The History of International Law in the Caribbean and the Domestic Effects of International Law in the Commonwealth Caribbean

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I. INTRODUCTION

The Caribbean has a rich history. The languages and dialects, the racial makeup of the different islands and the legal systems present in the region are a few examples of the outcome of history in the region. This Article seeks to analyse the international legal history that resulted in the reception of English law into the Commonwealth Caribbean. In making its analysis, the Article will highlight the following themes: the role of international law in the initial colonisation of the Caribbean islands; the arguments used to debase the sovereignty of the first Caribbean islanders; and the effect of the involvement of international law in the history of the region upon the legal systems of the Commonwealth Caribbean. It will argue that international law played an under-researched role in the initial development of the history and the legal systems of the Caribbean islands. This role is only highlighted by using a multidisciplinary approach that relies on history and international law scholarship to locate the position of international law in the history of the Caribbean.2

The Article begins with an investigation of the role of international law through international action in the pre-colonisation years and the initial colonisation of the Caribbean islands. Then it critiques the legal rhetoric and the application of

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1 The word 'Caribbean' has many different connotations. The focus of this Article shall be the islands of the Caribbean Sea, excluding the continental territories, with a special focus on the Commonwealth Caribbean. The Commonwealth Caribbean is used to describe the English-speaking islands of the Caribbean that were colonies of England.

2 For a discussion of linkages between history and international law, see Matthew Craven, ‘Introduction: International Law and its Histories’ in Matthew Craven, Malgosia Fitzmaurice and Maria Vogiatzi (eds), Time, History and International Law (Martinus Nijhoff Publishers 2007).
Eurocentric legal norms to indigenous peoples. The fourth Section explores the effect of international action and international law upon the legal systems of the region with an emphasis on the reception of English law into the former English colonies of the region. In concluding, this Article argues that the enterprise of colonialism in the Caribbean was underpinned by international law that was used to debase the sovereignty of the indigenous people and rival European powers. Moreover, it will assert that international law doctrines of title to territory contributed to the doctrine of reception of law being applied to the Commonwealth Caribbean islands.

II. THE ROLE OF INTERNATIONAL LAW IN THE INITIAL COLONISATION OF THE CARIBBEAN

2.1 The Papal Bulls

The first known pieces of international law to affect the Caribbean region sparked a colonial and commercial rivalry between European powers that would last for centuries. Williams put it best when he stated, ‘Caribbean history, conceived in international rivalry, was reared and nurtured in an environment of power politics’. Even before Christopher Columbus rediscovered the region, the people and islands of the Caribbean were pawns in the power politics of European powers: a series of papal bulls predetermined the rights to explore and conquer the land west of the Iberian Peninsula. The immediate consequences of the papal bulls are obvious, but the reactionary responses of other European powers should be considered in order to highlight the role of international law in the initial colonisation of the region.

In 1493, the assumption existed that the pope had temporal authority over pagans and Christians. Given his position as head of the Roman Catholic Church the pope had the authority to issue decrees, known as papal bulls. Among other applications, papal bulls were used to sanction and legitimise the actions of European powers. Any decree by the pope granting sovereignty would have legitimacy backed by this temporal authority.

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4 For description and analysis of the relevant papal grants commencing from 1452, see WG Grewe, *The Epochs of International Law* (de Gruyter 2000) ch 8; David Berry, ‘The Caribbean’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of The History of International Law* (OUP 2012); Matthew Craven, ‘Colonialism and Domination’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of The History of International Law* (OUP 2012).

A series of five papal bulls gave dominion of the theretofore unknown Caribbean islands to the Spanish. The fourth and most pertinent papal edict, *Inter caetera*, granted the Spanish rights to all lands discovered, or to be discovered, beyond an imaginary line drawn from north to south, one hundred leagues west of the Azores and the Cape Verde Islands. One writer likened it to a form of ‘spiritual guardianship that granted title to the discovering Christian prince, who was commanded in turn to instruct the inhabitants in the Catholic faith’. Thus, east of this line was the Portuguese sphere of influence; west, the Spanish. The fifth, *Dudum siquidem*, quashed all other grants and extended the previous grants to include ‘all islands and mainlands whatever, found or to be found … in sailing towards the west and south,’ even if followed by actual possession. Not satisfied with the imaginary line of demarcation the Portuguese government entered into negotiations with the Spanish government to fix the line. These negotiations resulted in the Treaty of Tordesillas on June 7, 1492, which fixed the line at 370 leagues west of the Cape Verde Islands.

According to Berry, the meaning and legal effect of the papal bulls was, and remains, subject to controversy. He details three theories concerning the meaning and effect of the papal bulls. Firstly, that the papal bulls were meant to grant full title – literally to divide the world in two. Secondly and conversely, that the papal bulls only mandated Christian conversion of heathens in the west by the Spanish. Thirdly, that the pope’s decrees merely granted ‘inchoate’ title to the lands, which would be perfected following occupation. Albeit the final meaning and legal effect of the bulls remained vague, the Spanish used a wide interpretation of the grants. This is evident in the *Requerimiente* which was read by the Spanish Conquistadores to the indigenous people upon landing:

> On the part of the King, Don Fernando, and of Doña Juana, his daughter, Queen of Castille and Leon, subduers of the barbarous nations, we their servants notify and make known to you, as best we can …. One of these Pontiffs, who succeeded that St. Peter as Lord of the world … made donation of these isles and Tierra-firme to the aforesaid King and Queen and to their successors, our lords, with all that there are in these territories …. So their Highnesses are King and

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7 Berry, ‘The Caribbean’ (n 4) 580.


9 Berry, ‘The Caribbean’ (n 4) 580-81.
lords of these islands and land of Tierra-firme by virtue of this donation.10

At that time, it was meaningless to the indigenous people whether the papal edicts granted full title, a mandate to convert or radicate title. Nevertheless, the objects intended to be covered by the legal effect of the papal bulls are clear: the lands and people west of the Cape Verde Islands. The papal bulls constituted an international action that had its origins in and was sanctioned by shaky international law – the legitimacy of the temporal authority of the pope.

2.2 Response of European Powers

Spain and Portugal never succeeded in persuading the other colonial powers to recognise the legitimacy of the papal legal titles, or the Iberian colonial monopoly that was based upon them.11 As a consequence of the papal bulls and the rediscovery of the New World, Spain and Portugal’s European rivals sought to delegitimise the effects of the papal bulls and to challenge their claims of sovereignty. The states that challenged the Iberian claims viewed the New World as ‘foreign’ to all Europeans and asserted that sovereignty over the land could not be maintained by the papal bulls or by the Treaty of Tordesillas.12 In effect, the French and English attempted to reference and mould international law to suit their own colonial interests.

The English sought to oppose papal donation and prove their legitimacy and dominium in the Caribbean by citing biblical precedents, freedom of navigation (mare liberum) and agriculturalist justifications – vacancy (vacuum domicilium) or absence of ownership (terra nullius).13 For example, Berry cites a 1580 letter from Queen Elizabeth to the Spanish envoy in London, Mendoza. In speaking of the effect of the papal bulls, the Queen stated:

[T]his donation of what does not belong to the donor and this imaginary right of property ought not to prevent other princes from carrying on commerce in those regions or establishing colonies there in places not inhabited by the Spaniards. Such action would in no

10 Grewe, Fontes Historiae Iuris Gentium (n 8) 68 (quoting Requerimiento, Proclamation read to the American-Indian natives by the Conquistadores after their landing’ (1513)).
11 Grewe, The Epochs of International Law (n 4) 240.
way violate the law of nations, since prescription without possession is not valid. Moreover all are at liberty to navigate that vast ocean, since the use of the sea and the air are common to all. No nation or private person can have a right to the ocean, for neither the course of nature nor public usage permits any occupation of it.\textsuperscript{14}

Nevertheless, the fact that the English Crown challenged Iberian claims of dominium in the New World did not preclude it from using the same language found in the papal bulls. As observed by David Ramsay in 1789, the words used in Henry VII’s letters patent to John Cabot of 1496 were a replica of the terms used by Alexander VI’s Bulls of Donation by granting him rights to ‘conqueror and possess’ for the King any territory not already in Christian hands.\textsuperscript{15}

In France, unlike England, the authority of the pope and his edicts was not questioned. However, it was contested whether the Spanish were honouring the obligations derived from their missionary mandate. Moreover, the French relied on arguments grounded in the principle of freedom of the seas and that the edicts of Alexander VI did not exclude France from the division of the world.\textsuperscript{16}

The principles cited by the English and French jurists drew heavily upon ancient legal thought, principally Roman law.\textsuperscript{17} These colonial powers utilised analogies drawn from Roman private law to develop new international law rules for the circumstances at hand. For instance, in diplomatic correspondence between Queen Elizabeth I and Mendoza, it is evident that the Queen relied on the arguments that no one could claim ownership or exclusive rights to the sea, mare liberum. The core of such a rationale was based on Roman legal scholarship, which asserted that such things are common by nature.\textsuperscript{18} Moreover, one of the most influential principles of Roman law on early modern international law was res nullius. Roman law demanded that a thing acquired by occupation be res nullius. This meant that the object acquired could not be someone else’s property; it was the common property of all mankind. Ownership could be acquired by capturing the object and putting it to some,

\textsuperscript{14} Grewe, \textit{Fontes Historiae Iuris Gentium} (n 8) 151 (quoting ‘Queen Elizabeth of England to the Spanish envoy in London Mendoza’ (1580)).

\textsuperscript{15} David Ramsay, \textit{The History of the American Revolution}, vol 2 (Philadelphia 1789).

\textsuperscript{16} Grewe, \textit{The Epochs of International Law} (n 4) 244.

\textsuperscript{17} Kaius Tuori, ‘The Reception of Ancient Legal Thought in Early Modern International Law’ in Bardo Fassbender and Anne Peters (eds), \textit{The Oxford Handbook of The History of International Law} (OUP 2012).

\textsuperscript{18} Hugo Grotius, \textit{The Freedom of the Seas} (OUP 1916) 26-27.
generally agricultural, use.\textsuperscript{19} By capturing the object and putting it to some use dominium over the object would be acquired. \textit{Res nullius} therefore provided the rationale for the establishment of \textit{dominium} (lawful possession). This doctrine was embraced in international law under the name \textit{terra nullius} as a way to legitimise possession.\textsuperscript{20}

III. INTERNATIONAL LAW SCHOLARSHIP AND THE SOVEREIGNTY OF INDIGENOUS PEOPLE OF THE CARIBBEAN

International law at the time of first contact between Europeans and the people of the Caribbean was still in its formative stages.\textsuperscript{21} Without any precedent or international custom to reinforce European claims to the Caribbean and characterisations of the indigenous people, principles of Roman law were again utilised. The same principles that were appropriated in international law to discredit Spanish claims to possession of the islands of the Caribbean were also used, in addition to ideologies of natural rights, to deny sovereignty to the indigenous people of the region. Furthermore, international law at the time was almost exclusively Eurocentric, and consisted of a number of common rules developed from natural law and pre-existing custom. Consequently, the questions surrounding the international legal status of the indigenous people and their territory, as well as rules that would govern European-indigenous relations would be shaped by European powers and their colonial ambitions.

Hurbon has recognised that the Caribbean in the early 16th century was the testing ground for Western ideology.\textsuperscript{22} The Spanish, being the first Europeans in the region to gain territory, were first to adopt an exclusionary rhetoric aimed at characterising the indigenous people as primitive pagans. Sude-Badillo in his research describes that the indigenous people were never recognised as the Spaniard’s equals, but rather only as their disempowered ‘vasals’. The significance of labelling the indigenous people as ‘vasal’ meant that the Spanish claimed to have a right to require tributes from them.\textsuperscript{23} Additionally, according to Hurbon, it was propagated that there were two

\textsuperscript{19} Pagden, \textit{Lords of All the World} (n 13) 76.
\textsuperscript{20} Tuori (n 17) 1028.
\textsuperscript{21} David Berry, ‘Legal Anomalies, Indigenous Peoples and the New World’ in Barbara Saunders and David Halijan (eds), \textit{Whither Multiculturalism?: A Politics of Dissensus (Studia Anthropologica)} (Leuven University Press 2003).
types of Indians in the islands – the Caribs, who were cruel and cannibalistic because they rebelled against the evangelisation and power of the conquistadores, and the Arawaks, who were gentle and obedient, and who were the victims of the Caribs and open to the protection of the Spanish. This encouraged the Catholic monarchs of Spain to invest more in the expeditions to the islands, in keeping with the concession of the papal edicts to promote evangelisation.

This exclusionary rhetoric was extended to the sovereignty of the indigenous people, specifically concerning the lands they occupied which were treated as res nullius. The Spanish theologians and jurists of that era were debating the nature of right and dominium. They transposed this debate into the discussions about the legitimacy of the conquests in the New World. Dominium had many meanings: a person could hold it over things (dominium rerum, including natural elements), over one’s fellows (dominium iurisdictionis), over one’s own acts (dominium suis actus), over one’s own liberty, and even over one’s own life (dominium suis). One jurist in particular, Palacios Rubios, justified Spanish occupation of the Caribbean islands on the basis that if civil society is defined as a society based upon property, and property relations were what constituted the basis for all exchanges between men in society; if a society possessed no such relationships, and could not be regarded as a civil society, the individuals of this society could not make claims to dominium rerum when confronted by invaders. Furthermore, these writers claimed that since all dominium derives from God’s grace, not from God’s law, no non-Christian, and no ‘ungodly’ Christian, could be the bearer of rights. Thus, as a result of being non-Christian and having the title of uncivilised the indigenous people of the region were denied any standing in law and thus the entitlement of being considered sovereign by the Spanish. In essence, the indigenous people would not have superior property claims over the Spanish.

While the aim of many early European writers was to reinforce their state’s claims to dominium and imperium in the Caribbean islands, writers such as Francisco de Vitoria argued that indigenous people merited equitable treatment before the law. For instance, in his De indis lecture, de Vitoria asserted that the

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24 For analysis of Spanish debates over the rights of the indigenous population, see Pagden, ‘Dispossessing the Barbarian’ (n 5).
26 Pagden, Lords of All the World (n 13) 163.
27 ibid 75.
indigenous Indians possessed the minimal requirements for social life and reason and as such could not be the ‘natural slaves’ described in Books I and III of Aristotle’s *Politics*. While some credit de Vitoria as advocating a potentially more benign, humanist approach towards indigenous peoples, it should be recognised that his writings neither supported complete equality nor granted sovereignty to the indigenous people. Moreover, the equitable treatment de Vitoria intended would have comported with notions of fairness defined by those in a position of physical power and geographically removed, thus ignoring reality of the indigenous people. At the end of the same lecture, de Vitoria, unable to conclusively reason the Spanish claim to *dominium* in the New World, claimed that since the Spanish were already there any attempt to abandon the colonies would result in ‘… a great prejudice and detriment to the interests of our princes which would be intolerable.’

Like the Spanish, the English and French did not recognise the full legal status and rights of the indigenous people they encountered. Their arguments for justifying their possession and bolstering their claims to *dominium* were based in one way or another upon the principle of *res nullius*. Using *res nullius*, which was transformed in international law to the rule of *terra nullius*, the colonising powers easily dismissed indigenous occupation of the Caribbean islands and did not consider this occupation to be an obstacle to colonisation and acquiring sovereignty.

The work of English writer John Dee was influential in the initial enterprise of English colonisation. Dee claimed that occupation rather than mere discovery was the way to establish English sovereignty over the New World. He proclaimed the right of Queen Elizabeth I to draw into her *dominion* those lands that were discovered by English subjects and were not currently in the actual possession of a Christian prince by Roman law and the law of nature and nations. Accordingly, the English Crown had no reservations in granting title to lands ‘not possessed by Christians’, Claims of sovereignty underpinned by Cromwell’s ‘Western Design’ as well as the ‘godliness’ of individuals were also the basis of early British assertions of occupation. The French initially based

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29 Francisco de Vitoria, ‘De indis recenter inventis’ in Teofilo Urdanoz (ed), *Obras de Francisco de Vitoria* (Bibiloteca de Autores Christianos 1960).
30 Berry, ‘The Caribbean’ (n 4) 593.
31 de Vitoria (n 29) 725.
32 Pagden, *Lords of All the World* (n 13) 86.
34 ibid ch 2.
35 Ramsay (n 15).
their claims on the assumption that God had approved their venture with the purpose of peaceful evangelisation.\footnote{Pagden, \textit{Lords of All the World} (n 13) ch 3; JHM Salmon, ‘France’ in Howell A Lloyd, Glenn Burgess and Simon Hodson (eds), \textit{European Political Thought 1450-1700: Religion, Law and Philosophy} (Yale University Press 2007).}

In the absence of a sustained argument to the right of occupation grounded on the supposed nature of the indigenous inhabitant, the British and French recognised that some claim of legitimate possession of the lands, which excluded the indigenous people, was necessary for successful occupation. Both adopted the Roman law argument known as \textit{res nullius}.\footnote{For an account of English debates concerning the principle of \textit{res nullius} see, Tomlins (n 6) 55-56; Pagden, \textit{Lords of All the World} (n 13) 76-80.} The British and the French used this argument to treat the lands of the indigenous people as juridically vacant and therefore subject to discovery and occupation.

\section*{IV. THE DOMESTIC EFFECTS OF INTERNATIONAL LAW ON THE LEGAL SYSTEM OF THE CARIBBEAN REGION}

The modern legal systems of the Caribbean islands were born out of their experience with colonialism, during which law was transplanted into the region.\footnote{For a discussion of the legal systems of the Commonwealth Caribbean, see Rose-Marie Belle Antoine, \textit{Commonwealth Caribbean Law and Legal Systems} (2nd edn, Routledge-Cavendish Oxford 2008); Sir Fred Phillips, \textit{Commonwealth Caribbean Constitutional Law} (Cavendish Publishing 2002).} The transplantation of laws is the foundation of the doctrine of reception of law.\footnote{Antoine (n 38) ch 5.} This doctrine describes the process by which or through which laws from one state are exported to another state. In the Caribbean, the process of reception involved the exportation of existing sources of law such as statute, common law and equity, from England, into the Commonwealth Caribbean. The law so received has generally been regarded as a ‘natural birth right’ or ‘inheritance’ that was carried overseas by the first colonial settlers.\footnote{Anonymous (1722) 2 P Wms 75, 24 ER 646; United States v. Worrall, 28 F. Cas. 774, 779 (1798) (Chase J).} England would obtain title through various doctrines of title to territory that would evince and reinforce her claims to the individual islands. When and how the doctrine of reception was applied to the Commonwealth Caribbean islands is directly related to how England obtained title to the island.

Before starting the investigation into the specific domestic effects of international law within the Commonwealth Caribbean, one must be conscious that use of the word ‘reception’ has been questioned by contemporary writers...
and jurists. Writers such as Allot contend that the common law was forced onto the colonies and ‘… migrated because they were made to migrate’.\(^{41}\) Likewise, Lord Diplock in *Kaadesevan v AG* explained that ‘in the case of most former British colonies … the English common law is incorporated as part of the domestic law of the new independent State because it was imposed upon the colony …’\(^{42}\) This view can be seen in the case of *Rudling v Switch* in which Lord Stowell opined, ‘When the King of England conquers a country … the Conqueror by saving the lives of the people conquered gains a right and property in such people; in consequence of which he may impose what law he pleases’.\(^{43}\)

Around 1539, European powers started to utilise a wide range of modern legal arguments to further validate their claims to territory in their expanding empires in the Caribbean.\(^{44}\) The dominant arguments used to evince title in international law were discovery, conquest, cessation and occupation. Discovery is an original form of title; conquest is a derivative form of title.\(^{45}\) The other dominant doctrines are cessation and occupation, which are the most persuasive of the arguments; they could be established according to the status of the territory that was ceded or occupied.\(^{46}\) Moreover, the legal inconsistencies that existed in relations between European powers, such as entering into treaties and informal alliances with indigenous groups,\(^{47}\) can also be seen to be against the doctrines of discovery and conquest.\(^{48}\) For the purposes of reception, while there is no practical distinction between conquered and ceded territories or settled and occupied, there is a difference between conquered and settled.

Since the doctrine of imposition is closely linked to the historical background of the region it is necessary to make the distinction between territories that were settled or occupied and those that were conquered or ceded. The settled


\(^{42}\) *Kaadesevan v AG* [1970] AC 1111, 1116.

\(^{43}\) *Rudling v Switch* (1821) 2 Hag Con 371, 380.

\(^{44}\) Grewe, *The Epochs of International Law* (n 4) 250.

\(^{45}\) See generally J Crawford and I Brownlie, *Brownlie’s Principles of Public International Law* (8th edn, OUP 2012) pt III; Bryan A Garner (ed), *Black’s Law Dictionary* (7th edn, West Group 1999) 298 (defining ‘conquest’ as ‘[a]n act of force by which, during a way, a belligerent occupies territory within an enemy country with the intention of extending its sovereignty over that territory’).

\(^{46}\) For a discussion on the legal arguments used to justify title to territory, see A Fitzmaurice, ‘Discovery, Conquest, and Occupation of Territory’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of The History of International Law* (OUP 2012).


\(^{48}\) Berry, ‘Legal Anomalies’ (n 21).
territories of the Commonwealth Caribbean received the English common law by the end of the 17th century and include Anguilla, Antigua, the Bahamas, Barbados, British Virgin Islands, Jamaica, Montserrat, and Saint Kitts. The conquered territories are Dominica, Belize, Guyana, Grenada, Saint Lucia, Saint Vincent and Trinidad and Tobago. A settled colony is commonly described as one where there was no previous inhabitation by indigenous or ‘civilised’ peoples, or that had been inhabited by peoples from imperialist countries who had subsequently abandoned the territory or had been destroyed.\textsuperscript{49}

Such a definition ignores the existence of the indigenous people and their sovereignty. Conversely, the concept of a conquered territory refers to that which was first held by one imperialist power and which was subsequently transferred to another imperialist conquering power after battle. The total contempt with which conquerors viewed the indigenous peoples, whom they regarded as ‘uncivilised’ and their laws betray the biases inherent in the reception of law doctrine and in the doctrines of title to territory.\textsuperscript{50} According to Antoine, English common law was introduced into the region by two methods:

(a) For colonies settled or occupied, the colonists carried with them only so much of the English law that was applicable to the necessities of their situation and the conditions of the infant colony.

(b) With respect to conquered territories, the colonists retained the existing legal system of the colony once it was not repugnant to natural justice. The existing legal system was retained until such time as English law could be introduced into the colony.\textsuperscript{51} In most cases, the date of reception is the date that the English Crown directed that English law would come into operation.

While it may seem clear-cut, the two methods of introducing English common law into the region resulted in complex issues. One of the enduring consequences with respect to the conquered territories is the phenomenon of hybrid or mixed legal systems that are present in Guyana and Saint Lucia. In fact, Antoine posits that because of the regions’ peculiar historical development, all jurisdictions in the Commonwealth Caribbean could, at one time or another, have been described as mixed.\textsuperscript{52} A hybrid legal system contains a plurality of legal traditions that are mainly composed of common law and civil law. These type of systems are products of multiple instances of imposition of law due to colonisation, cessation, purchase or annexation by a

\textsuperscript{49} St George Tucker (ed), \textit{Blackstone’s Commentaries 1803}, vol 1 (Kelly 1969).

\textsuperscript{50} Antoine (n 38) 76.

\textsuperscript{51} ibid 77.

\textsuperscript{52} ibid 58.
state or power with a legal system that is different from that of the jurisdiction acquired.53

In the conquered territories of Saint Lucia and Guyana, common law was imposed on civil law systems; these countries were once colonies of France and the Netherlands, respectively. Nevertheless, civil law endured and a hybrid legal system was created in those territories. For instance, the constitutional law of Saint Lucia is English in origin. On the other hand, the introduction of English contract law was qualified in that the term ‘consideration’ was not to be interpreted in like manner to that under the common law tradition but referred to the civilian concept of ‘cause’.54

One is further reminded of the region’s colonial history when considering a noticeably absent component of the legal systems of the Commonwealth Caribbean – the legal traditions of the indigenous people of the Caribbean. Their laws and experiences were disregarded in the development of the legal systems and traditions of the region. Antoine asserts that laws that claim to be ‘Amerindian’, such as the Carib Reserve Act 1991 of Dominica, are false and were designed by the colonisers and their successors to compartmentalise the indigenous peoples and preserve their minority status.55

V. CONCLUSION

The central argument of this Article has been that international law is a fundamental component of the rich history of the Caribbean. Moreover, that an appreciation of the role of international law in the history of the region is necessary in order to understand the international legal history that resulted in the reception of law doctrine being applied to the Commonwealth Caribbean. This is revealed though the different, sometimes contradictory, ways in which international law was used in its formative years to demarcate indigenous Caribbean people from Europeans, and also claims and assertions of rights between European powers.

In the period leading up to and including the rediscovery of the Caribbean, international actions, their effects and consequences, such as Inter caetera and the Requerimiento, were endorsed by the belief in the temporal authority of the pope over the world. English and French jurists sought to dismantle this belief

53 ibid 59.
54 See Antoine (n 38) 66; Velox and Another v HelenAir Corporation & Others (1997) 55 WIR 179 (CA).
55 Antoine (n 38) 57; it is worthy to note section 149G of the Constitution of Guyana 1980 guarantees that ‘Indigenous peoples shall have the right to the protection, preservation and promulgation of their language, cultural heritage and way of life’.
using predominantly Roman law extrapolations into international law in an effort to carve out a piece of the Caribbean for themselves. It is evident that the different uses of Roman law in international law were utilised for the combined purpose of disenfranchising the native people of the Caribbean. By embracing arguments that delegitimised the papal grants and the rights of the Iberian powers to explore the land west of the Azores, the English and French not only questioned Spain and Portugal’s rights but also ultimately dismissed the original sovereignty and native title of the indigenous people. Furthermore, the adoption of Roman law into international law was also used to strip the indigenous people of the region of their rights, legal status and thereby their sovereignty. Mutual doubts and issues surrounding the rival powers lead to the development of the principles of discovery, conquest and occupation. These principles were used by England in order to bolster its claims to islands within the Caribbean. As a result of the territories being settled or conquered the doctrine of reception was then applied to import English law into the islands.

This analysis leads to the conclusion the legal systems of the Caribbean did not solely originate from the relevant colonial power that imposed upon the population the laws of the metropole. In fact, the reception of English law into legal systems of the Commonwealth Caribbean can be traced to the use of international law and the reception of Roman law into international law. It was the use of international law, coloured by the Roman law notion of *res nullius*, that directed the English to make the distinction between conquered and settled territories. The origin of the historical distinction between conquered and settled is critical for the reception of law not only because it dictated how English law would be introduced but more so to appreciate the historical origin of the legal systems of the Commonwealth Caribbean.
BIBLIOGRAPHY

BOOKS
Allot A.N, *The Limits of Law* (Butterworths 1980)
—— ‘Colonialism and Domination’ in Fassbender B and Peters A (eds), *The Oxford Handbook of The History of International Law* (OUP 2012)
Crawford J and Brownlie I, *Brownlie’s Principles of Public International Law* (8th edn, OUP 2012)
de Vitoria F, ‘De indis recenter inventis’ in Urdanoz T (ed), *Obras de Francisco de Vitoria* (Biblioteca de Autores Christianos 1960)
Fitzmaurice A, ‘Discovery, Conquest, and Occupation of Territory’ in Fassbender B and Peters A (eds), *The Oxford Handbook of The History of International Law* (OUP 2012)
McPherson B.H, *The Reception of English Law Abroad* (Supreme Court of Queensland Library 2007)


—— Lords of All the World: Ideologies of Empire in Spain, Britain and France c. 1500 – c. 1800 (Yale University Press 1995)


**JOURNAL ARTICLES**


**CASES**

*Anonymous* (1722) 2 P Wms 75, 24 ER 646

*United States v. Worrall*, 28 F. Cas. 774, 779 (1798)

*Rudling v Switch* (1821) 2 Hag Con 371

*Kaadesevaran v AG* [1970] AC 1111

*Velox and Another v HelenAir Corporation & Others* (1997) 55 WIR 179 (CA)