The Power of Social Movements and the Limits of Pluralism: Tracing Rastafarianism and Indigenous Resurgence through Commonwealth Caribbean Law and Culture

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Introduction

In the post-colonial era, social movements in the Commonwealth Caribbean[1] have empowered citizens to reclaim, redefine and further develop their identity. These movements, combined with a history of colonialism and transatlantic slavery in the region, have yielded a Caribbean culture "too diverse to be labeled."[2] Indeed, the Caribbean culture is composed of "a bastion of discrete identities as well as quarries of very invaluable raw material that can be used to build the bridges across cultural boundaries."[3] These distinct but potentially overlapping identities make the Commonwealth Caribbean a truly pluralistic region, at least at the cultural and social level.[4] As modern legal and political systems, however, the states of the Commonwealth Caribbean have, in many ways, failed to sufficiently protect the non-

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[1] In this paper, I use the term "Commonwealth Caribbean" to refer to independent, English-speaking states in the Caribbean, including: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

[2] Miranda La Rose, *Caribbean culture too diverse to be labelled – Prof Nettleford*, STABROEKNEWS (5 Sep 2008), http://www.stabroeknews.com/2008/archives/09/05/caribbean-culture-too-diverse-to-be-labelled-%E2%80%93-prof-nettleford/, (Quoting Professor Rex Nettleford. *See* Rex Nettleford, Expressions of the Mind: Philosophy and the Making of the Caribbean Nation, Keynote Address at the Carifesta X Symposium (Guyana 2008)).

[3] *Id.*

[4] *See generally* Derek O'Brien & Vaughan Carter, *Chant Down Babylon: Freedom of Religion and the Rastafarian Challenge to Majoritarianism*, 18 J. L. & RELIGION 219 (2002).

dominant groups within Caribbean.[5] Indeed, attempts to balance the majoritarian demands of democracy against the pluralist notion of minority rights protection have landed largely on the side of majorities.[6]

Two social movements in particular, the Rastafarian Movement and the Indigenous Resurgence Movement, have created or reclaimed Caribbean identities that, for their proponents and followers, are meaningful expressions of self. By allowing minorities to actively participate in their own identity development, these social movements combat the legacies of colonialism, slavery and oppression which imposed racist and prejudiced definitions of identity on the peoples of the Caribbean. These social movements also propelled those outside the identity to reimagine and expand their sense of what it means to be "Caribbean."

On one hand, social movements have made significant contributions to identity and cultural development, and the cultural awareness of the import of these contributions is increasing. On the other hand, instances of discrimination, failures to recognize rights, and unequal treatment in the law expose the limits of pluralism, particularly within Caribbean legal systems.

In this essay, I will explore both of these social movements in detail. First, I will provide definitions and a theoretical background for my analysis. Next, I will examine both the Rastafarian Movement and the Indigenous Resurgence Movement, in turn. In my examination of both movements, I will provide an overview of the group's origins and history, outline their contribution to the development of a uniquely Caribbean identity, and assess the movement's relationship with Caribbean law.

Ultimately, I find that the process of dynamic cultural development in the region has, on the positive side, yielded important and meaningful social change and added depth to the diversity of Caribbean society. Nonetheless, these social movements, and the identities they promote, have not been fully embraced by Caribbean law and legal systems. Hopefully, increasing awareness of the limits of existing legal structures will yield legal change, including increased recognition and protection of minorities' rights.

I. Theoretical Background on Identity Development and Pluralism

A. Social Movements, Identity and Identity Development

Before I begin my analysis of the Rastafarian Movement and the Indigenous Resurgence Movement, I would first like to lay out the definitions of key terms and concepts that I will use throughout the essay. First, I will

[5] *Id.*
[6] *Id.*

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explore the terms "social movement," "identity" and "identity development," and will consider the implications of the process of cultural identity development in a post-colonial and post-slavery society like the Commonwealth Caribbean. Second, I will define the terms "majoritarianism" and "pluralism" and explore the relationship between the two in democratic societies.

In the modern era, international human rights law has recognized the right of people to self-determination and of the right to freely pursue economic, social and cultural development.[7] The vital importance of such a right can be best understood in the Commonwealth Caribbean context. Indeed, through conquest, colonialism and transatlantic slavery, Europeans imposed not only political control on the region but narrowed the notions of identity, religion and culture among the people which, in turn, devalued local identities and cultures and ultimately oppressed the non-Europeans. This cultural imposition was often furthered through attempts to eliminate, suppress or alter traditional cultural practices of the non-Europeans or "indigenous people."[8] Some have even described the European colonization and slavery trade as a process of cultural genocide or ethnocide which attempted to destroy traditional cultures, religions and "identities" of the people.[9]

In response to the imposition of the colonizer's culture, individuals and communities in the Caribbean engaged in a process of cultural dissent.[10] This process involved a rejection of imposed cultural identities or mythologies and the creation (or reinstatement) of self-selected identities.[11] "Social movements," as they are now known, are both an expression of that cultural dissent as well as a force which amplifies the ongoing process of cultural identity development by spreading new and powerful notions of identity to others outside the movement.

As scholar Benedict Anderson explains, people imagine their identity by seeing themselves a part of a socially-constructed community.[12] Social movements are one of the forces by which that imagination occurs, evolves, and

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[7] Marissa Hughes, *Indigenous Rights in the Philippines: Exploring the Intersection of Cultural Identity, Environment, and Development*, 13 GEO. INT'L ENVTL. L. REV. 3, 9 (2000).

[8] Marina Hadjioannou, *The International Human Right to Culture: Reclamation of the Cultural Identities of Indigenous Peoples Under International Law*, 8 CHAP. L. REV. 193, 193–194 (2005).

[9] *Id.* at 193.

[10] *See* Madhavi Sunder, *Cultural Dissent*, 54 STAN. L. REV. 495 (2001).

[11] *Id.* at 498–500.

[12] BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM, 6 (1983).

spreads to others. In allowing individuals to (re)imagine their own identity, establish connections and communities of equals, and create platforms for challenging imposed identities, social movements empower individuals and their communities to take back their identities.[13] Understanding social movements and their place in history as well as in contemporary society helps us to understand the current process of "identity development" and the ways in which identity development is limited by political, legal or social forces.

B. Majoritarianism v. Pluralism

"Majoritarianism" is defined here as "the assumption that the will of the majority is absolute and is the final authority when defining the limits of individual rights and freedoms."[14] As democratic societies theoretically defer to the will of the majorities in election-based decision-making, majoritarianism is an implicit part of a democracy.[15] Generally speaking, majoritarianism is less problematic in societies that are relatively culturally homogenous as there are fewer minority groups in need of protection as well as more cultural agreement and conformity. Likewise, majoritarianism is often more problematic in societies like the Caribbean that are culturally diverse and have numerous minority populations.

"Pluralism" is commonly used in two different senses, political pluralism and cultural pluralism. "Political pluralism" requires that, to some extent, the rights of minorities must be allowed to supersede the will of the majority in order to encourage diversity (whether it be religious, racial, sexual or ideological) and to protect basic human rights.[16] "Cultural pluralism" on the other hand refers to the coexistence of several diverse ethnic, religious and cultural groups within one unified society.[17] Thus, it is possible for a society to be culturally pluralistic while failing to protect minority rights on a political level (and thus not being politically pluralistic).

Culturally pluralistic democratic societies have the unique challenge of balancing the majoritarian decision-making process with some level of political pluralism or protection of minority rights. Commonly, the conflict between the demands of majoritarianism and those of cultural pluralism comes to a head in cases where minority individuals attempt to practice a religious or cultural

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[13] DEBAL K SINGHAROY, PEASANTS' MOVEMENTS IN POST-COLONIAL INDIA, 210 (2004).

[14] O'Brien, *supra* note 4 at 225.

[15] *Id.*

[16] *Id.*

[17] ROSE-MARIE BELL ANTOINE, COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS 6 (2d ed. 2008).

tradition that is not well-understood or embraced by the dominant culture. The Commonwealth Caribbean is one such example where conflicts between majoritarianism and pluralism are likely to occur. The law and legal systems of the region are tied to the British legal tradition—one that is based on a relatively homogenous cultural context and did not originally reflect the cultural, religious and social realities of the Commonwealth Caribbean.[18] Moreover, majoritarianism is further complicated in post-colonial states like those of the Caribbean because the will of the democratic majority is often clouded by the legacy of colonialism, which we must not forget often devalued, mythologized or suppressed many cultures and identities.

This essay explores several examples of where basic human rights are casualties of the conflict between political majoritarianism and cultural pluralism and how social movements play a unique role in exposing and responding to these human rights violations. The next two sections of this paper use the social movements Rastafarianism and the Indigenous Right Movement as case studies through which these theoretical concepts can be applied and better understood. These case studies allow us to look at how social movements enable identity development and how they expose the conflict between majoritarianism and pluralism in the Commonwealth Caribbean.

II. The Rastafarian Movement

A. Historical Overview

The Jamaican Great Revival of the late 19th century laid the groundwork for the Rastafarian Movement.[19] The Revivalists blended Christian traditions with African spiritual and folk beliefs, and, in so doing, enabled Jamaicans and other West Indians to begin to create a new, distinct identity separate from the identity of a "colonial subject" or "slave."[20] This identity development served as a form of resistance to colonialism and slavery and as a form of self-emancipation.[21]

Marcus Garvey, the founder of the Universal Negro Improvement Association, built upon the resistance momentum begun by the Revivalists and catalyzed the Rastafarian Movement.[22] Garvey rejected slavery,

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[18] *Id.* at 7.

[19] *Id.* at 224.

[20] NATHANIEL SAMUEL MURRELL, AFRO-CARIBBEAN RELIGIONS: AN INTRODUCTION TO THEIR HISTORICAL, CULTURAL, AND SACRED TRADITIONS 248 (2010).

[21] *Id.*

[22] O'Brien, *supra* note 4 at 224.

colonialism and political and social oppression of African peoples.[23] In his teachings, he advanced a number of radical ideas, including black economic self-sufficiency, black political self-sufficiency and predictions that there would one day be a Black Messiah (which he also referred to as a Black King).[24]

Many people took Garvey at his word that blacks ought to abandon the white perspective and take upon the perspective of Ethiopia.[25] When Prince Ras Tafari was crowned Emperor Haile Selassie of Ethiopia (thus fulfilling Garvey's prediction of the exalting of a Black King), many of Garvey's followers considered Emperor Selassie to be God.[26] Though Garvey denied the divinity of the newly crowned Emperor, Garvey's supporters, particularly those in the poor areas of Kingston, Jamaica, continued to deify Selassie and formed Rastafarianism,[27] which grew into both a religious faith and a social movement.[28]

B. The Rastafarian Movement and Its Contributions to Commonwealth Caribbean Identity Development

The Rastafarian Movement is at once a religious, cultural, ethnic and political movement.[29] It has had a great impact not just on Caribbean society and culture, but on the entire world.[30] This section explores four main areas of the Rastafarian Movement and how those have, in turn, contributed to the Caribbean identity development.

1. Rastafarianism as a Non-Hierarchical, Non-Doctrinal Religion

Though Rastafarians hold diverse religious and spiritual beliefs, most Rastafarians are united in several core tenets. Rastafarians share the belief that

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[23] Melissa R. Johnson, *Positive Vibration: An Examination of Incarcerated Rastafarian Free Exercise Claims*, 34 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 391, 394–95 (2008).

[24] *Id.*

[25] O'Brien, *supra* note 4 at 225.

[26] *Id.* at 395.

[27] The name of the Rastafarian movement was taken from Emperor Haile Selassie's name prior to coronation.

[28] MICHAEL KEENE & DENNIS MCKOY, NEW STEPS IN RELIGIOUS EDUCATION FOR THE CARIBBEAN 86 (2003).

[29] O'Brien, *supra* note 4 at 222.

[30] Antoine, *supra* note 17 at 8.

Emperor Haile Selassie is God.[31] Rastafarians preach a gospel of Black pride and reject the Western world[32] which they claim exploits black individuals.[33] Rastafarians reject the notion that communication with God should be channeled through a church official.[34] Instead, they believe that individuals can communicate with God independent of the church.[35] Rastafarians believe the Bible is the sacred text within the religion and discussions about scripture (also known as "reasonings") should take place frequently.[36] Though these sources of religious information are important to Rastafarians, the final interpretation of religious passages is left to individuals to decide.[37] Finally, Rastafarians believe in repatriation to Africa or Ethiopia (which they often refer to as Zion).[38] Some Rastafarians take repatriation to mean physical relocation to Africa or Ethiopia, while others take repatriation to mean cultural reclamation of their African identity, and still others believe repatriation will come through divine means.[39]

These core tenets of Rastafarianism enabled proponents to lay claim to their own identity and to reject the oppression of colonialism and slavery. Specifically, the belief in the deity of the black Emperor Haile Selassie, the gospel of Black pride, and the goal of repatriation to Ethiopia served as forms of black empowerment when blacks were greatly oppressed. These beliefs continue to be racially empowering beliefs of Rastafarianism. The decentralization of religious authority and the ability to interpret scripture individually allows believers to take ownership of their faith and to imagine a religious identity that is meaningful to them as individuals. Overall, Rastafarianism has served and continues to serve as a way for Caribbean citizens to claim an empowering and relevant spiritual identity.

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[31] Johnson, *supra* note 23 at 395.

[32] The Western world is also referred to as "Babylon" or the "Babylon system" by Rastafarians.

[33] O'Brien, *supra* note 4 at 221.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] PETER J. PARIS, RELIGION AND POVERTY: PAN-AFRICAN PERSPECTIVES 142 (2009).

[39] CHANTING DOWN BABYLON: THE RASTAFARI READER 31 (Nathaniel Samuel Murrell, ed., 1998).

2. Marijuana: A Form of Economic, Political, and Religious Expression

Since the beginning of the movement, Rastafarians have embraced Garvey's call for economic self-sufficiency. Some Rastafarians have even rejected all forms of paid-employment as forms of servitude.[40] Out of financial need, early Rastafarians who rejected employment began to sell herbs, including marijuana.[41] In popular culture today, Rastafarians are often linked with the sale and use of marijuana, but few focus on marijuana either as a route to economic independence or as an expression of economic dissent.[42] Despite outsiders' failure to recognize the economic dimensions of marijuana for the Rastafarians, the sale of the herb has allowed Rastafarians to challenge the economic status quo and to engage with a different economic system.

Some, but not all Rastafarians view marijuana as having both spiritual and medicinal qualities.[43] In this way, the use of marijuana actually plays a role in the larger Rastafarian project of establishing an independent and relevant religious tradition. Additionally, because authorities classify the substance as a controlled drug, the use and sale of marijuana also serves as an act of political resistance through which Rastafarians exercise another of their main tenets—the refusal to recognize the moral and legal sovereignty of the established political order.[44]

Taken as a whole, the sale and use of marijuana by the Rastafarians serves as an expressed enactment of several core beliefs including: economic self-sufficiency, religious self-expression, and resistance to the notion that the extant political order is morally or legally superior. Use of the herb does not merely correlate to beliefs on an ideological level, but also allows Rastafarians to perform their beliefs and actively physically engage in the process of resistance that they embrace ideologically.

3. Reggae Music: A Tool for Creating and Spreading a Culture

It is not in the Rastafarians' nature to actively try to convert others to Rastafarianism.[45] Nonetheless, the movement's messages and tenets have been effectively spread through reggae music, which has reached all corners

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[40] O'Brien, *supra* note 4 at 225–226.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 221.

[44] *Id.* at 220.

[45] O'Brien, *supra* note 4 at 221.

of the globe.[46] And though the message sharing power of reggae music is significant, it serves a much more important purpose. As scholar Linden F. Lewis describes, reggae is a tool for, "political, cultural, moral, and religious purposes and protests."[47] Indeed, to Rastafarians, reggae music is a form of resistance to the dominant culture and a way to actively engage in identity development. This is achieved through a variety of mechanisms.

First, reggae music restores people to self-awareness by teaching them about their African heritage and identity.[48] This self-awareness provides listeners with an alternative to the dominant Westernized culture prevalent in their societies.

Next, reggae music allegedly portrays the truth about Western culture, particularly its oppressive and divisive nature.[49] In so doing, reggae music motivates listeners to rethink their cultural affiliations.

Finally, reggae music expresses the political and cultural grievances of society felt by the Rastafarians and allows for expression of "demands for change."[50] Such a feature makes reggae music not only a tool to enable the process of identity development, but also a tool for political mobilization and resistance. Given the powerful nature of Rastafarian music, it is little surprise that Rastafarians consider reggae music as their primary weapon in the war to defeat the dominant and oppressive Western culture.[51]

Overall, reggae music operates on four levels to empower listeners to engage in the process of reimaging their own identity. First, the music itself brings believers together both culturally, via a shared form of expression, as well as physically, via concerts and other musical gatherings. Reggae music thus allows Rastafarians to "perform" their culture. Second, the music spreads the messages of Rastafarian culture and thereby increases the movement's size and impact. Third, the music promotes identity development in promoting listeners to challenge the dominant culture as well as gives them the tools to begin to imagine a different form of culture. Finally, reggae music is an act of political resistance through which musicians and their listeners express political beliefs and protest instances of oppression and discrimination. Reggae music is not just music. It is a core part of disseminating, expressing and enacting the Rastafarian identity.

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[46] Keene, *supra* note 28 at 87.

[47] *See* ENNIS BARRINGTON EDMONDS, RASTAFARI: FROM OUTCASTS TO CULTURE BEARERS 51 (2002), (quoting Linden F. Lewis).

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

4. Practices and Rituals: Performing Cultural and Religious Identity

There are several unique practices and rituals which unite Rastafarians and allow them to literally *perform* their identity. In this subsection I will address three of them: dreadlock wearing, the Rastafarian dialect, and the I-tal diet. First, the most visual and symbolic ritual of the Rastafarian culture is the practice of wearing dreadlocks. Rastafarians began to dread their hair in the 1940s when images of Africans wearing dreadlocks appeared in Jamaican newspapers. Images included Gallas, Somalis, Masais and Jomo Kenyatta's freedom fighters.[52] Thus, early Rastafarians saw wearing dreadlocks as a way to reappropriate African customs and the practice began to spread.[53]

Though wearing dreadlocks is a practice associated with Rastafarianism, not all Rastafarians wear dreadlocks—some choose to represent their Rastafarianism through the wearing of a beard, while others have neither a beard nor dreadlocks.[54] Nonetheless, for those that do wear dreadlocks and beards, hair styling serves as a direct assault on the dominant culture and as a rejection of popular conceptions of priority and fashion. Moreover, dreadlocks have become a visible symbol of Rastafarianism in that they differentiate Rastafarians from the masses as they go about their daily life and enable Rastafarians to perform their culture and religion in the public sphere.

Second, the Rastafarian dialect, alternatively known as Iyaric, Livalect, Dread-talk, Wordsound, or I-talk, is a created version of English spoken by members of the Rastafarian movement.[55] Many African languages were lost as a result of slavery. Speakers and proponents of Rastafarian dialect see the creation of the language as a way to reclaim their speech and to reject the oppressive dominant culture.

Many words in the Rastafarian dialect clearly reflect this intent to reject oppression. For example, Rastafarians changed the word "understand" to "overstand" because they wanted to rid the implication from the term that their knowledge was "under" some dominant force or power.[56] Likewise, Rastafarians use the term "downpression" instead of "oppression" to better express the true nature of the subjugation as something that forces people down.[57]

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[52] CHANTING DOWN BABYLON: THE RASTAFARI READER, *supra* note 39 at 31.

[53] *Id.*

[54] Johnson, *supra* note 23 at 396.

[55] BARRY CHEVANNES, RASTAFARI AND OTHER AFRICAN-CARIBBEAN WORLDVIEWS 177 (1998).

[56] HOWARD JACKSON & ETIENNE ZÉ AMBELA, WORDS, MEANING AND VOCABULARY: AN INTRODUCTION TO MODERN ENGLISH LEXICOLOGY 136 (2000).

[57] *Id.*

Rastafarians also increase the positivity of words by replacing the "ate" sound ("hate" for example) with the word "love." Consider the case of "create" (which sounds like cre-hate) being replaced with "crelove;" and "appreciate" (which sounds like appreci-hate) being replaced with "apprecilove." Consider also the replacement of the word "dedication" (which has the sound "dead" at the beginning) with the word "livication," to empower themselves to focus on life and vitality.[58]

Through linguistic changes such as these, Rastafarians reclaimed language and made it their own. These changes also enabled Rastafarians to bring their values and worldview into their language, adding positivity and empowerment to everyday terms. Additionally, by speaking in the Rastafarian dialect, Rastafarians mark themselves as separate from other Caribbean citizens. In so doing, they call attention to their movement and enable themselves to identify fellow Rastafarians.

Another important practice adopted by many Rastafarians is the "I-tal diet." The I-tal diet is similar to the "kosher diet" in that it excludes impure, unnatural and unclean foods from the Rastafarian's diet.[59] Though the diet varies,[60] most versions exclude "meat ..., predatory fishes and lowly crustaceans, dairy products, white flour breads, alcohol, sweets, and salt," as well as "chemical" foods.[61] Proponents of the diet believe eating "dead flesh" tarnishes the body, a holy entity, and as such it is to be avoided.[62] The consumption of food items off dishes that have had contact with prohibited foods is often prohibited as well.[63] Finally, most I-tal diets also prohibit the use of tobacco.

In many ways, this diet reflects the way in which Rastafarianism has empowered Caribbean citizens and allowed them to actively create their own identity and culture. First, the very world "I-tal" is a Rastafarian creation.[64] Additionally, the diet is seen as a way to reject the oppressive Western way of life and, in particular, the unhealthy junk foods sold in most supermarkets.[65] Rastafarians also believe that the I-tal diet increases vital life energy, or

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[58] CLEMENT M. NYIRENDA, RASTAFARIANISM IN MALAWI: A FRONT FOR CHAMBA SMOKERS OR A FAITH COMMUNITY 7 (2006).

[59] Johnson, *supra* note 23 at 398.

[60] LEONARD E. BARNETT, THE RASTAFARIANS: TWENTIETH ANNIVERSARY EDITION 141 (1997).

[61] Johnson, *supra* note 23 at 398.

[62] *Id.*

[63] *Id.*

[64] Peter Meehan, *Ital is Vital*, N. Y. TIMES, Oct. 12, 2012, at MM47.

[65] *Id.*

Livity, while processed foods reduce Livity.[66] On a spiritual and physical level, the I-tal diet allows Rastafarians to take control over their bodies and energy levels, thereby empowering them. Finally, the popularity of the diet has led to the sale of "I-tal" foods in grocery stores throughout the region.[67] The sale of these products yields economic gains for Rastafarians, enabling them to attain a level of economic self-sufficiency. The sale of these products also increases public awareness of the movement and serves as a commercial interface with the larger society.

C. Rastafarianism Persecution within the Law

Though Rastafarians have had an important impact on Caribbean society and have contributed to the development of a distinct Caribbean identity, Rastafarians can hardly be said to have been embraced in the legal traditions of the Commonwealth Caribbean. In fact, the legal history of the Commonwealth Caribbean betrays a strong favoritism toward dominant social groups and structures at the expense of minorities like the Rastafarians, a trend which largely continues to this day.

1. Establishment of Unlawful Societies

The most extreme example of legal persecution of Rastafarians might be the passage of Dominica's "Prohibited and Unlawful Societies and Associates Act, No. 32 of 1974" which designated certain societies (made identifiable by "their mode of dress or manner of wearing their hair"—particularly the Rastafarians) as *unlawful societies*.[68] Section 9 of the act provided that "[no criminal or civil procedures] shall be brought or maintained against any person who kills or injures any member of an association designated unlawful … ."[69] It also prohibited members of unlawful societies from holding public office and permitted police to arrest members of these societies without a warrant.[70] This act has never been challenged as unconstitutional, and it evinces an extreme level of societal and institutional discrimination against the Rastafarian people.

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[66] ROBERT SHEPHERD, RASTAFARI LIVITY: A BASIC INFORMATION TEXT 10 (2d ed., 2004).

[67] Barnett, *supra* note 60 at 267.

[68] Antoine, *supra* note 17 at 8.

[69] *Id.* at 9.

[70] *Id.*

2. Marijuana as a Pretext for Oppression

The persecution of Rastafarians under the law is not a relatively recent event; laws and police procedures have deliberately targeted the Rastafarian Movement since its genesis in the 1930s. Indeed, early Rastafarians who depended upon the sale of marijuana for their survival were often targeted by the police for their anti-colonialism[71] who used the sale and distribution of marijuana as a pretext to arrest Rastafarians.[72]

The criminalization of marijuana soon became enshrined in the law. In 1948, the Jamaican Parliament passed the "Dangerous Drugs Law" which set out penalties for the cultivation, possession or sale of marijuana.[73] Initial penalties for a first conviction of any of these offenses resulted in a year-long prison sentence and a monetary fine.[74] Later, the Jamaican government declared marijuana a "[d]angerous drug and all users a danger to the established social order," and modified the 1948 Dangerous Drugs Law to include harsher penalties.[75] Under the revised law, a first conviction for cultivating or selling marijuana would result in a five-year minimum prison sentence, while possession yielded an eighteen-month sentence.[76] Many Rastafarians experienced harsh drug sentences like these and consider them as a form of oppression.

3. Refusal to Recognize Rastafarianism as a Religion

Rastafarians have also had difficulty getting their beliefs recognized as a religion. For example, in 1999 the Grand Court of the Cayman Islands considered whether a school that expelled a Rastafarian student who kept his hair in dreadlocks had infringed the student's religious freedom.[77] The court concluded that Rastafarianism was not, in fact, a religion but rather more of a "socio-political movement."[78] Similarly, in 1997, the Constitutional Court considered whether Constitutional redress was due an appellant who had been

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[71] O'Brien, *supra* note 4 at 226.

[72] *Id.*

[73] STEPHEN A. KING, REGGAE, RASTAFARI, AND THE RHETORIC OF SOCIAL CONTROL 79 (2007).

[74] *Id.*

[75] *Id.*

[76] *Id.* at 80.

[77] Antoine, *supra* note 17 at 9. *See generally* Grant and Chin v. The Principle of John A. Cumber Primary School, 1999 CILR 307.

[78] *Id.*

arrested for possessing and dealing marijuana, which appellant claimed was done on religious grounds.[79] Specifically, the appellant argued that he was a Rastafarian and that using marijuana was a sacrament and an essential practice of the Rastafarian religion.[80] The court, however, dismissed the application.[81]

Today, Rastafarians in the Caribbean still do not have equal treatment under the law, and members of the movement still face societal discrimination. A 2012 report by the United States' Department of State identifies allegations of "ongoing discrimination against detainees at Fox Hill Prison" in the Bahamas including cutting dreadlocks against prisoners' will and failing to meet Rastafarian dietary standards.[82] The report also notes that Rastafarians are penalized with up to four years of imprisonment for the possession of a single marijuana cigarette, which Rastafarians allege is a violation against their religious beliefs.[83]

Moreover, the report indicates that in Jamaica, societal discrimination against Rastafarians still exists with "elements of [the Rastafarian] religion, such as wearing dreadlocks and smoking marijuana, present[ing] serious barriers to the ability to find employment and achieve professional status in the official economy."[84] The report notes that the group has unsuccessfully sought religious incorporation in Jamaica for fifteen years with Parliamentarians repeatedly denying incorporation on allegedly false grounds.[85]

The report also identifies Rastafarian complaints that prohibition of marijuana prevents them from performing their religious rituals in St. Kitts and Nevis,[86] Dominica, St. Lucia, and St. Vincent in the Grenadines,[87] and instances

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[79] *Id. See generally* Forsythe v. DPP and the AG of Jamaica, (1997) 34 JLR 512.

[80] *Id.*

[81] *Id.*

[82] BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U. S. STATE DEPARTMENT, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012: BAHAMAS (2012), available at: http://www.state.gov/j/drl/rls/irf/2012religiousfreedom/index.htm#wrapper (last visited Aug. 4, 2015).

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U. S. STATE DEPARTMENT, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012: SAINT KITTS AND NEVIS (2012) available at: http://www.state.gov/j/drl/rls/irf/2012religious freedom/index.htm#wrapper (last visited Aug. 4, 2015).

[87] *Id.*

of discrimination in hiring and in education against Rastafarians in St. Kitts and Nevis, Antigua and Barbuda, and St. Vincent in the Grenadines.[88]

Overall, Rastafarians have suffered and continue to suffer discrimination on societal and institutional levels. In many countries and circumstances, their beliefs are not recognized by law as religious beliefs. In prisons and schools, Rastafarians are prevented from wearing their hair in dreadlocks. They are barred by law from performing religious rituals involving marijuana. Penalties for marijuana consumption are arguably too punitive. In the past, these laws have been used as a pretext to penalize Rastafarians for their political beliefs.

As these examples reveal, the law in the Commonwealth Caribbean does not take a pluralistic approach to religious beliefs and expression, but rather takes a majoritarianistic approach which favors the Christian majority and fails to recognize the Rastafarian minority. Hopefully, increasing awareness of the contributions that Rastafarians have made to Caribbean society and the plight of Rastafarians under the law will yield increased recognition and respect of Rastafarian rights.

III. The Indigenous Resurgence Movement

A. Historical Overview

1. Pre-Colonial History (Pre-1492)

The first inhabitants of the Caribbean islands migrated from Central America roughly six thousand years ago.[89] Additional indigenous peoples migrated from South America, with the largest wave of migrants coming during the Ceramic Age, roughly two thousand years ago.[90] In 800 C.E., the "indigenous people region" of the Caribbean began a period of development that yielded complex agricultural societies with a high degree of social and political unity.[91] These indigenous peoples traveled frequently by sea, and they exchanged resources in extensive trade networks that kept them in contact with each other.

Historians generally divide Caribbean indigenous populations into three geographical groups: (1) those of the South American Mainland (residing in modern day Guyana, Suriname, French Guyana and parts of Brazil and Venezuela), (2) those of the Island Caribs or Kalinago (residing on

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[88] *Id.*

[89] SAMUEL M. WILSON, THE INDIGENOUS PEOPLE OF THE CARIBBEAN xiv (1997).

[90] *Id.*

[91] *Id.*

the modern day Caribbean islands as far south and east as Trinidad and Tobago and as far north and west as Dominica), and (3) those of the Taíno population (residing on the north western Caribbean islands, with Antigua and St. Kitts and Nevis serving as the eastern and southern boundaries and Cuba and the Bahamas serving as the northern and western boundaries).[92] Regardless of this division, indigenous groups throughout the region shared many cultural traditions, including religious customs and beliefs, agricultural practices, social hierarchies and structures, and traditional rites and ceremonies.[93] They were also alike in their artistic and construction techniques, with indigenous groups throughout the Caribbean constructing thatched buildings, weaving hammocks in the same manner, and producing similar types of basketry.[94]

2. Colonial "Recorded" History (1492 to 1962)

Historians tend to focus on the perspective of European colonists and the evolution of the colonial regimes in the Caribbean and to ignore the perspectives and experiences of the indigenous populations.[95] When indigenous populations are mentioned, most historians focus on the decimation of indigenous groups through colonial practices such as slavery, genocide, and the spread of foreign diseases.[96] Many scholars and historians have even gone so far as to declare that the indigenous people "disappeared as a cultural group" at some point after the arrival of Europeans colonists in the region due to disease and war.[97] Others have implied that the exogamous nature of indigenous lifestyles "diluted" the indigenous culture so much as to render it irrelevant or obsolete.[98] Still others have produced historical accounts of the region that "appear written in ignorance of the very existence of [the indigenous] population."[99]

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[92] *Untold Origins: The Indigenous Heritage of the Caribbean and its Contribution to a Caribbean Identity*, THE CUMING MUSEUM, Previous Exhibits, available at: http://www.southwark.gov.uk/info/200162/the_cuming_museum (last visited Jan. 19, 2014).

[93] *Id.*

[94] *Id.*

[95] Wilson, *supra* note 89.

[96] *Id.*

[97] TONY CASTANHA, THE MYTH OF INDIGENOUS CARIBBEAN EXTINCTION: CONTINUITY AND RECLAMATION IN BORIKÉN (PUERTO RICO) 6 (2011).

[98] *Id.* at 7.

[99] CHRISTIAN FORTE, INDIGENOUS RESURGENCE IN THE CONTEMPORARY CARIBBEAN: AMERINDIAN SURVIVAL AND REVIVAL 1 (2006).

Through these misleading and incorrect depictions of Caribbean society, academics have—whether intentionally or inadvertently—not only denied and suppressed the indigenous peoples of this region, but they have also established the commonly accepted myth of indigenous extinction.[100]

3. Colonial History Including Indigenous Resistance (1492–1962)

A more accurate version of the history of the Caribbean islands after Christopher Columbus's arrival in 1492 is thought to include the following series of events. The European's arrival in the region led to the introduction of measles, influenza and smallpox, diseases which took a large toll on indigenous communities.[101] Later, the rise of the transatlantic slave trade led to the introduction and spread of malaria and yellow fever in the region.[102] As indigenous people had no immunity to these diseases, they suffered greatly.[103] Roughly 80–90% of the population in some places died as a result.[104]

The Spaniards then established a system of subjugation known as encomienda, in which the Spanish Crown granted colonists the right to demand tribute and forced labor from indigenous people. Under this system, the Taíno indigenous peoples (those inhabiting north eastern Caribbean islands) were forced to work in colonial plantations or in gold mines.[105] The Taíno suffered due to starvation and Spanish brutality, and many ultimately died.[106] The Taíno that survived resisted the oppressive regime by fighting back or hiding from the Spaniards.[107] Some hid themselves by living deep within the countryside or on the fringes of society. Others hid in plain sight, intentionally concealing their ethnic and cultural identity.[108]

Soon, various groups of Europeans attempted to settle the Lesser Antilles, but Island Carib groups residing there violently resisted European settlement.[109] The Island Caribs eventually organized themselves with other Carib groups from the Guianas and together they raided European

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[100] *Id.*
[101] Untold Origins, *supra* note 92 at 8.
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.* at 9.

settlements.[110] As a result, Europeans began to spread a still unsubstantiated myth that these Island Caribs were cannibals and used the claim to justify the enslavement and extermination of these people.[111] The Island Caribs in the Lesser Antilles continued to resist Europeans into the late 1700s, adopting many of the same survival strategies as the Taíno. They too retreated into rural areas and/or concealed their ethnic identity.[112] In Dominica, for example, Island Caribs retreated to the inaccessible west side of the island after the British took control in 1763.[113] At this time, indigenous people also began coming into contact with African slaves and escaped slaves were often given refuge in indigenous enclaves.[114] Together, these African descendants and indigenous people developed their own communities in the countryside and relied upon the indigenous peoples' knowledge of the environment for their survival.[115]

Not only did the indigenous cultural traditions and practices survive this period of colonization, they ultimately became part of the dominant culture.[116] Examples include expanded use of medicinal herbs, consumption of indigenous foods prepared in indigenous cooking styles, production of indigenous crafts such as basketry, utilization of indigenous methods of canoe construction, and continued reliance upon traditional indigenous fishing techniques.[117] Indigenous influence can also be seen in traditional stories and myths, in the names for plants, foods and agricultural methods, and in indigenous cultural values that remain part of the dominant culture.[118]

Though the notion that indigenous Caribbean peoples are disappearing (or have disappeared) remains part of the "common knowledge" of many foreigners, and even to many non-indigenous locals, the reality of the Caribbean history suggests that the indigenous population is still an integral part of Caribbean society and that indigenous traditions continue to form a vital part of Caribbean culture.

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[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.* at 10.
[115] *Id.*
[116] *Id.* at 12.
[117] *Id.*
[118] *Id.*

B. The Indigenous Resurgence Movement and Its Contribution to Commonwealth Caribbean Identity Development

This section considers how the Caribbean Indigenous Resurgence Movement has been engaged in the process of rewriting Caribbean history and strengthening indigenous identities, thereby contributing to identity discourse and empowering Caribbean citizens to reclaim their history, their culture, and ultimately their identity.

The Caribbean Indigenous Resurgence Movement, begun in the 1960s as part of the global Indigenous Rights Movement and amplified by the 1992 Quincentennial of Columbus's voyage, has led to the reformulation and reimagination of the Caribbean culture and of individual and collective identities.[119] This resurgence is taking place at multiple levels within Caribbean society including at the individual, local, scholarly, and transnational levels. This section considers how the Caribbean Indigenous Resurgence Movement has achieved (1) the rewriting of Caribbean history, and in turn, the Caribbean citizen's understanding of themselves, (2) the resumption and strengthening of indigenous cultural practices, and (3) the establishment of a Pan-Caribbean indigenous network.

1. Rewriting History: Establishing Native Continuity

Over the past three decades, anthropologists, ethnographers, archaeologists and historians have revisited traditional accounts of the indigenous populations of the Caribbean, which commonly portrayed indigenous peoples as extinct.[120] Historians have begun resisting and correcting the myth of indigenous extinction through their writings. David Maybury-Lewis, for example, wrote in 1997 that, "it was widely assumed that indigenous people were dying out... [t]his assumption was quite wrong."[121] Marshall Sahlins concurred in 1999, saying, "[r]eports of the death of indigenous cultures... have been exaggerated."[122] These claims have been furthered by a new generation of indigenous historians and scholars, including José Barreiro of the Taíno Nation of the Antilles, Garnett Joseph of the Carib Peoples, and Joseph Palacio of the Garifuna Peoples, who have all been able to provide indigenous perspectives and have incorporated

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[119] Castanha, *supra* note 97 at 5.

[120] Kirwin R. Shaffer, Review of Wilson, Samuel M., ed., THE INDIGENOUS PEOPLE OF THE CARIBBEAN. H-Net Reviews. August, 1998, available at https://www.h-net.org/reviews/showpdf.php?id=2219 (last visited Aug. 4, 2015).

[121] Forte, *supra* note 99 at 2.

[122] *Id.*

indigenous historical traditions into histories of the wider Caribbean.[123] By tackling the myth of indigenous extinction and sharing the true history with today's Caribbean society, these scholars have helped to promote a re-examination of what it is to be "Caribbean" and who is a member of the Caribbean community.

Additionally, ethnographers have traced many local rituals, once taken for granted as just "customs of unknown origins," to indigenous practices, such as forms of food preparation and handicrafts.[124] This trend has caused Caribbean citizens to reimagine their own cultural identities and has brought indigenous history out of the books and into the real-world lives of Caribbean citizens. Instead of indigenous culture being a relic, ethnographers are demonstrating that indigenous culture is very much a part of Caribbean life today.

Moreover, in regions where scholars claimed the indigenous population had been "biologically exterminated," today's biologists have demonstrated that there are still sizable indigenous populations.[125] One example is a study of Puerto Rico which determined indigenous descendants make up over 60% of the population, which means they make up the majority of the population.[126] By providing genetic verification that indigenous populations are still very much present in the region, these ethnographers, and the indigenous activists who spread their findings, are restoring the voices of the Caribbean indigenous people and proving that the indigenous identity has indeed survived.

The rewriting of history is deeply significant as the myth of extinction has served to undermine the credibility of indigenous peoples, resulting in them being "routinely ridiculed and dismissed as a people."[127] The reclamation of indigenous history and the indigenous place in contemporary Caribbean society has restored to the indigenous people their power and their voice. It has also inspired Caribbean citizens to reinterpret their own legacy and recognize their own connection to indigenous populations.

2. Today's Cultural Resurgence

Throughout the Caribbean, indigenous groups are also engaging in a process of cultural resurgence, whereby indigenous customs and traditions have taken on a new centrality in the lives of many. For example, in

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[123] *Id.* at 6.
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] Castanha, *supra* note 97 at 15.

Dominica, Caribs in the Waitukubuli Karifuna Community have begun to relearn ancestral skills, including basket weaving and traditional methods of making canoes with fire and water.[128] They also have their own council and chief, and they have established their own church within their community.[129] Through the reinstitution of these cultural traditions and social structures, the Carib community is reasserting its cultural identity and allowing its inhabitants to reimagine their relationship to Caribbean society.

In Belize, indigenous communities in the Toledo District have a radio station, known as Ak'Kutan Radio, which helps them to communicate and maintain their indigenous identity.[130] This radio station reaches a number of distinct communities in Belize including Silver Creek, Big Falls, Indian Creek, Mango Creek, and Pueblo Viejo, and it provides link between the groups and the larger indigenous resurgence movement.[131] Ak'Kutan Radio also reaches indigenous and non-indigenous persons outside distinct indigenous communities, thus helping spread the indigenous message to the wider Belizean population and to encourage citizens to understand and embrace the indigenous dimension of their society.[132]

In Trinidad and Tobago, the Santa Rosa Carib Community of Arima is a multiethnic group including descendants of Carib from St. Vincent, Trinidad, Venezuelans of indigenous-Spanish blood, and Africans.[133] Like the Caribs of Waitukubuli Karifuna Community, the Santa Rosa Community has attempted to reclaim its identity by resuming traditional practices and customs. For example, this group makes cassava bread using traditional methods, builds traditional ajoupa houses using local materials, and transmits and preserves indigenous knowledge of Trinidadian plants and herbal medicines.[134] The group also uses traditional hunting and horticultural practices as well as traditional forms of weaving.[135] The effort to reinstate

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[128] NICHOLAS J. SAUNDERS, THE PEOPLES OF THE CARIBBEAN: AN ENCYCLOPEDIA OF ARCHEOLOGY AND TRADITIONAL CULTURE xxii (2005).

[129] *Id.*

[130] *Ak'Kutan Radio, the Only Community Radio in the Toledo District of Belize, Expands Their Coverage*, CULTURAL SURVIVAL (Mar. 26, 2014), http://www.culturalsurvival.org/news/akkutan-radio-only-community-radio-toledo-district-belize-expands-their-coverage (last visited Aug. 4, 2015).

[131] *Id.*

[132] *Id.*

[133] Saunders, *supra* note 128.

[134] *Id.*

[135] *Indigenous Peoples in Trinidad and Tobago*, THE INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS (2007), http://www.iwgia.org/regions/latin-america/trinidad-and-tobago (last visited Aug. 4, 2015).

these traditions is local in part, and the Trinidadian Carib Queen has played a notable role in this process, but information has also been shared by visiting indigenous groups from Guyana and Dominica.[136] As this example illustrates, part of the process of cultural resurgence has been increasing connections between indigenous peoples living through the Caribbean region and incorporating wider Caribbean society into the movement.

3. Regional Networking: Creating a Shared Pan-Caribbean Identity

As part of the Indigenous Resurgence Movement, indigenous populations throughout the region have come together, creating regional and international organizations and interfaces that link indigenous communities in various Caribbean states and help formulate a Pan-Caribbean identity. These regional and international connections are hugely significant, not only in amplifying the voice of established indigenous populations in places like Trinidad and Belize, but also in creating a Caribbean identity accessible to people living in states that do not recognize indigenous rights, or states that have small or hidden indigenous populations.

One key institution created as part of the indigenous resurgence is the Caribbean Organization of Indigenous Peoples (COIP). Its country members include: Belize, Dominica, Guyana, Puerto Rico, Saint Vincent, Suriname, and Trinidad and Tobago.[137] The groundwork for this organization was laid at a seminal meeting in St. Vincent in 1987, and the organization was officially founded in 1989.[138] Through its regional conferences, the organization has paved the way for indigenous persons to claim their identity.[139] It has also drawn attention to the isolation of many indigenous persons and small groups in the Caribbean and provided a platform for collective action on indigenous rights issues in the region.[140]

Regional coalitions have also been formed at the national level. For example, in Guyana, distinct indigenous groups have formed federations,

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[136] Saunders, *supra* note 128.

[137] *Caribbean Organization of Indigenous Peoples,* CARIBBEAN POLICY DEVELOPMENT CENTRE (2011), http://www.cpdcngo.org/cpdc/index.php?option=com_content&view=article&id=118:caribbean-organisation-of-indigenous-people-coip&catid=40:regional-networks&Itemid=150 (last visited Aug. 4, 2015).

[138] Forte, *supra* note 99 at 225.

[139] *25th Anniversary of the Caribbean Organization of Indigenous Peoples,* THE CARIBBEAN NETWORK FOR INTEGRATED RURAL DEVELOPMENT (2012), http://cnird regional.org/25th-anniversary-of-the-caribbean-organisation-of-indigenous-peoples (last visited Aug. 4, 2015).

[140] *Id.*

including the Federation of Amerindian Organizations of Guyana and the Amerindian Peoples' Association of Guyana, that claim their right to practice their own traditions and to maintain their own cultural identities.[141] By forming federations, these groups have been able to strengthen their rights-based claims and to fight the myth that indigenous populations are extinct or entirely assimilated into the dominant culture. Moreover, these federations allow individual indigenous people to interact at a personal level, thereby allowing them to share practices and strategies and providing them with a way to connect to others within their identity group.

The media has also been an important tool in regionalizing the movement and rebuilding an understanding of the indigenous component of Caribbean societies. Media outlets like local news agencies, community radio, and the Internet are useful because they serve as a way for indigenous groups to simultaneously increase their visibility, embody their identity, gain recognition from outsiders, and add authenticity to their claim to be a real—rather than an extinct—identity.[142]

Throughout the Caribbean, local news agencies are paying increasing attention to indigenous populations and their concerns.[143] Attention in the news media allows the indigenous voices to reach both isolated indigenous persons as well as the larger community.[144] In this way, news coverage is helping to form a bridge between different indigenous groups and between the Indigenous Resurgence Movement and the wider Caribbean population. News coverage of violations of indigenous rights also helps increase awareness of and support for attempts to increase recognition of and respect for indigenous rights.[145]

Similarly, the Internet has been an important platform for the indigenous resurgence.[146] The Taíno Movement, for example, has had an important online presence.[147] The online Taíno Movement is notable both for its contribution to the project of rewriting history and for its success in creating a network of Taíno communities online. First, many Taíno sites organize their communities as a

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[141] Forte, *supra* note 99 at 225.

[142] Maximilian Forte, *'We are not extinct:' The Revival of Carib and Taino identities, the internet, and the transformation of offline indigenes into online 'N-digenes,"* SINCRONÍA (Jan 2002), http://sincronia.cucsh.udg.mx/CyberIndigen.htm (last visited Aug. 4, 2015).

[143] Forte, *supra* note 99 at 225.

[144] *Id.*

[145] *Id.*

[146] Forte, *supra* note 142 at 4.

[147] *Id.* at 7.

people committed to the project of fighting the myth of extinction.[148] These sites provide genetic data that disproves indigenous people are extinct and they encourage visitors to correct journalists and scholars publishing misinformation about the Taíno's alleged "extinction."[149] In this way, the Internet community plays an important role in disseminating information about historical truths to the public and organizing their community around the truth. Second, the online Taíno community is found not just on one site, but on a network of interconnected and inter-referential websites that share information, form community bonds, and build on each other's online presence.[150] These sites use shared symbols, seek common interests (including recognition as Taínos), and communicate regularly (via electronic newsletters, email, message boards, chat rooms, etc.).[151] Thus, they are an example of the ways that members of indigenous groups can form communities despite geographic barriers.

Overall, whether through websites, televised news programming, or community traditions, indigenous people throughout the Caribbean are reclaiming their indigenous identity and culture. In so doing, they are helping to expand Caribbean society's imagination of itself to include indigenous voices and indigenous cultural traditions.

C. The Exclusion of Indigenous Rights in the Law and Important Advancements in Correcting Past Wrongs

While the Indigenous Resurgence Movement has contributed to Caribbean culture and has empowered locals to reclaim their own identities, modern Caribbean legal systems have "almost entirely ignored the original peoples of the region."[152] This did not happen accidentally, but rather was the intentional product of prejudicial theories of law that refused to acknowledge the legitimate systems of law and custom set in place by the indigenous peoples of the region and instead imposed European laws and customs on the region.[153] Even in places where the law seemingly takes a pluralistic approach, indigenous populations are often not even enumerated as subpopulations forming part of Caribbean society.[154]

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[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] Antoine, *supra* note 17 at 11.
[153] *Id.*
[154] *Id.*

Where indigenous populations are acknowledged in the law, it is largely by laws that regulate their habitat on reservations in Guyana, Belize, and Dominica.[155] For example, the Amerindian Act of Guyana provides for establishment of Amerindian villages and sets limits on the entry of non-Amerindians into these areas.[156] On one hand, these laws can be seen as positive recognitions of the right to self-governance and self-determination, as they provide a degree of autonomy for indigenous populations.[157] On the other hand, these laws can arguably "more accurately be described as institutional neglect," or another way for colonial, and later independent governments, to ignore indigenous populations and their needs and rights.[158] This section considers the ways in which indigenous populations have been excluded from Caribbean legal discourse and legal systems and points to potential changes for the better. It covers: (1) the exclusion of indigenous customs from customary law, and (2) the growing recognition of "native title" or "indigenous title" to real property.

1. Exclusion of Indigenous Customs from "Customary Law"

Most Caribbean jurisdictions operate under English law and thus include "customary rules of law" as a source of law.[159] The existence of these customary rules must be established by the party who pleads the existence of such customary right. The test to determine whether a customary right exists involves an analysis of the customary practice's (1) antiquity, (2) continuous existence, (3) ability to be enjoyed peaceably, (4) mandatory nature, (5) certainty and clarity, (6) consistency, and (7) reasonableness.[160] Under these tests, many ongoing indigenous practices meet (and, at the dawning of the colonial era, would have met) this definition of "a regional customary law" and thus ought to be an official part of Caribbean law.[161]

Examples of indigenous legal practices that may satisfy these conditions include indigenous forms of punishment. For instance, most indigenous populations did not have "public punishments," but instead allowed injured parties or their relatives to punish the offender.[162] Other nations had very

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[155] *Id.* at 12
[156] *Id.*
[157] *Id.*
[158] *Id.*
[159] *Id.* at 179.
[160] *Id.*
[161] *Id.* at 188.
[162] *Id.* at 189.

specific punishments. For example, the Carib nation had a fixed punishment for those who committed adultery—they were put to death in a public place by the whole village.[163]

Early judicial decisions in the region briefly recognized some of these indigenous customs, demonstrating the viability of indigenous claims under customary law. For example, in 1837, the Court of Appeal of Demerara and Essequibo considered the case of Billy Williams, an indigenous man who was sentenced to death for murdering his wife for adultery.[164] On appeal, Lord Goderich held that indigenous customs rendered it unfair to impose the common law on Williams and acquitted him of the murder. He stated in his dispatch to the acting governor after the case:

> [Billy Williams] seems to have been actuated by a wide opinion of justice and to have conformed to the traditionary maxims of his tribe … he had been taught to believe himself the proper judge and avenger of such guilt [for the crime of adultery]. I entirely concur...[165]

Though Lord Goderich originally intended to release Williams, he instead banished him from the area to protect him from a reprisal by his wife's family in recognition of another indigenous custom—the custom of allowing the victim's family members to punish offenders.[166]

Other courts in the region expressed similar acknowledgements of the presence of distinct, functional legal systems of the indigenous populations noting that "although dwelling among us … they [the indigenous peoples] are still essentially a distinct people, governed by their own customs and petty chiefs."[167] Such recognition of the indigenous legal traditions unfortunately did not last.

With independence came the decision to commit to a majoritarianistic rule of law at the expense of recognition of indigenous customs as part of the law.[168] Today, most Caribbean common and customary laws draw from laws and customs received from Europe during the colonial period, rather than from historical indigenous practices.[169] The resultant legal sphere is one where

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163 *Id.*
164 *Id.*
165 *Id.*
166 *Id.*
167 *Id.*
168 *Id.*
169 *Id.*

the law fails to acknowledge the customs of the indigenous peoples or to protect their traditional rights.[170] In this way, the legal regime of the Caribbean Commonwealth fails to embrace the pluralistic nature of its society, and instead forces an imposed majoritarianistic definition of law on populations that have viable, competing legal traditions and customs that ought to be respected and protected. There are signs however, that non-recognition of indigenous rights and customs may be changing, at least to some degree.

2. Growing Recognition of "Indigenous Title" to Real Property

An important modern legal trend is challenging the exclusion of indigenous customs from customary law and creating a degree of recognition of the property rights of indigenous peoples.[171] This trend, known as "native title" or "indigenous title," is a form of property title wherein native populations re-gain land rights in regions where courts have come to recognize and respect indigenous land customs.[172]

Within the Commonwealth Caribbean, indigenous groups have made claims for recognition of native title to lands under customary law. One such group is the Toledo Maya of Belize.[173] While the Toledo Maya's claim to native title initially failed at the domestic level in 1996, it ultimately succeeded at the international level.[174] In 2002, the Inter-American Commission of Human Rights held that the Belize government ought to "clarify and protect the territory in which the Toledo Maya people have a communal property right, in accordance with their indigenous group's customary land practices..."[175] Subsequently, the Belize Supreme Court ruled in favor of the Toledo Maya, holding in 2007 that the Toledo Maya have customary land rights and that these rights in turn give rise to property rights under the Belize Constitution,[176] and the decision was later affirmed in 2010.[177]

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[170] *Id.*

[171] *Id.* at 190.

[172] *Id.*

[173] *See generally* Maya Indigenous Community of the Toledo District v. Belize, Case 12.053, Report No 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 727 (Oct. 12, 2004), available at: http://www1.umn.edu/humanrts/cases/40-04.html (last visited Aug. 4, 2015)

[174] *Id.*

[175] *Id.*

[176] Zelena Jones, *Culture's Ties to the Land: The Belize-Guatemala Border Conflict's Implications for the Maya Communities in Light of the UN Declaration*, 29 WIS. INT'L L .J. 773, 797–98 (2012).

[177] *Id.*

Unfortunately, other claims to native title in the Caribbean have yet to be as successful, such as those by the Maroons of Jamaica. Despite the fact that Jamaica ratified the American Convention on Human Rights on July 19, 1978, Jamaica has thus far failed to fulfill its "positive obligation to adopt special measures that guarantee members of indigenous and tribal peoples the full and equal exercise of their right to the territories that they have traditionally used and occupied."[178] However, the establishment of precedents in the area of native title may aid the claims of the Maroons and, hopefully, continue this trend throughout the region.[179]

Recognition of native title is a highly significant trend. It confers valuable property rights, but it also brings with it accompanying *land use* rights such as the right to fish, gather, hunt, or to otherwise use natural resources.[180] These, in turn, empower indigenous populations to maintain their own cultural and economic traditions. Moreover, as these land use rights are held collectively, recognition of native title serves as recognition of indigeneity as a group identity.[181]

Though there is still much progress to be made, the beginnings of a judicial trend in recognizing native title as a customary right is significant in restoring and protecting indigenous people's property rights and cultural rights. Hopefully, this trend will become part of a process of wider judicial recognition for the rights of indigenous persons within the Commonwealth Caribbean, and will continue the dramatic and necessary transformation of legal traditions that have subjugated or ignored indigenous populations for centuries.

IV. Conclusions

The states of the Commonwealth Caribbean are richly diverse. Social movements, like the Rastafarian Movement and the Indigenous Resurgence Movement, exemplify that diversity. These movements have been useful drivers of identity development in the post-colonial Caribbean encouraging Caribbean citizens to challenge imposed identities and empowering them to redefine themselves and their relationship with the rest of the society. In this way, they are examples of how cultural pluralism infuses a society with

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[178] Case of the Saramaka People v. Suriname,IACHR Series C No 185 (Nov. 28, 2007), available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf (Last visited Aug. 19, 2015)

[179] Antoine, *supra* note 17 at 193.

[180] *Id.*

[181] *Id.*

dynamism and empowers individuals to pursue their own definitions of self and of society.

However, the states of the Commonwealth Caribbean have in many ways failed to embrace a version of political and legal pluralism that protects the rights of minorities like Rastafarians and indigenous populations. Indeed, in creating laws that punish or exclude individuals who attempt to perform their identity, the states of the Commonwealth Caribbean have engaged in a process of oppression and exclusion that is to its overall detriment. Hopefully, though, increasing awareness and appreciation of the contributions that these groups have made to Caribbean society will lead to increased legal protections for these groups. There are encouraging signs that Caribbean legal systems are indeed moving in that direction. As it stands today, Caribbean societies serve as an example of how a state can be culturally pluralistic while still favoring the interests of majorities in its laws and political structures.