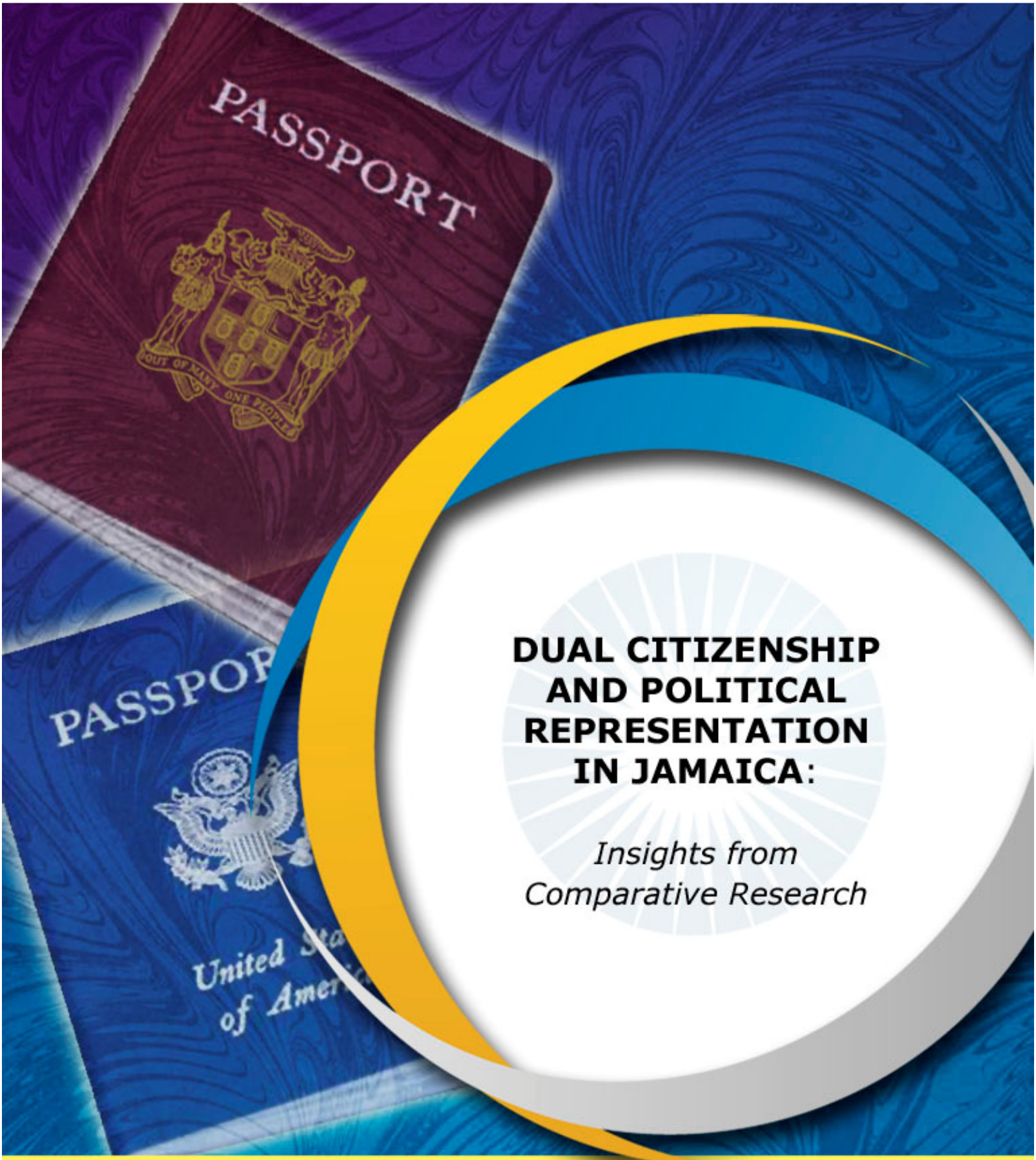


# DUAL CITIZENSHIP AND POLITICAL REPRESENTATION IN JAMAICA:

*Insights from Comparative Research*

CaPRI

Caribbean Policy Research Institute


# DUAL CITIZENSHIP AND POLITICAL REPRESENTATION IN JAMAICA:

## *Insights from Comparative Research*

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*TITLE: Dual Citizenship and Political Representation in Jamaica: Insights From Comparative Research*
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# INTRODUCTION

The court ruling which stripped Daryl Vaz of his seat in parliament, and subsequently led to the resignation of Danville Walker as director of elections, thrust the issue of dual citizenship onto the national agenda. A debate has broken out between proponents and opponents of the constitutional provision which provided the basis for the legal ruling. As with many such public debates, the competing sides appeared to be driven by strong-held opinions and, in some cases, logical arguments. However, lacking in the discussion has been evidence to support one side of the argument of the other.

In light of this, the Caribbean Policy Research Institute, whose mandate is to conduct evidence-based research on issues of public interest so as to inform public discourse, undertook to do a study on the topic. In keeping with its approach, this paper seeks not to build an argument for one side of the argument or the other. Rather, it seeks to tease out the central claims being made by both sides of the debate, and to weigh them against the available evidence.

One of the findings which emerged in the course of this project is just how limited the research on this topic is. There is no shortage of discussion, but agreeing on what is to be measured is seldom clear. As a result, what the authors of this study decided to do is to sample the local press for opinions on this topic, and from this, to elicit the chief hypotheses animating the discussion. Equipped with these, we then conducted a survey of the comparative literature, to see if any clear rule emerged on one side or the other of the debate. Our finding was that the aggregate evidence suggests there is no compelling argument either for or against the existing law.

Within Jamaica, the debate boils down to two competing positions, which we term the commitment hypothesis and the capacity hypothesis. When we tested these hypotheses against the data, what we found was that the commitment hypothesis found little empirical support for legislators, though it might find a larger justification if applied to cabinet ministers. The capacity hypothesis appeared to have stronger backing.

Any act of legislation entails costs and benefits. Setting them against one another is one way to ascertain if, on balance, a given arrangement is optimal. The costs and benefits of retaining or rescinding the existing constitutional clause barring political representation by dual citizens pose some challenges for comparison, as some of them are political, others economic. However on balance, it would appear that for legislators, the costs of maintaining the existing arrangement outweigh the benefits. Whether or not this statement can be made with equal confidence of ministers is unclear, though the available evidence suggests some caution may be in order.

# THE ISSUE

Section 40 (2) of the Jamaican Constitution specifies that:

1. (2) No person shall be qualified to be appointed as a Senator or elected as a member of the House of Representatives who a) is by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State.

It is important to note, though, that Section 39 of the constitution specifies that a foreign power is a non-Commonwealth country. Citizens of Commonwealth countries who have been resident in Jamaica 12 months are thus eligible to sit in parliament.[i]

Other Caribbean countries have similar laws governing the appointment and election of members to the House of Representative and the Senate. In Section 48(1) of the Trinidad and Tobago constitution, there is a similar clause related to the election of a member of the House of Representatives. Other similar clauses of Caribbean constitutions include St Vincent 26 (1), Guyana 155(1), St. Kitts and Nevis 28 (1), the Bahamas 42 (1), Antigua and Barbuda 30 (1), Barbados 38 (1), Grenada 26 (1) and also in St Lucia, where Section 26 (1) states that

"No person shall be qualified to be appointed as a Senator if, at the date of his appointment, he a) is by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state."

It is worth noting that in all the cases cited above, the proscription is not on dual citizenship as such, but on political representation by dual citizens. This is consistent with some of the arguments being made by defenders of the existing law in Jamaica, who stress that they have no objection to Jamaicans holding dual citizenship. Their objection is only to dual citizens holding high office. It must be acknowledged, though, that to some dual citizens, to be denied high office is to be classed as a second-class citizen. As some of the letters to the local press in recent months attest, the symbolism of this act may – at least for some citizens – outweigh its actual effect on political representation (since very few citizens will ever aspire to, let alone attain, high office).

Be that as it may, the issue remains one of significant contestation in several countries of the Caribbean, not just Jamaica. In St. Kitts and Nevis, Trinidad and Tobago, Grenada and Guyana, the rise of dual citizens to high or elected office has thrust the issue onto the agenda (Richards 2007). Here in Jamaica, the issue had been largely dormant for much of Jamaica's history, in that some past holders of high office had been dual citizens.

However, after the 2007 general election, People's National Party (PNP) candidate for West Portland, Abe Dabdoub, filed a suit against his rival Daryl Vaz of the Jamaica Labour Party (JLP). Mr. Dabdoub asked that the court declare the election of Vaz null

and void and appoint him instead as the Member of Parliament for the constituency of West Portland, on the grounds that the incumbent had sworn and acknowledged allegiance to a foreign power – in this case, the United States -- a violation of Section 40(2) of the Constitution of Jamaica. Mr. Dabdoub's lawyers argued that the court was bound by law to give him the seat if Mr. Vaz was indeed disqualified and that no by-election should be held, citing several cases from English case law as precedents for their argument. They also argued that the electors of West Portland were duly warned during the campaign that any votes for Mr. Vaz would be wasted and that the Director of Elections, Mr. Danville Walker, made an improper judgment when he told electors to disregard these statements. US legislation was cited and lawyers argued that it demonstrated that Mr. Vaz had to have sworn allegiance to the United States to retain his citizenship and thereby obtain a US passport.

On Friday, 13 April, Chief Justice Zaila McCalla disqualified Daryl Vaz from sitting in the House of Representatives on the basis that he 'voluntarily' renewed his US passport and travelled on it on numerous occasions. This was interpreted as a voluntary action of swearing allegiance to a foreign power. However, the Chief Justice did not give Mr. Dabdoub all he wanted: rather than returning him to office, it was ordered that a fresh by-election should be held. Although Mr. Dabdoub launched an appeal, the issue went before the nation, and a debate began.

# THE ARGUMENTS

## COMMITMENT VERSUS CAPACITY

Those who argue in favour of the current law, and more specifically defend the court's requirement that those found to be in breach of the constitution should be required to resign their positions, articulate one of what might be called the weak and strong versions of the argument ("weakness" referring to the vigour of their case, not its intellectual rigour).

The weak argument in defence of the law is, essentially, that it must be upheld. Several commentators have argued that if the constitution bars someone who has professed loyalty to a foreign power, however the court interprets it, he or she must abide by it. Writing in the Gleaner (30 April 2008), Paul Ashley maintains that "decisions of the court in relation to all laws, including constitutional law, must be obeyed," and that to dismiss the constitutional clause in question as a technicality is to undermine the legal basis of the political system. This is called the weak version because this argument allows for the law to be changed. Its basic premise is, simply, that the law must be upheld. Presumably, those making this argument would therefore have no objection to the law being altered – provided, of course, that this change was done within the limits of the constitution. Or, as General Secretary of the People's National Party Peter Bunting put it, "we have a constitution. If we don't like provisions in it, let us all get together and agree to change it" (Gleaner, 13 April 2008).

The strong argument, on the other hand, goes beyond merely calling for the law of the land to be respected: it defends the substantive content of the law. This argument can

be called the commitment hypothesis. The commitment hypothesis is that an individual who has pledged allegiance to a foreign power may offer less than full commitment to either country. The risk is that, at the margins, the individual in question might make trade-offs that an individual who holds only one citizenship -- and thus has no "escape clause" -- would not have the option of doing. In the event of a crisis, he or she might leave the country. In the case of a conflict between the two countries of which he or she is a citizen, his or her loyalty to Jamaica might be compromised. Therefore, while dual citizenship itself might not be problematic, this school of thought maintains that individuals who hold high national office need to have an uncontested loyalty to Jamaica. This was the argument explicitly made by Abe Dabdoub and seconded by David Coore (March 2008). As former Prime Minister Edward Seaga – who himself once renounced his US citizenship to take a seat in parliament – put it in a commentary (Seaga 2007), "one person cannot hold allegiance to two flags." Devon Dick, in a Gleaner commentary (15 April 2008) similarly argued that "any Jamaican who pledges allegiance and obedience to a foreign country should be debarred from our Parliament."

In contrast, those who argue that the law should be repealed tend to make an argument which, for the purposes of this paper, can be called the capacity hypothesis. This school of thought maintains that widening the pool of eligible representatives to include the diaspora enhances the overall quality of the political process. Proponents of this view maintain that allowing Jamaicans to go abroad and return is likely to lead to increases in the country's stock of human capital – citizens who spend time abroad acquire new skills -- which will ultimately prove beneficial to both the society and the polity. As the Guyanese Health Minister, Dr. Leslie Ramsammy declared, his skills would enable him to earn more money abroad than at home, so his public service should actually be seen as a net gain to the country (Richards 2007). This has led some voices in the Diaspora to call for the law to be amended in such a way as to allow them full participation in the political process (see e.g. Rose 2007).

## ASSESSING THE ARGUMENTS

One can arguably dispense with the weak argument against representation by dual citizens on the grounds that it is not an argument against allowing dual citizens to hold high office, but rather an argument that allowing them to do so requires a change to the law in accordance with the procedures of constitutional amendment. That leaves the commitment and capacity arguments. On the face of it, both have their merits. Cutting off an army's escape option is an ancient military strategy used by generals who want their soldiers to fight to the death. In a crisis, it does not seem unreasonable to expect that citizens who have no "exit clause" will be more likely to see a country through its crisis and avoid precipitating one, than would those who enjoy full rights of citizenship elsewhere.

Equally, in a case in which two countries are in conflict, and an individual is a citizen of each country, it may be that in trying to reconcile his or her competing loyalties, an individual will engage in decision-making which is sub-optimal for each country. For instance, faced with a decision about what Jamaica's relationship to Cuba should be, it is plausible that a legislator who holds both US and Jamaican citizenship might act differently from one who holds only a Jamaican passport, given the fractious nature of the US-Cuban relationship.

However, while theoretically plausible, such eventualities might prove rare in practice. Despite the popularity of talk that Jamaica is in crisis, the very act of running for office by a dual citizen would seem to suggest that – at least in the eyes of the individual in question – such a crisis does not exist. Furthermore, outside of periods of conflict, one could argue that a citizen who has the option of working elsewhere yet serves in Jamaica might actually evince a higher level of commitment than one who has no such option.

With respect to conflicts of interest, the issue that must be considered is how often such conflicts might arise for individual legislators; and the likelihood that when they do, individual legislators will be involved in the relevant decision-making process. Statistically, it seems likely that a quite small share of actions taken by individual legislators would put them into such positions of consequential conflicted loyalty: in a time of peace, a small share of a country's political decisions involve conflicts with other countries, and a small share of those decisions will in turn involve any one individual legislator. So it is likely that the actual welfare cost (which is to say, the welfare of the political system) of dual citizenship will be low in a country with few if any enemies, like Jamaica. On the other hand, it would likely rise in specific areas of interest, such as trade negotiations, in which all legislators ultimately have a say. Moreover, for an open economy like Jamaica, this might be an insignificant factor.

Finally, while there is a small pool of literature from the US which suggests that dual citizens display lower levels of "political connectedness" (Renshon 2000, Staton, Jackson and Canache 2007), the findings are probably not applicable to Jamaica: the research has been done among Latino immigrants, and thus looks not at Americans who acquired an additional citizenship, but at foreigners who acquired an American citizenship. Moreover, the linguistic barrier separating many Latinos from full membership in their new society has no real parallel when it comes to Jamaicans who have dual citizenship[1]. The study may be instructive, but can probably not be treated as solid support for the commitment hypothesis in the Jamaican context. Meanwhile, a small amount of research among Jamaicans living in the US has found that their sense of belonging to Jamaica has, if anything, been strengthened during their time abroad, (Gleaner, 7 June 2006). This reinforcement of identity through "negation" is, in fact, consistent with other research (see Rapley 2004).

To test the commitment hypothesis, CaPRI opted to run a content analysis of legislation in Jamaica to determine how frequently conflicts of loyalty might arise for legislators who are dual citizens. On the assumption that passing legislation is not only the most important role a legislator performs, but also that in which conflicts of loyalty were most likely to arise – the all-important localised task of constituency work

[1] The majority of Jamaicans migrate to the USA, Canada and the United Kingdom, all English-speaking countries.

would pose few evident conflicts of loyalty for most legislators – we used this as a proxy for the risks posed by having dual citizens in the legislature.

We took the commitment hypothesis as a given, and assumed that in any situation in which a legislator faced a conflict of loyalty, he would act in a manner that was not optimal for Jamaica (a strong assumption to begin with). Using a detailed methodology (see Appendix), we combed through ten years of legislation (1998-2008), and found that such potential conflicts of loyalty arose less than 1% of the time. Most acts are actually fairly mundane, with titles like "The Building Societies Act" and the "Agricultural Produce Act." It may be that there are other aspects of a legislator's job which pose far more conflicts of loyalty; but on the basis of their legislative behaviour, the vast majority of a legislator's work involves activities which solely concern Jamaica.

The capacity hypothesis – that there are gains in productivity to be had from widening the pool of eligible legislators -- finds some support in economic theory. Trade theory indicates that open economies are more likely to operate at optimal efficiency, leading to aggregate welfare gains. It is not unreasonable to suppose that the same effect could operate within the political system, principally through the effect of widening the pool of suppliers (in this case, of political services), thereby augmenting competition. There is also research which shows that for some economies, allowing for free emigration and return migration produces human-capital increases which redound to the economy's advantage.[ii]

Jamaica presents a telling case. Recent scholarship estimates that among immigrants to OECD countries who come from Latin America and the Caribbean, over a quarter (27.6%) have tertiary education. This is more than two times the share of the population back home with tertiary degrees (11.8%). The ratio is likely to be higher for Jamaica, since the country is known to have one of the world's highest rates of emigration by university graduates (Docquier and Marfouk 2004). It is probably safe to assume that a high proportion of these migrants will take citizenship in the countries to which they migrate. With that being the case, it seems evident that by closing off this pool of human capital from the legislative process, Jamaica is making a trade-off. Return migration can bring many skills and assets back into the Caribbean (Connell and Conway 2000).

Given that the literature on immigration in developed economies is fairly clear that it raises productivity and growth (see, for instance, Borjas 1995, Neal and Uselding 1992, United Nations 2006), it follows that liberal immigration policies will benefit Caribbean islands. And within the Caribbean, for the time being, the vast majority of immigrants are likely to be returning nationals, many of them coming back with new passports.

Quantifying the extent of this trade-off cannot easily be done in the way it was for the incidence of potential conflicts of loyalty. It does seem likely that the trade-offs are not insignificant, though. Given what we know about the impact of education upon efficiency, with some studies estimating that each added year of schooling raises a household's output by as much as 2% (see, for example, Lau, Jamison and Louat 1991), it is possible that were Jamaica's diaspora fully integrated into its economy, average annual output might rise by three or four percent[iii] – a substantial gain over time. Of course this is purely hypothetical, as one cannot envision a scenario in which

all the highly-educated diaspora would return to Jamaica. Moreover, there is no obvious way of measuring productivity gains in the political system. The analogy is therefore useful merely in making the point that losing the most skilled Jamaicans to migration has had well-understood and not inconsiderable productivity losses for the economy. It is reasonable to conclude that excluding them from the political process upon return is likely to result in a negative trade-off there as well.

Setting the commitment and capacity arguments against one another, there is no clear advantage to either hypothesis. Trade-offs appear inevitable. The existing law may provide for a higher degree of aggregate commitment, but a lower degree of aggregate capacity. Whether the country should prioritise capacity or commitment would thus depend on what it considered its likely needs: greater capacity, or uncontested loyalty. To shed some insight on how this dilemma might be resolved, it is helpful to consider what the experience of other countries grappling with the issue has been.

## LESSONS FROM ABROAD

The first thing that can be said about the insights of comparative research is that the global trend appears to be towards more rather than less openness when it comes to matters of citizenship. In contrast to an earlier tendency to see dual citizenship as an evil, in the latter half of the twentieth century, dual citizenship appears to be on the rise globally, with more and more countries tolerating it (Martin and Hailbronner 2003: 3, 18). In some cases, this increased tolerance comes about as a result of legal change; whereas in others, it results from benign neglect, as has been the case in Poland (Faist 2007: 184). Within Jamaica itself, dual citizenship appears to have been increasingly embraced as governments have begun to aggressively court the large and growing diaspora, an ever more important source of income to the country (Jones 2007). Indeed, spokesmen of the previous government went so far as to encourage Jamaicans living abroad to acquire foreign citizenship in order to obtain better access to the resources on offer in their countries of residence, with an eye to ultimately enriching Jamaica (JIS 2005).

In recent years, countries as disparate as the Netherlands (1992), Ghana (2002) and Mexico (1998) have altered their laws on citizenship and nationality to take account of the growth of migration in a global age. Mexico only allows for dual nationality (allowing a more limited set of political rights than dual citizenship), though, not citizenship, and is debating whether dual nationals should have the right to vote (see Rico 2005). Meanwhile, Kenya is currently mooting changes to its laws to allow for dual citizenship. India is resisting allowing its citizens to obtain citizenship elsewhere, but has amended its laws to allow for "overseas citizens" -- persons of Indian origin living in specified countries, including Canada, United Kingdom, Israel, the United States of America and Italy, who are given privileged access to certain public goods: no requirements for separate documentation for admission to colleges or institutions or for taking employment, parity with respect to facilities available in the economic, financial and educational fields and access to facilities under the various housing schemes of the Life Insurance Corporation, state governments and other governmental agencies (Mehta and Chothani 2004).

Armenia just this year liberalised its citizenship laws precisely to make more space for its Diaspora – greater in numbers than those in Armenia itself – in its politics; it was expected that their exposure to different ways of governance might lead to an improvement in the politics of their homeland (Melkonian 2005); dual citizenship is especially sensitive to the Armenians since a previous president was alleged to have banned it expressly to keep a rival – who had foreign citizenship – out of office: (see http://www.armeniapedia.org/index). Today, at least 89 countries permit dual citizenship.

It is important to note that most of the countries above are no more liberal than Jamaica already is when it comes to permitting for dual citizenship of their peoples. In spite of its opening, Ghana, for instance, still bars dual citizens from holding certain high offices. The point is merely that there appears to be a global trend towards increasing openness in the citizenship laws of many of the world's countries, in apparent recognition of the realities of the latest wave of globalisation. Especially noteworthy in this regard is that several countries with large and increasingly economically-important diasporas made legal changes in order to accommodate those of its citizens who had acquired citizenship abroad, but who could still be counted on to contribute to the development of their own countries. In this respect the question for Jamaica to ponder might not be, is the country open by international standards – it appears to be so – but rather, should it join the trend towards further liberalisation? In addition, the trend towards increasing openness does not always extend to political representative rights.

Despite the trend towards openness, many countries still adhere to restrictive laws of citizenship. Japan, Germany, Singapore all bar dual citizenship, as do Afghanistan, Algeria, Andorra, Angola, Belarus, Austria, Finland, Iceland, Indonesia, Pakistan, Belgium, Iran, Papua New Guinea, Brunei, Peru, Burma, Latvia, Lithuania, Malaysia, Mauritius, the Philippines, Chile, China, Poland, Korea, Denmark, Ecuador, Fiji, The Solomon Islands, Thailand, Venezuela, Vietnam, Nepal, Norway, Romania and Zimbabwe. Saudi Arabia has gone so far as to criminalise it (citizens caught with foreign passports, for example, can face criminal prosecution) (Renshon 2000, Millbank 2000: 6). Other Gulf States maintain virtually ethnic rules of citizenship, requiring a family to be resident for several generations before citizenship can be obtained. Nevertheless, as should be clear from the list above, there is no rule as to what types of political system – small versus large, democratic versus authoritarian, rich versus poor – maintain restrictive citizenship laws. Nor, on the face of it, is there a clear connection between openness to dual citizens and economic growth: Several of the countries listed above, with restrictive attitudes towards dual citizenship, are prosperous and dynamic, while some of the more open ones are not star economic performers.

A country is most open when it not only allows dual citizenship, but also full rights of citizenship, including holding high office. While the United States is known for its famous requirement that to be president, one must be born a natural-born citizen, the exact meaning of natural-born is unclear. What is clearer is that senators and representatives must be citizens. However, as in the well-known case of the current governor of California, it is possible for holders of dual citizenship to aspire to most high offices. Indeed, it is not unusual for holders of even cabinet-level offices in the US

to speak with foreign accents, testifying to a relative tolerance on the part of the US political system. Much the same can be said for Canada. Its governor-general, although no longer a citizen of her land of birth, comes from Haiti and is married to a Frenchman. More than one Canadian prime minister has held British citizenship. Equally, Britain allows for foreign citizens to participate fully in the country's politics, and several Caribbean nationals, for instance, have held and continue to hold seats in the House of Lords.

Australia, on the other hand, adheres to its relatively closed traditions, barring dual citizens from sitting in the federal parliament (but not, curiously, in state parliaments). There is a bit of history from Australia which Jamaicans, in light of the current debate, will find interesting. In 1998, a National Party candidate who turned out to hold British citizenship was elected to the Senate. The losing candidate sued. Although the winning candidate had subsequently renounced her British citizenship, the Australian High Court ruled that since she had been a dual citizen on nomination day, she could not occupy the seat. However, rather than seat the opposition candidate, the court ruled that voters' preferences had to be taken into account in the allocation of the seat. Australia's electoral system allowed the seat to thereby be transferred to the next-listed candidate of the National Party. Resonant with the current Jamaican controversy, the Australian case also resulted in may people criticising the law for disfranchising electors.

What emerges from the above discussion is that, on the face of it, there are no obvious correlates with openness on dual citizenship. Countries which are both rich and poor, small and large, democratic or authoritarian; countries which have large diasporas and countries which do not; countries which are ethnically homogeneous and countries which are not; all make widely varying allowances for both the duality and the political representation of their citizens. There are no obvious lessons for Jamaica.

That, however, may be itself a lesson. If there is no compelling case to be found in the comparative literature for either the commitment or capacity hypotheses, determining whether or not the law should be retained or revoked depends, first, upon principles of jurisprudence. The liberal argues that a law needs to be justified in order to be put in place, and that when no such justification can be found, it should be withdrawn; the conservative argues, on the contrary, that before a law is revoked, a case needs to be made that the alternative will provide society with a net improvement.

A liberal approach would therefore probably conclude that unless a peculiarity of the Jamaican context were shown to be so compelling as to render all the comparative data irrelevant, there is little basis for the law; it should therefore be rescinded. A conservative approach would maintain that precisely because there is no obvious insight from the comparative literature, there is no reason yet to suppose that the law is doing harm; and that therefore, it should be retained.

# CONCLUSION

There are clear costs attached to the law barring political representation by dual citizens. Although a precise quantification is difficult, it would appear that the losses in productivity in the political system are not insignificant, and that these would quite likely show up in the quality of political representation given to Jamaicans. The gains of the existing arrangement are likely marginal, although a stronger case may possibly be made for barring dual citizens from holding cabinet appointments. To establish definitively the benefits of barring dual citizens from holding cabinet positions would require a more detailed research exercise, though. However, on the face of it, all but the most conservative principle for burden-of-proof would probably judge that the case for the law barring political representation lacks strong empirical support.

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# APPENDIX:

## CONTENT ANALYSIS

## INCIDENCE OF POTENTIAL CONFLICT OF LOYALTY FOR LEGISLATORS

## METHOD AND RESULTS

### PROBLEM

The "commitment hypothesis" maintains that a legislator who has professed loyalty to a foreign power will encounter instances in his or her public life in which his/her loyalty is contested. As he or she negotiates his public decisions, conflicts of loyalty may, when tested, lead to outcomes that are sub-optimal for either country.

### DEFINITION

The law on political representation by dual citizens does not outlaw representation by dual citizens as such, merely representation by citizens who have professed loyalty to a foreign country. However, in the legal judgment rendered, travelling on a foreign passport was taken to be a profession of allegiance to a foreign power. Since almost any foreign citizen can be expected to avail himself/herself of the right to travel on a foreign passport, we will assume that the distinction is – for the purposes of this paper – moot. All dual citizens will be regarded as having in some way professed allegiance to a foreign power.

### HYPOTHESIS

We will take as given the commitment hypothesis. Therefore, we will assume that a legislator will, when faced with legislation that involves divided loyalty, render a sub-optimal outcome. The question then becomes how often such a potential conflict of loyalty can arise.

## METHOD

There are three approaches that can be compared to one another in order to estimate the proportion of legislation a member of parliament will consider in which his or her loyalty to Jamaica might be contested. Two of these are quantitative, one is qualitative.

- Qualitative study of three acts of legislation, two of which – the Extradition Act and The Terrorism Prevention Act – obviously involved foreign interests, and one of which – the National Water Commission Act – held no such obvious interest, found that the greater the number of potential conflicts of loyalty in a piece of legislation, the more likely it was that the legislation made reference to foreign countries or governments.
- Therefore, the entire corpus of legislation for one year, selected at random (the year chosen was 2005) was scanned to identify the number of times reference is made to foreign countries. Working backwards, we then looked at the passages in question to determine what share of the content of legislation involved a potential conflict of loyalty (going clause by clause: in determining a percentage share, the total number of clauses was used as the denominator, and the clauses with potential conflicts of loyalty was used as the numerator).
- Analysts' notes were then compared to determine if findings were sufficiently similar to validate the method employed. Having found that results were close to identical, with brief discussion resolving initial differences, the method was found to be robust. Accordingly, having identified that the most likely indicator of a potential conflict of loyalty was mention of foreign governments or powers in an act of legislation, the survey period was widened to ten years (1997-2006), so as to ascertain if the initial survey year was a statistical outlier. Once acts of legislation were "red-flagged" using a word-search, the clauses so-identified were studied qualitatively to determine where actual conflicts of loyalty were found. It was thereby ascertained that the results for the ten-year period were of a similar order for the initial survey year of 2005. The methodology was thus judged to be robust.
- Most Jamaicans who are dual citizens will be citizens of either the US, Britain, or Canada; therefore, these countries will be used for test purposes. However, the number of mentions of these countries in the corpus of legislation was not treated in the aggregate, but individually – it was presumed that while a Jamaican who, say, had US citizenship, might act in defence of US interests when these arose, he or she would not have a particular loyalty to any other country simply by virtue of being a dual citizen.
- In determining whether a potential conflict of loyalty existed, the following rule was applied: a potential for gain had to exist for a foreign country, and the trade-off between this country's gain and Jamaica had to be a zero-sum game.
- Two surveyors were employed for the qualitative analysis. To guard against biases, they were selected after having identified their own biases, with one chosen who favoured the repeal of the law, and one chosen who opposed it.

They worked separately, and only compared notes after their surveying was done.

## RATIONALE

This method used an objective standard of interest: specifically, in what cases does a country other than Jamaica stand to gain direct material benefit from a particular act of legislation. We envisioned scenarios in which direct gain might not accrue to a country, but an act of legislation might still represent a worldview that is common in the country in question; this would amount to an ideological gain rather than a material one. However, determining what constitutes an ideological gain is a highly subjective exercise: just because a particular act of legislation is favoured by a foreign government does not in and of itself mean that the legislation will go against the interests of the Jamaican government. In any event, it seemed reasonable to suppose that ideological gains would, if they occurred with any frequency, show up in material gains, and thus be objectively measurable (it seemed difficult to envision a scenario in which a foreign government consistently gained on the ideological front, with no evidence in legislation). As for the choice of legislation, it was evident that legislation is just one form of action taken by the political system. Much of policy-making occurs through individual decisions, some of which might not even be officially recorded but show up in behaviours and orientations. Legislation is but one facet of politics. Nonetheless, it is arguable that legislation is, for most legislators, the single most important political function they perform. More importantly, it once again seemed reasonable to suppose that legislation would, in the aggregate and over time, be consistent with policy and the government's orientation more broadly. It seemed equally hard to envision a scenario in which a country's government was, over the long term, consistently biasing in the direction of an interest which ran contrary to that evinced by the legislature. Such tensions can exist in the short term, but they give rise to public conflicts which are eventually resolved by one side or the other prevailing. In the absence of such evident tension, one can assume that legislation will be more or less consistent with the government's broad orientation, especially in a majoritarian Westminster model like our own, in which the government controls the legislative agenda.

## FINDINGS

In the initial survey year (2005), the act with the highest incidence of potential conflicts of loyalty was the Extradition Act; the team adjudged that roughly 15% of the

legislation, by clause, posed potential conflicts of loyalty for any legislator. The Terrorism Act was the only other act of legislation in that year which presented potential conflicts of loyalty. Overall, therefore, we found that in 2005, in the total act of legislating, potential conflicts of loyalty arose for dual citizens 0.3% of the time.

When we then applied the methodology over the ten-year period, the results were consistent with this finding. We thereby concluded that 2005 was not a statistical outlier, but was in fact a representative year.

In the course of the team's discussion of qualitative research, however, we made a serendipitous finding. We came across incidents where legislation afforded powers to government ministers which, were they dual citizens, might well pose conflicts of loyalty at the implementation stage (even though the act of passing such legislation posed no such conflict). For instance, a minister might be given the power to act in a way that he or she could use to favour another country's interests; but nothing in the legislation itself enabled the legislator to influence this behaviour, or even to prevent the minister in question acting against rather than for another country's interests. This is probably not surprising. The Westminster system, with majoritarian governments, tends to concentrate power; this effect is amplified in small societies, in which the total proportion of policy decisions in which a minister is involved will rise.

Therefore, while we found that legislators who were dual citizens would confront conflicts of loyalty less than 1% of the time, we judged that for cabinet ministers who were dual citizens, such conflicts would be more frequent. But we also determined that it would be impossible to estimate a figure for this incidence, since so many policy decisions take place beyond the public view. However, the statement that there is a risk of greater potential conflicts of loyalty for ministers has to be tempered by the fact in many of the incidents which arose, the research team judged that for the interests of a foreign country to be privileged over those of Jamaica, the abuse by the minister in question would have to rise to the level of treason. Historically, and across countries, treason is rare (there have been no incidents in Jamaica's independent history). So while the likelihood of potential conflicts of loyalty is higher for ministers than it is for legislators, it is not likely to be higher by several orders of magnitude.

[i] See also Section 2 of the Foreign Governments (Landholding) Act, and the Foreign Nationals and Commonwealth Citizens (Employment) Act. We are grateful for the advice of Monica Ladd and Kent Gammon on this point.

[ii] Elizabeth Thomas-Hope, "Return Migration to Jamaica and Its Development Potential," International Migration 37, 1.

[iii] This is because the rise in the share of the population with tertiary degrees would raise the average per capita educational attainment by a year or two.