in part, through court clothing.

When seated at the bench in Courtroom 1 of the CCJ courthouse, the seven judges wear black slacks (or a black below-the-knee skirt for the sole female judge), black waistcoats, and white neckties. This staid outfit is covered by a bright royal blue robe trimmed with an equally vivid band of yellow that runs along the robe’s front opening (Figure 2). While no one offered an explanation for the neckties and waistcoats, the genealogy of these accoutrements were evident and were, moreover, on display at the Trinidad and Tobago



Figure 2: Seven judges of the CCJ, 2012–2013, wearing formal court attire, including waistcoat, necktie, and judicial robe. (Photo by CCJ. Reprinted with permission.). [Color figure can be viewed at [wileyonlinelibrary.com](http://wileyonlinelibrary.com)]

Hall of Justice during the time of my fieldwork. There, presented in a museum-like exhibit, were the chronologically ordered costumes of Trinidadian judges from yesteryear through the present day, showing the preservation of various aspects of British judicial fashion, such as the necktie and the waistcoat. Indeed, just as the British law lords and the judges of former Caribbean colonies wear these accessories, so too do the CCJ judges, thereby marking their inalienable and unbroken connections to the respected and authoritative law and justice of Great Britain—a fashioned link to the past, as discussed above.

The CCJ's blue and gold robes, however, were worthy of remark and explanation. In an interview, the chief executive administrator of the CCJ told me that these colors hold great significance. This court, she explained, serves all of the Caribbean, and these colors are not the colors of any one particular nation-state, but are the colors of the Caribbean Sea and the sun. The court's very first annual report, issued for 2005–2006, offered the same message with more detail.

Blue robes signify the Caribbean Sea which touches our shores and binds us together—the pure and strong gold band signifies the strength of the Caribbean sun which warms us all. We are not Lords over serfs, we are Honourable men and women of the Caribbean, working for *our* Caribbean and we bow in unison to the Caribbean people whom we serve. (Caribbean Court of Justice 2006, 6)

As the *Annual Report* clearly states, the CCJ's blue and gold robes should be experienced as manifestly Caribbean robes worn by Caribbean judges serving Caribbean people. Emphasizing the transformation that the court hopes to achieve through these robes, the *Annual Report* disclaims a characteristically feudal lord and serf relationship and, instead, positions the CCJ and its judges as “men and women of the Caribbean.” Similarly, it literally

underscores its effort to redefine the Caribbean and its people by forcefully calling the region “*our* Caribbean” that is populated by the “Caribbean People whom we serve.” In other words, these blue and gold robes, which notably sit *over* and partially cover the waistcoat and necktie, work to call forth a Caribbean populace that possesses its own law and that is decidedly different from a (post)colonial population that adheres to the sovereign’s law.

This effort to shape a noncolonial Caribbean subject is also observable in other courthouse clothing or, rather, in what is not worn to court. Instructions to attorneys clearly state: “Attorneys appearing before the Court are expected to dress as they would to address the Supreme Court in their home state. Wigs however are not required.”<sup>10</sup> As I observed, not only are wigs “not required” but also they are never worn by either attorneys appearing before the court or by the judges of the CCJ. As legal scholar Charles M. Yablon (1995) has noted, “English judges and barristers began wearing wigs and robes because *everybody* in polite society was wearing wigs in robes in those days. They continue to wear them because nobody has ever told them to stop” (1133). Overtime, as Yablon details, the wig became a quintessential mark of the distinct Britishness of British law and the persons who practice it. Thus, by dissuading legal practitioners at the CCJ from wearing a wig, the CCJ is consciously casting off its association with British law, British tradition, and the British society that historically inspired this tradition. By *not* wearing wigs, the CCJ seeks to align the Court with a new society populated by a Caribbean people who do not passively adopt the traditions of the former colonizer or actively embrace its laws and legal system. A wig-less CCJ is a court for a wig-less population.

This population, though, is not a gender-less population. As described earlier, the policing of attire at the Court was very much a gendered practice, with women giving and receiving the great majority of reprimands. This observation accords with those made by Freeman in Barbados (1993, 2000) and Cohen (1996) in the British Virgin Islands (BVI), both of whom noted the carefully selected and critically judged business attire worn by working women in those Anglophone Caribbean locales. Women, Cohen demonstrates, mark their professional success “by wearing pantyhose, pumps, and well-matched suits or separates” (135). Moreover, since these professional positions are largely occupied by BVI “Belongers,” this same attire indexes their national status (135). Freeman (2000) similarly shows how the growing “pink-collar” workforce in Barbados contributes to an emerging sense of what it means to be a modern Caribbean woman that belongs to a modern Caribbean state. The gender-specific criticisms of clothing at the CCJ, then, might be read as not only a careful protection of the professionalism of the Court and those who work there but also as an active measure to construct a modern Caribbean people. In other words, as much as the court’s apparel acknowledges the local community’s abiding faith in British law, it simultaneously attempts to nudge this same population toward an enlightened identity and transform the (post)colonial populace into legal subjects who can sustain a truly Caribbean court.

## Conclusion

At first glance, the lowest courts in Cuba and the highest court in the independent Anglophone Caribbean appear to have little in common, including, what (not) to wear. However, these courts, as different as they are, locate at least part of their legitimacy in being popular courts with close, historic, and irreplaceable links to their respective local communities. In Cuba, a socialist revolution led to an understanding of law as nothing more than the ordinary common sense of the now-socialist population. At the CCJ, a slow and tentative break from a centuries-long engagement with the British legal system led to a court that had no choice but to honor the extraordinariness of the sovereign’s law if it hoped to garner

the support of the people it claimed authorized it. The weight of these histories shows itself in the very clothes that are worn in the courtroom.

This article's focus on courthouse attire, though, allows for deeper consideration of the populism of these courts. By bringing the rich literature on the anthropology of clothes into conversation with courthouse ethnography, I have argued that while courthouse clothing is certainly reflective of the past, it is also, perhaps more profoundly, constructive of the present. The local communities—the populace—in which these courts stake their popular legitimacy require shaping, adjusting, and ongoing attention in order to become the legal subjects that these courts hold themselves out to be serving in the first place. It is the very visibility of clothing, the comments that it elicits, and the criticisms that it draws that make it such a productive site through which to observe the transformation of the legal subject and the constitution of an ideal community. Clothing, in short, draws attention to the fact that the “popular” adjective preceding “justice” is, in fact, laboriously constructed.

### Notes

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1. All names are pseudonyms.
2. Unscheduled speech by Fidel Castro on July 25, 1962, from Santiago de Cuba University, <http://lanic.utexas.edu/la/cb/cuba/castro.html>.
3. Fidel Castro, speech to students, May 21, 1963, <http://lanic.utexas.edu/project/castro/db/1963/19630521-1.html>
4. The twelve signatories of the Agreement Establishing the Caribbean Court of Justice, are Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, St. Christopher and Nevis, St. Lucia, the Republic of Trinidad and Tobago, Dominica, and St. Vincent and the Grenadines, which are all former British colonies, as well as Suriname, a former Dutch colony.
5. The independent Caribbean states that continue to use the JCPC are Antigua and Barbuda, The Bahamas, Grenada, Jamaica, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, and the Republic of Trinidad and Tobago.
6. Notably, in 2006, the JCPC traveled to the Bahamas to hear several cases, at the request of the Bahamian judiciary, for its first itinerant sitting in 170 years. It did so again in 2007 and again in 2009.
7. “Mission and Vision,” *Caribbean Court of Justice*, accessed June 16, 2018, [www.ccj.org/about-the-ccj/mission-vision](http://www.ccj.org/about-the-ccj/mission-vision).
8. See *Attorney General v. Joseph and Boyce* 2006, 18.
9. Caribbean Court of Justice, <http://www.caribbeancourtsofjustice.org>.
10. Caribbean Court of Justice, <http://www.ccj.org/judgments-proceedings/information-for-attorneys>.

## References Cited

- Archibold, Randal C. 2015. "American Flags Popping Up in Cuba on Everything but a Pole." *New York Times*, April 13. <http://nyti.ms/1NzicvB>.
- Berman, Jesse. 1969. "The Cuban Popular Tribunals." *Columbia Law Review* 69 (8): 1317–54.
- Caribbean Court of Justice. 2006. *Annual Report 2005–2006*. [www.caribbeancourt-ofjustice.org/wp-content/uploads/annualreports/ar0506.pdf](http://www.caribbeancourt-ofjustice.org/wp-content/uploads/annualreports/ar0506.pdf)
- Cohen, Colleen B. 1996. Contestants in a Contested Domain: Staging Identities in the British Virgin Islands. In *Beauty Queens on the Global Stage: Gender, Contests, and Power*, edited by Colleen Ballerino Cohen, Richard Wilk, and Beverly Stoeltje, 125–45. New York: Routledge.
- Cohn, Bernard S. 1996. *Colonialism and Its Forms of Knowledge: The British in India*. Princeton, NJ: Princeton Univ. Press.
- Comaroff, John L., and Jean Comaroff. 1997. *Of Revelation and Revolution*. Volume 2, *The Dialectics of Modernity on a South African Frontier*. Chicago: Chicago University Press.
- Comaroff, John L., and Simon Roberts. 1981. *Rules and Processes: The Cultural Logic of Dispute in an African Context*. Chicago: University of Chicago Press.
- Evenson, Debra. (1994) 2003. *Law and Society in Contemporary Cuba*. The Hague: Kluwer Law International.
- Ewick, Patricia, and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.
- Freeman, Carla. 1993. Designing Women: Corporate Discipline and Barbados's Off-Shore Pink-Collar Sector. *Cultural Anthropology* 8(2): 169–86.
- . 2000. *High Tech and High Heels in the Global Economy: Women, Work, and Pink-Collar Identities in the Caribbean*. Durham, NC: Duke University Press.
- Guevara, Ernesto. (1965) 1997. "Socialism and Man in Cuba." In *The Che Guevara Reader: Writing on Guerilla Strategy, Politics and Revolution*, edited by David Deutschmann, 212–230. Melbourne: Ocean Press.
- Hansen, Karen T. 2004. "The World in Dress: Anthropological Perspectives on Clothing, Fashion, and Culture." *Annual Review of Anthropology* 33:369–92.
- Haque, Emdadul. 2012. The Dress Code for Lawyers: In Search of Change with Climatic Compatibility in Bangladesh. *Global Journal of Human Social Science* 12 (14): 53–60.
- Hodge, Derrick. 2001. Colonization of the Cuban Body: The Growth of Male Sex Work in Havana. *NACLA Report on the Americas* 34 (5): 20–28.
- . 2005. Sex Workers of Havana: The Lure of Things. *NACLA Report on the Americas* 38 (4): 12–25.
- Isani, Shaeda. 2010. "Semiotic Dialectics of Legal Courtroom Attire and the Cross-Cultural Erosion of Professional Identity." *ESP Across Cultures* 7: 89–103.
- Kahn, Paul W. 1997 *The Reign of Law: Marbury v. Madison and the Construction of America*. New Haven, CT: Yale University Press.
- LaFont, Suzanne. 1996. *The Emergence of an Afro-Caribbean Legal Tradition: Gender Relations and Family Court Use in Kingston, Jamaica*. San Francisco: Austin & Winfield.
- McVeigh, Brian J. 2000. *Wearing Ideology: State, Schooling and Self-Presentation in Japan*. Oxford: Berg.
- Merry, Sally Engle. 1990. *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*. Chicago: University of Chicago Press.

- . 1992a. “Anthropology, Law, and Transnational Processes.” *Annual Review of Anthropology* 21: 357–79.
- . 1992b. Popular Justice and the Ideology of Social Transformation. *Social & Legal Studies* 1: 161–76.
- . 2000. *Colonizing Hawai‘i: The Cultural Power of Law*. Princeton, NJ: Princeton University Press.
- Mertz, Elizabeth. 2007. *The Language of Law School: Learning to “Think Like a Lawyer.”* Oxford: Oxford University Press.
- Miller, Daniel, and Sophie Woodward. 2012. *Blue Jeans: The Art of the Ordinary*. Berkeley: University of California Press.
- Ng, Kwai H. 2009. *The Common Law in Two Voices: Language, Law, and the Postcolonial Dilemma in Hong Kong*. Palo Alto, CA: Stanford University Press.
- O’Connor, Sandra Day. 2013. “Justice Sandra Day O’Connor on Why Judges Wear Black Robes: The Supreme Court Icon Breaks Down the Tradition.” *Smithsonian Magazine*, November.
- Richland, Justin. 2008. *Arguing with Tradition: The Language of Law in Hopi Tribal Court*. Chicago: University of Chicago Press.
- Ryer, Paul. 2014. The Seeing Eye is the Organ of Tradition, December 31 (blogpost). <http://etnocuba.ucr.edu/the-seeing-eye-is-the-organ-of-tradition>. Last accessed April 14, 2016.
- . 2017. The Rise and Decline of *La Yuma*: Global Symbols, Local Meanings, and Remittance Circuits in Post-Soviet Cuba. *Journal of Latin American and Caribbean Anthropology* 22(2): 276–97.
- Salas, Luis. 1983. The Emergence and Decline of the Cuban Popular Tribunals. *Law and Society Review* 17 (4): 587–612.
- Steele, Valerie, and John S. Major. 1999. *China Chic: East Meets West*. New Haven, CT: Yale University Press.
- Thomas, Deborah A. 2004. *Modern Blackness: Nationalism, Globalization, and the Politics of Culture in Jamaica*. Durham, NC: Duke University Press.
- Turner, Terrence S. [1980] 2012. The Social Skin. *Hau: Journal of Ethnographic Theory* 2(2), 486–504.
- Yablon, Charles M. 1995. “Judicial Drag: An Essay on Wigs, Robes and Legal Change.” *Wisconsin Law Review* 1995(5): 1129–53.
- Zatz, Marjorie S. 1994. *Producing Legality: Law and Socialism in Cuba*. New York: Routledge.

### **Treaties and Agreements**

- Agreement Establishing the Caribbean Court of Justice (2001)
- Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (2001).

### **Court Cases**

- The Attorney General, Superintendent of Prisons and Chief Marshal v. Jeffrey Joseph Lennox and Ricardo Boyce. [2006] CCJ 3 (AJ).