PROROGATION, MOTIONS OF NO CONFIDENCE AND POLITICAL SURVIVAL IN THE COMMONWEALTH CARIBBEAN : An Examination of Adopting Locally-modified Twentieth-century Westminster Constitutional Conventions in Commonwealth Caribbean Political Systems

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ABSTRACT

This paper addresses the use of the prorogation of Parliament as a means of avoiding adverse political circumstances in the Commonwealth Caribbean by Prime Ministers and Presidents to ensure political survival in the following cases :
1. 1989 - Prime Minister Herbert Blaize in Grenada.
2. 2002 – Prime Minister Patrick Manning in Trinidad and Tobago.
3. 2012 – Prime Minister Tillman Thomas in Grenada.
4. 2014 – President Donald Ramotar in Guyana.

The applicability of the Miller case in the UK in September 2019 which overturned the decision of Prime Minister Boris Johnson to advise the Queen to prorogue Parliament is not applicable in the Commonwealth Caribbean and the paper will show why.

Apart from these decisions to prorogue Parliament, there are also situations whereby motions of no confidence have either been deliberately not tabled for debate in Parliament by the Speaker (St. Kitts-Nevis 2012) or they have failed to satisfy the constitutionally-required criteria for removal of the Prime Minister from office (Barbados 1994).

The only successful motion of no confidence in the region was in the presidential-parliamentary hybrid political system of Guyana in 2018.
The constitutional dissimilarities on prorogation, dissolution and motions of no confidence between the Westminster-Whitehall model in the Commonwealth Caribbean and the Westminster model in the UK will be interrogated.
Keywords : Prorogation, motions of no confidence, Westminster model, Westminster-Whitehall model.

Introduction

"As Lord Bingham of Cornhill said in the case of *Bobb v Manning* [2006] UKPC 22, para. 13, 'the conduct of government by a Prime Minister and Cabinet collectively responsible and accountable to Parliament lies at the heart of Westminster democracy.' Ministers are accountable to Parliament through such mechanisms as their duty to answer Parliamentary questions and to appear before Parliamentary committees, and through Parliamentary scrutiny of the delegated legislation which ministers make. By these means, the policies of the executive are subjected to consideration by the representatives of the electorate, the executive is required to report, explain and defend its actions, and citizens are protected from the arbitrary exercise of power." **R (on the application of Miller) v The Prime Minister (Respondent), Cherry and others (Respondents) v Advocate General for Scotland (Appellant)(Scotland) [2019] UKSC 41 @ para. 46.** (The Miller case).

This judgment in the Miller case in 2019 made use of a precedent from Trinidad and Tobago (the Bobb v Manning case cited above) to buttress its argument about parliamentary accountability.

This may not have been the best case for the UK Supreme Court to cite as the lofty principles espoused at paragraph 46 in the Miller case were at variance with the facts on the ground in Trinidad and Tobago in 2002.

The general election of 10th December 2001 had produced a tied result as both the incumbent United National Congress (UNC) and the opposition People's National Movement (PNM) earned 18 seats each in a 36-member House of Representatives. After much deliberation, inclusive of personal consultation with Professor Vernon Bogdanor of Oxford University, President Arthur N.R. Robinson revoked the appointment of Prime Minister Basdeo Panday and appointed the Leader of the Opposition, Patrick Manning, as Prime Minister. For a more detailed account of this situation see Hamid Ghany, "Parliamentary deadlock and the removal of the prime minister : Incumbency and termination theory in Trinidad and Tobago" in the Journal of Legislative Studies. [1]

Parliament was not convened until 5th April 2002 and it failed to elect a Speaker. On 6th April 2002, Prime Minister Manning advised President Robinson to prorogue Parliament as the Government was unable to end the sitting of the House of Representatives by majority vote. This prorogation would have fallen comfortably into Gerard Horgan's concept of "partisan-motivated" prorogations. [2]

The legal proceedings in the Bobb v Manning case were eventually determined on 25th April 2006 by Trinidad and Tobago's final court of appeal, the Judicial Committee of the Privy Council, in Privy Council Appeal No. 50 of 2004. [3] Unlike the Miller case where there was swift justice or urgent determination of the matter, there was no similar urgency by the Appellants in the Bobb v Manning case as their matter was based on a complaint "that the respondent, who at all material times acted as the Prime Minister, had retained (or declared an intention to retain) power in a manner that was unconstitutional and unlawful." [4]

The appellants commenced their proceedings on 16th August 2002 (some eight months after President Robinson's decision on 24th December 2001 and some four months after the prorogation of Parliament on 6th April 2002) and the matter was heard swiftly by Mohammed J and dismissed. On 27th August 2002, the appellants gave notice of appeal to go before the Court of Appeal. One of their reliefs was a demand for the holding of fresh general elections. On 28th August 2002, the Second Session of Parliament, after the prorogation of the First Session had ended, was convened and the House of Representatives met again to try to elect a Speaker which failed once again. On 30th August 2002, Prime Minister Manning advised President Robinson to dissolve Parliament. This political decision made the proceedings in the Bobb v Manning case academic as a general election was set for 7th October 2002. Fresh elections were being sought by the claimants and that request was now granted in the political domain which reduced the urgency of their request. The fact that it took from April 6th 2002 until August 16th 2002 for the claimants to file their action demonstrated an afterthought, rather than an immediate urgency.

The Court of Appeal in Trinidad and Tobago eventually heard the matter on 11th February 2004 and dismissed it. What was decided, and dismissed, on 25th April 2006 by the Privy Council was the issue of leave to apply for judicial review that sought remedies to resolve what the Judicial Committee of the Privy Council described as "a constitutional crisis" in 2001-2002. [5]

What permitted the politically-motivated prorogation was the need for the Government to survive as there was an approved budget in place already since September 2001. That was a consideration for Prime Minister Manning in deciding on the holding of another general election which was judicially noticed by the Privy Council. [6] Parliament had to be dissolved by August 30th 2002 because a general election had to be held no less than 35 days after dissolution according to the Representation of the People Act. The financial year was ending on September 30th and the Constitution only provided for a one-month grace period (1st – 31st October) for the pending approval of supply by the Parliament during a period of contingency expenditure. The general election was held on 7th October and Patrick Manning and the PNM were returned to office with a 20-16 majority, Parliament assembled on 17th October, and the Budget for 2002-2003 was approved by the House of Representatives on 25th October, 2002 and by the Senate on 30th October, 2002.

There was now no need for urgency in the hearing of the appeals, however, they did provide the opportunity for important judicial arguments to be advanced, one of which made its way into the Miller case in September 2019 in the United Kingdom.

Other Politically-motivated prorogations in the Commonwealth Caribbean

The constitutions of the Commonwealth Caribbean all provide for an automatic prorogation at the end of one year from the commencement of a new session of Parliament. In other words, no session can last for more than one calendar year from its commencement.

Provision is made for this in Commonwealth Caribbean constitutions as follows : (i) Antigua and Barbuda, s. 59; (ii) The Bahamas, s. 65; (iii) Barbados, s. 60; (iv) Belize, s. 83; (v) Dominica, s. 53; (vi) Grenada, s. 51; (vii) Guyana, s. 69; (viii) Jamaica, s. 63; (ix) St. Kitts and Nevis, s. 46; (x) St. Lucia, s. 54; (xi) St. Vincent and the Grenadines, s. 47; and, (xii) Trinidad and Tobago, s. 67. (See Appendix on "Constitutional References on Prorogation in the Commonwealth Caribbean" below).

Unlike the United Kingdom, where a period longer than one year may elapse between prorogations, this is not possible in Commonwealth Caribbean Parliaments as their sessions are regulated by constitutional requirements. For example in Trinidad and Tobago, the following are the constitutional requirements :

"67.(1)Each session of Parliament shall be held at such place within Trinidad and Tobago and shall commence at such time as the President may by Proclamation appoint.
(2)There shall be a session of each House once at least in every year, so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session." [7]

This is to be contrasted with the dictum in the Miller case as follows :

"3. Parliament does not decide when it should be prorogued. This is a prerogative power exercised by the Crown on the advice of the Privy Council. In practice, as noted in the House of Commons Library Briefing Paper (No 8589, 11th June 2019), 'this process has been a formality in the UK for more than a century : the Government of the day advises the Crown to prorogue and that request is acquiesced to.' In theory the monarch could attend Parliament and make the proclamation proroguing it in person, but the last Monarch to do this was Queen Victoria in 1854. Under current practice, a proclamation is made by Order in Council a few days before the actual prorogation, specifying a range of days within which Parliament may be prorogued and the date on which the prorogation would end…" [8]

The Westminster-Whitehall version of the power of prorogation is restricted to an annual requirement to prorogue, while the Westminster original is a prerogative power of the Crown with no specific date requirements. The UK Parliament had been in session since 2017 and according to Nikki da Costa, Director of Legislative Affairs in the Office of the Prime Minister, in a memorandum dated 15th August 2019, to the Prime Minister, Boris Johnson, this had been the longest session since records began. [9]

This dissimilarity between the Westminster model in the UK and the Westminster-Whitehall model in the Commonwealth Caribbean confirms the inapplicability of the Miller case to Commonwealth Caribbean democracies.

Given that there is a requirement to ensure that a session does not last longer than one year, there is no limitation on how many times prorogations can take place and each time there is a prorogation and the resumption of parliamentary sessions,

there is a one-year window that becomes available for the length of time that Parliament can be in session. Indeed, lengthy prorogations spanning several months in the Westminster-Whitehall model in the Commonwealth Caribbean are not considered “unlawful” as was confirmed in the Bobb v Manning case, which is to be contrasted with the judgment in the Miller case which rendered a five-week prorogation “unlawful”.

Apart from the politically-motivated prorogation in Trinidad and Tobago in 2002, there have been other such prorogations in the Commonwealth Caribbean as follows :

1. 1989 - Prime Minister Herbert Blaize in Grenada advised the Governor-General, Sir Paul Scoon, to prorogue Parliament in August 1989 following a ministerial dismissal and the two ministerial resignations as a result of that which led to the Government losing its majority as the dismissed former minister created a new political party and was joined by the two former ministers who had resigned.

2. 2012 – Prime Minister Tillman Thomas in Grenada advised the Governor-General, Sir Carlyle Glean, to prorogue Parliament in September 2012 as there was a motion of no confidence that had been filed against him by some of his former ministerial colleagues that would have been debated had the House of Representatives been able to sit.

3. 2014 – President Donald Ramotar in Guyana prorogued the National Assembly in November 2014 to avoid the debate on a motion of no confidence that had been filed against him in August 2014.

Grenada 1989

In the first general election, in 1984, to be held after the restoration of civilian government in Grenada following the United States and Caribbean forces’ intervention in October 1983 following the collapse of the People’s Revolutionary Government (PRG), the New National Party (NNP) led by Herbert Blaize won 14 of the 15 seats at stake.

Parliament was opened on 29th December 1984 with the Governor General, Sir Paul Scoon, delivering the Throne Speech. As a consequence, the life of the Parliament would have ended on 28th December 1989, if not sooner dissolved.

There were fissures in the Blaize administration which manifested themselves in the resignation of ministers in 1986 and 1987. In 1989, following one ministerial dismissal, there were two ministerial resignations. One former minister tabled a motion of no confidence in the Prime Minister which ought to have been debated in August 1989.

This was derailed by the advice of prorogation being tendered by Prime Minister Blaize to Governor General Sir Paul Scoon. However, Scoon has recited an unusual disclosure in his autobiography which reads as follows :

"I took the unusual step to advise the Prime Minister that the way to get out of his dilemma was to prorogue Parliament. His initial reaction was that he would have to think about it. Within a couple of days he informed me he would take that route. Meanwhile, my wife and I had planned a vacation in Canada. We were due to leave on August 16. I knew that if an election were imminent, I would have had to cancel my vacation plans and remain at home. I also knew that if a crisis, political or otherwise, were to arise during my absence, I would have to abandon the rest of my vacation and return home as quickly as possible. Blaize had carefully studied the Constitution and was satisfied that he could use the prorogation device and stay on until the end of the year. He confidently advised that I could proceed on my vacation as he had no intention of calling elections before the end of his five-year term of office." [10]

With the Governor-General prompting him to advise a prorogation, Blaize was able to hold off the debate and vote on the motion of no confidence in an election year.

The manner in which the Governor General was able to have the prorogation implemented was a compliment to his administrative efficiency as a former Secretary to the Cabinet. He recounts these events as follows in his autobiography :

"The day before I left for Canada….Sir Hudson Scipio, who was to be my deputy during my absence, came to see me twice that day. We spoke of the gradual erosion of political power as was then experienced by the Prime Minister. In the circumstances, I deemed it expedient that Parliament be prorogued on Wednesday, August 23, 1989. I instructed him to sign the proclamation proroguing Parliament on the appointed day during my absence from the State. This was kept a closely guarded secret. The proclamation was prepared not in the Attorney General's office as was customary, but in my office. After carefully vetting it I left it in the safe hands of my personal assistant and I accordingly informed Sir Hudson." [11]

The level of intrigue involved with this prorogation confirms the importance of the exercise of such a power in Commonwealth Caribbean democracies.

Prime Minister Blaize had been granted a reprieve until the date on which Parliament would stand dissolved in December 1989. Scoon went further to say as follows :

"However, in the evening of Friday, August 25, out of sheer curiosity, I rang Prime Minister Blaize from my hotel room to find out how the prorogation of Parliament was received. The Prime Minister seemed to be in a jovial mood. In his usual style he said to me that those chaps needed to know the meaning of prorogation. Many of them thought that Parliament was dissolved and were eagerly awaiting the announcement of the date for elections. The chaps to whom the Prime Minister made reference included political activists and newspaper columnists." [12]

Blaize had outsmarted his opponents in civil society, however, he had been reported to be in ill health and he died on 19th December 1989, just nine days shy of the date on which Parliament would have stood dissolved.

Grenada 2012

On 8th July 2008, the NDC won the general election in Grenada with an 11-4 majority in a 15-member Parliament and Tillman Thomas was appointed Prime Minister. Fissures began to appear within the Cabinet as the Prime Minister found himself at odds with some of his Ministers. In May 2012, Thomas survived a motion of no confidence by an 8-5 margin.

By September 2012, another motion of no confidence was being prepared against the Prime Minister. However, on 10th September 2012, the Prime Minister advised the Governor General, Sir Carlyle Glean, to prorogue Parliament thereby heading off debate on the motion. That prorogation lasted until 9th January 2013 at which time he advised the Governor General to dissolve Parliament. A general election was held on 19th February 2013 which Thomas and the NDC lost and the NNP won all fifteen seats in the House of Representatives.

The prorogation between September 2012 and January 2013 was a politically-motivated one as it kept Prime Minister Thomas in power and he was able to avoid another motion of no confidence for four months. His government was able to limp into an election year with a four-month prorogation which seemed to really delay the inevitable.

Guyana 2014

The result of Guyana's 2011 general election on 28th November produced a split result between the presidency and the National Assembly owing to the different counting methods employed for these offices.

With the Hare method of proportional representation (PR) being used for 40 seats on the National Top Up List in the National Assembly and for the ten regions which had 25 seats allocated among them, the PPP/Civic won 32 seats (13 regional seats and 19 National Top-Up seats) out of the 65 seats available with 48.6% of the votes cast. The APNU won 26 seats (10 regional seats and 16 National Top-Up seats) with 40.8% of the votes cast. The AFC won seven seats (2 regional seats and 5 National Top-Up seats) with 10.3% of the votes cast. This created a hung Parliament.

However, for the presidency, the first-past-the-post (FPTP) method is used and owing to the fact that the PPP/Civic had the largest individual number of votes cast, their presidential candidate on their list, Donald Ramotar, was elected President.

For the first time in its history under this mixed electoral system of FPTP for the presidency and PR for the National Assembly, there was divided government

between the presidency (PPP/Civic) and the National Assembly (no overall majority by any party).

The APNU and the AFC voted together to elect a Speaker, Deputy Speaker and to control all of the committees in the National Assembly to the exclusion of the PPP/Civic.

There had been differences of opinion between the President and the National Assembly and on 7th August 2014, a motion of no confidence in the Government of Guyana was filed in the National Assembly. It was to be debated on 10th November 2014. However, on that day, President Ramotar prorogued Parliament. It was a politically-motivated prorogation that allowed Ramotar to avoid facing a motion of no confidence.

However, on 28th February 2015, President Ramotar dissolved Parliament and fixed 11th May 2015 as election day. His party (PPP/Civic) earned 32 seats in the National Assembly and the APNU/AFC coalition earned 33 seats. As far as the presidency was concerned, the APNU/AFC coalition won 50.29% of the votes cast, while the PPP/Civic won 49.20% with a difference of 4,506 votes between these two parties.

As a consequence, David Granger, who was listed as the APNU/AFC coalition nominee for the presidency was appointed President. [13]

Transplanting prorogation from Westminster to the West Indies

The effect of transplanting the power of prorogation from the Westminster model to the Westminster-Whitehall model in the Commonwealth Caribbean has not resulted in the power being exercised in a manner similar to the UK.

The core reason for this dissimilarity is to be found at paragraph 39 of the Miller judgment as follows :

"39. Although the United Kingdom does not have a single document entitled 'The Constitution', it nevertheless possesses a Constitution, established over the course of our history by common law, statutes, conventions and practice. Since it has not been codified, it has developed pragmatically, and remains sufficiently flexible to be capable of further development. Nevertheless, it includes numerous principles of law, which are enforceable by the courts in the same way as other legal principles. In giving them effect, the courts have the responsibility of upholding the values and principles of our constitution and making them effective. It is their particular responsibility to determine the legal limits of the powers conferred on each branch of government, and to decide whether any exercise of power has transgressed those limits. The courts cannot shirk that responsibility merely on the ground that the question raised is political in tone or context." [14]

The grant of independence to countries in the Commonwealth Caribbean by the UK has seen the implementation of written constitutions in which a variety of unwritten UK conventions have been codified. Whereas in the UK, it is possible for Parliament to be in session for longer than a period of one year, that would be a

constitutional impossibility in the Westminster-Whitehall constitutions in the Commonwealth Caribbean.

All Parliaments in the region have clauses that guarantee self-prorogation after twelve calendar months from the commencement of a new session of Parliament if not sooner prorogued (see the Appendix on Constitutional References on Prorogation in the Commonwealth Caribbean below).

According to the judgment of the Judicial Committee of the Privy Council delivered by Lord Bingham of Cornhill writing for the court in the Bobb v Manning case :

"4. Section 67(1) of the Constitution provides that each session of Parliament shall be held at such place and shall commence at such time as the President may by proclamation appoint, but the frequency of Parliamentary sessions is regulated by section 67(2) which requires that there shall be a session of each House once at least in every year, so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session. A 'session' is defined in section 3 to mean the sitting of a House commencing when it first meets after a dissolution, and a sitting means a period during which a House is sitting continuously without adjournment…" [15]

The prorogation situation that faced the UK Parliament in September 2019 could not happen in Trinidad and Tobago, nor in the Commonwealth Caribbean for that matter as lengthy prorogations are envisaged in the written constitutions of Commonwealth Caribbean democracies. Some elaboration is required here and the judgment by Lord Bingham in the Bobb v Manning case is helpful as follows :

"7. In an address to the 23rd Meeting of the Conference of the Heads of Government of the Caribbean Community in Georgetown, Guyana, on 3 July 2002 the respondent said : 'In the case of Trinidad and Tobago, the last General Election resulted in a hung parliament, with both sides each obtaining 18 seats. This political result is unprecedented for us and I am told equally unique in the Caribbean. Our people have responded to this development with tremendous maturity, undoubtedly an indication of their confidence that a resolution will be found within the framework of our democratic institutions. If we are unable to elect a Speaker and/or pass a budget by October 31st, the end of this current budget period, General Elections will be held in Trinidad and Tobago.' This observation calls for a little explanation. The Republic's financial year had been prescribed to mean a period of 12 months ending on 30 September. Money bills may only be introduced in the House (section 63(1) of the Constitution), and certain important financial provisions require the recommendation or consent of the Cabinet (section 63(2)). As would be expected, the Constitution regulates the receipt of public monies into a Consolidated Fund and the disbursement of public monies from it…." [16]

The Privy Council recognised that there was another factor impinging upon the prorogation of Parliament which was the need for the enactment of an annual Appropriation Act to provide for the service of Trinidad and Tobago which was time-limited. That constitutional requirement would force a political response on

the issue of prorogation with no Speaker having been elected and no supply having been approved beyond 30th September with a one-month grace period for expenditure without parliamentary approval until 31st October. Prime Minister Manning was very aware of these constitutional and political realities.

Indeed, his announcement that he had advised the President to dissolve Parliament on 30th August 2002 was a clear recognition that a general election had to be held no earlier than 35 days after a dissolution of Parliament and he was now swaying very close to the deadline for fresh appropriations to be granted by Parliament. The general election was held on 7th October 2002, Parliament assembled on 17th October 2002 and the budget was approved by 30th October 2002. There was no question of a parliamentary session lasing more than one year as took place in the UK between 2017 and 2019 whereby there is no interconnection between prorogation and the enactment of an annual Appropriation Act.

The Prime Minister, Boris Johnson, lost his legal battle in September 2019 on the ground that he exercised the power of prorogation in an unlawful manner according to the Miller judgment. With an unwritten constitution, it became apparent that there are now confirmed conditions under which the prerogative power of prorogation must now be exercised in the UK.

In the case of Trinidad and Tobago, the precise wording for the exercise of the power of prorogation reads as follows at section 68 :

"68. (1) The President, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament." [17]

The use of the word "may" was used by the drafters because both prorogation and dissolution are used in the same clause rather than being separated into discrete clauses which conveys the option of a choice between either prorogation or dissolution. In Dominica, the same style of drafting is used at section 54(1) of its constitution when tendering advice. [18] In Antigua and Barbuda, the same style of drafting is used at section 60(1). [19]

The use of "may" in these circumstances does not confer a discretion on the Governor-General or the President.

If the arguments in Miller had been applied in each of the cases in Trinidad and Tobago and Grenada, the exercise of the power would not have been deemed unlawful because their constitutions permitted such lengthy prorogations. Certainly in Trinidad and Tobago in 2002, the judiciary confirmed that it was not unlawful.

In the case of Guyana, there is a hybrid presidential/parliamentary system and so the judgment in Miller would not apply because the President exercises his/her powers in his/her own deliberate judgment, except in cases where the President is required by the constitution to act on the advice of some other person or authority. [20]

The issue of the transplantation of UK constitutional conventions to Commonwealth Caribbean constitutions was addressed by this author in the Journal of Legislative Studies in relation to the power of dissolution. [21] The issue of prorogation is clearly fixed by the constitution in the Commonwealth Caribbean and

there is no reserve power or discretion. In the UK, Parliament can continue without prorogation for more than one year, while in the Commonwealth Caribbean it cannot. The fundamental question to be answered at Westminster is whether or not the exercise of the prerogative power of prorogation is lawful or unlawful. In the Westminster-Whitehall model no such discussion arises as long as the power is exercised within the confines of the constitutional provisions.

Motions of no confidence

The same constitutional rigidity applies to the consideration of whether or not a motion of no confidence against a Prime Minister has been carried in the Westminster-Whitehall democracies of the Commonwealth Caribbean. When Prime Minister James Callaghan lost a motion of no confidence in him by a margin of 310-311 on 28th March 1979 in the House of Commons, it was obvious that such a vote was calculated on the basis of the MPs who were present and voted because the number of MPs listed for the House of Commons at the time was 635. The number who were present and voted was 621.

In Commonwealth Caribbean constitutions, a motion of no confidence is mandated to be calculated on the basis of a majority of all of the MPs as opposed to those present and voting.

Barbados

According to the constitution of Barbados :

"66.(2) If the House of Assembly by a resolution which has received the affirmative vote of a majority of all the members thereof resolves that the appointment of the Prime Minister ought to be revoked and the Prime Minister does not within three days of the passing of the resolution either resign or advise the Governor-General to dissolve Parliament, the Governor-General shall, by instrument under the Public Seal, revoke the appointment of the Prime Minister." [22]

This section of the constitution was tested on 7th June, 1994 when the following motion was debated in the Barbados House of Assembly :

"Resolution that this House has no confidence in the Right Honourable the Prime Minister and that his appointment ought to be revoked." [23]

At the conclusion of the debate, the division of the House revealed 12 Noes and 14 Ayes. The Hansard records the following pronouncement made by the Speaker :

"**Mr. Speaker :** Fourteen Honourable Members voted 'Aye', 12 Honourable Members voted 'No'. The resolution has been carried but not in accordance with Section 66."[24]

With 28 MPs constituting a full attendance in the Barbados House of Assembly in 1994, it was necessary to secure 15 MPs to vote in favour of the motion to have it carried. With the Speaker (an elected MP) in the chair and one opposition member absent by virtue of being overseas for medical treatment, there were only 26 MPs on the floor of the House. 14 MPs voting in favour did not meet the standard of the constitutional requirement for successful passage.

At Westminster, the motion would have been carried and the Prime Minister would have had to resign, be removed from office, or advise a dissolution (as was done by Prime Minister Callaghan in 1979). In Barbados, Prime Minister Erskine Sandiford continued in office and subsequently advised a dissolution of Parliament on 18th June 1994 after the reaction from civil society favoured a general election. Mr. Sandiford stepped down as party leader of his Democratic Labour Party (DLP) and he was replaced Mr. David Thompson.

The general election was set for 6th September 1994 and Mr. Owen Arthur and the Barbados Labour Party (BLP) came to power.

This Barbados example demonstrates the constitutional rigidity that is applied to Westminster conventions that have been codified in Commonwealth Caribbean constitutions.

St. Kitts-Nevis

However, the process of ensuring that debate on a motion of no confidence will take place in a timely manner can defy both Westminster convention and Westminster-Whitehall constitutional requirements.

In St. Kitts-Nevis, the Cabinet of Prime Minister Denzil Douglas suffered the resignation of two senior Ministers in 2012. By December 2012, the Leader of the Opposition requested the Speaker of the National Assembly to table a motion of no confidence in the Prime Minister. Five months later, the Speaker had not placed the motion on the agenda of parliamentary business. This action by the Speaker brought his office into political disrepute and undermined its neutrality.

The matter was taken to court and Lanns J in the Eastern Caribbean Supreme Court held as follows :

"1. In these two cases before me, I have to decide whether there is, under section 52-(6) of the Constitution of Saint Christopher and Nevis, an implied right in every elected member or elected representative in the National Assembly, to bring and move a resolution of no confidence in the government of Saint Christopher and Nevis, and to have that resolution scheduled, debated and voted on as a matter of urgency, and without undue delay, and accorded priority over other motions and business. If I find that there exists an implied constitutional right, I have to decide whether I have jurisdiction to determine whether that right was infringed by the

failure of the Speaker of the National Assembly to schedule the motion of no confidence for debate and ensure that it is debated and voted on urgently, without undue delay and in priority over other business of the Assembly. If I conclude that I do have jurisdiction and that the right has been infringed, I must then decide whether I have jurisdiction to grant relief for the infringement of that right, under section 96 of the Constitution of Saint Christopher and Nevis, and if so, what the nature of the relief should be.
2. A sub-issue is whether, in view of section 52(6) of the Constitution, the court has jurisdiction to declare that Standing Orders should be amended to provide expressly for a motion of no confidence.
3. After consideration of the parties' arguments and for the reasons that follow, the court concludes that every elected member or elected representative in the National Assembly has an implied right under section 52-(6) of the Constitution of Saint Christopher and Nevis to bring a motion of no confidence, and to have that motion listed, debated and voted on without undue delay and within a reasonable time. I also conclude that this court has jurisdiction and that the rights which are implicit in section 52-(6) had been violated by the failure of the Speaker to schedule the motion of no confidence for debate, and to be voted on without undue delay and within a reasonable time of the motion being handed to the Clerk, or sent, or left at the Clerk's office. Finally, I conclude the court has jurisdiction under section 96 of the Constitution to grant relief for that violation, and that the claimants are entitled to the declarations sought, except those which the claimants are no longer pursuing because they are now academic." [25]

This judgment proved the point that Westminster procedure may not necessarily be reflected in Westminster-Whitehall practice. The fact that the Leader of the Opposition as well as other MPs had to go to court to try to get the Speaker to table his motion of no confidence and the Speaker failed to carry out the constitutional requirements permitted the Prime Minister to stay in office longer than he ought to.

There was a general election in February 2015 which led to a change of government and Dr. Timothy Harris became the Prime Minister so that the determination of this matter on 7th November 2017 rendered a part of the claim "academic". However, the procedural protocols were established by the judge in this case for future reference.

Guyana

According to Section 5 of Act No. 17 of 2000 enacted by the Parliament of Guyana, the following additions were made to section 106 of the Constitution that pertain to the Cabinet :

"5. Article 106 of the Constitution is hereby altered by the insertion immediately after paragraph (5) of the following paragraphs -

(6) The Cabinet including the President shall resign if the Government is defeated by the vote of a majority of all the elected members of the National Assembly on a vote of confidence.
(7) Notwithstanding its defeat, the Government shall remain in office and shall hold an election within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine, and shall resign after the President takes the oath of office following the election." [26]

This amendment is highly significant, because its effect was to revive the parliamentary motion of confidence for the Cabinet which had been removed in the Guyanese constitution that had been introduced in 1980. [27] What had been introduced as part of the post-independence constitutional reform in 1980 that shelved the parliamentary system had been revived in 2000 with the introduction of a motion of no confidence as a means of removing the President and the Cabinet from office.

This amendment shifted the genre of the Guyanese presidential model towards a presidential-parliamentary hybrid with a significant tilt towards the parliamentary model.

After the outcome of the 2011 general election that created a divided government with the presidency in the hands of the PPP/Civic and the National Assembly having no party with overall control, the APNU and the AFC were able to arrange a pre-election coalition for the 2015 general election that permitted them to win the presidency (on a FPTP basis) and also control the National Assembly with a 33-32 majority.

That coalition suffered a serious blow on 21st December, 2018 when one of its MPs, Charrandass Persaud (a member of the AFC in the APNU/AFC coalition), voted with the opposition PPP/Civic on a motion of no confidence against the Government which produced an adverse 32-33 result for the Government.

According to the Constitution of Guyana, as amended in 2000, the Government has to resign if it is defeated on a motion of no confidence and a general election shall be held within three months. The Government will remain in office until a President takes the oath of office after that general election. That did not happen.

On Thursday 3rd January, 2019, the Speaker of the National Assembly of Guyana, Dr. Barton Scotland, ruled that he would not reverse his decision on accepting the validity of the vote on the motion of no confidence that was successfully carried against the Government of Guyana on December 21st 2018.

According to Speaker Scotland :

"Hon. Members, you will recall that at the 111th Sitting of the National Assembly on 21st December, 2018, a motion of no-confidence was moved in the House on behalf of the Opposition. After a number of hours of debate, the motion was put and carried by a majority of one vote. The motion was carried by a vote of 33 in favour and 32 votes against. One Member of the Government's side, at that time the Hon. Charrandass Persaud, withheld his support from the governing

coalition on the list of which he was a Member, and instead voted with the Opposition. After the Speaker had declared the motion carried, he announced to the House that at the next Sitting of the National Assembly, which was scheduled for today 3rd January, 2019, the House will meet to consider the consequences of the vote.…...Where, as in these instances before us, there are different even competing views of certain provisions of the Constitution, as well as certain inter-related provisions of the Constitution all of which fall to be examined, the Speaker on this occasion and without more, declines the invitation to act in the reversal. Full, final and complete settlement of these issues by a Court of competent jurisdiction will place beyond doubt any question which may exist and serve to give guidance to the Speaker and to the National Assembly for the future. Hon. Members, in treating with this matter, I have made every effort to present it to you as fully as I did, in the hope that it will assist in your understanding of the matter and enable our fellow citizens to understand the issues. I, thank you." [28]

In refusing to reverse his decision on accepting the validity of the motion of no confidence of 21st December, 2018, Speaker Scotland opened the door to litigation by his ruling in which he spoke about full, final and complete settlement of the issues surrounding the motion of no confidence by a court of competent jurisdiction would put the matter beyond all doubt. And to court the matter went.

One proposition that was put before the courts was that there are 65 seats in the National Assembly which meant that half of that was 32.5 which then had to be raised to the next whole number of 33 and then add one to that to make 34 which meant that the motion had failed. Another proposition was that it was discovered after the vote that Charrandass Persaud was a dual Guyanese-Canadian citizen and that his vote should not count.

With 33 not being regarded by the litigants as the next whole number to satisfy the numerical requirements of a majority of all the 65 MPs voting, one had to understand that the APNU/AFC administration would naturally want to explore all options in order to stay in power.

Three court matters were bundled for hearing and they were ultimately decided by the Caribbean Court of Justice (CCJ), Guyana's final court of appeal on 18th June, 2019 [29] with consequential orders being made on 12th July, 2019. [30]

According to the judgment delivered on 18th June, 2019 the issue of the size of the majority was settled as follows :

"[27] The Guyana Assembly comprises an odd number of persons (i.e. 65). When all the members of the Assembly are present and vote (as was the case here), all that is necessary is to follow the wording of the Constitution and determine whether the motion has garnered 'a majority of all the elected members.' Such a majority is clearly at least 33 votes. On the 21 December 2018 we would venture to suggest that every member of the Assembly knew this. The Clerk certainly knew it. And so too did the Speaker who announced that the motion had passed. Since the Assembly comprises an odd number, there is no need to imply into the Constitution any formula for defining a majority as being 'half plus one'. Indeed, as an American judge noted, the '50% plus one rule' leads to illogical results when it is applied to

odd numbers. So, for example, it is trite that when a Court of Appeal sits as a panel of three, a majority decision is 2:1. The Chief Justice was therefore right when she adjudged that a majority from among 65 members is a minimum of 33." [31]

Despite this judgment in June 2019 and the orders made in July 2019, there was no resignation of the Government as an argument was advanced that it was necessary to conduct a countrywide re-registration exercise for the conduct of the general election. As a consequence, that general election was held on 2nd March 2020 and after more months of court wrangling that reached to the CCJ after that, the final result was declared on 2nd August 2020 which resulted in a change of government and the return of the PPP/Civic to power.

Conclusion

The use of the power of prorogation for political survival has been invoked in the Commonwealth Caribbean before, despite a constitutional limitation to guarantee that no session of Parliament can last longer than one calendar year.

There is no comparison with the Westminster model in the UK which has no limitation on its use other than such use must be lawful. Permitting Parliament to remain in session for more than one year is a representation of the flexibility of Westminster constitutional conventions, while leaving a prorogation in place for five weeks is regarded as "unlawful". In the Commonwealth Caribbean, parliamentary sessions have to be regulated on an annual basis and a prorogation can last for several months, unlike in the UK, and still be regarded as lawful.

The need to include the appropriation of public monies on an annual basis is vicariously interwoven with the power of prorogation. The transplantation of the conventions from Westminster to Westminster-Whitehall constitutions of the Commonwealth Caribbean has been effected through codification which has changed the character of the unwritten conventions.

However, despite codification of the constitutional provisions for motions of no confidence in Westminster-Whitehall constitutions, there are still procedural hurdles to be jumped as there is no guarantee that the Speaker will table the motion of no confidence in a timely manner. This was confirmed in St. Kitts-Nevis where the actions of the Speaker in 2012/2013 prolonged the tenure in office of Prime Minister Denzil Douglas. It took judicial interpretation by the High Court in 2017 long after there had been a change of government in 2015 to establish what the proper protocol should be.

In 2019, an Act of Parliament was enacted to provide for the tabling of a motion of no confidence in St. Kitts-Nevis. It read, in part, as follows :

"**3. Timeline for Resolution of No Confidence.**

Where a question of no confidence in the Government is brought before the National Assembly, in accordance with the provisions of the Constitution and the National Assembly Elections Act, the question of no confidence shall be determined by

Resolution of the National Assembly within a period not exceeding twenty one days." [32]

The fact that a statute is required to further clarify what is codified in the constitution is confirmation of the fact that codification of Westminster conventions in Commonwealth Caribbean constitutions may not always be enough for compliance if public officials fail to carry through with the proper procedure on what needs to be done.

In the hybrid presidential-parliamentary constitution of Guyana, which is by no means of the Westminster-Whitehall genre, the need for public officials to comply with constitutional directives also emerged as a challenge following the refusal of the APNU-AFC coalition to resign after losing a vote of no confidence in the National Assembly on 21st December 2018.

The consequential orders that were made on 12th July, 2019 by the CCJ also reaffirmed the validity of the need for general elections to be held within the three-month window specified in the Constitution. The court did not seek to specify a date, but provided a window within which elections must be held and asked that public officials carry out their duties in accordance with the Contitution as follows :

"[5] The judiciary interprets the Constitution. But, as we intimated in our earlier judgment, these particular provisions require no gloss on the part of the Court in order to render them intelligible and workable. Their meaning is clear and it is the responsibility of constitutional actors in Guyana to honour them. Upon the passage of a vote of no confidence, the Article requires the resignation of the Cabinet including the President. The Article goes on to state, among other things, that notwithstanding such resignation, the Government shall remain in office and that an election shall be held 'within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine ...' The Guyana Elections Commission ("GECOM") has the responsibility to conduct that election and GECOM too must abide by the provisions of the Constitution.
[6] Given the passage of the no confidence motion on 21 December 2018, a general election should have been held in Guyana by 21 March 2019 unless a two thirds majority in the National Assembly had resolved to extend that period. The National Assembly is yet to extend the period. The filing of the court proceedings in January challenging the validity of the no confidence vote effectively placed matters on pause, but this Court rendered its decision on 18 June 2019. There is no appeal from that judgment.
[7] Article 106 of the Constitution invests in the President and the National Assembly (and implicitly in GECOM), responsibilities that impact on the precise timing of the elections which must be held. It would not therefore be right for the Court, by the issuance of coercive orders or detailed directives, to presume to instruct these bodies on how they must act and thereby pre-empt the performance by them of their constitutional responsibilities. It is not, for example, the role of the Court to establish a date on or by which the elections must be held, or to lay down timelines and deadlines that, in principle, are the preserve of political actors guided

by constitutional imperatives. The Court must assume that these bodies and personages will exercise their responsibilities with integrity and in keeping with the unambiguous provisions of the Constitution bearing in mind that the no confidence motion was validly passed as long ago as 21 December 2018." [33]

This opinion by the CCJ goes to the heart of the trust and confidence that must be placed in public officials to perform their constitutional duties in accordance with proper protocols. There is a similarity between St. Kitts-Nevis and Guyana in terms of how their motions of no confidence were handled that caused their handling to end up in the courts.

However, the dissimilarity between St. Kitts-Nevis and Guyana can be found in the differing approaches of the Speakers in both Parliaments to the issue of the role of the courts in interpreting the exercise of the powers of the Speaker in relation to motions of no confidence.

In St. Kitts-Nevis, Speaker Martin resisted the jurisdiction of the court to rule on parliamentary procedure in relation to the conduct of a motion of no confidence. In Guyana, Speaker Scotland welcomed the jurisdiction of the court to render a final verdict on his acceptance of the outcome of the motion of no confidence. In both instances, the court exercised its jurisdiction over parliamentary business.

END NOTES

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3. [2006] UKPC 22.

4. Ibid, para. 1.

5. Ibid.

6. Ibid. para. 7.

7. The Constitution of the Republic of Trinidad and Tobago, Laws of Trinidad and Tobago, Ch. 1:01, Schedule, s.67.

8. R (on the application of Miller)(Appellant) v The Prime Minister (Respondent), Cherry and others (Respondents) v Advocate General for Scotland (Appellant)(Scotland) [2019] UKSC 41, para. 3.

9. Ibid. para. 17.

10. Scoon, Paul. 2003. **Survival for Service : My Experiences as Governor General of Grenada** (Macmillan Caribbean, p. 257).

11. Ibid., pp. 257-258.

12. Ibid., p. 258.

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14. [2019] UKSC 41, para. 39.

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16. Ibid., para. 7.

17. The Constitution of the Republic of Trinidad and Tobago, Laws of Trinidad and Tobago, Ch. 1:01, Schedule, s. 68(1).

18. The Commonwealth of Dominica Constitution Order 1978 (S.I. 1978 No. 1027), s. 54(1).

19. The Antigua and Barbuda Constitution Order 1981 (S.I. 1981 No. 1106), s. 60(1).

20. The Constitution of the Co-operative Republic of Guyana Act 1980 (Act No. 2/1980), s. 111.

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25. Mark Brantley and Others (Claimants) v Curtis Martin (Speaker of the National Assembly)(Defendant) and The Attorney General (Intervening Party) and Timothy Harris (Claimant) and Curtis Martin and the Attorney General (Defendants) [Claim No. SKBHCV 2014/0231].

26. Laws of Guyana, Act No. 17 of 2000, s. 5.

27. Laws of Guyana, Act No. 2 of 1980, op. cit.

28. Parliament of Guyana, Official Report, Proceedings and Debates of the National Assembly, Thursday 3rd January, 2019, pp. 4-7.

29. [2019] CCJ 10 (AJ).

30. [2019] CCJ 14 (AJ).

31. [2019] CCJ 10 (AJ), para. 27.

32. St. Christopher and Nevis. Motion of No Confidence Act 2019, No. 10 of 2019.

33. [2019] CCJ 14 (AJ), op.cit., paras. 5, 6 and 7.

APPENDIX

Constitutional References on Prorogation in the Commonwealth Caribbean

1. The Antigua and Barbuda Constitution Order 1981 (S.I. 1981 No. 1106), s. 59.
2. The Bahamas Independence Order 1973 (S.I. 1973 No. 1080), s. 65.
3. The Barbados Independence Order 1966 (S.I. 1966 No. 1455), s. 60.
4. The Belize Independence Order 1981 (S.I. 1981 No. 1107), s. 83.
5. The Commonwealth of Dominica Constitution Order 1978 (S.I. 1978 No. 1027), s. 53.
6. The Grenada Constitution Order 1973 (S.I. 1973 No. 2155), s. 51.
7. The Constitution of the Co-operative Republic of Guyana Act 1980 (Act No. 2/1980), s. 69.
8. The Jamaica (Constitution) Order in Council (S.I. 1962 No. 1550), s. 63.
9. The Saint Christopher and Nevis Constitution Order 1983 (S.I. 1983 No. 881), s. 46.
10. The St. Lucia Constitution Order 1978 (S.I. 1978 No. 1901), s. 54.
11. The Saint Vincent Constitution Order 1979 (S.I. No. 916), s. 47.
12. The Constitution of the Republic of Trinidad and Tobago, Laws of Trinidad and Tobago, Ch. 1:01, Schedule, s. 67.