



Law after empire: Channels and carriers of legal knowledge in the post-colonial

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Abstract

This paper examines how legal knowledge circulates in post-colonial contexts, arguing that the authority of law after empire is produced through the movement of people, institutions, and epistemic practices along old and new imperial routes. Drawing on comparative research on three regional courts, the Caribbean Court of Justice, the now-defunct Central American Court of Justice, and the East African Court of Justice, it reframes post-colonial legality not as a story of transplantation or dependency, but as a process of circulation and translation. Building on Bourdieu's field theory, read through its own colonial origins, it defines the post-colonial legal field structurally rather than chronologically, as a field whose hierarchy of legitimacy still points to an external centre, and proposes an analytical triad, channels, carriers, and mobility, to explain how legal forms acquire legitimacy as they travel. Regional courts are the privileged site of analysis because they are where these channels converge and where translation becomes both visible and authoritative. Across the three regions, law's imperial afterlife is not a tale of rupture but of selective re-appropriation: imperial legal forms endure, but their meanings are continually re-negotiated by the actors who carry them.

Key words

Law in the post-colonial, sociology of law.

Resumen

Este artículo analiza cómo circula el conocimiento jurídico en contextos poscoloniales, y sostiene que la autoridad del derecho tras el imperio se genera a través del movimiento de personas, instituciones y prácticas epistémicas a lo largo de antiguas y nuevas rutas imperiales. Basándose en una investigación comparativa sobre tres tribunales regionales —el Tribunal de Justicia del Caribe, el ya desaparecido Tribunal de Justicia de Centroamérica y el Tribunal de Justicia de África Oriental—, replantea la

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legalidad poscolonial no como una historia de trasplante o dependencia, sino como un proceso de circulación y traducción. Partiendo de la teoría del campo de Bourdieu, interpretada a la luz de sus propios orígenes coloniales, define el campo jurídico poscolonial de manera estructural y no cronológica, como un campo cuya jerarquía de legitimidad sigue apuntando hacia un centro externo, y propone una tríada analítica — canales, vectores y movilidad— para explicar cómo las formas jurídicas adquieren legitimidad a medida que se desplazan. Los tribunales regionales constituyen el ámbito privilegiado de análisis, ya que es en ellos donde convergen estos canales y donde la traducción se hace visible y adquiere autoridad. En las tres regiones, la vida posterior del derecho imperial no es una historia de ruptura, sino de reapropiación selectiva: las formas jurídicas imperiales perduran, pero sus significados son renegociados continuamente por los actores que las transmiten.

Palabras clave

El derecho en la era poscolonial, sociología del derecho.

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1. Law's post-colonial circuits

Boarding the old banana-boats that sailed between Kingston, Port of Spain, Bridgetown, and the other smaller islands of the Caribbean archipelago, they carried their casebooks in weather-stained briefcases and their wigs and gowns in small wooden trunks. The “banana-boat lawyers” was the first generation of Caribbean lawyers. In absence of a local faculty of law, they had previously crossed the Atlantic to study law at the Universities of the Imperial metropolis and were trained in the manners of the English Bar. Once back to the Caribbean, they practiced throughout the region, emerging as the first truly transnational legal elites of the post-colonial era (Caserta and Madsen 2016). They argued court cases from Saint Lucia to Belize, represented clients before the old, but still operational today, Judicial Committee of the Privy Council (JCPC or Privy Council) in London,² drafted constitutional opinions, and advised governments that had started shedding colonial rule from the 1960s and 1970s (Williams 1984). Yet, as they ferried between islands, they also transported the epistemic authority of English common law.

The mobility, social background, and role of these lawyers summarize the paradox of post-colonial legality in the Caribbean and beyond: while colonial territories claimed and eventually achieved political sovereignty, law itself continued to travel along old imperial routes (Dezalay and Garth 2002), immediately after decolonization and still today. In other words, the banana-boat lawyers, like other elite lawyers in post-colonial societies, were the human vectors of colonial and post-colonial legal epistemology (Caserta and Madsen 2016). Their authority was social as much as intellectual: English credentials and connections to the Privy Council and London's chambers symbolised modernity, independence, and competence (*Ibid.*, 95-97). At the same time, their itinerant practice produced a shared professional identity and an embryonic sense of regional legal space, which today is epitomised by the Caribbean Community (CARICOM) and its regional court, the Caribbean Court of Justice (CCJ).

The trajectory of the banana-boat lawyers encapsulates the central concern of this paper: how does legal knowledge travel in post-colonial contexts, and through which avenues, actors, and institutions does law acquire authority when practiced in the shadow of the empire? It is my argument that, despite formal decolonization, legal knowledge in post-colonial societies continues to circulate through networks, institutions, and symbolic hierarchies that were originally imperial (Benton 2002). Yet these channels are not mere conduits of domination. They become sites of creative adaptation, contestation, and re-articulation of norms and practices to local contexts (Wiener 2014). Understanding this requires a sociology of law attentive to the circulation of ideas, expertise, and legitimacy between the metropole and its former colonies, and to how such circulation reproduces and sometimes reconfigures global hierarchies. To this purpose, the article provides a field-based account that follows the people, institutions, and artifacts through which law acquires meaning and authority (Bourdieu 1987), and conceptualises post-colonial legal fields as spaces of circulation and translation structured by specific channels and carriers of knowledge. It studies these fields through three regional courts, the CCJ, the Central

² The Judicial Committee of the Privy Council (JCPC), based in London, was the highest appellate body for Britain's colonies and remains the final court of appeal for several Caribbean states, a vestige of the colonial legal order.

American Court of Justice (CACJ), which ceased to function in 2026 after its member states denounced its Statute,³ and the East African Court of Justice (EACJ), for two reasons. First, regional courts are the nodes where the channels of legal circulation converge: they are staffed by the most mobile carriers of their fields, and their judgments are where the translation of foreign legal forms becomes both visible and authoritative. Second, regional courts are the very institutions that the dominant literature treats as transplants of European models (Alter 2013, Alter and Helfer 2017), and therefore the strategic site on which to test the alternative account of circulation defended here.

Methodologically, the article partly relies on secondary literature and partly on field work conducted in the regions in the context of a set of broader studies on the institutionalization and gaining of authority of regional international courts.⁴ Through interviews with litigants, NGOs, judges and others, we have learned about the strategizing behind litigation, local and international connections between different actors, and how ideas have been transported from one region to another and back, often through the intermediary of international NGOs.

The article is structured as follows. Section 2 sets out the theoretical framework: it narrows the critique of transplantation to the literature on regional courts, defines law, empire, the post-colonial, and mobility, explains why Bourdieu's field theory can be deployed in a post-colonial analysis, introduces the triad of channels, carriers, and mobility, and justifies the selection of the three cases. Section 3 presents the empirical findings, mapping for each region the channels of legal knowledge, the actors who navigate them, and the strategies through which they translate global authority into local legitimacy in the jurisprudence of the regional court. Section 4 concludes.

2. Re-thinking the law in the post-colonial: Channels, carriers, and mobility in the battle for the legitimacy of law

The law in post-colonial societies has often been narrated through the metaphor of transplantation. In this view, legal rules, institutions, and doctrines originate in the "metropole" and are then imported into the "periphery" (Watson 1993, Alter and Helfer 2017), first through formal empires (Benton 2002), later through informal, mostly economic, empires in the form of legal reforms, trade connections, and development assistance (Rosenberg 1999). The metaphor has limited potential to explain the empirical reality of law in the post-colonial, because it implies a one-way, top-down, and technocratic process that neglects the actors, interests, and power relations shaping how law travels in practice. It treats law as a discrete and transferable object, detachable from the social relations and professional structures that sustain it (Zumbansen 2019).

³ Nicaragua denounced the Statute of the CACJ on 18 March 2025, Honduras on 29 April 2026, and El Salvador on 20 May 2026. The Honduran Ministry of Foreign Affairs announced on 30 April 2026 that the Court had ceased its functions and lost its international legal personality. Guatemala, whose 2007 ratification had never taken effect, formalised its withdrawal on 21 August 2026 (Acuerdo Gubernativo 115-2026), invoking Article 61 of the Vienna Convention on the Law of Treaties. For a first assessment, see Matamoros Pineda (2026).

⁴ A total of 85 interviews were conducted between 2013 and 2022 in the three regions together with Professor Mikael Rask Madsen and Dr. Mihreteab Tsighe Taye, with follow-up interviews over Zoom and Skype. Interviews lasted between one and three hours and were recorded and transcribed. Since interviewees were guaranteed anonymity, the interviews are not directly cited but used as background data.

This critique is not new, and I do not claim to have discovered it. Comparative lawyers have long questioned whether law can be transplanted at all, or whether what arrives is better described as an irritant (Legrand 1997, Teubner 1998, Twining 2005). Three decades of legal history have replaced the image of law exported from centre to periphery with that of law made through engagement, negotiation, and improvisation across imperial space (Tomlins 2001, Benton 2002, Dorsett and McLaren 2014), and work on the mobility of law has shown how colonial precedents circulated between colonies, not only from the metropole outwards, and were transformed at every stage of the journey (Hussin 2012, Mawani and Hussin 2014). The more specific claim of this article is that one influential body of scholarship has largely escaped this critique. Many accounts of international and comparative law still replicate the transplantation bias, setting up European and/or Western institutions as the benchmark against which non-Western institutions are assessed (Caserta 2021). The clearest example is the scholarship on regional economic and human rights courts, which measures the successes and failures of these institutions against the two European courts, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). The argument proceeds as follows: today there are at least eleven institutional copies of the Luxembourg Court and two adaptations of the Strasbourg Court in Africa, South America, and the Caribbean (Alter 2013); these courts share many institutional and legal features with their European models, which, however, they have failed to operationalise in a satisfactory manner (See, among many, Alter and Helfer 2017).

The weaknesses of this approach have been repeatedly discussed by post-colonial and critical legal studies, which have illustrated the enduring legacies of empire while attending to how local actors engaged critically with such epistemic dependency (Darian-Smith and Fitzpatrick 1999, Santos 2002). Benton showed that imperial legal orders were not unified systems exporting coherent norms, but jurisdictional mosaics linked by circulation, negotiation, and improvisation (Benton 2002); Pitts traced how imperial thinkers produced a global legal vocabulary that simultaneously universalised and hierarchised law (Pitts 2018); critical law and development scholars exposed how transplanting Western models produced symbolic reform without social traction (Trubek and Galanter 1974). All reject diffusionist narratives, showing instead how law in colonial and post-colonial societies is the product of multiple interactions between centres and peripheries, mediated by local brokers and translators (Dezalay 2004). Yet these perspectives still tend to treat movement as a derivative process, something that happens after law has been produced elsewhere. In this article, I treat the movement of laws and actors itself as constitutive of legality in the post-colonial. Mobility and circulation do not begin once norms are created; they are the social condition through which norms, expertise, and authority acquire their very form. The implication is that what travels is not law as such, but a set of professional and institutional practices through which actors attempt to reproduce the legitimacy of law elsewhere.

2.1. Law, empire, the post-colonial, and mobility: Four working definitions

That formula is compressed to the point of being cryptic, and unpacking it requires being explicit about four terms that the literature on law and colonialism has rightly problematised (Fitzpatrick 1992, Darian-Smith and Fitzpatrick 1999): law, empire, the post-colonial, and mobility.

By law, I do not mean a body of rules that could be lifted out of one system and set down in another. Following Bourdieu, I take law to be what a juridical field produces as authoritative: a bundle of institutions, credentials, procedural forms, modes of argument, and professional dispositions, the *habitus*, that together allow certain utterances to count as law and certain persons to speak in its name (Bourdieu 1987, Madsen and Caserta 2025). On this view, the content of a rule is the least mobile part of law. As this paper shows, the Privy Council's death penalty jurisprudence changed its meaning between London and Bridgetown, and the CJEU's doctrine of direct effect means something different in Managua than in Luxembourg. What does travel, and travels well, are forms and capitals: law degrees, wigs and gowns, citation practices, the deference owed to a superior court, the idea that jurists are the custodians of order. Circulation moves the social conditions of legal authority; the content of the rules is remade at every stop.

By empire I mean, with Benton (2002) and Pitts (2018), a political formation that organises legal authority hierarchically across space, so that the legitimacy of law in some places depends on its proximity to a centre located elsewhere. The definition covers formal empires, in which the centre governs directly, and informal ones, in which the hierarchy is sustained through tutelage, finance, education, and the export of legal models (Rosenberg 1999). The post-colonial, in turn, is not used here as a chronological marker but as a structural condition: that of a legal field in which the hierarchy of legitimacy continues to point to an external centre after formal political subordination has ended. This follows Fitzpatrick's argument that modern law constitutes itself through the colonial encounter and remains marked by it (Fitzpatrick 1992, Darian-Smith and Fitzpatrick 1999), and Anghie's demonstration that the categories of international law, sovereignty first among them, were forged in that encounter (Anghie 2005). The structural definition has a consequence for case selection, addressed in Section 2.4: the post-colonial condition so defined can outlast formal independence by decades or, as in Central America, by two centuries, and it can be re-layered by successive informal empires. Whether it does so is an empirical question that a chronological notion of the post-colonial cannot even pose.

Finally, mobility. Recent scholarship has shown that law is not merely something that moves but something made through movement: Hussin (2012) traces how colonial precedents circulated between India, Malaya, and Egypt and were transformed on the way; Mawani and Hussin (2014) speak of law's "itineraries" to insist that the route, and not only origin and destination, shapes what law becomes. This article shares that premise but narrows the object. Mobility here is the concrete movement of legal actors: the physical, educational, and professional movement of judges, lawyers, and academics across jurisdictions and institutions. This reflects the sociological wager of the article, that the circulation of law is best studied by following the people who carry it, and it allows mobility to be operationalised through biographies, career paths, and credentials rather than merely asserted.

The aim, then, is to show how the circuits of legal knowledge that today connect the Caribbean, Central America and East Africa are the historical afterlives — yet not mere passive loci — of imperial pathways of law. Circulation and translation, however, are never neutral. They are shaped by the distribution of capital and by the strategic interests

of carriers: judges may invoke international precedents to strengthen their independence; lawyers may deploy metropolitan credentials to attract clients; academics may align research agendas with global epistemic trends. These practices sustain what Dezalay and Garth describe as a “market for legal ideas”, where actors trade in the currency of legitimacy (Dezalay and Garth 2010). Post-colonial legal fields are thus not mere receptive peripheries, but markets of translation within the global economy of law.⁵ The expression is meant fairly literally. Foreign forms of recognition, a London degree, a Harvard LL.M., an appointment to an international tribunal, are exchanged for local authority, and the rate of exchange varies: where domestic legal education is weak, a metropolitan credential commands a premium; where local expertise has consolidated, the same credential may mark its holder as an outsider. The exchange rate is an index of the field’s autonomy, and mapping it is one way of measuring how post-colonial, in the structural sense, a legal field still is.

2.2. Bourdieu after empire

The article builds on Bourdieu’s notion of the “legal field” as a structured space of positions and struggles over capital, and treats law as a form of capital situated within existing relations of power (Bourdieu 1987). Deploying Bourdieu in a post-colonial analysis requires a word of justification, since his sociology is often read as a sociology of the French state. The choice is less incongruous than it may appear, for both genealogical and analytical reasons. Genealogically, field theory was not conceived in Paris and then applied to the colonies: its central concepts, habitus, the mismatch between dispositions and positions, symbolic domination, were forged in Bourdieu’s early ethnographic work in colonial Algeria, in a society being violently reorganised by a metropolitan power (Bourdieu 1958, Bourdieu and Sayad 1964). As Go has argued, this makes Bourdieu’s sociology one of the few classical frameworks that already contains a theory of the colonial situation (Go 2013). Analytically, the concept of symbolic violence, the recognition by the dominated of the legitimacy of the very hierarchy that dominates them, is what a post-colonial critique of law needs in order to explain why metropolitan law continues to be recognised as law, and as better law, by those who were never asked to consent to it. In post-colonial contexts, the autonomy of legal fields is constrained not merely by the state, but by their position in a global hierarchy of knowledge. The prestige of foreign jurisprudence, reliance on external funding for judicial reform, and imported models of legal education all reinforce the perception that legitimate legal ideas originate elsewhere. Yet actors within the field are not passive recipients: they appropriate and reconfigure these ideas to put forward local claims of authority, in the manner of what Dezalay and Garth called the “transnational broker”, the lawyer or academic who translates foreign expertise into domestic authority (Dezalay and Garth 1996, 2010). Used in this way, field theory is not a metropolitan lens imposed on post-colonial material, but a tool for denaturalising the hierarchy of legal legitimacy that the transplant literature takes for granted.

⁵ The argument diverges from recent transnational legal orders approaches, which emphasise how coherent rule-systems consolidate through institutional alignment across national boundaries (see Halliday and Shaffer 2015).

2.3. Channels, carriers, and mobility

To empirically contextualise the analysis, the paper develops three interrelated concepts: channels, carriers, and mobility. Channels are the institutional infrastructures that enable legal knowledge to move across boundaries: universities, judicial academies, donor programs, and professional associations, including colonial legacies such as the Inns of Court and the Privy Council as well as contemporary law-school partnerships and judicial training institutes. Each channel embeds specific hierarchies that condition whose knowledge travels. The University of the West Indies (UWI), for example, operates a regionally coordinated curriculum, yet its law programs are explicitly modelled on the English common law tradition, tied into the Commonwealth-style Legal Education Certificate system, and assessed by external examiners from the United Kingdom, Canada, and other Commonwealth jurisdictions.⁶ Similarly, judicial education in East Africa remains closely tied to Commonwealth networks such as the Commonwealth Judicial Education Institute and to donor-supported programs.⁷

Carriers are the actors who navigate and populate the channels: the judges, professors, lawyers, and bureaucrats who convert their mobility across contexts and jurisdictions into professional authority, translators who render global legal vocabularies intelligible in local settings (Dezalay 2004). In Central America, the quintessential carrier has been the legal technocrat, a figure that emerged in the post-Cold War era but is rooted in old Spanish ideas of law as a technical tool of order and stability (Caserta and Madsen 2022). Carriers in East Africa and the Caribbean, by contrast, have drawn their authority not from the managerial language of development, but from the continuity of judicial professionalism inherited from the Commonwealth legal tradition (Taye 2018, Caserta 2020).

Within these channels and by means of these professional trajectories and links, carriers move. This mobility functions as a form of convertible resource within and across fields: its value lies in the ability to translate recognition from one space into another, at the variable rate of exchange described above. Mapping the carriers' mobility within these channels, thus, reveals the layered structure of post-colonial legality (Bourdieu 1986, Dezalay and Garth 1996).

Together, these concepts shift the analytical lens from what types of norms move to who moves them, through which structures, and with what effects. Unlike transplantation, which assumes an origin and a destination, or translation, which presumes two pre-existing languages, circulation presupposes a field of ongoing exchange where meanings and hierarchies are continually renegotiated. The concepts also enable comparison across different regions: Caribbean, Central American, and African legal fields differ in

⁶ See UWI St. Augustine, *Undergraduate Law Programme* ("based on the English common law model" <https://sta.uwi.edu/law/undergraduate-programme/>; UWI Faculty of Law (Mona), *Undergraduate Programmes* (shared common curriculum) <https://www.mona.uwi.edu/law/pg-title/undergraduate-programmes>.

⁷ See Commonwealth Judicial Education Institute, <https://thecommonwealth.org/organisations/commonwealth-judicial-education-institute-cjei>; International Development Law Organization (IDLO) and East African Community (EAC), "Concept Note: East African Judicial Education Committee Joint Session" (2021). https://www.idlo.int/sites/default/files/pdfs/events/cjs-eajec_final_concept_note_joint_session_-_10_may_2021.pdf.

institutional density and historical trajectory, yet share a similar architecture of channels, carriers, and capitals.

2.4. Case selection: Two recently decolonised fields and one long-independent field

The three regions were selected to vary precisely on the dimension that a chronological understanding of the post-colonial would hold constant. The Commonwealth Caribbean and East Africa decolonised in the 1960s and 1970s and inherited from the same formal empire the same legal tradition, the same appellate hierarchy and, for a time, the same final court (Antoine 2008, Ibhawoh 2013, Caserta and Madsen 2016, Taye 2018). Central America has been formally independent since 1821, has passed through several state formations, was never part of the British Empire, and its regional court descends from a tribunal created in 1907 by sovereign states (Sanchez Sanchez 2009, Caserta 2020, Caserta and Madsen 2022). If the post-colonial were a matter of time elapsed since independence, Central America would not belong in this comparison. Its inclusion is deliberate: it tests the structural definition advanced above (Fitzpatrick 1992, Darian-Smith and Fitzpatrick 1999, Comaroff and Comaroff 2006), namely whether, and through which channels and carriers, a hierarchy of legal legitimacy oriented towards external centres can survive two centuries of sovereignty and be re-layered by successive informal empires, Spanish, US and, most recently, European (LaFeber 1963, Rosenberg 1999, Dezalay and Garth 2002, Becker Lorca 2014). The comparison is therefore not one between three equivalent cases but between two variants of a recently decolonised field and one long-independent field, and the differences between them are as much part of the findings as the similarities (Przeworski and Teune 1970). The Central American case has, moreover, become a complete lifecycle: the CACJ ceased to function in 2026, so that the article can observe not only how such a field produces a court, but what happens to that court when the governments that created it withdraw.

Two clarifications are needed. The argument does not require that every external centre towards which a field orients itself be an empire. Regional courts routinely look to one another (Alter 2013, Alter and Helfer 2017, Caserta 2017a), and the CACJ's reliance on the jurisprudence of the CJEU, discussed in Section 3.2, is not presented as an imperial dynamic but as a symptom of heteronomy, of a field that still seeks recognition from a script written elsewhere (Bourdieu 1987, Dezalay and Garth 2010, Caserta 2021), which is what distinguishes it from, say, the Inter-American Court's selective borrowing from Strasbourg (Neuman 2008). Nor are the channels through which law circulates all imperial in origin or content. Legal education in particular, as Section 3.3 shows for the University of Dar es Salaam, has carried into post-colonial fields streams of thought profoundly critical of the imperial inheritance (Shivji 1986a, Darian-Smith and Fitzpatrick 1999). The triad is built to account for this: a channel is defined by the movement it enables, not by the direction in which it points (Hussin 2012, Mawani and Hussin 2014), and the empirical question is always which carriers move through which channel towards which position in the field (Dezalay and Garth 1996, Dezalay 2004).

3. Comparative empirical findings

This section maps the channels through which law circulates, the carriers who navigate them, and the mobility that enables such movement across three regional legal systems. To make the triad do visible work, each case study follows the same order: it begins with the channels, principally legal education and professional recognition, through which legal forms enter and are reproduced in the field; it turns to the carriers whose trajectories run through those channels; and it closes with the regional court, where the two meet and where translation becomes authoritative in the form of judgments. Each region displays a distinctive configuration of post-colonial dependence and professional innovation, yet all reveal a shared architecture in which authority is produced through the movement of people, credentials, and ideas, rather than through autonomous local creation or top-down imposition (Bourdieu 1987, Halliday and Shaffer 2015).

3.1. From the privy council to the Caribbean Court of Justice: Caribbean shifting geographies of law in the shadow of the British Empire

In the Commonwealth Caribbean, law after empire has moved, and to some extent continues to move, along well-established routes, from London to Bridgetown, from Oxford to Kingston, from Cambridge to Port of Spain, but with new stops, detours, and translators along the way. The region did not simply inherit British legal institutions; it inherited pathways of legal circulation: modes of education, accreditation, and professional recognition that tie the legitimacy of law to its proximity to imperial sources. What changed is the institutional geography through which these pathways operate. Universities, bar associations, and regional courts have reconfigured imperial infrastructures into new networks of exchange, while lawyers, judges, and academics have exploited colonial credentials as legitimacy capital. The result is a legal field that remains deeply entangled with the English common-law world, yet increasingly capable of re-articulating itself in a Caribbean fashion (Antoine 2008).

Channels: Legal education and professional recognition

When independence was achieved throughout the 1960s and 1970s, the Caribbean region remained linked to its former colonial power in many ways (Antoine 2008). First, the region lacked a local faculty of law. For a long time, aspiring lawyers had to travel to the United Kingdom to study at the Universities of the former colonial power; the best connected made it to Oxford or Cambridge. Their journey was not merely a logistical necessity, but a symbolic rite of passage (Naipaul 2001). To “go to London” was to enter the profession’s epistemic centre, to acquire a *habitus* steeped in the style, speech, and rituals of English law (Caserta and Madsen 2016).⁸

This colonial route was later domesticated, but never fully severed. The UWI Faculty of Law, established in 1970, introduced a local channel of legal education that aspired to autonomy while maintaining international credibility by basing its curriculum largely on English common law (Caserta and Madsen 2016). The Council of Legal Education, founded in 1971, then standardised professional training through its three law schools, Hugh Wooding in Trinidad, Norman Manley in Jamaica, and Eugene Dupuch in the

⁸ On the concept of *habitus* in international settings: Madsen and Caserta 2025.

Bahamas, ensuring that local education conferred regional recognition while preserving metropolitan benchmarks.⁹

This system embodies what might be called regulated dependency. By harmonizing accreditation across jurisdictions, it enabled professional mobility within the Caribbean; by retaining British standards, it reaffirmed external authority (Theodore 2021). Degrees, syllabi, and even dress codes continue to encode traces of imperial epistemology, a form of what Bourdieu would call symbolic violence, reproduced through pedagogy rather than decree (Bourdieu 1979). This should not be read as if legal education in the region had stood still since 1970. The UWI faculty was from its inception also the seat of a self-consciously Caribbean legal scholarship, critical of the colonial inheritance, which built the intellectual case for a regional final court long before the CCJ existed (Pollard 2004, Antoine 2008). The point is rather that the critical and the reproductive functions coexisted within the same channel: the institution that taught students to question the Privy Council also trained them to English standards and dressed them in English robes. Which disposition prevailed in a given carrier depended less on the syllabus than on the position that carrier came to occupy in the field, a point to which I return in the East African case.

Carriers: Two generations of lawyers

Within these channels we encounter the carriers of legal knowledge: those who move across jurisdictions, institutions, and epistemic communities and, in so doing, establish the authority of the law while shaping it to local needs. In the Caribbean, the first generation of post-colonial carriers were the banana-boat lawyers introduced above. Educated in the former colonial power, they practiced across the region, fought for political independence, drafted constitutions, and represented governments and clients before the Privy Council. Their credentials and mobility condensed a paradox: the newly independent states sought legal sovereignty while drawing legal authority from elites trained in the United Kingdom (Dezalay and Garth 2002). The very act of appearing before the Privy Council on behalf of Caribbean clients both asserted and undermined post-colonial autonomy (Caserta and Madsen 2016).

The second generation of carriers were the younger lawyers trained locally at UWI after 1970. These transformed the inherited mobility into a regional professional identity. No longer defined solely by imperial credentials, they forged a network of regional associations, conferences, and courts; their habitus was hybrid, grounded in Caribbean experience yet oriented toward the norms of global professionalism (*Ibid.*). Both generations are what Dezalay and Garth call transnational brokers: actors who convert one form of capital into another, translating prestige acquired in one field (the Commonwealth, international arbitration) into authority in another (the regional judiciary) (Dezalay and Garth 1996). Their resources, British or Commonwealth degrees, fluency in legal English, professional links to London and, later, membership in

⁹ The Agreement Establishing the Council of Legal Education (1971) made the Legal Education Certificate the recognised professional qualification across participating territories (arts. 4–5), delivered through the Hugh Wooding, Norman Manley, and Eugene Dupuch law schools. The UWI LLB is expressly “based on the English common law model,” and external examiners review assessment. See <https://caricom.org/wp-content/uploads/Agreement-Establishing-The-Council-of-Legal-Education.pdf>.

CARICOM institutions and the CCJ, fuse imperial and regional currencies of legitimacy. They are both a residue of empire and the condition for regional self-assertion.

The Court: Speaking the Privy Council's language against the Privy Council

It is at the CCJ that these channels and actors can be seen at play most clearly. Inaugurated in 2005, the CCJ is the judicial apex of CARICOM and also the final appellate court for member states that have replaced the Privy Council (O'Brien and Foadi 2008). Its establishment marked a symbolic and material break with the imperial legal order (Pollard 2004). Yet its structure and jurisprudence reveal that the empire was never fully left behind; it was translated into a regional judicial form. Its early presidents and senior judges, Michael de la Bastide, Sir Dennis Byron, and Adrian Saunders, were themselves products of these transnational circuits: English-educated, Commonwealth-connected, and regionally active; de la Bastide and Byron were even sworn as Privy Council judges before joining the CCJ. Their careers exemplify how carriers embody the intersection of imperial and regional capital (Caserta 2020).

The Court's jurisprudence reveals a constant oscillation between deference to metropolitan authority and assertion of regional voice. In its original jurisdiction, interpreting the Revised Treaty of Chaguaramas as a regional economic court, the CCJ has often relied on a distinctly English-style, dualist approach to international and regional integration law, confirming its reliance on former colonial structures, yet inscribed in a community law setting (Caserta and Madsen 2016). In *Shanique Myrie v. Barbados* ([2013] CCJ 3 (OJ)), for instance, the CCJ invoked community law and fundamental rights to recognise the right of a Jamaican national to enter Barbados under the Treaty, while grounding its reasoning in common-law doctrines of legitimate expectation and dualism.

In its appellate jurisdiction, by contrast, the CCJ engages directly with the colonial inheritance of the common law. It cites the Privy Council and other Commonwealth authorities extensively, yet often re-contextualises them. In *Joseph and Boyce v. Barbados* (Appeal No. CV 2 of 2005, BB Civil Appeal No. 29 of 2004), the Court confronted the death penalty under the Barbadian Constitution, an issue over which litigation in the region dated back to the 1970s. The question was whether, when a death-row inmate had petitioned an international body (here, the Inter-American system), domestic authorities had to await the outcome before executing the sentence (*Boyce* para 49). The issue was bound up with a locally contested Privy Council precedent, *Pratt and Morgan v the Attorney General of Jamaica* ([1994] 2 AC 1), which had held that a delay of more than five years in carrying out a death sentence amounted to inhuman and degrading treatment, and was complicated by the fact that Barbados had ratified but not incorporated the American Convention on Human Rights, which supported the typically British dualist argument that the treaty had no domestic effect. While invoking Privy Council and common law precedents, the CCJ reframed the issue through a regional lens and ruled that unincorporated treaties give rise to "legitimate expectations" that the procedures they establish will be respected (*Boyce* para 116).

This landmark case was followed by others that refined the Court's approach to the death penalty and to laws discriminating against LGBTQI+ persons, both shielded from

judicial review by constitutional savings clauses that were relics of English colonialism.¹⁰ In *Nervais and Severin v. Queen* ([2018] CCJ 19 (AJ)), the CCJ held that the mandatory death penalty for murder in Barbados breached the right to life and to a fair trial and amounted to inhuman and degrading treatment, and concluded that savings clauses must be interpreted restrictively (*Nervais* paras 70, 71, and 77). In *McEwan and Others v. The Attorney General of Guyana* ([2018] CCJ 30 (AJ)), concerning cross-dressing in public under Guyana's colonial-era vagrancy laws, the Court held that savings clauses were out of step with the constitutional rights of citizens of independent countries and must be read as narrowly as possible. What matters for the argument is less the outcome of these cases than their technique. In each, the CCJ reasoned in the idiom of the common law, citing Privy Council and Commonwealth authority at length, and used that idiom to dismantle the very colonial relics that the Privy Council had for decades declined to touch. The doctrinal form arrived in Port of Spain intact and was put to a use that reversed its original meaning, which is circulation rather than transplantation.

When read in Bourdieusian terms, these developments show that the Caribbean legal field remains heteronomous: its internal hierarchy of value still references the metropolitan field, yet it is increasingly gaining autonomy and local embeddedness. Without breaking radically with its colonial past, the CCJ is slowly but decisively shifting the axis of legal recognition from London to Port of Spain. Each high-profile decision, each Commonwealth judicial exchange hosted in the region, each academic reference to "Caribbean jurisprudence" adds symbolic weight to the regional court. Mobility is both the medium and the measure of post-colonial autonomy: the more successfully the CCJ and its actors circulate within global networks, the more they can claim local authority. The empire's channels remain open; what has changed are the directions and meanings of the journeys they carry.

3.2. From the Cartago Court to the second demise of the Central American Court of Justice: Central American law between the Spanish "doctrina", US tutelary internationalism, and European scripts of integration

In Central America, the movement of legal ideas after empire has followed a trajectory distinct from the Commonwealth Caribbean, and the case is included precisely because of that distance. Central America's legal order remains marked by multi-layered legacies, formal and informal, sedimented over two centuries of sovereignty: Spanish legal formalism, US hemispheric tutelage, and, more recently, European scripts of regional integration in the form of the jurisprudence of the CJEU. The first two were imperial in the sense defined in Section 2; the third was not, and is not claimed to be. It is included because it displays the same structural feature at work after the empires had receded: a legal field seeking recognition from a script written elsewhere. Each wave introduced its own idiom of authority, and each promised to modernise and stabilise the region by law. The result is not a break with empire(s), but sedimentation: a field that continually renews itself by appropriating foreign grammars of legitimacy to secure

¹⁰ "Savings clauses" are features of the constitutions of former British colonies included to provide legal continuity during a transitional period. In the specific, such clauses prevent to challenge judicially pre-independence laws, which can then only be abolished and/or reform by means of legislation.

order in a troubled region (Sanchez Sanchez 2009). The section closes with the Court's dissolution in 2026, which confirms this diagnosis rather than complicating it.

Channels: Two imperial grammars and one regional script

In the Spanish Empire, law was conceived primarily as an instrument of moral governance and social hierarchy as it was designed to preserve the divine and imperial political order (Benton 2002). Law, understood as *doctrina*, was a scientific project in which its interpreters were the archetype of bureaucratic virtue. In this view, lawyers and judges combined moral authority with legal expertise and conceived of legality as a means of achieving order, not justice in a pluralist sense (Herzog 2004).

This approach left enduring marks on how legality was imagined after independence. When the region declared independence from Spain in 1821 and formed the Federal Republic of Central America (1824–1838), its elites applied both the substance and the spirit of the Spanish approach to law, recast in republican form, and again deployed law to produce political stability (Caserta 2020, 193–195). As Merryman observed, Latin and Central American jurists carried a faith in law as a rational science inherited from Spain (Merryman 1985). At the same time, they internalised the Eurocentric vocabulary of law as civilization, positioning themselves as semi-peripheral international lawyers who sought parity through mimicry (Becker Lorca 2014). The tension between law as order, science, and civilization produced a paradoxical combination of pride and dependency: law as a badge of progress, but with ideas largely imported from abroad.

By the late nineteenth century, the ideal of a politically and legally unified Central America had faded amid wars, foreign interventions, and economic dependency. The legal culture, however, remained structured by the old imperial grammar: textualism, hierarchy, and faith in the judge as moral custodian. It was within this codified and bureaucratic field that a second imperial channel entered: US hemispheric tutelage. As the US established itself as guardian of the region under the Monroe Doctrine and consolidated control to build the Panama Canal, it sought to stabilise the isthmus through legal and diplomatic instruments rather than direct conquest (LaFeber 1963). Law, now in the form of international arbitration and courts, became the language of the new empire (Rosenberg 1999).

The Cartago Court of 1907, generally regarded as the first permanent international court, created by the Treaty of Washington between five sovereign republics under US diplomatic mediation, embodied this approach. Through it, the US sought to reactivate the old juridical dream of Central American unity in the vocabulary of modernization, peace through law, and international arbitration (Caserta and Madsen 2022). The Court was a novel experiment combining international arbitration with domestic constitutional supervision, with competence over both inter-state disputes and conflicts between national branches of government (Caserta 2020, Ch. 3), yet it continued to draw on the civil-law notions of written procedure and judicial hierarchy typical of the Spanish imperial approach to law.

The Court collapsed in 1918, undone by geopolitical rivalries and domestic resistance, yet its symbolic model endured (Caserta and Madsen 2022, 538–539). Throughout the twentieth century, the idea of a supranational Central American tribunal resurfaced whenever integrationist projects sought legitimacy through legality, and when the

Central American Court of Justice (CACJ) was re-established in 1991 it consciously evoked the lineage of 1907 (Caserta 2020, 205-208), adopting nearly identical jurisdictional language, most notably Article 22(f) on disputes between branches of government, and presenting itself as the guardian of regional democracy and the rule of law.¹¹ The CACJ was thus not a post-imperial innovation like the CCJ, but the reactivation of an imperial legal form under a new vocabulary, that of regional economic integration through law; yet another import, this time from Europe (Cochrane 1969, Mattli 1999).

Carriers: The legal technocrat

Within these circuits emerged a new professional figure: the legal technocrat, the new carrier of transnational legality. Trained in national faculties still modelled on the Spanish civil law tradition, the legal technocrats pursued postgraduate studies in Madrid, Salamanca, or Paris, acquiring both doctrinal authority and the cultural capital of the former metropole. Others hold LL.M.s or certificates from Washington, Harvard, or the Inter-American Human Rights Institute in San José, reflecting a geography of legal influence shaped by US hemispheric governance. Several have served as consultants for programs funded by the Inter-American Development Bank, USAID, or the OAS, framed around “judicial modernization” and “rule of law”.¹² These overlapping affiliations produce a hybrid post-colonial habitus combining Spanish formalism with Anglo-American managerial efficiency. Legal education is the channel through which this habitus is reproduced, and here the Central American case differs most sharply from the Commonwealth cases. The national faculties of the isthmus were never subjected to a metropolitan accreditation regime: no Privy Council, no external examiner, no regional Legal Education Certificate. Dependency was reproduced instead through the prestige of postgraduate study abroad and a curriculum still organised around the codes and commentaries of the former metropole, sustained less by institutional rule than by the aspirations of the carriers themselves. This is why the Central American technocrat is, in field terms, a more fragile carrier than the Caribbean barrister or the East African judge: his authority rests on credentials that the local field did not issue and cannot guarantee. The events of 2025–2026, discussed below, showed how far that fragility extended to the institution the technocrats had built.

The Court: From borrowing to translation

The jurisprudence of the CACJ is emblematic of these trajectories. Although formally an economic tribunal within SICA, the CACJ quickly extended its reach to the constitutional life of the region: electoral disputes, parliamentary immunities, even territorial conflicts (Caserta and Madsen 2022). From its inception, the Court sought legitimacy by borrowing from the European Union, importing the CJEU’s doctrines of direct applicability, direct effect, and supremacy to structure its emerging *Comunidad Jurídica Centroamericana* (Caserta 2017). This borrowing should not be mistaken for an imperial dynamic: the European Union never governed Central America, and courts routinely look to one another (Slaughter 2004, Neuman 2008, Alter 2013, Caserta 2017). What makes the CACJ analytically relevant is not the fact of borrowing but its structure. The

¹¹ See Agreement Establishing the CACJ, Article 22(f) and Tegucigalpa Protocol, artt. 3-5.

¹² See overview of the judges profiles (Caserta 2020, 91-93).

Court imported the doctrines wholesale, before any Central American constituency had asked for them, and presented them as the source of its own authority rather than as tools for solving problems of its own. It is this orientation, seeking legitimacy from an external script rather than from the field the Court was meant to serve, that the structural definition of the post-colonial captures, and it is why the borrowing was soon criticised as a technocratic gesture detached from the social and political conditions of Central America (Caserta 2017, 2020).

The Court's first real opportunity to transform mimicry into authority came with the *Bolaños v. Nicaragua* (CACJ 69-01-03-01-2005) dispute, a constitutional crisis that erupted between President Enrique Bolaños and the Nicaraguan National Assembly in the early 2000s. Facing mutual accusations of corruption and abuse of power, and a deadlock that threatened to paralyze the state, the CACJ asserted jurisdiction to review Nicaragua's internal constitutional acts. It justified this move by invoking SICA's founding commitments to the rule of law and democratic governance, claiming that the region's constitutional order was itself a matter of Community concern (Caserta 2017). In doing so, the Court performed a juridical act of translation: it converted the managerial idioms of integration, transparency, and good governance, originally imported from global technocratic discourse and the EU, into the language of regional legal integration in the region.

This was not mere legal activism. It was a sociological moment of transformation, in which a post-colonial institution re-signified the borrowed symbols of global legality to generate its own claim to authority. *Bolaños* marked a shift from imitation to interpretation, from institutional dependency to a tentative normative autonomy. By recasting law once more as a mechanism for stabilising order, this time through regional constitutionalism rather than empire or peace treaties, the CACJ positioned itself as both guardian and producer of democratic legality in the post-conflict isthmus, turning imitation into authorship and dependency into a claim of voice within the hierarchies of international law.

Taken together, these trajectories reveal that law after empire in Central America is not a story of liberation from imperial legality, but of its re-enactment through successive grammars of reform. From the jurists of the Spanish Empire to the US-trained legal technocrat and the regional judge who read Luxembourg, the region's legal field remains anchored in the belief that legitimacy derives from conformity to external models. Each generation of carriers converts imported forms of authority into the field, thereby reproducing dependency even as they claim autonomy. The Central American case thus does not sit awkwardly beside the two Commonwealth cases; it is the one that shows most clearly why the post-colonial must be defined structurally rather than chronologically. Two centuries of sovereignty did not dissolve the orientation of the legal field towards external centres. They multiplied the centres.

The CACJ thus occupied an ambivalent position. Its borrowing of European doctrine was a strategy of recognition; its intervention in *Bolaños* an act of translation, turning a borrowed language to local constituencies and problems. Both illustrate the post-colonial condition of juridical heteronomy: authority sustained by symbolic capital acquired abroad. If in the Caribbean law moves through the empire's surviving routes, in Central America it moves through its mirror, in a constant oscillation between

imitation and reinvention. Law here remains the preferred idiom of order, the perennial but perhaps hollow promise that peace and legitimacy can be made by borrowing the grammar of others.

Coda: The second demise

The Court's second demise confirms this diagnosis. Between March 2025 and May 2026 Nicaragua, Honduras, and El Salvador denounced the Court's Statute; by the end of April 2026 the CACJ had ceased to function and lost its international legal personality, and Guatemala, whose ratification had never taken effect, formalised its exit in August. That governments withdrew is, in itself, unremarkable: regional courts are attacked by the governments they judge everywhere, and the CACJ had been in open conflict with member states before (Caserta and Madsen 2022). The remarkable fact is that nothing in the field rose to defend it. When East African governments moved against the EACJ after *Anyang' Nyong'o*, the regional bar and the East African Law Society mobilised and the Court survived in amended form (Gathii 2013); when Caribbean electorates declined, in successive referenda, to replace the Privy Council with the CCJ, the Court's constituency among lawyers, judges, and academics kept it in being and kept arguing its case (Caserta 2020). The CACJ seemed to have no such constituency to lose. Its authority rested on symbolic capital acquired abroad and on a script that no Central American bar, faculty, or litigant community had asked for; its carriers had converted external credentials into jurisdictional claims, but hardly into local embeddedness, and legitimacy that has been borrowed can be withdrawn by the lenders. The framework explains the Court's defencelessness, not the governments' motives, which were the familiar ones of sovereigntist and austerity politics; but it is the defencelessness that distinguishes this case from the other two. The history of the isthmus also suggests that the form will return, as it did after 1918 (Caserta and Madsen 2022). Founded twice and dissolved twice, the Central American court is the clearest illustration in this article of an imperial legal form that circulates without ever settling.

3.3 From the East African Court of Appeal to the East African Court of Justice: English and Commonwealth legacies in the fight for democratization

In East Africa, too, law after empire did not emerge from a tabula rasa. The East African Court of Justice (EACJ), established in 2001 under the Treaty for the Establishment of the East African Community (EAC), is the institutional heir to the East African Court of Appeal (EACA), the central judicial organ of the British colonial administration and, later, of the first East African Community (1967–1977) (Taye 2018).

This colonial legacy generated a professional and normative field steeped in British legal traditions, cultivating what might be called an imperial judicial habitus (Morris and Read 1972). Although the formal architecture of colonial justice was dismantled at independence,¹³ its institutional vocabulary, procedural grammar, and professional ethos endured, and East African legal elites re-appropriated these templates, translating them into the idiom of regional integration and rule of law within the EAC (Gathii 2011). East Africa thus stands as a paradigmatic case of law after empire: a region and a court

¹³ Different from the Caribbean, newly independent East African countries abolished the appeals to the Privy Council.

that embody the afterlife of imperial legality through the persistence of professional habits, procedural norms, and ideals of judicial virtue.

Channels: The Court of Appeal, the Commonwealth, and two law faculties

To better understand this, one has to look at the genealogy of the EACJ, which begins with the EACA established in 1902 as part of the British protectorate's administrative structure and later formalised under the East African High Commission in 1948 (Taye 2018). The EACA was an itinerant court, hearing appeals from the High Courts of Kenya, Uganda, Tanganyika, and Zanzibar. Its judges were drawn predominantly from Britain, its jurisprudence steeped in the common law, and its language and decorum modelled on the colonial judiciary (Ibhawoh 2013).

After independence, the EACA survived as a shared appellate institution under the first EAC (1967). Its dissolution in 1977, following the political disintegration of the Community, left an institutional vacuum, but not an intellectual one: the EACA left a positive mark on the professional imagination of East African lawyers, who pressed for an EACA-like regional court with individual standing when the EAC was revived in 1999 (Taye 2018). The creation of the present EACJ is thus not, unlike the CCJ, a judicial novelty, but the reactivation of dormant colonial and post-colonial traditions; its authority stems not from rupture but from continuity, the reproduction of judicial forms first crafted in the imperial context.

This continuity was mediated through three sets of channels. First, of central importance was the Commonwealth Judicial Infrastructure. After independence, East African judges remained tied to Commonwealth professional networks such as the Commonwealth Magistrates' and Judges' Association and the Commonwealth Judicial Education Institute. Through these channels, ethical and procedural codes associated with British judicial culture travelled and were localised within national and regional institutions, reinforcing what scholars describe as a distinct judicial-professional identity around East Africa's regional courts (Gathii 2020).

As in the Caribbean, post-colonial legal education in East Africa operated within a matrix of imperial inheritance and nationalist reinvention; here, however, the reinvention took a far more radical form, and it complicates any account of channels as mere conduits of imperial epistemology. The University of Dar es Salaam Law Faculty, founded in 1961, became the intellectual hub of the region's new legal order. Staffed initially by British expatriates (Twining 2019, ch. 6), it was from the early 1970s transformed by Tanzanian socialism and by an influx of Marxist scholarship (Shivji 1986a, 1993). Its teachers and students, Issa Shivji foremost among them, drew on political economy and dependency theory to attack the colonial legal inheritance root and branch, and the Dar es Salaam debate on the class character of the post-colonial state was conducted, in part, from within the law faculty (Tandon 1982). Through this and, with time, other institutions, East African legal elites were socialised into a professional world both post-colonial and transnational, anchored in the epistemic authority of British legalism while participating in the developmentalist aspirations of the new states. Law became, at once, a discipline of doctrinal precision and a moral technology of modernization (Morris and Read 1972).

Was the Dar es Salaam of the 1970s a form of post-coloniality or its opposite? In the terms proposed here, it was neither an exception to circulation nor a reversal of it, but circulation along a different route. The Marxism that reached Dar es Salaam travelled through channels of its own, the journals and conferences of the non-aligned left and the visiting scholars who animated the Dar es Salaam debate (Tandon 1982, Shivji 1993), and it too was carried by mobile academics whose authority derived from credentials and connections acquired elsewhere; some of them carried it back, in turn, to the British law schools of the 1970s (Harrington and Manji 2017). The field was multi-centred rather than un-centred: the critique of the imperial inheritance was itself an import, and its carriers converted a different foreign capital into local authority. Nor did this counter-hegemonic channel displace the imperial one. The same faculty that taught political economy continued to teach the common law of contract, evidence, and procedure, a tension its own members recognised (Shivji 1986b), and its graduates were examined, admitted, and promoted according to professional standards inherited from the EACA. More decisively, the two channels fed different positions in the field. The critical stream's most visible products were academics, advocates, and public intellectuals. The jurists who came to sit on the EACJ, by contrast, were largely recruited from national apex courts, attorneys general's chambers, and law reform commissions (Taye 2018), the institutions in which the inherited judicial habitus was most faithfully reproduced, whatever their individual exposure to the faculty's radical years. The Dar es Salaam case thus shows something the transplant metaphor cannot register: a post-colonial legal field can host a radical critique of its inheritance and still reproduce that inheritance in the institution that matters most for the authority of law, the bench, because critique and reproduction are carried by different people, along different channels, to different destinations.

Carriers: Judges with institutional memory

Within these infrastructures moved the carriers of legal knowledge, judges, lawyers, academics, and bureaucrats whose careers embody the layered history of East African legality. The first generation of post-colonial judges, educated in Britain or at the University College of East Africa before its division, were shaped by the EACA's ethos of collegial deliberation, textual fidelity, and judicial restraint. Even after Africanization, the image of the judge as a detached guardian of legality endured (Kithinji 2018).

The judges who later staffed the EACJ embodied and reproduced this inherited habitus. As Taye's prosopography shows, the Court's first generation was drawn largely from the upper tiers of national judiciaries: former chief justices, supreme- and appeal-court judges, attorneys general, and law-reform commissioners. Figures such as Joseph Warioba, Solomy Bossa, Augustino Ramadhani, and Harold Nsekela brought decades of experience in common-law adjudication, administrative reform, and Commonwealth judicial diplomacy, with careers spanning domestic courts, international tribunals such as the ICTR and ITLOS, and the regional and global conferences that Taye describes as "off-the-bench diplomacy" (Taye 2018, 119-122; 138-139; 283-312).

This mobility endowed the EACJ's bench with the educational, linguistic, and network resources that authorise jurists to speak the language of legality across borders. Educated in Dar es Salaam, Makerere, or British universities, active in bar associations and Commonwealth networks, these judges transformed their transnational biographies into

institutional legitimacy. The itineraries linking Kampala, Nairobi, Dar es Salaam, and Arusha today echo the older circuits between London and the colonial high courts. Through them, the ethos of imperial legality was neither repudiated nor passively inherited but re-inhabited, providing the social and symbolic capital through which East African judicial authority continues to circulate. What distinguishes these carriers is their institutional memory: they see the EACJ not as an experiment in supranationalism, but as the natural continuation of East Africa's judicial tradition, and they sought to turn their professional capital and mobility into jurisdictional authority.

The Court: An imperial idiom turned against post-colonial governments

This clearly emerges from the jurisprudence of the Court. Originally conceived as a regional economic tribunal, its jurisdiction limited to the interpretation of the EAC Treaty, the EACJ soon outgrew this narrow mandate. The scarcity of commercial disputes and the political demand for legitimacy spurred a functional transformation. Through strategic interpretation, the Court gradually reinvented itself as a forum for rule-of-law and human-rights adjudication (Gathii 2013).

In *Anyang' Nyong'o and Others v. Attorney General of Kenya* (EACJ Reference No. 1 of 2006/Application No. 5 of 2007), opposition politicians challenged Kenya's nominations to the East African Legislative Assembly, and the EACJ held that political interference violated the Treaty's rule-of-law clause, asserting judicial review over national acts. In *Katabazi and Others v. Secretary General of the EAC & The Attorney General of Uganda* (EACJ Reference No. 1 of 2007), the Court found Uganda in breach of the Treaty for detaining individuals despite domestic court orders. *Plaxeda Rugumba v. Secretary General of the EAC and Attorney General of Rwanda* (EACJ First Instance Division Reference No. 8 of 2010) extended this reasoning to unlawful detention, and *Independent Medical Legal Unit v. Attorney General of Kenya* (EACJ Appeal No. 1 of 2011) explicitly recognised competence over human-rights and rule of law claims. In each case the Court reasoned in the register of the common law and of Commonwealth constitutionalism: the rule of law was construed through judicial review of executive action, detention in defiance of court orders was treated, as in *Katabazi*, as an affront to the authority of courts as such, and the Treaty's principles were read much as a Commonwealth appellate court would read a bill of rights. The idiom was that of the imperial judiciary, now used to hold post-colonial governments to account before a regional bench.

These decisions reveal a professional culture that valorises judicial guardianship over democratic problems rather than legal integration for market purposes (Gathii 2016). This arises from the same ethos that once animated the EACA: the conviction that law must act as a bulwark against political disorder. The EACJ's turn to human rights and rule of law protection was thus an endogenous response to the vacuum of political integration, a way to preserve relevance by asserting moral and legal authority.

The EACJ's trajectory thus parallels other post-colonial courts discussed earlier. Like the CCJ, it reinterprets old forms and manifestations of imperial legality to claim regional authority; like the CACJ, it retools inherited proceduralism to navigate crises of legitimacy. Its distinctiveness, however, lies in the uninterrupted continuity of its judicial field: a bench that never ceased to imagine legality as the organizing principle of political order.

4. Conclusion: Law's imperial afterlives

Law after empire is not the story of a transplant, but of the circulation of imperial legal epistemologies, institutional templates, and professional practices, continually reanimated under new vocabularies. Across the Caribbean, Central America, and East Africa, what emerges is not rupture or dependency, but continuity and translation. The agents of this translation do not simply reproduce inherited legalities; through education, judicial networks, and professional exchange, they convert them into legitimate capital in post-colonial legal fields.

The comparative evidence dismantles the diffusionist image of law travelling in straight lines from metropole to periphery. Law circulates through channels that are at once historical and contemporary, the Privy Council, Commonwealth networks, British, American and Spanish universities and their links to local ones, and these are not relics but infrastructures of movement in which law's authority is continuously (re)negotiated. Within them operate the carriers, judges, lawyers, and academics, whose mobility produces legitimacy. The banana-boat lawyers, the Central American legal technocrats, and the East African judicial diplomats are not passive brokers but active producers of authority: they translate foreign credentials, linguistic fluency, and network affiliations into domestic or regional authority. Authority in the post-colonial is achieved through selective inhabitation and adaptation of inherited forms.

The three regional courts crystallise this process of re-appropriation. Each emerged within a distinct imperial genealogy, yet all transformed, or sought to transform, imperial legacies into regional authority. In the Caribbean, the CCJ embodies a project of justice repatriation: severing the final appellate tie to London while reproducing the professional decorum of the common-law tradition; its judges, trained in the circuits that once symbolised imperial dependence, now perform those circuits as signs of regional competence. In Central America, the CACJ re-enacted older and newer imperial forms under the vocabulary of economic integration and good governance; its legitimacy derived from the selective adaptation of largely European doctrine to regional constitutional crises, and its dissolution in 2026 marks the limit of that strategy: a court not embedded at home could be dissolved by three denunciations without a constituency rising to defend it. The contrast with the CCJ and the EACJ, both of which have survived attacks from the governments they judge, turns the claim that autonomy is relational from an assertion into a finding. In East Africa, the EACJ is the most striking example of continuity with imperial legal forms: its members, drawn from national apex courts and international tribunals, inherited an imperial judicial ethos which enabled them to reframe an economic court into a forum for rule of law and human rights adjudication.

Across these cases, law's post-colonial afterlife unfolds not as a linear transition from dependence to autonomy, but as a dialectic of reproduction and re-signification. The forms of imperial legality endure, but their meanings change. This is why the post-colonial has been defined here as a structural condition rather than a period. The Central American field, formally sovereign for two centuries, displays the same orientation towards external centres of legal legitimacy as the two regions that decolonised within living memory; what differs is the number and succession of the centres, not the fact of heteronomy. Conversely, as the Dar es Salaam faculty shows, a field that decolonised

recently can host a radical critique of its inheritance and still reproduce it, because critique and reproduction travel along different channels and settle in different positions. If the juridical field is defined by the struggle over the monopoly of legitimate interpretation, post-colonial legality operates within a doubly structured field, stratified internally by domestic hierarchies and externally by global epistemic inequalities. Its autonomy is relational: a function of its capacity to convert transnational recognition into local legitimacy. The legal afterlife of empire is not a residue of the past, but a structural condition of the present global legal order.

Seen from this angle, the post-colonial world is not the periphery of global law, but its circulatory system. It is in the movement between Kingston, Port of Spain, London, New York, Arusha, San José, Managua, and Madrid that law achieves and renews its symbolic power. The post-colonial legal field is, therefore, a laboratory where global norms acquire social reality and where legitimacy is produced not by origin but by translation.

References

- Alter, K. J., 2013. *The new terrain of international law: Courts, politics, rights* [online]. Princeton University Press. Available at: <https://doi.org/10.23943/princeton/9780691154749.003.0001>
- Alter, K. J., and Helfer, L. R., 2017. *Transplanting international courts: The law and politics of the Andean Tribunal of Justice* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780199680788.001.0001>
- Anghie, A., 2005. *Imperialism, sovereignty and the making of international law* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511614262>
- Antoine, R. M. B., 2008. *Commonwealth Caribbean law and legal systems* [online]. 2nd ed. London: Routledge-Cavendish.
- Becker Lorca, A., 2014. *Mestizo international law* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781139015424>
- Benton, L., 2002. *Law and colonial cultures: Legal regimes in world history, 1400–1900* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511512117>
- Bourdieu, P., 1958. *Sociologie de l'Algérie*. Paris: Presses Universitaires de France.
- Bourdieu, P., 1979. Symbolic power. *Critique of Anthropology* [online], 4(13–14), 77–85. Available at: <https://doi.org/10.1177/0308275X7900401307>
- Bourdieu, P., 1986. The forms of capital. In: J. G. Richardson, *Handbook of theory and research for the sociology of education*. New York: Greenwood Press, 241–58.
- Bourdieu, P., 1987. The force of law: Toward a sociology of the juridical field. *Hastings Law Journal*, 38(1987), 805–53.
- Bourdieu, P., and Sayad, A., 1964. *Le Déracinement: La crise de l'agriculture traditionnelle en Algérie*. Paris: Éditions de Minuit.

- Caserta, S., 2017a. Regional integration through law: The Central American and Caribbean cases. *Leiden Journal of International Law* [online], 30(3), 579–602. Available at: <https://doi.org/10.1017/S0922156517000322>
- Caserta, S., 2017b. Regional international courts in search of relevance: Adjudicating politically sensitive disputes in Central America and the Caribbean. *Duke Journal of Comparative and International Law* [online], 28(2017), 59–92. Available at: <https://doi.org/10.2139/ssrn.2942662>
- Caserta, S., 2020. *International courts in Latin America and the Caribbean: Foundations and authority* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780198867999.001.0001>
- Caserta, S., 2021. Western centrism, contemporary international law, and international courts. *Leiden Journal of International Law* [online], 34(2), 321–42. Available at: <https://doi.org/10.1017/S0922156521000017>
- Caserta, S., and Madsen, M. R., 2016. Between community law and common law: The rise of the Caribbean Court of Justice at the intersection of regional integration and post-colonial legacies. *Law and Contemporary Problems*, 79(1), 89–115.
- Caserta, S., and Madsen, M. R., 2022. The world's most powerful international court? The Central American Court of Justice and the quest for de facto authority (1907–2020). *American University International Law Review*, 37(2022), 484–540.
- Cochrane, J. D., 1969. The politics of regional integration: The Central American case. *Tulane Studies in Political Science* 12. New Orleans: Tulane University/The Hague: Martinus Nijhoff.
- Comaroff, J., and Comaroff, J. L., eds., 2006. *Law and disorder in the postcolony* [online]. University of Chicago Press. Available at: <https://doi.org/10.7208/chicago/9780226114101.001.0001>
- Darian-Smith, E., and Fitzpatrick, P., eds. 1999. *Laws of the postcolonial*. Ann Arbor: University of Michigan Press. Available at: <https://doi.org/10.3998/mpub.14470>
- Dezalay, Y., 2004. Les courtiers de l'international: Héritiers cosmopolites, mercenaires de l'impérialisme et missionnaires de l'universel. *Actes de la recherche en sciences sociales* [online], 151–152, 4–35. Available at: <https://doi.org/10.3917/arss.151.0004>
- Dezalay, Y., and Garth, B. G., 1996. *Dealing in virtue: International commercial arbitration and the construction of a transnational legal order*. University of Chicago Press.
- Dezalay, Y., and Garth, B. G., 2002. *The internationalization of palace wars: Lawyers, economists, and the contest to transform Latin American states* [online]. University of Chicago Press. Available at: <https://doi.org/10.7208/chicago/9780226144276.001.0001>
- Dezalay, Y., and Garth, B. G., 2010. *Asian legal revivals: Lawyers in the shadow of the empire* [online]. University of Chicago Press. Available at: <https://doi.org/10.7208/chicago/9780226144665.001.0001>

- Dorsett, S., and McLaren, J., eds., 2014. *Legal histories of the British empire: Laws, engagements and legacies* [online]. Abingdon: Routledge. Available at: <https://doi.org/10.4324/9781315851457>
- Fitzpatrick, P., 1992. *The mythology of modern law*. London: Routledge.
- Gathii, J. T., 2011. *African regional trade agreements as legal regimes* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511994821>
- Gathii, J. T., 2013. Mission creep or a search for relevance: The East African Court of Justice's human rights strategy. *Duke Journal of Comparative and International Law* [online], 24(2013), 249–88. Available at: <https://doi.org/10.2139/ssrn.2178756>
- Gathii, J. T., 2016. The variation in the use of sub-regional integration courts between business and human rights actors: The case of the East African Court of Justice. *Law and Contemporary Problems*, 79(1), 37–62.
- Gathii, J. T., ed., 2020. *The performance of Africa's international courts: Using litigation for political, legal, and social change* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780198868477.001.0001>
- Go, J., 2013. Decolonizing Bourdieu: Colonial and postcolonial theory in Pierre Bourdieu's early work. *Sociological Theory* [online], 31(1), 49–74. Available at: <https://doi.org/10.1177/0735275113477082>
- Halliday, T. C., and Shaffer, G., 2015. *Transnational legal orders* [online]. Cambridge University Press. <https://doi.org/10.1017/CBO9781107707092>
- Harrington, J., and Manji, A., 2017. The limits of socio-legal radicalism: Social and legal studies and third world scholarship. *Social & Legal Studies* [online], 26(6). Available at: <https://doi.org/10.1177/0964663917729874>
- Herzog, T., 2004. *Upholding justice: Society, state, and the penal system in Quito (1650–1750)* [online]. Ann Arbor: University of Michigan Press. Available at: <https://doi.org/10.3998/mpub.17644>
- Hussin, I., 2012. Circulations of law: Colonial precedents, contemporary questions. *Oñati Socio-Legal Series* [online], 2(7), 18–32. Available at: <https://opo.iisj.net/index.php/osls/article/view/71>
- Ibhawoh, B., 2013. *Imperial justice: Africans in Empire's court* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780199664849.001.0001>
- Kithinji, M. M., 2018. *The State and the university experience in East Africa: Colonial foundations and postcolonial transformations in Kenya*. Pretoria: UNISA Press.
- LaFeber, W., 1963. *The new empire: An interpretation of American expansion, 1860–1898*. Ithaca: Cornell University Press.
- Legrand, P., 1997. The impossibility of legal transplants. *Maastricht Journal of European and Comparative Law* [online], 4(2), 111–24. Available at: <https://doi.org/10.1177/1023263X9700400202>
- Madsen, M. R., and Caserta, S., 2025. International judicial habitus: Pierre Bourdieu and the cognitive turn. In: A. van Aaken and M. Hirsch, eds., *International legal*

- theory and the cognitive turn* [online]. Oxford University Press, 220-239. Available at: <https://doi.org/10.1093/9780198909293.003.0011>
- Matamoros Pineda, A., 2026. The rise and second demise of the Central American Court of Justice. *EJIL:Talk!* [online], 1 September. Available at: <https://www.ejiltalk.org/the-rise-and-second-demise-of-the-central-american-court-of-justice/>
- Mattli, W., 1999. *The logic of regional integration: Europe and beyond* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511756238>
- Mawani, R., and Hussin, I., 2014. The travels of law: Indian ocean itineraries. *Law and History Review* [online], 32(4), 733–47. Available at: <https://doi.org/10.1017/S0738248014000467>
- Merryman, J. H., 1985. *The civil law tradition: An introduction to the legal systems of Western Europe and Latin America*. Stanford University Press.
- Morris, H. F., and Read, J. S., 1972. *Indirect rule and the search for justice: Essays in East African legal history*. Oxford: Clarendon Press.
- Naipaul, V. S., 2001. *The loss of Eldorado: A colonial history*. London: Picador.
- Neuman, G. L., 2008. Import, export, and regional consent in the Inter-American Court of Human Rights. *European Journal of International Law* [online], 19(1), 101–23. Available at: <https://doi.org/10.1093/ejil/chn002>
- O'Brien, D., and Foadi, S., 2008. CARICOM and its Court of Justice. *Common Law World Review* [online], 37(4), 334–58. Available at: <https://doi.org/10.1350/clwr.2008.37.4.0177>
- Pitts, J., 2018. *Boundaries of the international: law and empire*. Cambridge, MA: Harvard University Press.
- Pollard, D., 2004. *The Caribbean Court of Justice: Closing the circle of independence*. Barbados: Caribbean Law.
- Przeworski, A., and Teune, A., 1970. *The logic of comparative social inquiry*. New York: Wiley-Interscience.
- Rosenberg, E. S., 1999. *Financial missionaries to the world: The politics and culture of dollar diplomacy, 1900–1930*. Cambridge, MA: Harvard University Press.
- Sanchez Sanchez, R. A., 2009. *The politics of Central American integration*. London: Routledge.
- Santos, B. S., 2002. *Toward a new common sense: Law, science, and politics in the paradigmatic transition*. London: Routledge, 2002.
- Shivji, I. G., 1986a. *Law, state, and the working class in Tanzania*. London: James Currey.
- Shivji, I. G., 1993. *Intellectuals at the hill: Essays and talks, 1969–1993*. Dar es Salaam University Press.
- Shivji, I. G., ed., 1986b. *Limits of legal radicalism: Reflections on teaching law at the University of Dar es Salaam*. Faculty of Law, University of Dar es Salaam.

- Slaughter, A. M., 2004. *A new world order*. Princeton University Press.
- Tandon, Y., ed., 1982. *University of Dar es Salaam debate on class, state and imperialism*. Dar es Salaam: Tanzania Publishing House.
- Taye, M. T., 2018. *International courts in the context of region building: An analysis of the creation and institutionalization of the EACJ and the SADCT*. PhD diss., University of Copenhagen.
- Teubner, G., 1998. Legal irritants: Good faith in British law or how unifying law ends up in new divergences. *Modern Law Review* [online], 61(1), 11–32. Available at: <https://doi.org/10.1111/1468-2230.00125>
- Theodore, M. E., 2021. *The governance of vocational/professional legal education in the Commonwealth Caribbean: A case study of the Council of Legal Education*. EdD diss., University of Sheffield.
- Tomlins, C., 2001. The legal cartography of colonization, the legal polyphony of settlement: English intrusions on the American mainland in the seventeenth century. *Law & Social Inquiry* [online], 26(2), 315–72. Available at: <https://doi.org/10.1111/j.1747-4469.2001.tb00181.x>
- Trubek, D. M., and Galanter, M., 1974. Scholars in self-estrangement: Some reflections on the crisis in law and development studies in the United States. *Wisconsin Law Review* (1974), 1062–1102.
- Twining, W., 2005. Social science and diffusion of law. *Journal of Law and Society* [online], 32(2), 203–40. Available at: <https://doi.org/10.1111/j.1467-6478.2005.00322.x>
- Twining, W., 2019. *Jurist in context: A memoir* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/9781108645911>
- Watson, A., 1993. *Legal transplants: An approach to comparative law*. 2nd ed. Athens, GA: University of Georgia Press.
- Wiener, A., 2014. *A theory of contestation* [online]. Berlin: Springer. Available at: <https://doi.org/10.1007/978-3-642-55235-9>
- Williams, E. E., 1984. *From Columbus to Castro: The history of the Caribbean 1492–1969*. New York: Vintage Books.
- Zumbansen, P., 2019. Transnational law as socio-legal theory and critique: Prospects for ‘Law and Society’ in a divided world. *Buffalo Law Review*, 67(3), 909–78.