

Max Planck Encyclopedias of International Law



Judicial Committee of the Privy Council

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Content type: Encyclopedia entries

Product: Max Planck Encyclopedias of International Law [MPIL]

Module: Max Planck Encyclopedia of International Procedural Law [MPEiPro]

Article last updated: February 2020

Subject(s):

Colonization / Decolonization — Appeals — Jurisdiction — States, independence

Published under the direction of H el ene Ruiz Fabri, with the support of the Department of International Law and Dispute Resolution, under the auspices of the Max Planck Institute Luxembourg for Procedural Law.

A. Introduction

1 For much of the nineteenth and twentieth centuries, the Judicial Committee of the Privy Council ('JCPC') was the highest court of appeal for the British Empire-Commonwealth, across all branches of law. Established in 1833, it received appeals from across the British Empire and from countries where British subjects had been granted extra-territorial rights. It became the key legal institution for interpreting and expanding English common law around the world. It was also an important mechanism for standardizing the administration of justice in the British Empire. In colonial appeals, the role of the JCPC was founded on the Crown's prerogative of justice, a corollary of which was the constitutional right of all British subjects to approach the throne and seek redress (Howell, 1979, 55).

2 The overseas jurisdiction of the JCPC grew with Britain's empire. As the empire expanded eastwards following the loss of the American colonies, the JCPC's jurisdiction also extended to diverse communities in Asia and Africa. With its primary mandate to uphold British standards of justice in the colonies and dominions, the JCPC's jurisdiction went beyond national and regional boundaries, ultimately covering more than a quarter of the world (Magrath, 2003, 4). One legal scholar described the JCPC as having 'a wider jurisdiction than any court known to history ... unique in the variety of its suitors, which include not only subjects of every part of the empire, but also Indian gods, African chieftains, and vassal princes' (Bentwich, 1912, 15). In the administration of imperial justice, the JCPC served as a veritable clearing house of conflicting legal codes, demands, disputes, and hence a gateway to both local processes and imperial regulation (Bentwich, 1912, 15).

3 At the height of its influence in the early twentieth century, the decisions of the JCPC were binding in colonial courts across the British Empire. Local courts were bound to follow its decisions even if they were rendered on appeals from other jurisdictions (Harris, 1990, 583). The JCPC's judicial influence was unique in this regard. The case laws of domestic English courts and the House of Lords were treated with respect in colonial jurisdictions but were not considered strictly binding in colonial courts. Until 1927, the JCPC took the position that colonial courts were bound to the interpretation of an English statute applicable to the colony. After the Balfour Declaration, however, the JCPC stepped back from this position, asserting that it is not right to assume that an appellate colonial or dominion court is wrong if on a matter of English Law, it differs from an appellate court in England (Keith, 2011, 234). This did not apply to the decisions of the House of Lords which the JCPC affirmed as the 'the supreme tribunal to settle English law' (*Robins v National Trust Co Ltd*, 1927). Generally, however, the JCPC enjoyed unparalleled influence over the administration of justice in British dominions and colonies.

4 By the mid-twentieth century however, the influence and jurisdiction of the JCPC had reduced significantly. This followed the enactment of the Statute of Westminster in 1931 which enabled colonial dominions to assert more autonomy and discontinue appeals to the JCPC. Starting with the Irish Free State and Canada, several British territories abolished the right to JCPC appeal in the 1930s and 1940s. The JCPC's decline was hastened by the wave of decolonization in the 1950s and 1960s when many former British colonies gained independence and promptly abolished the rights of appeal to the JCPC. Although the JCPC's influence and jurisdiction has waned significantly since the height of the British Empire, it remains the court of final appeal in some domestic matters and overseas jurisdictions. These include British Overseas Territories and Crown dependencies, and several

→ *Commonwealth* countries that have retained the appeal to Her Majesty in Council. Many of the ex-British colonies that have retained JCPC jurisdiction are Caribbean countries.

B. Origins of the Judicial Committee of the Privy Council

5 The origin of the modern JCPC dates to 1833, when the British Parliament passed the Judicial Committee Act as part of a broader reform of the longstanding Privy Council, the main advisory body of the Crown. Prior to 1801, the Privy Council under the Crown played a wide-ranging role in the administration and government of British dominions and colonies. The Judicial Committee Act provided for Crown appeals to the newly formed JCPC, a duty that had been the responsibility of the Privy Council's Appeals Committee since the seventeenth century. The JCPC's original jurisdiction derived from a customary practice of the Norman monarchs, ie the medieval *Curia Regis*, whereby the English Crown was advised by a royal court of magnates, ecclesiastics, and high officials. Subjects bearing grievances against the administration of justice by baronial and other subordinate judicial authorities could petition the Crown in Council for redress (Howell, 1986, 3). This practice was founded on the notion that the King was the fountain of all justice throughout his dominions and exercised judicial powers through the Privy Council acting as an advisory body of the Crown (Bentwich, 1912, 1). The role of the Privy Council in respect to the colonial appeals was therefore understood to be a manifestation of the prerogative of justice, a corollary of which was the constitutional right of all British subjects to approach the throne and seek redress (Howell, 1986, 55).

6 In the nineteenth century, the JCPC came to represent British constitutional monarchism and became a symbol of the power and influence of British aristocratic principles and legal traditions (Roy, 1928, 285). Although the Privy Council historically concerned itself with advising the Crown on domestic legislation and the administration of justice, growing ties between Britain and the settlements in the New World saw an expansion of this role, as an increasing number of appeals to the Crown came from plantations and colonies in the Americas. Some scholars have suggested that without the uniformity of colonial law forged by the Privy Council's judicial review prior to the eighteenth century, the 13 American colonies might never have felt a collective will to fight their revolution and remain united (Beth, 1976, 42).

7 The Judicial Committee Act of 1833, which formally established the JCPC, was born out of the need to standardize the system of appeals to the Crown through the Privy Council. This was part of several reforms introduced to make the old Appeals Committee of the Privy Council more efficient. These reforms were crucial to the administration of appellate justice as the British Empire expanded eastwards and encountered varied indigenous customary legal systems in the colonies. The 1833 reforms effectively made the JCPC the final court of appeal for non-domestic jurisdictions and other judicial matters not handled by existing domestic courts.

8 A central figure in the creation of the JCPC was the liberal statesman and Lord Chancellor, Henry Brougham, who became famous for his unrelenting campaign against the slave trade, among other political and social causes. As Lord Chancellor from 1830 to 1834, Brougham initiated several domestic and colonial legal reforms to reorganize judicial governance and ensure more uniform standards in the administration of justice throughout the British Empire. The highlights of Brougham's tenure as Lord Chancellor included the passing of the 1832 Reform Act, which introduced wide-ranging changes to the British electoral system, and the Slavery Abolition Act of 1833 which he staunchly supported (Ibhawoh, 2013, 29). In 1833, Brougham as Lord Chancellor introduced the precursor to

the Judicial Committee Act, entitled A Bill for the Better Administration of Justice in His Majesty's Privy Council.

9 Under the Statute, the new tribunal consisted of all Privy Councillors who held high judicial offices under the empire, with some measure of expertise in colonial laws and legal systems. These included the Lord Chancellor, Chief Justice of the Court of King's Bench, Master of the Rolls, and the Chief Judges of other superior courts in Britain. The Crown could appoint two additional Councillors with legal training directly to the Committee. The Crown also retained the longstanding prerogative of appointing anyone to the Privy Council and, subsequently, to the Judicial Committee (Howell, 1986, 29). Several other acts passed after 1871 also reformed the Judicial Committee by extending membership to all the Lords Justice of the English Court of Appeal who were also Privy Councillors, and to an extended range of Privy Councillors who held high judicial office in the dominions of Canada, Australia, and South Africa (Howell, 1986, 131). Apart from the expansion of the JCPC's composition, the Judicial Committee Act of 1833 also extended the colonial jurisdiction of the Privy Council.

10 To put it in a position to adjudicate appeals from different legal systems within the empire, further reforms were introduced between 1908 and 1928 that allowed for colonial judges who were members of the Privy Council to sit on the JCPC (Imperial Conference 1930). These changes allowed for the appointment of Judicial Assessors, who were sometimes drawn from the ranks of retired colonial judges and provided advice on local conditions and local law. These reforms also permitted representative judges from all British colonies to sit on the JCPC. This allowed for the appointment of colonial judges from India, Ceylon (Sri Lanka), and colonies in Africa to the JCPC from 1909 (Judicial Committee Amendment Act, 1895).

11 Judges and assessors from the dominions and colonies who served on the JCPC often had close ties with Britain. Most of the early Indian assessors appointed to the JCPC were serving and retired English officials and judges who had worked in India. However, from 1909, South Asian judges began to take on a major presence in the upper echelons of the imperial legal system with the appointment of Syed Ameer Ali as the first South Asian judge on the JCPC (see Abbasi, 1989; Muhammad, 1991). Indigenous judges from the colonies, such as Syed Ameer Ali and Dinshaw Mulla, who was appointed in 1930, played a crucial role in bringing indigenous perspectives to the jurisprudence of the JCPC, particularly in terms of their expertise and interpretations of Hindu and Islamic law.

C. Practice and Procedure

12 The 1833 Judicial Committee Act provided for the JCPC to make its recommendation to the King in Council for a final decision, after hearing any matter referred to it. This was the customary practice with matters referred by the Crown to the Privy Council. The reasoning was that the Sovereign was the Judge, and the Councillors his advisers. Every aspect of the Judicial Committee's work, as indeed those of the larger Privy Council, therefore derived authority and efficacy solely from the direct official action of the Sovereign.

13 Despite this philosophy that framed the JCPC's work, certain provisions of the Judicial Committee Act suggested that it possessed the full adjudicatory powers of a regular court of law. For example, unlike the old Appeals Committee of the Privy Council, the reconstituted Judicial Committee comprised experienced senior Judges empowered to summon and subpoena witnesses to testify under → *oath* before the Committee. Like regular appeal courts, the JCPC could also refer cases back to lower courts for re-trial. Most significantly, the JCPC Act provided that the Judicial Committee shall 'have and enjoy in all respects the same power of punishing contempt and compelling appearances ... as are exercised by the High Court of Chancery or the Court of King's Bench' (sec 28, Judicial

Committee Act, 1833). This clause implied that the JCPC was more than an advisory committee of the King's Privy Council, as was customary. Unlike the old Appeals Committee, the JCPC was not simply one of many advisory committees of the Privy Council. Its authority and responsibilities were more far-reaching. In practice, the JCPC served as an imperial appeal court, exercising independent judicial function more as an appellate tribunal than as an advisory board to the Crown (Ibhawoh, 2013, 33).

14 The practices and procedures of appeals to the JCPC reflected its dual role as both the Crown advisory board and the Empire's Court of Appeal. At the conclusion of each appeal case, the panel of judges which heard the case, otherwise known as the Board, produced two documents: the formal report to the Privy Council and an opinion, or 'Judgment', embodying the reasons for that report. The latter was read in the JCPC chambers in Westminster in the presence of the parties or their lawyers. Concise and generic, the reports to the Crown were couched in terms of humble advice and devoid of legal technicalities. The reports simply stated that the Board had taken the appellant's petition into consideration and, having heard counsel, stated that the judgment of the lower court from which the case was appealed ought to be affirmed or reversed (Howell, 1986, 38). The report contained no reasons for the Board's decisions, the details of the case, or the legal arguments presented before it.

15 Based on this report, the Crown issued an 'Order in Council', which put the Board's decision into effect. The published opinions or judgments of the JCPC, on the other hand, were detailed legal documents that analysed the legal arguments presented before the Board and the reasons for its decision. While some of these historical practices have changed with recent reforms, many unique JCPC procedures have endured. For example, unlike most appellate courts, the JCPC is not bound to follow its own previous decisions. It could depart from previous decisions in exceptional circumstances where it deemed that following its previous decisions would be unjust.

16 Another distinguishing feature of the JCPC as it operated for much of the nineteenth and twentieth centuries is that, unlike traditional appellate courts, it did not acknowledge or publish dissenting judicial opinions. The JCPC did eventually introduce the practice of publishing dissenting opinions of its members in 1966. Before then, its decisions were presented as the unanimous views of all its members. The historical rationale for this practice was that the Sovereign should not be troubled with conflicting advice (Rankin, 1930, 8). Another reason was to maintain the prestige of the JCPC among colonial subjects.

17 When proposals were put forward in 1901 to publish the dissenting opinions of JCPC Judges, Lord Chancellor Selborne worried that dissent might create discontent in the colonies and negatively affect the prestige of the JCPC in the eyes of the local British subjects. He was particularly concerned about the difficulty of satisfying public opinion in India, where the opinion of dissenting judges might become the subject of 'great and critical discussion'. While criticism of the JCPC might be permissible in England, he argued, it was ill-advised among 'half-educated Hindoo lawyers' (Stevens, 1993, 19). As was customary with matters referred by the Crown to the Privy Council, it was crucial to maintain finality of litigation and this was better secured without the uncertainty and ambiguities imposed by the publication of dissenting judicial opinion. Imperial justice as dispensed by the JCPC was anchored in perceptions of infallibility as much as it was by the rule of law.

D. Colonial Jurisdiction

18 The JCPC made final rulings on and interpretations of a vast variety of laws across the British Empire-Commonwealth, including Roman Dutch law from South Africa, British Guyana, and Ceylon (Sri Lanka), Spanish law from Trinidad, pre-revolutionary French law from Quebec, the Napoleonic Code from Mauritius, Roman and Sardinian law from Malta, Venetian law from the Ionian Islands, medieval Norman law from the Channel Islands, Muslim, Buddhist, and Hindu law from India, Ottoman law from consular courts in Turkey, Cyprus, and Egypt, Chinese law from British courts in Shanghai and the Straits Settlement, and diverse indigenous customary laws from across Africa.

19 The responsibility of the JCPC in interpreting and ruling on a wide variety of laws from across the Empire was one that its judges took seriously. British subjects whose cases came before the JCPC expected that these judges were conversant enough with diverse legal systems and local laws to effectively administer justice. Lord Watson, a long-serving judge of the JCPC, was extolled for his acumen in interpreting laws according to the spirit of the jurisprudence from which an appeal came:

If it was a Cape appeal from South Africa, he was a Roman Dutch lawyer; if it was an Indian case of adoption, he entered into the religious reasons for the rule to be applied; if it was a Quebec case of substitution under the old French code, or a Jersey appeal about the customs of Normandy, it was just the same (Haldane, 1899, 279).

20 This eclectic and wide-ranging approach to the administration of justice was considered crucial to the work of the JCPC as the court of last resort in the British Empire.

21 For reasons of cost and distance, few colonial subjects could seek legal redress at the JCPC. This lack of direct engagement does not necessarily indicate the JCPC's limited influence in the colonies. The imperial role of the JCPC is best measured in the breadth rather than the depth of its reach, in the high precedential value of its judgments, and in the ways they shaped colonial law and the administration of justice in the British Empire. The JCPC adjudicated a wide range of legal disputes from diverse jurisdictions affecting everyday life in the colonies. These colonial appeals involved questions of nationality rights, treaty rights and obligations, the validity of customary law and colonial statute law, the scope and limits of executive power, the power of the Crown to annex territories, as well as a variety of commercial and private legal matters. Colonial appeals constituted the largest category of cases that came before the JCPC between 1833 and 1966 (Ibhawoh, 2014, 34).

22 Before 1860, most appeals to the JCPC came from British colonies and plantations in the Americas, Australia, New Zealand, Irish Free State, and India. From the 1920s, more appeals came from colonies in Africa and South Asia. After the power and territories of the East Indian Company were transferred to the Crown in 1858, the number of Indian cases climbed sharply. The Bengali appeals in particular exceeded the total business presented to the Judicial Committee from all of its other jurisdictions (Howell, 1986, 112). For example, of all the 76 cases brought to the JCPC in 1875, 38 appeals were from the colonial courts of India, many of them commercial cases involving Europeans.

23 The JCPC's long history and varied jurisdictions allowed it to hear a wide range of precedent-setting cases. These include landmark cases on aboriginal rights (*Liquidators of the Maritime Bank of Canada v Receiver-General of New Brunswick*, 1892) and constitutional cases on federalism and provincial sovereignty. Among prominent JCPC judgments were decisions on appeals from Hindu leaders in India against the ban on the traditional practice of *sati* where widows were compelled to jump on to the funeral pyres of

their husbands. Notable twentieth century appeals include a 1948 challenge to the lawfulness of British controls on immigration to Palestine by European Jews.

24 JCPC decisions in constitutional matters proved to be the most contentious cases. For example, the JCPC played an important role in early twentieth century debates about Canadian federalism. In the inter-war years, critics in the dominion of Canada saw the judgments of the JCPC as shifting the balance of power in favour of the regional provinces at the expense of the central government in ways that were not envisaged by the Fathers of Confederation who negated the British North American union. Successive decisions of the JCPC served as a major step towards increased provincial power and to diminish federal influence in ways that riled proponents of strong federal government. There were concerns about rumoured divisions among the members of the JCPC which were never officially confirmed because of the JCPC's practice at the time of not allowing dissenting judicial opinions (Keith, 2005, 203).

25 Disagreements over JCPC decisions on such constitutional matters resulted in the Balfour Declaration issued by the 1926 Imperial Conference of British Empire leaders in London. The Declaration recognized the growing political and judicial independence of the Dominions in the years after the First World War. It declared the United Kingdom and the Dominions to be autonomous communities within the British Empire. This laid the groundwork for the Statute of Westminster of 1931, which granted colonial dominions more political and judicial autonomy.

E. The Decline of Jurisdiction

26 The JCPC's influence and jurisdiction declined significantly following the enactment of the Statute of Westminster in 1931 and the wave of decolonization in the 1960s. Upon independence, most former British colonies replaced the JCPC immediately, establishing supreme courts or other such judicial institutions in its place. The abolishment of the rights to appeal to the JCPC has been justified through a variety of reasons. The main one is that any legal tie to a former colonizer is incompatible with the dignity and responsibility of independence and sovereignty. In many countries, the debate over abolishing the right to appeal to the JCPC was also driven by concerns over inadequate representation from the colonies on the JCPC bench.

27 The first cracks in the overseas jurisdiction of the JCPC appeared in the dominions. The debate over the right to JCPC appeal informed discussions of dominion status in the 1920s and early 1930s following the Statute of Westminster. Most of the early discussion focused on strengthening representation from the old dominions of Canada, Australia, New Zealand, South Africa and, to a lesser extent, India. During this period, the JCPC arguably faced a crisis of relevance and legitimacy arising mainly from the demands in Canada and the Irish Free States for the abolition of the rights to Privy Council appeal.

28 In Australia and New Zealand, the argument for restricting appeal reflected concern about the composition of the Privy Council and about the top courts of the United Kingdom and its Empire. In New Zealand, there was longstanding ambivalence toward the Privy Council. As early as 1903, the Bench and Bar protested certain judgments of the JCPC as showing ignorance of New Zealand law and social conditions. One New Zealand judge decried the tendency of the Lordships of the JCPC to reverse the decisions of local courts on statute law. Local court decisions, he argued, involved 'trained lawyers who have spent their lives in the Colony, who know and understand its genius, its laws and its customs' (*Wallis v Solicitor General*, 1903, 759). In contrast, the Lordships of Privy Council had to depend, as a rule, upon such assistance as they could get from members of the English Bar, who knew nothing of such local laws and customs (Richardson, 1997, 908). Concerns were also expressed about colonial representation on the JCPC bench. In a debate

at the 1911 Imperial Conference the Australian and New Zealand prime ministers called for a single court, including dominion judges, to replace the existing two, for dominion judges to sit, especially in cases coming from that dominion, and for dissenting opinions to be published (Keith, 2005, 202).

29 These concerns did not immediately lead to the abolition of the right to JCPC appeal. By the 1930s however, there was a shift toward restricting JCPC jurisdiction in the colonies and dominions. Canada abolished the right to appeal in criminal cases in 1933 and abolished the right to appeal in civil cases in 1949. The right of appeal to the Privy Council enshrined in the Constitution of the Irish Free State was abolished in 1933 by a Constitutions Act. Similarly, India abolished the rights of appeal in 1949 soon after it gained independence from British colonial rule while South Africa abolished the right of appeal to the Privy Council in 1950 with the enactment of the Privy Council Appeals Act of 1950. The political circumstances leading to the abolition of appeals in both countries foreshadowed the end of appeals elsewhere in the British Empire-Commonwealth.

30 In the colonies, opposition to maintaining the right of appeal to the JCPC was shaped by political rather than legal considerations. This was linked, first with sovereigntist demands in the Dominions, and later with anti-colonial movements in Asia and Africa. The shrinking of JCPC jurisdiction revolved around questions of sovereignty and the republican drift of newly independent nations more than anything else. Between 1947 and 1966, several British colonies in Africa and Asia achieved independence and many of these new countries either immediately, or upon declaration of republican status, ended their appeals to the Privy Council. For many nationalist politicians in these countries, executive, legislative, and judicial sovereignty were interlinked. Abolishing the right of appeal to the JCPC was therefore seen as a key step in the assertion of independence and sovereignty.

31 Arguments for sovereignty and judicial independence aside, the demise of the JCPC was also related to longstanding dissatisfaction with the unrepresentative composition of the JCPC bench. The right of appeal to a 'court' located overseas, made up mostly of English judges who were sometimes considered out of tune with local law and values, was a point of contention in the colonies even at the height of British imperial power. This situation became even more untenable as imperial influence waned in the mid-twentieth century. There was also criticism of the JCPC's inclination toward imperial legal uniformity and its tendency to apply the law of one country too readily to another country, regardless of local differences.

32 In Australia and New Zealand, some Privy Council decisions on legislative authority were criticized for not sufficiently coming to grips with the notion of the legislative power of the state being limited by a federal structure. One such decision was *Webb v Outrim* which the Australian High Court refused to follow (*Webb v Outrim*, 1907). In another case, the Chief Justice of New Zealand, Sir Robert Stout, criticized the decision of the JCPC on liquor legislation and described the JCPC as a *de facto* 'legislative body' (Stout, 1905).

33 In East Africa, the major critique of the JCPC within the local political and legal establishment was that English judges who constituted the JCPC bench were ill-equipped to adjudicate complex matters arising from local customary, Islamic, and Hindu law. The 1951 case of *Bakhshuwen v Bakhshuwen* was most frequently cited as proof of the JCPC's shortcomings. The issue involved Islamic law, not English law, but the JCPC resolved that the courts of Kenya and Zanzibar were bound by a decision on the point given earlier in an appeal from India. In Kenya, where the distinction between the practice of Islamic law in East Africa and in India had long been understood, officials voiced strong disagreement with this verdict. The JCPC decision was perceived as a simplistic and homogenous view of Islamic law, ignorant of the cultural contingencies and complexities of Kenya. Moreover, the

Indian case that had provided the grounds for the JCPC decision in the Kenyan case was also severely criticized in India and eventually overruled by legislative act.

34 Beyond concerns about representation on the JCPC, there was also the general perception that the JCPC, regardless of the quality of judges that staffed its bench, was ultimately a second-class court. It was, after all, an appellate court constituted exclusively to adjudicate colonial cases; an imperial court situated in the imperial centre but with limited jurisdiction over metropolitan cases. The reluctance of British officials to contemplate having United Kingdom appeals heard by anyone else other than the House of Lords was taken as evidence that, with the Privy Council, the dominions and colonies were being subjected to an inferior court to which Britain did not subject her own citizens. Critics referred to the landmark case of *London Joint Stock Bank Ltd v MacMillan*, in which it was held that the decisions of the JCPC were not theoretically binding in English courts, even if they may be deemed influential (1919).

35 As more countries abolished the right of appeal to the JCPC, some officials and politicians in Britain and the ex-colonies attempted to reform the JCPC to retain its relevance in the transition from Empire to Commonwealth. In the 1960s, British officials proposed the establishment of a → *Commonwealth Court of Appeal* as a successor institution to the JCPC. Like the JCPC, the new Commonwealth Court of Appeal would be an institution for maintaining judicial standards in the Commonwealth. The old concept of imperial responsibility had taken on a new form. British officials came to believe that the continuation of the right of appeal from courts in the countries of the new Commonwealth to the Judicial Committee or to another new Commonwealth Court of Appeal would most effectively safeguard the rule of law in these countries. For a period, discussions also revolved around a Commonwealth Bill of Rights, to be underwritten by the reformed appellate system (Swinfen, 1987, 12). These efforts at reinventing the JCPC were unsuccessful. Leaders of newly independent ex-colonies saw the JCPC as an anachronistic survivor from the days of the Empire and rejected the idea of replacing the JCPC with a Commonwealth Court of Appeal.

36 In some parts of the British Commonwealth however, the influence of the JCPC persisted for several decades after political independence was attained. Some non-United Kingdom, Commonwealth judges have sat in the JCPC in the post-colonial period. Australia only abolished the right of appeal to the JCPC in 1986 and New Zealand in 2003. Sri Lanka (formerly Ceylon) abolished most appeals to the Privy Council in 1972 on becoming a republic while Malaysia abolished the right of appeal in 1985. Singapore placed restrictions on the type of cases that could be appealed to the JCPC in 1989 and completely abolished the right to appeal in 1994.

37 In 2001, the countries of the Caribbean Community voted to abolish the right of appeal to the JCPC in favour of the Caribbean Court of Justice ('CCJ'). After the inauguration of the CCJ in 2005, several Caribbean countries including Barbados, Guyana, and Belize replaced the process of appeals to the JCPC. The government of Jamaica has made several attempts to abolish appeals to the JCPC. As at 2019, a final determination had not been made.

F. The Judicial Committee of the Privy Council in the Twenty-First Century

38 The JCPC remains the constitutionally prescribed final court of appeal for several former British colonies and dependent territories (→ *Legacies of Colonialism in International Adjudication*). It hears appeals from 30 overseas countries and territories, from the British Antarctic Territory to the islands of Jamaica, Jersey, Guernsey, and the British Virgin Islands. Many of the countries that have retained the rights of appeal to the JCPC are Caribbean countries. As of 2018, eight of the twelve independent nations that

continue to use the JCPC as their final court of appeal were Caribbean countries—Antigua and Barbuda, the Bahamas, Grenada, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago. Aside from these Caribbean nations, the JCPC also had, as of 2018, jurisdiction in the following independent nations: Tuvalu, Mauritius, Kiribati, and Brunei. The Privy Council also hears appeals from the following dependent jurisdictions: Cook Islands, Niue, Jersey, Guernsey (including Alderney and Sark), Isle of Man, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St Helena, Ascension and Tristan da Cunha, Turks and Caicos, Pitcairn Islands, British Antarctic Territory, British Indian Ocean Territory, South Georgia and the South Sandwich Islands, and the Sovereign Base Areas of Akrotiri and Dhekelia. In some of these countries and territories, the debate continues over the right of appeal to the JCPC.

39 Disagreement over JCPC jurisdiction manifests in public referendums, complaints from the political elite, and thwarted attempts to cut ties with the court. In most of these jurisdictions, the JCPC operates as a constitutional court, contributing with other supranational and international tribunals, to developing fundamental principles on the rule of law, human rights and individual liberties. In some Caribbean countries such as Jamaica, and Trinidad and Tobago, the debate over abolishing or continuing the right to appeal to the JCPC has centred on death penalty cases. In these countries, critics of the JCPC contend that through strategic judgments in death penalty cases, the JCPC has effectively blockaded the use of the death penalty which is permissible under local laws (Hutchinson-Jafar, 2012).

40 As a commercial court, much of the work of the JCPC in the first two decades of the twenty-first century has centred on securing certainty and consistency among its jurisdictions, which include several offshore financial centres. This is illustrated by some recent high-profile financial crime cases such as those involving victims of Bernie Madoff's Ponzi operation. The JCPC's lesser-known domestic jurisdictions include disciplinary appeals for veterinary surgeons, disputes over parish boundaries, and even distribution of bounty in the event that a foreign ship is captured. Most of these obscure historical jurisdictions are rarely invoked (Turner and Mance, 2019).

41 Other recent developments in the work of the JCPC include the expansion of its jurisdiction to domestic matters. This follows a precedent-setting decision in 2016 that a JCPC judgment could formally bind English courts on questions of English law, despite being outside the English legal system (*Willers v Gubayi*, 2016). This is significant because a key critique of the JCPC over its two centuries of history has been that it was a subordinate court for the colonial underclass since its decisions were not generally binding on courts within the United Kingdom. Another key development in the practice of the JCPC occurred in 2016 when for the first time, the JCPC and the Supreme Court of the United Kingdom sat together as a single body to hear appeals concerning joint enterprise liability in both England and Jamaica.

42 As regards the common law, in recent decades the JCPC has been willing to accept divergence. The JCPC sits not as a United Kingdom court but as the final court of whichever jurisdiction the courts of which it is sitting in appeal are from. This is represented by having the relevant national flag displayed in the courtroom and by holding sittings in the originating territory itself.

43 Although the influence and jurisdiction of the JCPC has reduced significantly from what it was at the height of the British Empire, it has served as an important institution for exporting British common law traditions around the world. It continues to play an important role as a supranational court, to develop and uphold fundamental principles relating to the

rule of law, and to ensure commons standards in the administration of justice in the countries and territories where its jurisdiction persists.

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