

# Therapeutic jurisprudence in Trinidad and Tobago

## Legitimacy, inclusion, and the neo-colonialism of procedural justice

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### Introduction

What might be some contemporary consequences of colonialism and slavery in the Caribbean? How can research at the intersection of (in)justice, court systems, and therapeutic cultures reveal such consequences? In this chapter on the development of therapeutic jurisprudence in Trinidad and Tobago (T&T) I develop insights that emerged from a two-year national mixed mode study of the Trinbagonian legal system conducted between the Judicial Education Institute of Trinidad and Tobago (JEITT), the University of the West Indies, and University College London (Elahie, 2017; Kerrigan et al., 2019; Jamadar and Elahie, 2018; JEITT, 2018). In particular, in this chapter the questions and problems of how to secure justice out of a state of injustice are foregrounded, and the legacies of trauma, a lack of trust, and the problems of institutional legitimacy faced by a mental health approach to law are explored.

T&T are the southernmost islands in the Caribbean chain and form one twin-island nation. English is the official language and “the legal system is modelled after English common law” (Antoine, 2008; Johnson, Maguire, and Kuhns, 2014). The Spanish wiped out the majority of the original Amerindian inhabitants in the late 15th and early 16th centuries, although descendants still survive today (Newson, 1976: p. 18; Reid, 2009).

Understanding the development of the local legal system through the work of historians like Trotman (1986) and Mahabir (1985) demonstrates that much like many of its people, Trinidad’s<sup>1</sup> legal system was also imported into the island, first with the arrival of the Spanish led by Columbus in the late 15th century and then later the British 300 years later. As Mahabir notes, “despite three centuries of Spanish colonial administration, Spain’s legacy to the island’s legal system was minimal” (1985: p. 15). While Trotman confirms, “in large measure, penal systems, jurisprudence, and the organisation of the police were imported to colonial Trinidad from metropolitan England” (1986: p. 9). In 1831, the British colonisers created the island’s first legislative body, the Council of Government. At this time, Mahabir suggests Britain saw the colony as a “land of opportunity where sugar cane could be profitably grown” and as such law making in 19th-century Trinidad “was controlled by the sugar interest and...controlled by the Colonial

office in Britain” (1985: p. 22). It was the colonial-imposed relations of production around the sugar and later cocoa plantations in 19th-century Trinidad, i.e., the political economy, shaping, organising, and determining the race and class structure and hierarchies of the island, not to mention the development of its institutions and socio-cultural patterns into the 20th century and beyond (Brereton, 1979; Trotman, 1986; Kerrigan, 2010; McBride, 2016).

Today in the 21st century, almost 200 years later, T&T is clearly a multicultural society – not a plural one. It is populated by many different groups of people descended from the many different groups brought to T&T, the majority often involuntarily, during the Colonial era including persons from Africa, India, the Middle East, Europe, Asia, the Americas, and elsewhere. European colonialism made and remade social groups in T&T. As elsewhere, the colonial politics of domination – derived from historical experiences of slavery, indentureship, imported law enforcement practices, the criminalisation of cultural practices, and colonial administration – constructed difference and hierarchies in T&T by ignoring local cultural and social diversity for monolithic classifications in a production of hierarchal social structure and order based on a logic of race, racism, and violence (Crowley, 1957; Williams, 1962: p. xi; Mahabir, 1985; Reddock, 2007: p. 1). In the sociological context of its social structure and formation then, T&T has always been an unequal place no matter the inclusive desire of the national anthem; “every creed and race finds an equal place”, which raises the important neo-colonial question (how) is it possible to create justice out of states of injustice such as slavery, colonialism, and capitalism?

It also raises the importance of ‘transcultural psychiatry’ and the psychosocial realities of post-colonial populations such as those noted by some psychiatrists and psychologists in Trinidad, yet ignored by Global North proponents of therapeutic jurisprudence like “procedural justice” (Tyler, 2006). For example, studies by the head of Clinical Sciences at the University of the West Indies, Dr Gerard Hutchinson and others in the region, focus attention on the Caribbean’s historical condition and its impact on the mental health of local individuals. They suggest internalised colonialism and oppression are serious environmental contexts for research into therapeutic cultures in the Caribbean (Fanon, 2008; Nicolas and Wheatley, 2013: p. 172).

In postcolonial societies, individuals often struggle with these issues of agency, control, self-worth, and efficacy, creating self-defeating and psychologically undermining self-concepts. These issues sometimes express themselves as a lack of confidence and self-esteem but may also be represented as a cavalier overconfidence that turns into destructive narcissism, consequently leading to poor decision making. It is the feeling that decisions are made about you without your input and that they may not reflect your identity, interests, or desires.

*(Hutchinson, 2015: p. 150)*

This suggests that legacies of structural and everyday violence, histories of subordination, and collective historical trauma have long-term impacts on individuals in the Caribbean; and in other spaces of historical oppression and coloniality globally. They are important considerations for any assemblage developed to understand mental health in the Caribbean experience, including those trying to understand everyday experiences of lower income people interacting with Caribbean criminal justice systems (Erikson, 1994: p. 233; Morgan, 2014). Yet they are also not central components of the literature on therapeutic jurisprudence.

Hutchinson goes on to say that:

Research has also revealed longstanding psychopathological effects of slavery and colonialism in the Caribbean that have had significantly negative long term effects on the mental health of many within the Caribbean population. Current research suggests that there is a

need to nurture protective strategies to enhance resilience and social capital, which would ensure the wellness and continued survival of Caribbean people in spite of the many challenges they face.

(Hickling and Hutchinson, 2012)

Or phrased another way, the traumatic experiences of enslavement, migration, displacement, relative poverty, and much more – including the illegal US transshipment in arms and today the ninth highest murder rate in the world (Seepersad and Wortley, 2017) – has created various forms of distress and a loss of social and cultural capital that potentially manifest through what we might today call mental health and substance abuse and its consequences including, violence, homelessness, and crime. Such Global North psycho-diagnostic tautologies include anxiety, mood, personality, and psychotic disorders, addiction, impulse control, post-traumatic stress disorder, and more.

British colonialism certainly subjected indigenous, enslaved, and indentured labour to intensive forms of discipline and control, including through institutionalisation in reformatories and asylums as well as jails, and through a deliberate colonial strategy of creating relations of dependency via fostering addiction to drugs and alcohol (Nehring and Kerrigan, 2018). Not to mention these legacies can be felt on the other side of the issue in terms of Caribbean prison services, and the longstanding penal practices and systems, and in the statistics on who suffer violent crime and who is arrested and punished most often by Caribbean criminal justice systems. Today, this also includes those who cannot access legal representation due to high legal fees. This connects the colonial past to the neo-colonial present (Kerrigan, 2015; Kerrigan et al., 2019).

Reflecting this exploitation and system of control, historical experiences of being on the receiving end of mistreatment by the police and legal authorities is a common colonial and post-colonial experience for certain communities more than others; and many scholars of the Caribbean note that the development of such authority and its legal institutions such as the police, the law, and ideas around justice and punishment cannot be separated from the politics of British colonialism (Johnson, Maguire, and Kuhns, 2014: p. 956), and almost one family – the Stephens (McBride, 2016). Prisons and police forces as we know them in the Caribbean are all colonial inventions (Anderson, 2018).

In the 20th century, these legal and social inequalities were well discussed by local calypsonians – the indigenous observers, social critics, and organic intellectuals, of the society – who wrote that the justice system locally was unjust, reflecting the wider history of inequality of the local social system, with calypsos such as *No Truth in Justice, Money is King, Sedition Law, Class Language*, and the *Law is an Ass* (Rohlehr, 1990). For an example, these are lyrics from Luta's 1980s calypso hit *No Truth in Justice*:

The Judiciary, is a mockery  
The administrators would die in the fire.  
You don't know who to trust.  
The noble men unjust.  
The barrister is a professional liar.  
There is no truth in justice, no justice in the law.  
The system works for the rich,  
but it holds no hope for the poor.  
There is no truth in justice, no justice in the law.  
Facts don't really matter.

Once your name ain't big, you is who?  
 It's a case of who could lie better,  
 and who have more money than who.

Recognising colonial history and its contemporary consequences for everyday life, and mental health raises important decolonial concerns around what is justice in states incorporated and formed through state-led white-collar crimes (Fanon, 1965; Friedrichs, 1997; Agozino and Pfohl, 2003). From a Caribbean point of view, the Enlightenment, slavery, colonialism, and capitalism are an interconnected transnational and transhistorical system of racial injustice and state violence developed to enslave, punish, and accumulate the labour and wealth of distant others, in the expansion of an ideology of White supremacy founded on war and violence often referred to in the Global North as “exploration” and progress (Césaire, 1955; Fanon, 1965; Rodney, 1972). This has distinct contemporary consequences and potential solutions.

### **Untrustworthy authorities and a lack of inclusion – The need for procedural fairness in T&T**

Based on data collected over a two-year research project with the Judiciary of Trinidad and Tobago (Kerrigan et al., 2019; Jamadar and Elahie, 2018), this chapter now explores spaces of therapeutic jurisprudence and restorative justice that emerged over the last decade in T&T, and that has tried to build on the long-term socio-cultural history of community mediation and alternative court systems such as the Elder system, Village Councils, and the Panchayat, which during colonialism often served to settle disputes in T&T communities away from the authorities. The data suggests a “double movement” where the therapeutic jurisprudence culture of progressive members of the judiciary in T&T, which is promising and working for liberation and the building of new communities and humane ways for dealing with disputes; may also through its assumptions and procedures about cause and effect in the world, re-inscribe in development, amongst other things, a moral grammar of atomistic individualism and responsibility, and language and discourse that recolonises to some degree – rather than decolonises – ideas around freedom and the relationship between social context and individual outcomes.

As was suggested earlier via the recruitment of calypso in T&T, a culture of legal cynicism and distrust of the authorities by the masses has long been documented locally from the colonial period and throughout the post-colonial era (Johnson, Maguire, and Kuhns, 2014: pp. 952–953). Yet the failure of getting court users to accept the authorities as trustworthy can lead to problems of user compliance because “research findings have shown that legitimacy – typically operationalized as the perceived obligation to obey and trust and confidence in the relevant institutions – plays an important role in achieving such compliance” (Tyler and Jackson, 2014).

For example, the research on court users across the lower courts of T&T suggests that lawyers and judicial officers are viewed as a sort of parasitic class helping each other to make money, rather than having the client and their matter as number one priority (Kerrigan et al., 2019). As one court user at the Port of Spain magistrate court told us, “they keep putting off the case, so the lawyers get more money every time you come...Most of the time, the lawyers themselves end up being Magistrates. So therefore, it's a reoccurring decimal that is happening all the time.” At the San Fernando magistrates' court someone said, “on two occasions here, I was forced to pay a bribe in order to go upstairs [to the registry]. The Security did tell me ‘you know how the thing does go.’” And at Princes Town one user said, “nobody doing nothing for nobody here. It's a bribery something have to pay or something to be honest.”

For Tyler, at the heart of increasing and building trustworthiness within a courtroom, is the positive or negative personal “assessment of the character of the decision maker” by the court user (2007). The court user’s assessment, according to Tyler, often considers such interpersonal elements of judges and magistrates, as their sincerity, their ability to listen, how well they appear to consider the views in front of them, their capacity for honesty and openness about their actions and judgements, and that the court officials “are trying to do what is right for everyone involved; and are acting in the interests of the parties, not out of personal prejudice” (2007: p. 31). Tyler goes on to offer advice to judges and magistrates who want to be viewed as trustworthy:

- Give evidence that you are listening to people
- Acknowledge people’s needs and concerns, even when you cannot base your decision on them
- Express awareness of and empathy for their situation
- Take adequate time to consider arguments when making decisions
- Treat the matter seriously
- Explain your decision
- Demonstrate that you considered people’s arguments by referring to them

In our research on court users in T&T, there were both statements for and against these sorts of behaviours, with the majority of comments suggesting judicial officers are not doing this in the lower courts of T&T (Kerrigan et al., 2019). The only court where research found a substantial body of positive comments about judicial officers and their trustworthiness was the Family Court in Port of Spain, although there was also a body of negative comments there too.

Gathering different data points together on T&T, Tyler’s definition of “Trustworthy Authorities,” was amended by the JEITT and localised to be more specific to the social history and cultural realities of T&T (Johnson, Maguire, and Kuhns, 2014; Jamadar and Elahie, 2018; JEITT, 2018). For example, in T&T against a backdrop of mistrust, and what historically in reference to calypsonians and other commentators could be described as an alienation from justice as a system of social regulation (Gutierrez Rodriguez, Boatca, and Costa, 2010), mistrust becomes an explicit concern for reformation of past injustices, rather than a necessary yet implicit process of reform. The judiciary and its staff in T&T are only trustworthy in this sense, if they are seen to earn it through public demonstration. In other words, the data suggested that in T&T the majority of lower court users come to court with a mistrust of the authorities. This structural recognition of how the perception of the local judiciary is seen in the local culture aided Judicial reformers in their implementation of a process of procedural justice in T&T because in contrast to Tyler’s definition, which assumes everyone including judicial officers comes to court to do right, in T&T due to historical realities this cannot be assumed, and the data suggests it must be earned. Thus, an updated definition to capture these local structural and historical nuances is needed in ex British colonies like T&T.

In the context of inclusion too, Tyler’s work on “inclusion” based on the White majority nations of North America cannot capture the structural legacies, shifting constructions of difference, and hierarchy of social development of the different groups in T&T over the last 180 years and their relationship to (in)justice and the entire court process. Much like with trust, Tyler’s definition of procedural fairness is not able to capture the longstanding cultural and social reality of alienation from justice that was collected in a large number of comments from the qualitative interviews about not feeling “included” in their legal matters (Kerrigan et al., 2019).

From interviews in Tobago with Tobagonian court users, one respondent spoke of not feeling included because the magistrate was not welcoming to her side of events, “she [the magistrate] telling you what she want to hear. When you telling her, she says, ‘No, I don’t want to hear that.’” Another user at a Princes Town lower court in Trinidad suggested not being able to participate in his matter because he couldn’t afford a lawyer. “I didn’t have an opportunity to speak like that because he have a lawyer and I can’t afford a lawyer because I’m a student.” While in the Port of Spain magistrate’s court, one person explained being made to feel peripheral and lost in his matter. “You felt more lost at the end of going before them than you was before you go before them. Because you don’t understand what’s going on. You just hearing certain terminologies being used. You don’t understand what it means.”

In contrast to these negative sentiments, the research also collected a smaller body of positive experiences where the feeling of being included, welcomed, and able to participate in their matter did seem to make a great difference to the court user’s experience of the lower courts. In the San Fernando lower court we heard that the magistrate, “makes sure you listen and understand what it is she saying.” Back in Princes Town, a court user congratulated the magistrate on letting them participate in the matter. “This [Magistrate] here, she does listen. That’s one thing about this lady. She will talk and she will ask what you think.” Again, at the family court, the general sentiment for many was one of inclusivity and ability to participate in matters. “The Magistrate here is very polite with how she handles it and deals with it. She gives everybody a chance to speak or to voice their opinion.”

While these observations suggest in line with Tyler that it is important for judicial officers and court staff to “communicate respect in locally appropriate ways,” and where this is found it speaks to people considering a “court’s authority legitimate” (Bornstein et al., 2016), it is also true that the elements of Tyler’s overall definition of procedural fairness – voice, neutrality, respectful treatment, and trustworthy authorities – do not adequately capture the issue of inclusion as localised and cultural relative to the T&T context. What then is justice in ex-colonies founded on injustice when there has been no restitution and reparations for such events? What is justice in societies deliberately underdeveloped by the powerful?

## **Justice out of a state of injustice: What is therapeutic jurisprudence?**

Once it is accepted that the social and economic processes of colonialism and slavery, and capitalism and development created structural, and longstanding forms of injustice in ex-colonies such as class and status differences, lack of socio-economic opportunities, and cumulative socio-economic disadvantages contributing to high rates of violent crime and unjust court and prison systems, then therapeutic jurisprudence could become one interdisciplinary approach to acknowledge such injustices.

Winick and Wexler note that therapeutic jurisprudence is about applying a “mental health approach to law” (Winick and Wexler, 2001: p. 479).

[Therapeutic jurisprudence] is an interdisciplinary approach to legal scholarship that has a law reform agenda. Therapeutic jurisprudence seeks to assess the therapeutic and anti-therapeutic consequences of law and how it is applied. It also seeks to affect legal change designed to increase the former and diminish the latter.

*(Winick and Wexler, 2001: p. 479)*

It is also about using “the tools of the behavioral sciences to assess law’s therapeutic impact” (Winick and Wexler, 2001: p. 479) and thereby promote psychological health and well-being.

Therapeutic Jurisprudence does not “trump” other considerations or override important societal values such as due process or the freedoms of speech and press. It suggests, rather, that mental and physical health aspects of law should be examined to inform us of potential success in achieving proposed goals. It proposes to consider possible negative psychological effects that a proposal may cause unwittingly.

*(Winick and Wexler, 2003)*

Wexler has also suggested that “a primary goal of therapeutic jurisprudence is to apply and incorporate insights and findings from the psychology, criminology, and social work literature to the legal system” (Wexler, 2016). However, inherent in this mental health approach to law when applied to the Caribbean is that context-driven explanations of social problems, which apply sociological and historical “literature to the legal system,” and thereby recognise transcultural psychiatry, the punishment of capital, restitution, and coloniality, as important considerations – instead of simply jailing and punishing “bad people” – are not a primary goal of criminal justice systems (Escobar, 2004; Watson and Kerrigan, 2018).

According to Magner (1997), the rise of therapeutic jurisprudence can be tied to the development of “problem solving courts and the development of restorative justice theory,” which saw law reform measures “supporting an understanding that law could be used in either a therapeutic or non-therapeutic manner” (Magner, 1997). For Evans and King (2012), the logic of therapeutic jurisprudence is focused on ethical arrangements and considering “the well-being of those involved in conflict” and must include developing in all those involved in a court process from the judges and court staff to other important people such as lawyers, counsellors, mental health professionals, and more, a “collaborative and holistic approach to consider the well-being of those involved in conflict. Such an approach requires not only a focus on skills and processes but also on ethical arrangements” (Evans and King, 2012).

Various bodies of research have suggested that therapeutic jurisprudence can result in reduced recidivism rates and improves conflict resolution because it increases the legitimacy court users take from the court process (Tyler, 2003, 2006; King, 2008, pp. 1115–1116). This was also confirmed in research done by Justice Kokaram in Trinidad on local mediation courts (Kokaram, 2017). Justice Kokaram, Justice Jamadar, and some other judges of the T&T Judiciary have actively through training seminars, workshop papers, judgements, and changes in their processes helped to push the idea of therapeutic jurisprudence beyond a niche concern.

Therapeutic Jurisprudence is traditionally viewed as originating with the practice in problem solving courts and mental health applications. It considers the role of the law as a therapeutic agent and theoretically underpins the practice of problem solving courts. Therapeutic jurisprudence advocates the use of social science to study the extent to which a legal rule or practice promotes psychological and physical wellbeing of the people it affects.

*(Kokaram, 2018)*

For Tyler, the major selling point of procedural justice as therapeutic jurisprudence is its desire to enhance the perceived legitimacy of the court process in the eyes of its users.

Psychological research has played an important role in legitimating this change in the way policymakers think about policing by demonstrating that perceived legitimacy shapes a set of law-related behaviors as well as or better than concerns about the risk of punishment.

Those behaviors include compliance with the law and cooperation with legal authorities. These findings demonstrate that legal authorities gain by a focus on legitimacy. Psychological research has further contributed by articulating and demonstrating empirical support for a central role of procedural justice in shaping legitimacy, providing legal authorities with a clear road map of strategies for creating and maintaining public trust.

*(Tyler, Goff, and MacCoun, 2015)*

Based on over 20 years of research on North American courts and the Police, Tyler sees procedural justice as “the most powerful explanatory concept for why people obey rules that restrict their behavior in ways they would otherwise find unacceptable” (Burke and Leben, 2007: p. 1).

## Legitimacy and public trust and confidence

When speaking about the legitimacy and the public perception of T&T’s justice system we must of course also consider the justice system’s purpose from the point of view of the post-colonial Judiciary of T&T. The official website of the T&T Judiciary explains the justice system’s purpose is to protect the fundamental rights and freedoms of the nation’s citizens and the laws created to support those fundamental rights and freedoms laid out in T&T’s Constitution, which include the right of an individual to security of the person; the right to *equality* before the law and the protection of the law [*italics mine*]; the right to be brought promptly before a court; the right to a fair and impartial hearing; and the right to be presumed innocent unless found guilty<sup>2</sup>.

Seen from the top-down perspective of the judiciary, legitimacy is the contextual framework by which the effective maintenance of law and order through the delivery of justice is achieved. As Tyler and Jackson note,

The empirical study of legitimacy has demonstrated that when authorities are viewed as legitimate they are better able to motivate people to comply with the law. In such research legitimacy is typically operationalized as (1) people’s authorization of legal authority to dictate appropriate behavior and (2) people’s trust and confidence that legal authorities are honest and act in ways that have citizens’ best interests at heart. Thus defined, legitimacy has been linked to a number of different law-related behaviors, including compliance with the law and cooperation with legal authorities

*(Tyler and Jackson, 2014: p. 1).*

Yet public confidence in the trustworthiness of authorities and the inclusivity of the local justice system both in the past and present was and is, perceived by many in the population as sorely lacking. So, how can the courts make themselves legitimate in the eyes of the public against a backdrop of mistrust, injustice, and historical inequalities? One way according to Tyler and others is to build a culture of what is termed, ‘Public Trust and Confidence.’ Not least because if the central role of and responsibility of the Justice System is to be proactive in upholding quality and fairness, and individuals and groups in the society perceive this as (in)justice, what underpins the rule of law locally beyond simple political power and the use of force?

According to Justice Peter Jamadar,<sup>3</sup> the former head of the JEITT, in the face of volumes written about the lack of public trust and confidence in court systems, public trust and confidence can be seen as the root of judicial legitimacy in the eyes of court users. In particular, public trust and confidence survives and flourishes when three central roles and concerns of the judiciary are satisfied in the eyes of the public. These are:



1. Effective Deterrence – this depends on successful crime detection and punishment
2. Consent and Cooperation – this is the creation in the population of a willingness to agree and cooperate with the law i.e., a duty to comply. This can be further broken down into
  - a. Therapeutic Jurisprudence/Procedural Justice – the quality of decision making and quality of interpersonal treatment  
and
  - b. Motive-based Trust – predictability that authorities will do things that they are tasked to do. Also based on strength of social bonds and quality of inter-personal treatment.
3. Empowerment – public's legitimisation of what the judiciary does. The public is empowering judges to interpret and apply the law.

For space reasons, let's just look at the cultural hegemony behind element two, Consent and Cooperation or what Tyler calls, "models drawn from psychological research on legitimacy" (Tyler, Goff, and MacCoun, 2015).

Numerous studies have shown that when the methodology of procedural fairness is practised within a court system, there is an increase in compliance with the law over time (Tyler, 2003). In particular, when the methodology of procedural justice is in place, citizens supposedly assign higher legitimacy to legal authorities. The reasoning behind this is that rather than court reformers concentrating "on instrumental factors such as time to disposition and costs associated with structural and procedural changes," court users respond best in terms of building a culture of legitimacy to "the quality of their interaction with judges and experiences within the court system" (Tyler, 2007: p. 44). This logic is deceptively individualist and ahistorical.

Tyler's understanding of procedural fairness suggests that rather than reformers solely concentrating their efforts and attention in the training of judges, building courthouses, enacting legal goods, and other formal processes, "too little attention [is] given to the underlying challenge of nurturing a culture that believes in and values the rule of law or in making institutional reforms that are really responsive to meeting the needs of the people" (Stromseth, 2009). In this culture, procedural fairness is the idea that losing becomes more palatable if you lose through a fair procedure.

## The other side of therapeutic jurisprudence

Criticisms of therapeutic jurisprudence are reminiscent of South African scholar André Keet's thesis (Keet, 2017) that without structural change all social science academic research produced in the academy can be seen as a crime because such knowledge without fundamental changes like reparations for land and democratic changes in corrupt ex-colonies, is a form of structural racism, since the fundamental global divisions of Western Modernity that remade the world are based on racialised class formations. His research presentation covered how human rights discourse in South Africa works against democracy, and how overarching frameworks of "transformative constitutionalism" can be seen as a "fictitious narrative of inclusive socio-economic and cultural-political progress in the 'aftermath' of Apartheid, [which] reveals not only the displacement of decolonial thought and strategies, but a re-inscription of the colonial project via rights idolatry" (2017).

A similar criticism could be levelled against progressive work designed to amend and implement the North American conceived procedural justice/fairness in T&T. For example, on one level therapeutic jurisprudence adapts the court process and makes it more palatable and legitimate in the eyes of users rather than change it completely. That said, the recent attempt at localising procedural justice in T&T did have an explicit mindset to reflect on the "contexts of hierarchy

and domination” embedded in the local court system and processes (Bornstein et al., 2016; p. 209; Kerrigan et al., 2019). Hence in the local T&T context the JEITT did adapt Tyler’s definitions and include extra levels specific to the local data and socio-cultural context. But is this enough?

Another critique of therapeutic jurisprudence comes from Augustyn (2015) who’s own research into procedural fairness with adolescent offenders in the United States suggests that while the concept is certainly “relevant to many offenders and it is important for ethical reasons,” in her study of the effect and impact of procedural fairness she noted that “when it comes to increasing compliance and satisfaction...fair practices don’t have the same effect on everyone” (Augustyn, 2015). One of the reasons Augustyn suggests this was the case is that the reasons for adolescent “offending were too complex to address by simply showing them respect and giving them voice” (Augustyn, 2015).

In their ethnographic write up of observations at Red Hook community court in Brooklyn, Bornstein et al. (2016) note that

procedural justice scholars, mostly from law and psychology, have emphasised the positive benefits of fair treatment as a way of promoting harmony in contexts of different interests and scarcity, but they have been reluctant to explore ‘the darker side of the fair process phenomenon’.

*(2016: p. 190)*

The central criticism is that procedural justice is at heart a form of false consciousness and cultural hegemony designed to make the less powerful in society consent and comply to the vision of the world of the powerful, no matter what longstanding issues of injustice, inequality, and substantial unfair or biased treatment there are.

As others have suggested, “psychologists of law fall into the ‘legitimacy trap’ of uncritically accepting that the social order and rule of law should be maintained and that compliance should be improved even if that may not be best for everyone” (Bornstein et al., 2016). Fair procedure in other words might make people feel better dealing with authorities but it does little to structurally transform uneven social relations in society. In Caribbean studies such a definition is described as neo-colonialism.

It is in this sense that the logic of therapeutic jurisprudence can be said to embody a moral grammar of atomistic individualism (Binkley, 2007; Nehring and Kerrigan, 2019), the logic of the psychological imagination (Madsen, 2014, 2018), and a language and discourse that actually in practice recolonises rather than decolonises ideas around freedom and the individual. For therapeutic jurisprudence and its sub-sets like procedural justice there is no structural change to create, rather the onus is like a mirror reflected back on the individual to be more accepting of the legitimacy of the legal process, which for many groups does nothing to transform the unfair socio-economic conditions handed down historically and cumulatively in Caribbean nations, which mostly reflect great inequalities of income, wealth, life skills, and opportunities. These of course also include a lack of access to legal representation due to high legal fees.

Nor are Caribbean-centric models of psychology, sociology, or history such as transcultural psychiatry, decoloniality, or reparations truly aspects of therapeutic jurisprudence and its interventions. This of course means that the central question of how justice can be produced out of states of injustice remains unanswerable in any substantive and structural transformative way because therapeutic jurisprudence does not go far enough to provide restitution and reparations for the longstanding punishment of capital experienced by low income groups in the Caribbean and elsewhere. Yes, some Caribbean judiciaries, like the Judiciary of T&T have begun to develop such projects in the region, but they do not go far enough.

## Final thought

Grosfoguel reminds us that, “The mythology of the decolonization of the world obscures the continuities between the colonial past and current global colonial/racial hierarchies and contributes to the invisibility of coloniality today” (2009: p. 23). Today the inherent inequalities of the capitalist mode of production and the social systems it has created are hidden by myths of individual failure or personal exceptionalism. The central purpose of this chapter has been to illustrate how within the legal system of T&T, neo-colonialism shapes the post-colonial present, and while therapeutic jurisprudence and its forms like procedural justice promise change and have begun to bring about fairer processes in some courts, more often than not the change reinforces global and local inequalities of class and race, rather than transforms them. We smooth out the processes and relations of the plantation system, but it is not justice. Justice is tearing the whole plantation system down. It means building new structures and systems.

## Notes

- 1 Tobago was made a ward of Trinidad by the British in 1898 and has a distinct socio-cultural history to Trinidad .
- 2 Please see T&T Judiciary website, <http://www.ttlawcourts.org/index.php/about-the-judiciary-1/overview-53>
- 3 Personal interview on May 8, 2017. I have hosted teaching seminars for the JEITT in 2015, 2016, and 2018 and also conducted various research projects with Justice Jamadar.

## Works cited

- Agozino, B. and Pfohl, S.J. (2003) *Counter-colonial criminology: a critique of imperialist reason*. London/Sterling, VA: Pluto Press.
- Anderson, C. (2018) *A global history of convicts and penal colonies*. London: Bloomsbury Publishing.
- Antoine, R.-M.B. (2008) *Commonwealth Caribbean law and legal systems*. New York: Routledge-Cavendish.
- Augustyn, M.B. (2015) ‘The (ir)relevance of procedural justice in the pathways to crime’. *Law and Human Behavior*. Educational Publishing Foundation 39(4): 388–401.
- Binkley, S. (2007) ‘Governmentality and lifestyle studies’. *Sociology Compass* 1(1): 111–126.
- Bornstein, A., Marcus, A., Curtis, R., Rivera, S. and Swaner, R. (2016) ‘Tell it to the judge: procedural justice and a community court in Brooklyn’. *PoLAR: Political and Legal Anthropology Review*. Wiley Online Library 39(2): 206–225.
- Brereton, B. (1979) *Race relations in colonial Trinidad 1870–1900*. Cambridge: Cambridge University Press.
- Burke, K. and Leben, S. (2007) ‘Procedural fairness: a key ingredient in public satisfaction’. *Court Review* 44(1–2): 4–25.
- Césaire, A. (1955) *Discours sur le colonialisme*. Paris: Presence Africaine.
- Crowley, D. (1957) ‘Plural and differential acculturation in Trinidad’. *American Anthropologist*. Wiley Online Library 59(5): 817–824.
- Elahie, E. (2017) *Reflections of an interested observer: ethnographic musings of the court user's experience in T&T*. Port of Spain: Judicial Education Institute of Trinidad and Tobago.
- Erikson, K. (1994) *A new species of trouble: the human experience of modern disasters*. New York: Norton.
- Escobar, A. (2004) ‘Beyond the third world: imperial globality, global coloniality and anti-globalisation social movements’. *Third World Quarterly*. Taylor & Francis 25(1): 207–230.
- Evans, A. and King, M. (2012) ‘Reflections on the connection of virtue ethics to therapeutic jurisprudence’. *UNSWLJ*. HeinOnline 35: 717–746.
- Fanon, F. (1965) *The wretched of the Earth*. New York: Grove Press.
- Fanon, F. (2008) *Black skin, white masks*. London: Pluto Press.
- Friedrichs, D. (1997) ‘Responding to the challenge of white collar crime as a social problem: implications for Caribbean states’. *Caribbean Journal of Criminology and Social Psychology* 2(2): 84–99.

- Grosfoguel, R. (2009) 'A decolonial approach to political-economy: transmodernity, border thinking and global coloniality'. *Kult* 6(1): 10–38.
- Gutierrez Rodriguez, E., Boatca, M. and Costa, S. (eds) (2010) *Decolonizing European sociology: transdisciplinary approaches*. Abingdon: Routledge.
- Hickling, F.W. and Hutchinson, G. (2012) 'Caribbean contributions to contemporary psychiatric psychopathology'. *West Indian Medical Journal* 61(4): 442–446.
- Hutchinson, G. (2015) 'Counseling and psychotherapy in the Caribbean (Trinidad and Tobago): Olivia's story'. In: Moodley, M. et al. (eds) *International counseling*. Alexandria, VA: American Counseling Association, pp. 149–155.
- Jamadar, P. and Elahie, E. (2018) *Proceeding fairly: report on the extent to which elements of procedural fairness exist in the court systems of the judiciary of the Republic of Trinidad and Tobago*. Port of Spain: Judicial Education Institute of Trinidad and Tobago.
- JEITT. (2018) *Procedural fairness manual: a guide to the implementation of procedural fairness in the court systems of the judiciary of the Republic of Trinidad and Tobago*. Port of Spain: Judicial Education Institute of Trinidad and Tobago. Retrieved October 12, 2019, from [http://www.tlawcourts.org/jelibooks/books/Procedural\\_Fairness\\_A\\_Manual\\_new.pdf](http://www.tlawcourts.org/jelibooks/books/Procedural_Fairness_A_Manual_new.pdf).
- Johnson, D., Maguire, E.R. and Kuhns, J.B. (2014) 'Public perceptions of the legitimacy of the law and legal authorities: evidence from the Caribbean'. *Law and Society Review*. Wiley Online Library 48(4): 947–978.
- Keet, A. (2017) 'Capital rights-decolonial thought and "rights-emancipations" in South Africa'. In *Understanding local entanglements of global inequalities: socio-cultural transformation and decolonial thought*. Retrieved October 12, 2019, from <https://www.uni-giessen.de/fbz/fb03/institute/ifs/prof/allg/international-workshop/INTERNATIONALWORKSHOPCollectionofAbstracts.pdf>.
- Kerrigan, D. (2010) *The accumulation of capital and the shifting construction of difference: examining the relations of colonialism, post-colonialism and neo-colonialism in Trinidad*. PhD dissertation, American University, Washington, DC.
- Kerrigan, D. (2015) 'Transnational anti-black racism and state violence in Trinidad'. *Cultural Anthropology Online*. Retrieved October 12, 2019, from <https://culanth.org/fieldsights/transnational-anti-black-racism-and-state-violence-in-trinidad>.
- Kerrigan, D., Jamadar, P., Elahie, E. and Sinanan, T. (2019) 'Securing equality for all in the administration of justice: the evidence and recommendations'. In *Caribbean judicial dialogue: equality for all in the administration of justice*. The Faculty of Law, The University of the West Indies, Mona, Jamaica.
- King, M.S. (2008) 'Restorative justice, therapeutic jurisprudence and the rise of emotionally intelligent justice'. *Melbourne University Law Review*. HeinOnline 32: 1096–1126.
- Kokaram, V. (2017) *The foundations of a peace jurisprudence movement: lessons learnt from Caribbean mediation*. Paper delivered at World Mediation Summit, Madrid.
- Kokaram, V. (2018) *Indar Singh v Kisundaya Soogrim*. Trinidad and Tobago.
- Madsen, O.J. (2014) *The therapeutic turn: how psychology altered western culture*. Hove: Routledge.
- Madsen, O.J. (2018) *The psychologization of society: on the unfolding of the therapeutic in Norway*. London: Routledge.
- Magner, E.S. (1997) 'David Wexler, Bruce Winick (eds), law in a therapeutic key: developments in therapeutic jurisprudence'. *Current Issues in Criminal Justice*. Routledge 8(3): 337–340.
- Mahabir, C. (1985) *Crime and nation-building in the Caribbean: the legacy of legal barriers*. Cambridge: Schenkman Books.
- McBride, K. (2016) *Mr. Mothercountry: the man who made the rule of law*. Oxford: Oxford University Press.
- Morgan, P. (2014) *The terror and the time: banal violence and trauma in Caribbean discourse*. Mona: University of the West Indies Press.
- Nehring, D. and Kerrigan, D. (2018) 'Thin selves: popular psychology and the transnational moral grammar of self-identity'. *Consumption Markets and Culture* 1–23 (online).
- Nehring, D. and Kerrigan, D. (2019) *Therapeutic worlds: popular psychology and the socio-cultural organisation of intimate life*. London: Routledge.
- Newson, L.A. (1976) *Aboriginal and Spanish colonial Trinidad: a study in culture contact*. London/New York: Academic Press.
- Nicolas, G. and Wheatley, A. (2013) 'Historical and socio-political perspectives on mental health in the Caribbean region'. *Interamerican Journal of Psychology* 47(2): 167–176.
- Reddock, R. (April 2007) 'Diversity, difference and Caribbean feminism: the challenge of anti-racism'. *Caribbean Review of Gender Studies* (1): 1–24.

- Reid, B.A. (2009) *Myths and realities of Caribbean history*. Tuscaloosa: University of Alabama Press.
- Rodney, W. (1972) *How Europe underdeveloped Africa*. London/Tanzania: Bogle-L'Ouverture Publications.
- Rohlehr, G. (1990) *Calyso and society*. Tunapuna, Trinidad and Tobago: HEM Printers.
- Seepersad, R. and Wortley, S. (2017) 'Ethnicity and crime victimisation in Trinidad and Tobago'. In: Joosen, K.J. and Bailey, C.A. (eds) *Caribbean crime and criminal justice impacts of post-colonialism and gender*. London: Routledge.
- Stromseth, Jane. (2009) 'Strengthening demand for the rule of law in post-conflict societies'. *Minnesota Journal of International Law*. HeinOnline 18: 415–424.
- Trotman, D.V. (1986) *Crime in Trinidad: conflict and control in a plantation society, 1838–1900*. Knoxville, TN: University of Tennessee Press.
- Tyler, T.R. (2003) 'Procedural justice, legitimacy, and the effective rule of law'. *Crime and Justice*. University of Chicago Press 30: 283–357.
- Tyler, T.R. (2006) *Why people obey the law*. New Jersey: Princeton University Press.
- Tyler, T.R. (2007) 'Court review: volume 44, issue 1/2-procedural justice and the courts'. *Court Review: The Journal of the American Judges Association* 217: 28–35.
- Tyler, T.R. and Jackson, J. (2014) 'Popular legitimacy and the exercise of legal authority: motivating compliance, cooperation, and engagement'. *Psychology, Public Policy, and Law*. American Psychological Association 20(1): 78–95.
- Tyler, T.R., Goff, P.A. and MacCoun, R.J. (2015) 'The impact of psychological science on policing in the United States'. *Psychological Science in the Public Interest* 16(3): 75–109.
- Watson, D. and Kerrigan, D. (2018) 'Crime, criminality, and north-to-south criminological complexities: theoretical implications for policing "hotspot" communities in "underdeveloped" countries'. In: Carrington, K., Hogg, R., Scott, J., Sozzo, M. and Walters, R. (eds) *The Palgrave handbook of criminology and the global south*. Cham: Springer International Publishing, pp. 611–632.
- Wexler, David B. (2016) 'Guiding court conversation along pathways conducive to rehabilitation: integrating procedural justice and therapeutic jurisprudence'. (October 18, 2016). *1 International Journal of Therapeutic Jurisprudence* 367 (2016); Arizona Legal Studies Discussion Paper No. 15–33. Available at SSRN: <https://ssrn.com/abstract=2677431> or <http://dx.doi.org/10.2139/ssrn.2677431>
- Williams, E. (1962) *History of the people of Trinidad and Tobago*. Port of Spain: PNM Publishing Company.
- Winick, B.J. and Wexler, D.B. (2001) 'Drug treatment court: therapeutic jurisprudence applied'. *Touro Law Review*. HeinOnline 18: 479–486.
- Winick, B.J. and Wexler, D.B. (2003) *Judging in a therapeutic key: therapeutic jurisprudence and the courts*. Durham: Carolina Academic Press.