

RESEARCH ARTICLE

Law, Language, and a Nonsovereign Caribbean

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ABSTRACT This article argues that the Caribbean Court of Justice (CCJ), a tribunal serving twelve independent primarily Anglophone Caribbean states, uses a variety of linguistic techniques in its pursuit of a regional future. Created upon a complicated (post)colonial landscape and charged with resolving the nonsovereignty of its member states, which, for the most part, continue to utilize the United Kingdom's Privy Council for their final court of appeal, the CCJ does not view sovereignty as a solution. Instead, as I demonstrate through several examples of the Court's use of, talk about, and abstention from language, the CCJ's judges and employees seek to constitute a yet-to-be-fully-defined nonsovereign region that carves out a Caribbean people, pointedly rejects ongoing British legacies and logics, refuses to adopt the legal practices associated with sovereignty, and strives to remain untethered to either nation-state or suprapstate. [*law, language, sovereignty, region, Caribbean*]

RESUMEN Este artículo argumenta que la Corte de Justicia del Caribe (CCJ), un tribunal al servicio de doce estados independientes primariamente anglófonos del Caribe, usa una variedad de técnicas lingüísticas en la búsqueda de un futuro regional. Creado sobre un paisaje (post)colonial complicado y encargado de resolver la no soberanía de sus estados miembros, la cual, en su mayor parte, continúa utilizando el Consejo Privado del Reino Unido para su corte final de apelaciones, el CCJ no ve la soberanía como una solución. En cambio, como lo demuestro a través de varios ejemplos acerca del uso de la Corte de, hablar sobre, y de la abstención de lenguaje, los jueces y empleados de la CCJ buscan constituir una región no soberana, aún por definir enteramente, que forja un pueblo caribeño, rechaza intencionalmente lógicas y legados británicos, rehúsa adoptar las prácticas legales asociadas con la soberanía, y lucha por permanecer libre de ataduras al Estado nación o al supra-Estado. [*ley, lenguaje, soberanía, región, el Caribe*]

During the first week of my first visit to the Caribbean Court of Justice (CCJ), a regional tribunal seated in Port of Spain, Trinidad and Tobago, I met with the chief executive administrator of that institution, Master Jacobs, as she was called with reference to her former position as a master in the Trinidad and Tobago national courts.¹ Over the course of our conversation, Master Jacobs, who had been instrumental in setting up the Court, offered fascinating details of the decisions she and others made leading up to the CCJ's opening in 2005. There was particular attention, she noted, to present the CCJ as a *regional* court, not just a court for Trinidad—a misunderstanding that might arise from the Court's location there. One way this was done, she told me, was to utilize the diversity of regional

accents of the CCJ staff when creating the telephone menu for the Court. For instance, she explained, “when you call the Court, we made sure that you do not hear a Trinidadian voice. You will hear a Bajan voice. Deeper into the system you hear a Guyanese voice.” While “outsiders” might not catch these nuances, “these differences matter” to people from the Caribbean, she assured me. Hearing these differences, she suggested, would signal to in-the-know callers that this Court was, in fact, theirs: a court for the insiders. Indeed, this linguistic choice was directed to defining the very region that these callers could believe themselves to be part of, one that was inclusive of national difference, as represented by the differences in nationally associated accents.

Language, I realized during that first week, was very much on the Court's radar as something deserving of attention. So I too paid attention as explicit discussions of language wafted in and out of my research over the next fourteen months. Many of those who worked there, from judges and high-ranking administrators to customer service representatives, seemed to understand that language could play a critical role in the CCJ's accomplishment of its goals. While not everyone was as explicit and intentional about language as Master Jacobs, a good number of judges, administrators, and staff members offered metadiscursive commentary about language's ability to do something for the Court *beyond the accomplishment of law itself*. It was as if they had read and digested the wealth of legal linguistic scholarship that has expertly shown how language, through law, has the capacity to veritably craft a world (e.g., Cormack 2007; Ford 1999; Maurer 2013; McVeigh 2007; Ng 2009; Richland 2011, 2012, 2013). In other words, my interlocutors at the CCJ proactively sought to constitute something through their thoughtful use of language. This was clear. Less obvious was what it was they believed language to be creating. The multi-accented telephone menu was designed to hold special meaning to an imagined audience of insiders that exists only through the presupposition and entailment of a particular region. But what, exactly, are the particularities of this region? How does language help to achieve it?

Drawing on several examples of the Court's talk about, use of, and occasional abstention from language, I argue here that the CCJ looks to language as an important medium through which a nonsovereign region can be constituted.^{2,3} I borrow the concept of nonsovereignty from Yarimar Bonilla (2015, xiv), who has defined it "as both a positive project and a negative place-holder for an anticipated future characterized by something *other than* the search for sovereignty." Indeed, this is precisely what the CCJ is attempting to accomplish through language; as a positive project, the Court works to effect a distinct break from persistent British colonial legacies and logics, and, at the same time, it signals a movement toward a yet-to-be-fully-defined Caribbean future that, whatever it is, is certainly not sovereign—a negative placeholder for something yet-to-be realized. I suggest that the subtlety, possibility, and flexibility of language allows the CCJ to navigate the path to nonsovereignty with a necessary sensitivity. Both its rejection of a (post)colonial past and present and its embrace of an unknown future must take into account a palpable tension between regional cooperation and national autonomy, a long-held familiarity with and comfort in British law and legal practices, and an acute awareness of the Caribbean's relative place in the global geopolitical hierarchy. I argue that the CCJ views language as a powerful means to negotiate these multiple delicate issues and sees a nonsovereign region as an ideal endpoint.

In what follows, I elaborate on the Court's efforts to constitute this envisioned region through, in part, its careful use of language. After an introduction to the CCJ, I offer a

more thorough discussion of the concepts of sovereignty and nonsovereignty and how they are useful in understanding the CCJ's region-making efforts. I then turn to series of examples to illustrate how those who work at the CCJ turn to language's constitutive abilities to respond, at multiple levels, to cross-cutting national, regional, and global pressures at the same time that they strive to establish the Court's own authority. While the range of the CCJ's linguistic techniques may give the impression of an unfocused approach—such as claiming that linguistic differences matter, on the one hand, as in the opening vignette, and silently eliding linguistic difference, on the other hand, as suggested in a later example—the Court is, I suggest, cohesive in its pursuit of a future that is not sovereign.

THE ANGLOPHONE CARIBBEAN AND ITS COURT OF JUSTICE

The CCJ, or some version of it, had been contemplated for many decades as a solution to two problems shared by many independent Anglophone Caribbean states. The first is that following independence most of these states retained the Judicial Committee of the Privy Council (commonly referred to as the "Privy Council"), the London-based tribunal that resolved conflicts within Britain's colonies, as their final court of appeal. On its own, the retention of the Privy Council is not unique; nearly all of Britain's former colonies utilized it for some time after independence until a national appellate court could be developed. What makes the Caribbean different is that despite the passing of thirty, forty, or even fifty years of independence, most Anglophone Caribbean states *still* retain the Privy Council. To this day, then, a tribunal in London, with justices from the Supreme Court of the United Kingdom at its helm, makes the final legal decisions on cases coming out of the majority of independent Anglophone Caribbean states.⁴ While many in the region find solace in this arrangement, seeing the Privy Council as a beacon of objectivity and superior justice, for others, this ongoing dependence on a British court is an affront to state sovereignty and an untenable legacy of colonialism, not to mention a formidable barrier to access justice; among other costs, traveling to London is a pricey endeavor requiring, for some, the acquisition of a visa, which has not always been granted.⁵ For those who decry the region's ongoing relationship with the Privy Council, a local court of appeal is an absolute necessity to "bring justice home" (Thompson-Barrow 2008).

The second problem shared by much of the Anglophone Caribbean is a history of lackluster regional organizations that have continuously promised economic integration and development but have mostly failed to deliver. The short-lived and controversial West Indies Federation (1958–1962), established with the encouragement, assistance, and insistence of the British Colonial Office and dismantled following the dissatisfaction and disagreement of its member territories, marked the first notable attempt at creating such an organization. The collapse of the federation spurred

TABLE 1. CARICOM member states. Those marked with a single asterisk (*) are state signatories to the Agreement Establishing the Caribbean Court of Justice and are, therefore, automatically subject to the CCJ's original jurisdiction. Those marked with a double asterisk (**) are also signatories to the agreement and have further made the necessary constitutional changes to replace the Privy Council's appellate jurisdiction with that of the CCJ. The year of their accession follows in parentheses

Full Members:	Associate Members:	Observer States:
• Antigua and Barbuda*	• Anguilla	• Aruba
• The Bahamas	• Bermuda	• Colombia
• Barbados** (2005)	• The British Virgin Islands	• Curacao
• Belize** (2010)	• Cayman Islands	• Dominican Republic
• Dominica** (2014)	• Turks and Caicos	• Mexico
• Grenada*		• Puerto Rico
• Guyana** (2005)		• Sint Martin
• Haiti		• Venezuela
• Jamaica*		
• Montserrat		
• St. Christopher and Nevis*		
• Saint Lucia*		
• Saint Vincent and the Grenadines*		
• Suriname*		
• The Republic of Trinidad and Tobago*		

the first wave of independence within the Anglophone Caribbean and also prompted the creation of the Caribbean Free Trade Association (CARIFTA), another conglomerate of states dedicated to serving the economic needs and development goals of the region. In short order, CARIFTA became the Caribbean Community (CARICOM), and, after decades of limited progress, CARICOM underwent a lengthy revision process, resulting in the creation of a Caribbean Single Market and Economy (CSME). It is during this process of revision that a court was identified as an essential institution in the pursuit of regional integration. To this end, the revamped CARICOM treaty (*The Revised Treaty of Chaguaramas* 2001), with its enhanced goals and amended provisions, called for the creation of the Caribbean Court of Justice to adjudicate disputes arising out of regional integration treaties and agreements. These cases would constitute the Court's original jurisdiction. The *Agreement Establishing the Caribbean Court of Justice*, signed in 2001 by twelve of CARICOM's fifteen full members, further delineated an appellate jurisdiction for the Court, which was intended to "close the circle of independence" by providing a more localized court that could hear appeals from the national courts of

each member state (Pollard 2004) (Table 1). While the original jurisdiction would handle regional integration matters, the appellate jurisdiction would replace the Privy Council as the final court of appeal for those member states who took the necessary constitutional steps to make this transition. The CCJ, in other words, was meant to kill two birds with one stone: bolster the sovereignty of individual Caribbean states and propel the quest for functional regionhood.

Since opening its doors in 2005, however, the CCJ has enjoyed limited success in laying to rest either bird. For reasons not fully understood by the Court or others, original jurisdiction cases have been slow to arrive—about one per year on average. One CCJ judge hoped that the rising generation of law students would be better trained in the type of law applied in the original jurisdiction and more eager to build their practices around such casework, while another judge glumly recognized the "real possibility" that the Court's original jurisdiction "could more or less slip into obsolescence" without some sort of restructuring of CARICOM that included an "Executive Commission-type organization," something that was unlikely, he thought, given the states' "attempt[s] to hold on to sovereignty." The Court's

appellate jurisdiction, too, has been disappointingly slow to develop. During the time of my research in 2012–2013, when the CCJ was seven-going-on-eight years old, only three states had acceded to the Court's appellate jurisdiction. Since then, only one more has joined them, while the citizens of two other states voted down accession in national referendums (Table 1).⁶ There are a great number of reasons that might explain the hesitancy to join the CCJ's appellate jurisdiction, including the fact that the issue has become mired in local politics in many states, with one party in support of the Court, the other firmly against it, and their respective constituencies voting along party lines. Misinformation or lack of information about the CCJ is another compounding factor, as regularly noted by the current president of the Court (Lilla 2008). And, of course, the still widely held belief that the justice doled out by the ancient, distant, and thus believed-to-be more-objective and less-corruptible Privy Council is superior to anything that could be produced by a Caribbean Court, presents one of the most difficult challenges to enticing more member states to join the CCJ's appellate jurisdiction (Lilla 2008).

What should be evident in this telling of the Court's genesis is that "the Caribbean" the CCJ purports to represent is incredibly limited. A far more expansive idea of the region existed for centuries before the economic- and political-integration projects that led to the establishment of the CCJ—an idea of the region, moreover, that has been continually defined and redefined through precolonial trade and travel and, especially, through colonialism, with its geopolitical turf wars and competing claims to dominance (see, e.g., Mintz 1971, 1974; Palmié and Scarano 2011; Trouillot 1992, 2002). Even after the heyday of colonialism, "the Caribbean" as a region, an idea, a promise, or an object of study continues to find definition through a multitude of institutions, projects, and processes. As many of my interlocutors point out, institutions such as the West Indies cricket team and the University of the West Indies have done much and do much to cohere an identifiable region (see also James 1993), and, as many of them also acknowledge, the Caribbean extends well beyond the West Indies and certainly beyond the twelve mostly English-speaking states that make up the CCJ's membership. Indeed, not even all of the CCJ's members are Anglophone; Suriname, a former colony of the Netherlands, calls Dutch its national language (though Surinamese attorneys appearing before the Court uniformly and exclusively speak English). Yet, the Court's unabashed priority is its English-speaking member states. Not only do these states constitute the great majority of the CCJ's membership, but the CCJ's entire appellate jurisdiction was created to address a problem common to only its Anglophone members, namely, their continued reliance on Britain's Privy Council. Thus, it is these states that have the greatest impact on the CCJ's work: their shared experience of British colonialism, their disappointment with the rise and quick demise of the West Indies Federation, and their ongoing frustrations with

the limited achievements of regional-integration attempts.⁷ And it is these experiences, disappointments, and frustrations that the Court sees language as adeptly able to navigate.

NONSOVEREIGNTY AS A PROBLEM, NONSOVEREIGNTY AS A SOLUTION

Despite the fact that completing the project of state sovereignty is one of the CCJ's founding charges, those who work at the Court tend to think rather poorly of sovereignty. Justice Matthews, a particularly reflective judge on the CCJ's bench, once identified the advent of sovereign statehood in the Caribbean as a regretful turning point that fractured cross-regional ties and travel. Another judge pointed out that sovereignty is what prevented a Jamaican man from attending his own appeal at the Privy Council because of visa restrictions. And the jealous "attempt to hold on to sovereignty," yet another judge noted, as quoted earlier, is what halts the full embrace of the CCJ and what even holds the possibility of its failure. Sovereignty, in short, as many at the CCJ see it, is problematic. It is what lies behind tightly controlled borders, insular populations, and claims to protect governance structures from perceived outside interference. Indeed, the concept of sovereignty that the CCJ judges see as problematic is very much a modern notion of territorial sovereignty defined by a "state-centered moral geography of a clearly bounded nation defined by a distinct land, people, and state" (Bonilla 2015, 6; see also Appadurai [1996] 2003).

Justice Matthews offered further insight into why this is a problem for the Caribbean. In the months that followed my initial discussion with Master Jacobs, I settled into my dual role at the CCJ as an anthropological researcher and a legal intern, and it was in this two-hatted capacity that I often conversed with Justice Matthews. During one such conversation, we discussed an appeal before the CCJ that he found particularly vexing because of the international laws that technically applied but only awkwardly fit the regional context. Our discussion of the case and the challenges it posed quickly pivoted to a broader reflection on the state of the Caribbean more generally. "As a judge from a Third World country," he said, as he pushed the case file aside, he was "very conscious of the terms on which the region was supposed to enter the globalized world."⁸ Specifically, the Caribbean must come in on the terms of "the big boys," he dubbed them. The problem, he told me, is that these so-called international standards were not "necessarily ... put in place by or are good for the Caribbean," such that any pretense of "a level playing field" is patently false, and so that in his role as a judge at a regional court serving Caribbean states, he will not "blindly embrace" them, though he realized he could not ignore them. He was clearly frustrated by this state of affairs and determined not to let the Caribbean dissolve into "international standards" without a fight. At the same time, he was contemplatively resigned: "But that is how the world is," he sighed. What is so frustrating, he explained,

is that the Caribbean is entering a world stage that is fraught with inequalities, and many of these are “the same inequalities as colonialism.”

Justice Matthews’s lamentations identify with remarkable clarity the crux of the problem of sovereignty for the Court, the Caribbean, and much of the Global South. The Court, as he suggested, is painfully aware of the trap set by “North Atlantic universals” like sovereignty (Trouillot 2002; see also Bonilla 2013, 2015), which promise entry into and equal treatment by “this world” but are, in fact, nothing more than impossible, inappropriate, and, at best, aspirational models that have never worked in the Caribbean (or elsewhere, for that matter). To be sure, few states ever attain sovereignty in its idealized North Atlantic form. In fact, most of the states the Court serves are *not*, by definition, sovereign; their borders remain open to, often welcoming of, British legal influence by way of the Privy Council. They are, instead, more accurately described as nonsovereign.⁹

Nonsovereignty, as Bonilla (2015, xiii) has pointed out, is irrespective of “flag independence.” Independent states, such as those the CCJ serves, and still-dependent territories, such as Guadeloupe (a state-department of France) and Puerto Rico (an unincorporated US territory), both of which inform Bonilla’s work, share a similar struggle “with how to forge a more robust project of self-determination, how to reconcile the unresolved legacies of colonialism and slavery, how to assert control over their entanglements with foreign powers, and how to stem their disappointment with the unfilled promise of political and economic modernity” (xiii). Justice Matthews’s reflection on “big-boy” standards that echo “the same inequalities as colonialism” captures just this and highlights not only the problem posed by the aspirational, yet unattainable, model of sovereignty but also the untenability of this type of (neo/post)colonial nonsovereignty as well.

Enter the region. Unable to address the problem of its member states’ nonsovereignty with sovereignty, the CCJ pursues something else: a regional nonsovereignty, the contours of which begin to take shape (though have not yet calcified into a settled definition) through, in part, the Court’s careful use of and talk about language. The nonsovereign region pointedly rejects ongoing British legacies and logics. It refuses to adopt the legal practices associated with North Atlantic conceptions of sovereignty, such as an authoritative legal sovereign (Simpson 2014). And it strives, as well, to remain untethered to one or another nation-state (or even a superstate, given the still-raw memories of the failed West Indies Federation), as suggested through the Court’s concerted effort to represent multiple nationalities in its phone menu. The region becomes “an alternative non-sovereign future” for nonsovereign states still wrestling with their dependence on Britain (Bonilla 2015, 151). It allows for the possibility “to break free from the epistemic binds of political modernity, even while still being compelled to think through its normative categories”

(15). The “big-boy” standards, in other words, do not go away, but the CCJ endeavors, through language, to work with them and around them without giving in to them.

IDENTIFYING A PEOPLE, JUSTIFYING THE COURT: “TEEFIN’ A WINE”

In the fall of 2013, after I had been at the Court for nearly a year, the CCJ initiated a new public education campaign in Trinidad. Stymied by the slow accession of states to its appellate jurisdiction, the Court hoped that educating school children would improve the public’s awareness of the CCJ and change already-existing biases against it. The campaign was designed, then, to both educate and persuade by offering justifications for the Court’s existence and demonstrations of its excellence. Though not in this format, the CCJ was already quite practiced in providing these types of explanations, and among the justifications it regularly offered for itself was a recurring theme: a shared language, I was told on numerous occasions, made this region a region and made a regional court a necessity. This familiar argument featured prominently in the newly developed education program.

After several months of organizing and a hurried few days of preparation, I joined the CCJ’s public education staff on their first of several planned school visits: a morning trip to St. Andrew’s Convent, a secondary school in Port of Spain. In an open-air assembly hall filled with eighty or so students, Serena and Sara, two CCJ staff members, moved through the program they had thoughtfully prepared while I assisted as I could. The highlight of the visit—a loosely scripted enactment of an appeal—was something that they, with the encouragement of a CCJ judge, eagerly anticipated, believing that it would resonate particularly well with the high-school-aged crowd. The objective was to have students act out, with the assistance of narration and prompting, the process of a case moving through Trinidad courts and eventually arriving at the Privy Council, and then to contrast that experience with an appeal to the CCJ.

As our student volunteers stood in their assigned positions, Serena explained the hypothetical scenario, one designed to be widely relatable to young audiences across Trinidad: a young man and a young woman were at a school dance when the young man tried to “teef a wine” (Trinidadian creole for attempting to intimately dance) with the young woman. The young woman was not happy with this and filed a case against him in the Trinidadian courts. As Serena continued to narrate, the female student walked to a series of students standing with premade signs that identified them as judges of different courts. At Trinidad’s “high court,” the young woman pointed to the young man and argued, “he tried to teef a wine from me,” to which the “judge” responded, to the amusement of the spectators, “No!”—firmly rejecting the woman’s argument. After appealing her case and offering the same argument, the young woman met the same adamant “No!” from the Trinidad “court of appeals,” who also rejected her case. She then appealed to the “Privy

Council,” after spending a good deal of time and money flying to England, as Serena explained, and presented the same argument. The “Privy Council judges,” Serena pointed out, had no idea what “teefin’ a wine” meant, and incorrectly and comically assumed that it had to do with stealing or “thieving” wine, the alcoholic beverage. Based on this misunderstanding, the “British judges” said “Yes!” to the woman’s case and, in a perversion of justice, jailed or fined (it was not clear nor wholly important) the young man. The message, as Serena spelled out, was that the “Privy Council” got it wrong; no one should be punished for merely trying to dance with someone, but because the Privy Council judges are not from the Caribbean, they could not understand.

To drive this point home, they continued the reenactment. Serena invited the audience to imagine what would have happened if the young woman could have appealed her case to the CCJ. On this prompt, the young woman walked up to the “CCJ judge,” and, as before, pointed to the young man: “He tried to teef a wine from me.” To this, the “CCJ judge” responded, looking at the young man, “Oh! You were just trying to dance.” The onlookers laughed, and Serena made sure they understood: the fictional case was correctly dismissed this time, and justice was properly served because this Caribbean court, unlike the Privy Council, understood Caribbean people. Notably, the fictional Trinidadian case had morphed into a Caribbean one.

Indeed, there are two slippages in Serena’s message. First, the differences between national creoles and accents—differences that were celebrated and showcased in the Court’s phone menu—were erased and transformed into a shared regional language spoken and understood by a regional people (Anderson 1983; Bauman and Briggs 2003; Gal 2006). While the phrase “teef a wine” is one that is recognizable throughout the region, it is strongly associated with a Trinidadian genre of music (soca), and throughout the hypothetical, it was uttered in a Trinidadian accent to Trinidadian courts. Yet the Trinidadianess of this linguistic example was quietly elided in Serena’s punchline. That is, the boundaries of difference were redrawn in a way that grouped citizens of various Caribbean states together while differentiating them from the British (Gal 2006; Irvine and Gal 2000). By way of clever storytelling and subtle erasures, Serena and Sara drew on classic strategies of multicultural nation-making by drawing together one people out of many, to echo Jamaica’s national motto (“Out of many, One People”), which reflects its own multiracial nationalist project (Thomas 2004). Indeed, the melding of many accents into one voice is reminiscent of language-standardization projects that offer up a single “authentic” national—here, pan-Caribbean—dialect, masking difference in the name of cohesion (Gal 2006).

Second, Serena’s message slips from a commentary on misunderstood Caribbean creole to a critique of unbridgeable cultural divides. It is not just that British judges cannot understand the meaning of the words but that they cannot understand the culture of the Caribbean, where “wining” is a commonplace, acceptable, and socially important form of

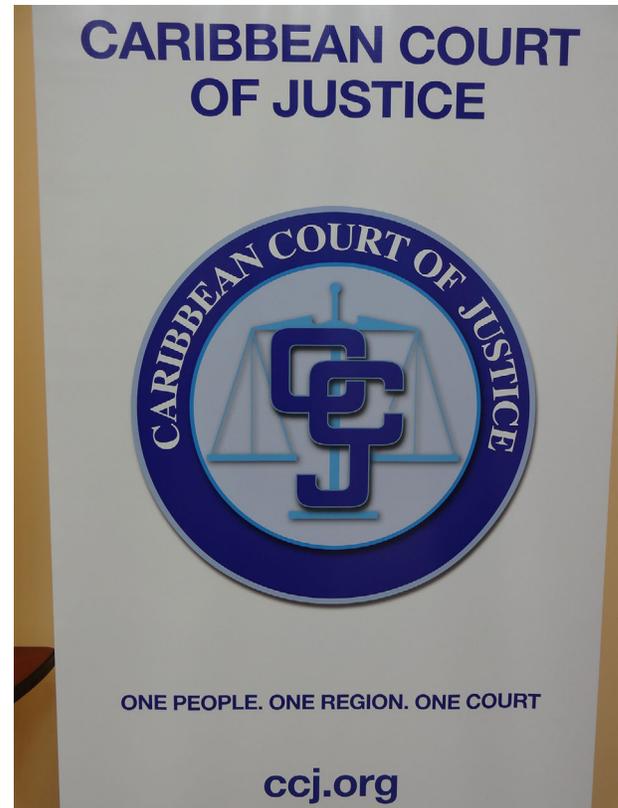


FIGURE 1. A portable banner displayed at conferences and workshops hosted by the Court. It, like much of the CCJ’s promotional materials, includes the tagline “One People. One Region. One Court.” (Photograph by author, 2018) [This figure appears in color in the online issue]

dance (Miller 1991). A shared language, in the CCJ’s view, is reflective of and is analogous to shared cultural traditions, and shared cultural traditions are indicative of the existence of a Caribbean folk, an equation of language-culture-region that mirrors a Herderian and standardizing ideology (see Anderson 1983; Bauman and Briggs 2003; Gal 2006). Importantly, by suggesting a shared Caribbean language-culture, the CCJ works to constitute the region against the relief provided by the British. Even more, by understanding language in this way, the CCJ’s own reason for being becomes self-evident. There is a Caribbean people, which this Caribbean court can *naturally*, in part because of a shared language, understand. The CCJ shares a cultural essence with this particular community of people (Gal 2006). As the CCJ claims in a tagline that appears on much of its promotional material, including its website: “One People. One Region. One Court” (Figure 1) (see also Caribbean Court of Justice 2012).

DEFINING THE COURT’S CARIBBEAN: “WE DON’T USE LORDSHIP”

Yet, not all of the people of the Caribbean—not even all of the people of the independent Anglophone Caribbean—are members of the CCJ. Instead, the CCJ’s membership is carved out of an evolving and confusing field that is to some

extent, though not definitively, bounded by those states that signed the *Agreement Establishing the CCJ* (2001). As noted earlier, while all twelve state signatories of the agreement are automatically included within the Court's original jurisdiction, only four states have acceded to its appellate jurisdiction (see Table 1). Of those yet to accede, there are a variety of complicated stories involving partial, failed, or promised accession, leaving space for much misunderstanding as to which states actually belong to which of the Court's jurisdictions. The clarity of the CCJ's jurisdiction is further complicated by an open invitation for other CARICOM member states or even states from the broader Caribbean to join the Court in any capacity. It is this possibility, in fact, that, according to one CCJ judge, helps justify the Court's claim to be a "Caribbean" institution (not just a CARICOM-serving institution). It is "potentially able to cover the whole Caribbean," he explained, adding, "I don't see that happening, but we're planting the seed."

What this amounts to is that while the Court is certainly aware of its jurisdictional membership, few others are. Even some attorneys and several judges in national courts do not have an accurate understanding of whether their own state falls within which (if either) of the Court's jurisdictions, making the question of who exactly the CCJ serves at any given point a live and valid issue. In the midst of this uncertainty, though, there is at least one bright line: those who appear before the CCJ are expected to call its judges "Your Honour," while those who remain with the Privy Council continue to use "My Lord," a point that was concisely made to a group of Caribbean attorneys visiting the Court.¹⁰

Following a tour of the courthouse, this group of attorneys had the opportunity to meet several CCJ judges for a prearranged question-and-answer session. As they waited for the judges in the conference room, Dr. Williams, the CCJ's chief protocol and information officer, offered advice to the attorneys on how to interact with the judges and encouraged them to use the opportunity to ask questions. It was in this vein that someone asked, "How should we address the judges?" Matter of factly, Dr. Williams responded that they can be called "Judge or Your Honour." He added, with a raised eyebrow and a wag of his finger: "We don't use 'Lordship.' That is for the Privy Council." With this comment, underscored by a cautionary gesture, Dr. Williams essentially etched a line through the confusing jurisdictional terrain of the broader Anglophone Caribbean.

Judith Irvine and Susan Gal (2000, 38) have described fractal recursivity as "the projection of an opposition, salient at some level of a relationship, onto some other level," and this is precisely the way the difference between "Your Honour" and "My Lord" has been imbued with a more profound meaning by those at the CCJ. Much like the public education visit emphasized an us/Caribbean versus a them/British divide, "Your Honour" versus "Lordship" creates a fractally recursive distinction between those Caribbean people who appear before the CCJ and those who continue to use the

Privy Council (Irvine and Gal 2000). While both are terms of judicial address used in many courts around the world—"Your Honour," for instance, is the preferred mode of address in a number of former colonies—Dr. Williams made the relevant distinction crystal clear; "Your Honour" is *ours*, he suggests, while "Lordship" is *theirs*, thereby refining the definition of "us" as opposed to "them" (Irvine and Gal 2000). Dr. Williams insisted that "we" do things differently, and that this difference could easily be heard through the choice of judicial address. Therefore, in selecting a term of judicial address that is deliberately *other* than the term of address used at the Privy Council, the CCJ established categories of insiders and outsiders—not just between British and Caribbean, but among Caribbean people themselves (Irvine and Gal 2000): who is with the Court and who is not, who is on board with the regional agenda and who is not, who is ready to claim full independence and who remains tethered to the colonial past.

"Your Honour," though, does not offer a clean break from colonialism. As many in the region know through widely available American television shows and via general public knowledge, "Your Honour" is used throughout the courts of the United States (a state with its own British colonial past, no less). The CCJ's adoption of this term of address, then, could well be taken as a move toward an alternative (neo)colonial relationship. This is not entirely wrong; CCJ judges and staff did occasionally point to the Supreme Court of the United States or then-president Obama as desirable models for Caribbean law and governance. Nevertheless, and despite the potential (neo)colonial connotations, "Your Honour" remains, most importantly, *not* British. It is gender-neutral, distinctly unmonarchical, and far less deferential than the (post)colonial "My Lord" and "My Lady." Further, whereas "My Lord" might signal continued dependence, "Your Honour" can index revolutionary independence. In the end, even if "Your Honour" might have the effect of aligning the Court and its members with the United States, it is far more preferable than "My Lord," calling to mind the British because, of all things, the CCJ and its constituents are certainly not that. The switch to "Your Honour," then, though seemingly inconsequential, significantly contributes to the creation of new categories of personhood (Irvine and Gal 2000; see also Maurer 1997) at the same time it cuts through the unsettledness of the Caribbean to delineate the Court's region.

DEVELOPING A CARIBBEAN JURISPRUDENCE: "SEE ALSO"

Of course, a court's primary role is not to justify its own existence or even to circumscribe a region (in ideal circumstances, those foundational matters would have been long settled); rather, it is to resolve disputes and develop jurisprudence. As explained to me during a visit to the CCJ in 2018, words matter here, too. I had, during this visit, been invited to present my research at the monthly CCJ judges' meeting,

and it was after my presentation that one of the judges, Justice Abel, explained to me how he became aware of the jurisprudential possibilities available through thoughtful word choice. He offered the story of his epiphany. “Let me share with you a little gem you might find interesting,” he said, as he proceeded to describe an event that occurred during the earliest days of his tenure at the CCJ.

Speaking in a judiciously anonymized way, Abel described an occasion where he was drafting a judgment, one of the first he had written as a judge at the Court. As is standard practice in common law legal systems, Abel relied on precedent—or prior legal decisions—to draw his conclusions and reach a decision. Referring to his use of precedent, he explained that he had wanted to draw a parallel between a prior case decided by the Privy Council and the case that he was presently deciding. He said: “So I wrote something like, ‘Much like in the Privy Council case, *A v. B*, the case now before this Court similarly has...’” Abel explained that he had not given this remark much thought until he showed his draft to the president of the CCJ, who, according to Abel, found the judgment to be in fine shape but for that one sentence. “He asked me, ‘What if we change “in the Privy Council case” to “in the Jamaican case?”’” Such a change was feasible, Abel explained, because the pseudonymized case, *A v. B*, had been decided by the Privy Council, but it had *originated* in Jamaica among Jamaicans and had been heard by at least two Jamaican courts (a trial court and a first-tier appellate court) before heading to the United Kingdom. It could, therefore, be accurately cast as either a Privy Council case or a Jamaican case. While the historically habituated tendency is to do what Abel had done and refer to it as a Privy Council case, the president, who had been at the CCJ since its inception, suggested a shift in language that emphasized the Caribbean origins of the matter—a “small suggestion,” as Abel remarked with a wondrous shake of his head and broad smile, that “made such a difference. It is amazing how changing one small word can really change an entire mindset.”

As Abel’s story ended, another judge chimed in to offer his own example. Justice Meyer, who, like the president, had been with the Court since 2005, noted that he had, too, rethought citational practice in a way that could emphasize the CCJ’s contributions and the jurisprudence it produced. It is common in legal writing to cite earlier judgments that bolster a particular finding; a judgment, for instance, might make a legal point then cite: “see *A v. B*” for precedential support. Justice Meyer explained, however, that rather than writing “see Privy Council case *A v. B*,” he insists on writing “see *also* case *A v. B*” (his emphasis). As he put it, writing “see Privy Council case *A v. B*” gives the impression that the Privy Council is the progenitor of all rules, holdings, and legal arguments, and this is not the impression the CCJ would like to reinforce. “It is not like the Privy Council is the only one to have made this point or to have been the first one,” he insisted. Thus, according to Meyer, “by writing ‘see *also*,’ it says that ‘we have it [this point or rule or holding], and they also happen to have it too.’” In other words, Meyer

chooses his words carefully and consciously to put the CCJ on par with and contemporary to the Privy Council. More than this, Meyer, Abel, the president, and the other judges view language—here, common law citational practices—as a means through which law and lawmaking can be repatriated or, in this context, newly regionated (Goodman, Tomlinson, and Richland 2014; Richland 2007; see also Ng 2009). Not only did the Caribbean have law, but it had its *own* laws, a critical step in “closing the circle of independence” (Pollard 2004) and edging toward a sovereign-like polity defined through its lawmaking powers (Maurer 1997).

REFUSING SOVEREIGNTY, CONSTITUTING A REGION: “WE ARE NOT LORDS OVER SERFS”

There is much in the CCJ’s reliance on language to suggest that it is, in fact, aspiring to be sovereign. After all, it works to define a distinct people, carve out a discernable territory, and claim its own jurisprudence, classic techniques in the construction of a sovereign nation-state, if ever there were any. Yet, the Court is adamant that sovereignty—as a “North Atlantic universal” and as a model passed down through colonialism (Trouillot 2002; see also Bonilla 2013, 2015, 2017)—is not at all what it desires on behalf of the Caribbean. Its rejection of a recognizably British model of law and sovereignty comes across, to return to an example discussed earlier, in the Court’s decision to address its judges by a title other than “My Lord.” It comes across, as well, though perhaps counterintuitively, in its failure to enforce this decision.

While Dr. Williams offered one take on why the CCJ uses “Your Honour” rather than “My Lord,” the Court’s inaugural *Annual Report* provides an additional perspective on how and why it came to this decision. In creating a new institution, the *Annual Report* states, “Decisions must be made on seemingly simple issues such as ... how are [the judges] to be addressed?” (Caribbean Court of Justice 2007, 6). In making each decision, as the Court executive administrator explained to me and the *Annual Report* iterates, the CCJ understood itself as “creating traditions and each tradition must be created with thought and consideration for the future of the institution being created and what it means to the development of the Caribbean region” (Caribbean Court of Justice 2007, 6). Thus, when the *Annual Report* later set forth—in an eloquently subtle manner—exactly what judges will be called at the CCJ, it was clear that this decision was made with the Caribbean region and the development of the “Caribbean legal tradition,” as the passage also claimed, in mind: “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 2007, 6; emphasis in original).

In this one poetic sentence, the Court announced to its audience not only how its judges would be addressed but also how it sought to fundamentally transform the relationship between law and society in the Anglophone Caribbean. Namely, the CCJ claimed that it will tip the

historically feudal experience of law on its head. Instead of British judges “lord[ing]” over their Caribbean subjects, a Caribbean court now served a Caribbean people humbly and honorably. Instead of justice coming from without and being imposed from above, it was now *of* a Caribbean people and existed *for* them. In short, by selecting “Your Honour” rather than “My Lord,” the CCJ does more than distinguish itself from the Privy Council (though it does that too). More profoundly, it intends to shift the relationships between law, the court, the region, and society; as much as the Court has jurisdiction over the people, its people have jurisdiction over it. As much as the CCJ speaks the law, so too are its people afforded this opportunity.

It is this move, which essentially devolves the jurisdictional monopoly that courts traditionally enjoy, that upsets classical notions of sovereignty. Jurisdiction, as has been recently argued, can be productively considered through its component parts *juris-* (or its Latin form, *iuris*) and *-diction* (or *dictio*). Doing so highlights its meaning as “law’s speech” or a “speaking of the law” and focuses attention on “the ways in which the scope of law’s power and authority are announced and delimited in the everyday details of legal discourse” (Richland 2012, 8). In proclaiming its jurisdiction over a case (or even when denying that it has jurisdiction)—that is, when speaking the law—a court simultaneously presupposes, entails, and limits legal authority (e.g., Cormack 2007; Ford 1999; McVeigh 2007; Maurer 2013; Richland 2011, 2012, 2013). It is in this way that jurisdiction speaks sovereignty into existence. By sharing or devolving its jurisdictional authority, the CCJ, thus, invites others into the project of delimiting law’s power, which, of course, unsettles sovereignty as it has been conceived by the Global North. The Court does this, as the *Annual Report* suggests, knowingly and purposefully as a response to the region’s (post)colonial experience (Simpson 2014).

In addition to undercutting the possibility of sovereignty, the CCJ’s rearrangement of jurisdictional authority also reverses long-established expectations of legal “scaling” inherited from the British experience (Philips 2016). As Susan Philips observed in another (post)colonial state, Tonga, “higher” courts are associated with more serious and complex cases, more highly educated judges, stricter enforcement of the law, superior use of the English language, and a greater exercise of authority over all (2016). Yet, the CCJ—the *highest* court in the region—through its decision to address its judges as “Your Honour,” explicitly disrupts this familiar scaling by ceding some of its jurisdictional authority and rejecting the quintessentially English “My Lord.” Instead of being more authoritative and more English, it intentionally becomes less. It also, as I turn to next, relaxes rather than reinforces the Court’s authority in controlling the courtroom, another inversion of the British scales of justice. Specifically, despite the apparent and multiplex significance of “Your Honour,” the CCJ never corrects attorneys who revert to addressing the judges as “My Lord.” I offer one example from the many I observed.

Some ten months into my research, I, like others at the Court, still eagerly anticipated courtroom proceedings at the CCJ. These were, after all, somewhat of a rarity given the Court’s rather light caseload and its reliance on videoconferencing technology for most of its hearings. Adding to the excitement, the matter scheduled for this particular day was bound to be quite interesting; it was a high-stakes, complex matter that was part of a series of appeals coming from Belize, one of the Court’s member states. Already present in the courtroom when I arrived was a handful of attorneys representing both sides of the case: three from England and three from Belize.

While British counsel did not regularly appear before the CCJ, this was not the first time. This series of appeals in particular brought with it a small rotation of silks and solicitors from the United Kingdom. These same hearings and appeals also built a familiarity among the attorneys, and those attending this hearing seemed to know each other fairly well and carried on casual banter as they awaited the judges’ arrival. The most senior attorney from Britain, Mr. Goldsmith, was especially chatty, asking his Belizean opposing counsel, Mr. Errol, about the nationalities of each of the judges and, importantly, what he should call them. “Justice or Your Honour” was the succinct and correct response offered by Mr. Errol. “Justice or Your Honour,” however, was not what Mr. Goldsmith called the judges throughout much of the hearing. Mr. Errol, too, occasionally got it wrong.

Within the first five minutes of the appeal, Mr. Goldsmith was already calling the presiding judge “My Lord,” and this was just the beginning. Throughout the day’s arguments, he could not seem to get it right, regularly and, for some lengths of time, exclusively, calling the judges “M’Lords.” Mr. Errol, for his part, was far more careful with his words. It took nearly an hour before he eventually stumbled, addressing a judge as “My Lo—Your Honour.” Not quite “My Lord,” but not cleanly “Your Honour,” he had managed to introduce a new term of address, a rendition of which I had heard before and after in different hearings, appeals, and cases, uttered by attorneys from Belize, Barbados, Britain, and beyond.

The verbal missteps of both Mr. Goldsmith and Mr. Errol were commonplace at the CCJ, with attorneys from all backgrounds periodically lapsing between “My Lord,” “Your Honour,” and the hybrid “M’Lord-Your Honour.” Yet there was not one occasion during the full expanse of my research that anyone ever corrected the attorneys who got it wrong. The judges never flinched, winced, or corrected them, and the registry staff, who are charged with managing the courtroom, never took the opportunity presented by a break in the arguments to officially announce, quietly inform, or even offhandedly mention that the CCJ policy was to address judges as “Your Honour.” Just when the judges might be expected to “giv[e] instructions: sharp instructions to subordinate the mind, voice, and body to authority” (Lazarus-Black 2007, 99; see also Philips 2016), they do not. While there may certainly be pragmatic reasons for a relatively new court

to permit some latitude on a seemingly trivial courtroom policy, I suggest that more is at play.

The judges are clearly aware of the attorneys' violations. When I discussed this with them during my 2018 visit, they rolled their eyes and chuckled, adding their own examples to my already long list of observations. Still, they never correct. Several of the judges seemed surprised when I pointed this out to them during that same conversation, but the president of the Court was acutely and decisively aware: "No," he said, definitively, "we never correct it." His certainty on the matter ended the discussion and seemed, also, to serve as a directive for the future: the judges shall not, going forward, correct the attorneys. Just as the Court proclaims in its *Annual Report*, these judges do not "Lord" over their subjects but allow them to speak for themselves; the Court does not demand subservience but is there to serve. It is within this logic, I suggest, that the judges do *not* speak the law. They do not state an exception (cf. Agamben 1998, 2005; Schmitt 2006), they do not exercise absolute power (cf. Hobbes 1968), and they do not claim sovereignty (Cormack 2007; Richland 2011, 2012, 2013). Though far less intentional than its other linguistic decisions, the Court's abstention from language becomes an important technique in the rejection of sovereignty and the pursuit of a nonsovereign region.

While the Court employs language as a means to legitimize the CCJ against a history of Privy Council dominance, carve out the Caribbean that constitutes its region, and create a jurisprudence according to the Court's own vision, the CCJ ultimately refuses to require others to use language in precisely the same way because to do so would undermine the Court's own broader project. To say this otherwise, the Court relies on language to set itself apart from the lordling tendencies of the Privy Council and the strictures of sovereign statehood. If it were to exercise its authoritative legal voice in such a direct manner over such a seemingly trivial issue, namely, how to address the judges, the CCJ would become the very lords exercising the same domineering authority it abhors (cf. Philips 2016). Instead, it allows attorneys to speak uncorrected.

What the attorneys' misspeaks amount to, then, are the absolutely necessary oppositional forces that save the Court from the sovereignty-making tendencies of language and law. Instead of the CCJ unilaterally determining what the Court, the region, and the law will be, "M'Lord" and "M'Lord-Your Honour" constitute the dialectic that does not derail the regional project but, in fact, makes it a possibility—for whatever is created through the absence of law's speech and the presence of attorneys' voices from Belize, Britain, Barbados, and elsewhere, it is decidedly nonsovereign (Bonilla 2015).

CONCLUSION

Established, in part, to address the nonsovereignty of its member states, but recognizing the ultimate impossibility and undesirability of sovereignty, the CCJ pursues, instead, a nonsovereign regional future. The Court, though, cannot

proceed without restraint. It must navigate a tricky socio historical landscape at the same time that it works to establish its own legitimacy and authority. Within these constraints, the CCJ turns, at least in part, to language, seeing in it the required deftness to address, at every level, long-established tensions between a colonial past and a decolonized future and understanding, as well, its constitutive potential.

It is through subtle linguistic erasures, therefore, that the CCJ tells stories of itself in which it presupposes and entails a distinctly Caribbean way of speaking that indexes a Caribbean way of life, which, in turn, demands a uniquely Caribbean Court. And through the selection of a particular term of judicial address that marks those who belong to the Caribbean region it represents, the Court thereby delineates a region and its inhabitants. And through carefully crafted judicial decisions, it constructs a sphere of Caribbean law and authority, not terribly unlike the jurisdictional work associated with the making of a sovereignty. Yet, what I have shown is that while the CCJ's linguistic work is certainly constitutive, it is not constitutive of a sovereignty. The Court has made both deliberate decisions to reject the sovereign model, refusing to "lord" over its constituents, for instance, and less intentional moves that upset the legal authority associated with sovereignty, such as refraining from correcting attorneys in the courtroom. All with the region as the imagined future.

This is, in the end, what the CCJ has been able to accomplish: an imagined future. The region, in other words, is far from a *fait accompli*. The Court has not, in its now fifteen years of existence, made much headway in attracting member states to its appellate jurisdiction or substantially increasing its caseload in its original jurisdiction. There remains a reluctance on the part of states to accept the nonsovereignty the Court has to offer, which I believe (but do not know for certain) has much to do with the fact that these states are equally reluctant to accept their own nonsovereignty. And this is crucial to remember: *both* regionhood and sovereignty remain imagined futures in this part of the world, yet these futures differ dramatically. One, through work like the CCJ's, is envisioned as a means to foster an independent Caribbean, while the other, through the work of colonialism, is linked to a project that made the Caribbean dependent. One creates the possibility of an even playing field, while the other perpetuates the fiction of equality. One, the CCJ wholeheartedly believes, might be accomplished, while the other, many have observed (e.g., Bonilla 2015, 2017), will likely remain an impossible aspiration. This is why the CCJ keeps doing what it is doing and saying what is saying; while a regional future may not be just around the corner, it is a far more hopeful one than a sovereign horizon never meant to arrive.

NOTES

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1. All names are pseudonyms.
2. In other work, I describe how the CCJ's project of region-making employs a wide variety of techniques, from reconceptualizing history to monitoring courthouse fashion and bodily comportment (see Cabatingan 2016, 2018a, and 2018b).
3. While there are certainly an array of actors working at the CCJ who hold different opinions and have varying levels of awareness when it comes to language use and linguistic decisions at the Court, I have chosen to refer to the Court as itself an actor. My decision to do this is in part based on simplicity but is also modeled after the way those who work at the CCJ regularly present individually made decisions as those of "the Court" or a homogenous "we" acting with a unified mind.
4. The Privy Council continues to serve as the final appellate court for the following independent Caribbean states: Antigua and Barbuda, The Bahamas, Grenada, Jamaica, St. Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and the Republic of Trinidad and Tobago.
5. In 2006, a Jamaican teacher sought to represent himself before the Privy Council but was denied a visa. This example is regularly proffered as part of the argument supporting the CCJ (Thompson-Barrow 2008).
6. The Court's light caseload is a sensitive issue for those who work there, but it is difficult for them to find an appropriate point of comparison to more accurately assess their success. As the CCJ's library assistant hyperbolically explained, the Privy Council has been around since "Jesus was a little boy," making it nearly impossible to know how many appellate cases it attracted during its earliest years. Today, however, the four states that utilize the CCJ's appellate jurisdiction do appeal far more cases to the CCJ than they had to the Privy Council, likely because of simplified and affordable access to the CCJ. It remains, though, that the majority of the Court's member states (including Trinidad and Tobago and Jamaica, the two most litigious) continue to appeal to the Privy Council, thereby stunting, probably significantly, the CCJ's appellate caseload. It is similarly difficult to assess the CCJ's original jurisdiction caseload, since the Court is the first venue in the region available to hear cases based on violations of regional treaties. The Court, therefore, tends to measure its success against its own expectations. While the CCJ has decided a couple of significant original jurisdiction cases (for example, *Shanique Myrie and the State of Jamaica vs. the State of Barbados* [2013] CCJ 3 [OJ]), which it holds up to the public as

a marker of its success, the low number of original jurisdiction cases has not met the Court's initial high expectations.

7. As I reference later in the article, I once asked a CCJ judge if he thought it was presumptuous to call the Court the *Caribbean* Court of Justice and to call CARICOM the *Caribbean* Community, given their limited, primarily Anglophone, memberships. Acknowledging that these names could be construed as misrepresentative, he ultimately disagreed. He noted the number and variety of associated and observer states on CARICOM's roster (see Table 1) and argued that the CCJ and CARICOM had the potential to represent the entire Caribbean. This subtle assertion of an intraregional order, in which a limited regional endeavor can rightfully claim "Caribbean"-wide status, echoes the strategic powerplays and hierarchies of colonialism.
8. I did not record this conversation. What appears in quotes represents my best reconstruction of the judge's words based on my detailed fieldnotes.
9. While it might be helpful to think of these states as having achieved a "quasi-sovereignty," as they do possess some of the characteristics associated with classical notions of sovereignty, such as jealously protected borders, I have chosen to avoid qualifiers, such as "quasi," "incomplete," or "full," that tend to perpetuate the idea of sovereignty-as-measuring-stick.
10. Notable here is the Court's spelling of "Your Honour," which underscores the complicated relationship between the CCJ and the (post)colonial context in which it exists. Even when dropping the title "My Lord," the Court still cannot escape the Anglicized spelling of "Your Honour."

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