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AN ESSAY ON IDEOLOGY AND LEGAL EDUCATION IN MICRO JURISDICTIONS: THE EXAMPLE OF JERSEY

David Marrani*

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ABSTRACT

This article explores the question of legal education in micro jurisdictions using the case of Jersey, a British Crown Dependency, positioned geographically, historically and culturally between two larger jurisdictions, France and the UK. It analyses how Jersey's legal training is pulled towards those large "big neighbours," rather than focusing on what makes its specificity and attraction. It questions how legal education in micro-jurisdiction is actually linked to ideology. The article starts with the following question: are we taking micro jurisdictions seriously? It then considers the routes to legal qualification in micro jurisdictions, before focusing specifically on the case of Jersey and analysing how ideology imposes asymmetrical views on micro jurisdictions, views that ultimately may erase the legal specificity of that micro jurisdiction.

Keywords: Jersey, Micro-jurisdictions; legal education in small states; mixed-jurisdiction; contamination; ideology; comparative legal education.

It can be said that legal education has been oscillating between two modes of education; being a part of liberal education and being treated as professional education.¹ As part of liberal education, legal education is considered to develop specific capacities as described by Andrew Delbanco:

1. A skeptical discontent with the present, informed by a sense of the past.
2. The ability to make connections among seemingly disparate phenomena.
3. Appreciation of the natural world, enhanced by knowledge of science and the arts.
4. A willingness to imagine experience from perspectives other than one's own.
5. A sense of ethical responsibility.²

When treated as professional education,

legal education equips law students for filling different roles in society, and discharging various law jobs, the range and scope of which are always expanding in modern democratic society, e.g., as policy-makers, administrators,

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1. A. Lakshminath, *Legal Education, Research and Pedagogy-Ideological Perceptions*, 50 J. INDIAN L. INST. 606, 606-28 (2008).

2. ANDREW DELBANCO, *COLLEGE: WHAT IT WAS, IS, AND SHOULD BE 3* (Princeton U. Press 2012) cited in Sherman J. Clark, *Law School as Liberal Education*, 63 J. LEGAL EDUC. 235, 242-243, 235-246 (2003).

lawyers, law teachers, industrials entrepreneurs etc.³

Some consider that legal education is not specifically a professional education but a “science to be studied in its own right, without reference to other areas of thought,” although it still departs from liberal education.⁴

This “oscillation” has been present since the beginning of legal education, as seen in the history of legal education in common law countries, where it evolved from “innovation and experimentation” to “a narrow, vocational teaching of law” by the late 1800s.⁵ The “tension” between the two modes of education in legal education has recently been once more at the core of debates in England; for instance, through the Legal Education and Training Review (LETR), which resulted in the solicitor training becoming more liberal.⁶

What we can consider is that legal education is currently composed of two parts, an initial academic general training, characterised by the need for a university degree, in law or not in law, primary or advanced, followed by practical or vocational training.

There is a particular issue regarding law and legal education. They both have a specific ideological function in a society. Althusser’s work interests the law, and particularly its comparison.⁷ First, it questions the core of the discipline itself. Indeed, Althusser’s writing on psychoanalysis used a very logical demonstration to show that psychoanalysis is a science. This demonstration may simply be applied to comparative law, for instance, to produce the

3. Lakshminath, *supra* note 1, at 606.

4. Joshua Krook, *A Brief History of Legal Education: A Battle Between Law as a Science and Law as a Liberal Art*, 17 *LEGAL HIST.* 42, 30-61 (2017).

5. *Id.* at 53.

6. See for discussion Jessica Guth & Chris Ashford, *The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?*, 48 *THE LAW TEACHER* 5-19 (2014). See also the new SQE for qualify as solicitor lifting the necessity for a Qualifying law degree (QLD) as prerequisite.

7. David Marrani, *Althusser in Avatar Comparative law as a Science and the Haunting of the Subject*, in *ALTHUSSER AND LAW* 95-110 (Laurent de Sutter ed., Routledge 2013).

same outcome.⁸ Then, there is Althusser's reading of Marx. Althusser considered Marxism as a discourse with a proper structure with an "erased" subject, a subject that is "always-already" and therefore should (in a way) vanish. What this could mean for law and its comparison, is that it has to deal with legal places without subjects (of law), but at the same time without totally forgetting the subjects. It also means that we are immersed in language as a structure that compels us to do "things" unconsciously, without leaving us the capacity to escape. Which is, for Althusser, the origin of ideology:

We experience ideology as if it emanates freely and spontaneously from within us, as if we were its free subjects, "working by ourselves." Actually, we are spoken by and spoken for, in the ideological discourses which await us even at our birth, into which we are born and find our place.⁹

Ideology works as a mechanism that masks reality, misrepresents reality, and ultimately creates a fantasy world to allow the continuation of a system. Along its various incarnations, the discourse of a society is manifested, through ideology, then relayed by the law, also as ideology, which forms the "common sense" of a period and thus appears natural, normal, and right. It contributes to dividing mankind and challenges humanity. For Althusser, ideology is based on the existence of assumptions, imaginary products of personal stories that are mere reflections of actual conditions of individual existence.¹⁰ He analysed the state into separate state apparatuses, dividing the repressive one and ideological ones. Law appeared in both categories, while education was considered to be the main "Ideological State" apparatus. Althusser ideas have obvious implications

8. LOUIS ALTHUSSER, *WRITINGS ON PSYCHOANALYSIS, FREUD AND LACAN* 17 (Columbia U. Press 1996).

9. Stuart Hall, *Signification, Representation, Ideology: Althusser and Post-Structuralist Debates*, 2 *CRITICAL STUD. IN MASS COMM.* 109, 91-114 (1985).

10. Claudio Zanchettin, *L'epistemologia marxista di Louis Althusser*, 2 *IL MULINO* 266, 257-280 (1972).

on the law and on lawyers, academics or practitioners, and particularly legal education.

[School] takes children from every class at infant-school age, and then for years, the years in which the child is most ‘vulnerable’, squeezed between the Family State Apparatus and the Educational State Apparatus, it drums into them, whether it uses new or old methods, a certain amount of ‘know-how’ wrapped in the ruling ideology (French, arithmetic, natural history, the sciences, literature) or simply the ruling ideology in its pure state (ethics, civic instruction, philosophy). Somewhere around the age of sixteen, a huge mass of children is ejected ‘into production’: these are the workers or small peasants. Another portion of scholastically adapted youth carries on: and, for better or worse, it goes somewhat further, until it falls by the wayside and fills the posts of small and middle technicians, white-collar workers, small and middle executives, petty bourgeois of all kinds. A last portion reaches the summit, either to fall into intellectual semi-employment, or to provide, as well as the ‘intellectuals of the collective labourer’, the agents of exploitation (capitalists, managers), the agents of repression (soldiers, policemen, politicians, administrators, etc.) and the professional ideologists (priests of all sorts, most of whom are convinced ‘laymen’).¹¹

If we transpose these words into the specific area of legal education, we can start thinking of law schools and how they create specific workers (“the lawyers”). Legal education would then be a certain “know-how” wrapped into the ruling ideology or simply the pure state of the ruling ideology. This is particularly true about law, itself an ideological state apparatus. Legal education in micro jurisdiction is not exempted from this movement but suffers even more deeply of its impacts.

As we know, “Even when geographically isolated, the small populations—both general and legal—of *micro-jurisdictions* and *small states* typically require them to reach beyond, often far beyond, their

11. Louis Althusser, *Ideology and Ideological State Apparatuses*, in LOUIS ALTHUSSER, LENIN, AND PHILOSOPHY AND OTHER ESSAYS 147 (Monthly Review Press 1971).

shores.”¹² Jersey’s position is a true illustration of this statement. Jersey is the largest of the Channel Islands, 12 miles from continental Normandy. It was separated from Normandy in 1204 but retained Norman law, customs, and language. But Jersey administration was carried out for the King of England.¹³ Jersey is truly squeezed geographically and legally between the representatives of the two main western legal traditions, what Legrand described as “discursive formations of sufficient homogeneity.”¹⁴ The island is struggling to maintain its legal identity. Indeed, the “big neighbours” of Jersey that are France and Great Britain are, as Legrand put it, “autonomous discursivities.”¹⁵ They are sources of tensions that impacts on Jersey lawyers who are then facing the dilemma of ideology.¹⁶ As Fairgrieve stated,

Situated geographically and culturally mid-Channel, between the tectonic plates of civil law and common law, this jurisdiction is illustrative of an open-minded and diverse approach to sources of law. With its hybrid interaction of such different legal systems within a micro-jurisdiction, this jurisdiction is in many ways the Galapagos Islands for comparatists!¹⁷

Remember that ideology focuses on the existence of imaginary assumptions, on imaginary, not on reality. They are a reflection of reality. Therefore, how the Jersey population understand itself is not based simply on the geography of where Jersey is, although it somehow plays a part in the perception of what Jersey and its population

12. Sean Donlan, David Marrani, Mathilda Twomey & David Zammit, *Legal Education and the Profession in Three Mixed/Micro Jurisdictions: Malta, Jersey and Seychelles*, in *SMALL STATES IN A LEGAL WORLD* 191, 191-212 (Petra Butler & Caroline Morris eds., Springer 2017).

13. ROY PEDERSEN, *ONE EUROPE, 100 NATIONS, MULTILINGUAL MATTERS* 39 (Channel View Books 1992).

14. Pierre Legrand, *How to Compare Now*, 16 *LEGAL STUD.* 240, 232–242 (1996).

15. *Id.*

16. LOUIS ALTHUSSER, *ESSAYS ON IDEOLOGY* 41 (Verso 1984).

17. DUNCAN FAIRGRIEVE, *COMPARATIVE LAW IN PRACTICE: CONTRACT LAW IN A MID-CHANNEL JURISDICTION* ch. 8 (Hart Publishing 2016).

are. It affects the perception Jersey lawyers have of themselves as well. It is easy to understand that some Jersey lawyers may be pushed to assume and imagine how they relate to the great Duchy of Normandy, while others may see the link to the Crown as a sort of romantic interpretation of the real position of Jersey between France and Great Britain. Due to the size of the micro jurisdiction that is Jersey and the massive influence that brings ideology here, it is obvious that these imaginary assumptions have consequences on Jersey lawyers as they have become an *essential* mystification that we could qualify as *essential*, intertwined with the society itself.¹⁸ As we know, the law is also an Ideological State Apparatus (ISA), which intensifies the ideological structure. This ISA is clearly dominated by where the lawyers have been trained (initial training and to some respect the final one), the core of the imaginary assumptions, augmented in Jersey by the increased use of English as a main language of communication (although French remains one of the official languages). As such, the law that is known by the lawyers of Jersey conditions their perception of the law. It conditions not only the law in Jersey but also the perception of the law of the “other,” the foreign law, creating value and hierarchy, simply through the classification in the structure of the law of the other law as foreign law. Legal education in Jersey has been influenced by these factors. As most Jersey lawyers are now trained in England, as I will explain in this paper, they therefore must study a foreign legal culture that is in fact alien to the jurisdiction and makes the law of Jersey the foreign law. This could be for instance a result of lack of higher education institutions on the Island, or simply the need of law firms to have lawyers trained in English law, or even the preference given to UK education over continental one. These factors taken separately or together are actually part of what Althusser considers to be constitutive of ideology. The result is the rather illogical but obliged

18. WILLIAM C. DOWLING, JAMESON, ALTHUSSER, MARX, AN INTRODUCTION TO THE POLITICAL UNCONSCIOUS 83 (Cornell U. Press 1984).

prerequisite that is the study of English law. The law of this micro jurisdiction is often becoming the foreign law itself.

What is at stake in micro jurisdictions legal training is quite simple and can be articulated around the ambivalence between the necessity of retaining a specific knowledge and expertise of the law of a particular micro jurisdiction, Jersey, what we may name the “legal identity” of Jersey, and the centrifugal attraction of the large jurisdictions, which defines in fact “two modes of understanding reality (reflecting the two foundational mythologies).”¹⁹ Squeezed between two modes of understanding reality, Jersey legal training is pulled towards these large foundational mythology, rather than focusing on what makes its (legal) attraction. I start this paper by a simple question: are we taking micro jurisdictions seriously? Indeed, when one micro jurisdiction tries to retain its legal identity, are we considering this attempt as something that is worthy or not? I then consider the routes to legal qualification in micro jurisdictions, attempting to propose various families of legal training, before focusing specifically on the case of Jersey. I then analyse the impacts of ideology on legal education in micro jurisdiction and how ideology imposes alien views on micro jurisdictions, views that may contradict in fact the attraction of the jurisdiction, by removing or erasing its legal identity.

I. ARE WE TAKING MICRO JURISDICTIONS SERIOUSLY?

The first section of this paper is an attempt to answer the following question: Are we taking micro jurisdictions seriously? And as a sub-question, and consequence, can we take (legal education in) micro jurisdictions seriously?

We found many references in the academic literature to small or microstates. The issue of their definition itself is so complex that some scholars, such as Baldacchino, are trying to avoid dealing with

19. Legrand, *supra* note 14, at 240.

it: “the easiest way to ‘deal with the problem’ of how to define the small state is to ignore or avoid the issue.”²⁰

That said, a study of small states, even if we do not define what they are, contributes to the understanding of general concepts, as unique opportunity of a specific study.²¹ That is somehow what I am doing here. Even if we had a clear definition of small or microstates, we would still be far from having a foundation for the study of micro jurisdictions. Indeed, many jurisdictions are not states as such, for instance, sub-national divisions like islands. Vlcek, for example, explained the following:

Many states possess sub-national jurisdictions which may engage in commercial activity extending beyond their national borders. Some of these jurisdictions physically exist beyond those national borders and as a result effectively extend the national border in that location.²²

It seems that mainstream scholarship has neglected these very small world’s legal spaces. I am conscious that when writing about micro jurisdictions I should start with a definition of micro jurisdiction. I suppose that it has to do with how small a jurisdiction should be to fit in the category, while still being a jurisdiction. Vlcek in his attempt to define what is a jurisdiction explains that: “[it] includes the designation of the space or territory (with permanent population, government, etc.) over which a specific legal regime operates and is enforced. It also reflects the word’s usage regarding the law, its practice and the range or extent of legal enforcement.”²³

We could well consider that we have a jurisdiction on a territory over a population, if we have: (i) a specific body of law applying uniquely to that territory or population; (ii) a legislative institution

20. Godfrey Baldacchino, *Mainstreaming the Study of Small States and Territories*, 1 SMALL STATES & TERRITORIES 3, at 7 (2018).

21. PETRA BUTLER, CAROLINE MORRIS, *SMALL STATES IN A LEGAL WORLD* vi (Springer 2017).

22. William Vlcek, *Why ‘jurisdiction’? Determining boundaries in offshore finance*, 1 SMALL STATES & TERRITORIES 169, at 171-182 (2018).

23. *Id.* at 170.

with capacity to make primary legislation; (iii) a distinct hierarchy of courts, judges, and public prosecutors; and (iv) a body of legal professionals recognised by the state or at least through self-regulation. What makes the size of a jurisdiction micro? Baldacchino adopts a more relaxed posture on the issue. He states that:

attempts at fixed and absolutist definitions of smallness are not very productive. What, then, is the alternative? One can argue that smallness is inherently a relative concept. Poland, for instance, has been described as a small state compared to one of its neighbours (Russia); but a large state when compared to a different neighbour (Lithuania). . . .²⁴

The relativity of the definition would work here for Jersey and its position between its “big neighbours.” A micro jurisdiction would be on a territory smaller than the “big neighbours” over a population that is also smaller than the “big neighbours,” if we have: (i) a specific body of law applying uniquely to that territory or population; (ii) a legislative institution with capacity to make primary legislation; (iii) a distinct hierarchy of courts, judges and public prosecutors; and (iv) a body of legal professionals recognised by the state or at least through self-regulation.

Micro jurisdictions can be found in all corners of the world, as common law, civil law and mixed or hybrid jurisdictions. According to some authors: “Contemporary small jurisdictions are quite heterogeneous.”²⁵ Some are independent micro-states that have some level of connections with “big neighbours” (geographically, historically, legally, financially); others are legal places within territories dependent on larger entities. Most of them share similar economic development as international finance centres, and the majority have similar issues concerning legal education.

24. Baldacchino, *supra* note 20, at 7.

25. Sebastian Wolf, Peter Bussjäger & Patricia Schiess Rütimann, *Law, Small State Theory and the Case of Liechtenstein*, 1 SMALL STATES & TERRITORIES 183, at 184-196 (2018).

In my opinion the most important point is the place of those jurisdictions in a global context rather than a geographical, historical, legal, or financial context. Through their quirky little rules, most of them survived from medieval time, these jurisdictions have developed as major players in our global economy. At the same time, questions are raised about the preservation of their legal heritage against the normalisation and the homogenisation, or even the fusion in larger legal spaces. Wolf et al. propose three assumptions regarding law in small states: assumption 1. a small jurisdiction extensively adopts foreign legal norms; assumption 2. a small jurisdiction features remarkable or unusual constitutional characteristics; assumption; 3. a small jurisdiction is dependent on external resources to maintain its judicial and legal institutions.²⁶ If a micro jurisdiction has its own constitutional characteristics, it has a specific constitutional identity, different from the surrounding neighbours. This offers the difference needed to qualify the jurisdiction in a way. I would quite rely on that assumption solely to define a micro jurisdiction, therefore assumption 2 would become the fundamental norm for the micro jurisdiction to exist as separate legal entity. Assumption 1 and 3 are different. If the jurisdiction adopts foreign legal norms or relies on external resources to maintain its judicial and legal institutions, it may be assumed that it may damage what makes it “a jurisdiction” and therefore affect its legal identity. But those assumptions are here to remind us about how the question of legal identity of micro jurisdictions is connected to relation between the centrifugal global movement towards “big neighbours” and the local roots of the micro jurisdictions. As a result, we have a “glocal” dimension of how the lawyers are trained. Legal education in micro jurisdictions is deeply affected by those assumptions, as seen in the various models for routes to lawyer’s qualification.

26. *Id.* at 184-185.

II. MODELS FOR ROUTES TO QUALIFICATION IN MICRO JURISDICTIONS

Legal education, as I summarised in the introduction, is evolving between liberal and professional (or science). In addition, legal education in the context of globalisation has been defined by Flood as falling into four main categories:

1. Importing foreign students to home law schools for LLM and research degrees.
2. Exporting domestic law schools' programmes to foreign countries, sometimes in conjunction with a host institution.
3. Creating global law schools that attempt to appeal transnationally.
4. Online law schools that could transcend borders but tend towards the local.²⁷

In addition, legal education has become global. Flood again stated that local education is becoming international, transnational, and global.²⁸ In that context, it is evidently complicated for micro jurisdiction to affirm their legal identity through their own legal education. However, it could be argued that micro jurisdiction, because of their specific position have a crucial part to play in these phenomena: “international, transnational and global.” Nothing precludes micro jurisdictions to recruit international students, to export their programme, to appear transnational, or to have online provision. Therefore, micro jurisdiction can truly be a place of legal education for future lawyers.

It could be argued that there are some “models” or archetype of legal education in these micro jurisdictions that allow us to classify

27. John Flood, *Legal Education in the Global Context Challenges from Globalization, Technology and Changes in Government Regulation*, Report for the Legal Services Board 6-7 (2011). <https://perma.cc/B57N-UX43>. (Last visited: July 5, 2022).

28. John Flood, *Global Challenges and Legal Education* in LEGAL EDUCATION IN THE GLOBAL CONTEXT: OPPORTUNITIES AND CHALLENGES ch..2, 32 & 78 (Christopher Gane & Robin Hui Huang eds., Taylor & Francis 2017).

them in families. They would evolve around the two parts: logically, between the academic part and the vocational part.

First, we may assume that micro jurisdictions rarely rely on 100% local legal education. This is particularly true of the academic stage for practitioners, the university phase of education. The reason could be as simple as the absence of a local university in the micro jurisdiction, or just because there is no faith from the micro jurisdiction (i.e., its population and/or its political elite) in a possible local education or because again, people or firms want/need students educated outside the micro jurisdiction. This point has dramatic consequences of course, as it obliges the initial legal training of future local lawyers of micro jurisdictions to be done abroad through foreign law schools. That said, this is less true of the initial vocational training. For this stage, there seems to be a (near) 100% local initial training on local laws that exists. We therefore have different families that are as follows:

- i) University phase and initial vocational training abroad: Reliance on professional qualifications from another jurisdiction (like currently Gibraltar); most rely on the *academic* stage in another jurisdiction, although this may be changing;
- ii) University phase abroad/initial vocation training local (without a local law school): Legal education without law schools (e.g., Isle of Man);
- iii) University phase abroad (sometimes offering also local university stage)/initial vocational training local (with a local law school): this has been the case of some micro jurisdictions that set up micro law school (e.g., Andorra, Jersey, and to some extent Guernsey);
- iv) University phase and initial vocation training local (e.g., San Marino).

For more than 7 years, I have been involved with the running of the micro law school providing legal education in Jersey, I would like to discuss further the case of Jersey.

III. THE CASE OF JERSEY

Jersey shares related histories and legal histories to the other Channel Islands, especially of Guernsey. These have broadly common histories and legal traditions but differ in some respects and are largely governed by separate local institutions. Jersey is very close geographically to France and its legal history closely relates to continental Normandy. Originally included in the Duchy of Normandy, Jersey remained attached to the English crown after the loss of Normandy. Jersey is a Crown Dependency, meaning that the island is neither part of the UK nor the EU. It is autonomous with its own parliament, the States of Jersey, and its own ordinary courts. English and French are the official languages.

The relationship between the Channel Islands and the United Kingdom results from historical and legal events. As one of the Channel Islands, Jersey, unlike the British Overseas Territories, is not a British colony. The Channel Islands (i) are not treated as part of the metropolitan territory under the British constitution and (ii) do not enjoy central democratic representation. They show a number of analogies with the British colonies and have a relationship with the United Kingdom that could be considered as “quasi-colonial.” It means that there could be some variable geometry in the way the UK Parliament may or may not act in the domestic affairs of Jersey and on how far the UK may be able to speak for and bind Jersey on international affairs.²⁹

During the 20th century, the working language of the law shifted decisively from French to English: legislation enacted after the 1930s is normally in English, judgments of the Royal Court from the 1950s adopted both English language and “common law style,” and English legislation had a great influence over the content and style of Jersey enactments. Note that Jersey has always enjoyed a

29. INSTITUTE OF LAW JERSEY, 7 JERSEY LEGAL SYSTEM & CONSTITUTIONAL LAW STUDY GUIDE 2018-2019 87-88.

specific status in relation the EU and Council of Europe. Jersey law has different layers. As stated by Southwell,

Much help can be found in the Reports of the Commissioners appointed to enquire into the criminal law of Jersey (1847) (“the Criminal Report”) and the civil, municipal and ecclesiastical laws of Jersey (1861) (“the Civil Report”). These Commissioners had the tasks of carrying out a thorough investigation of the laws and courts of Jersey, and not surprisingly they started with the sources of Jersey law, considering these under the two heads of common or customary law, and legislation.³⁰

Common or customary law can be found compiled in the *An-cienne coutume* of 1204, the *Grande coutume* of 1539 and the *Coutume réformée* of 1585, considered at length by the Privy council as evidence of customary law of Jersey before the separation, as commented by Le Geyt, Poingdestre, Terrien, Basnage, and Pothier, etc . . . Legislation comprises the Royal Charters, the laws passed by the States of Jersey, “triennial regulations,” and some Acts of the British Parliament concerning Jersey. In addition, we find the influence of French and English laws. According to Southwell, “French law as such is not authoritative in Jersey” while “it is inevitable that English doctrines have played a large part in the great development of Jersey law during the last 50 years.”³¹ From these words, we already have the flavour of the asymmetrical situation Jersey law is in. This had ripple effects on legal education in Jersey.

The question of legal education in Jersey has always oscillated between the “big neighbours.” Indeed,

Jersey’s approach to legal education and training reflects these influences, as well as the fact that the jurisdiction has never had a local university or formal Faculty of Law. In the nineteenth century, Jersey law students studied in France. Increasingly in the twentieth century, students

30. Richard Southwell, *The Sources of Jersey Law*, 1 JERSEY L. REV. 221 (1997).

31. *Id.*

typically studied at British, especially English, universities.

...³²

As explained by Jean-Marie Renouf, the current Jersey system of legal education is based on The Advocates and Solicitors (Jersey) Law 1997 (“the Law”)³³ that governs “the right to practise as an advocate or solicitor.” It includes setting out the requirements for admission as an advocate or solicitor. In addition, we have The Advocates and Solicitors (Qualifying Examination) (Jersey) Rules 1997 (“the Rules”),³⁴ which set out the structure of the Jersey qualifying examination.³⁵

Let us briefly describe the different stages of the legal training of a Jersey lawyer.

Initial training: Before 1997, Jersey lawyers could have a law degree of a British, French, or Irish university and Jersey advocate could have passed either the examinations set by the Council of Legal Education for call to the Bar by any one of the Inns of Court in England; or a *licence* of a French university.³⁶

After 1997, under the 1997 Rules it was decided a candidate applying to sit the qualifying examination of advocate or solicitor (the local legal practitioners) should have what the rules describe as a legal or a general qualification, that we will analyse first.³⁷ They

32. Donlan, Marrani, Twomey & Zammit, *supra* note 12, at 201.

33. The 1997 law. <https://perma.cc/S67S-BGNK>. (Last visited: July 5, 2022).

34. Advocates and Solicitors (Jersey) Law 1997 (the 1997 Rules). <https://perma.cc/8GX3-EG46>. (Last visited: July 5, 2022).

35. Jean-Marie Renouf, *Jersey Legal Education Reforms*, 12 JERSEY & GUERNSEY L. REV. §§ 4 & 6 (2008).

36. Before 1997, the Jersey Law 17/1971 Solicitors (Jersey) Law, 1971 mentioned ‘he has a law degree of a British, French or Irish university’ and for the advocate, Jersey Law 15/1968 Advocates (Jersey) Law, 1968 ‘he has passed the examinations set by the Council of Legal Education for call to the Bar by any one of the Inns of Court in England; or (ii) he has a diploma of licentiate in law of a French university’.

37. The 1997 Rules *supra* note 34.

may then do their training in Jersey law, what the rules refers to as the final examination, as we will see.

Under the 1997 Advocates and Solicitors (Jersey) Law (Rules), Rule 1(2) mentions that a legal qualification should be either a law degree of a British University although leaving discretion to the Board to approve one from another university and various training in England, Scotland, and Northern Ireland.

For the purposes of these Rules, a person has a legal qualification if the person has:

- (a) a law degree of a British University or of such other university or institution as the Board approves which conforms to the requirements in Rule 2;
- (b) passed the examinations and assessments included in any course validated by the Common Professional Examination Board in England and Wales;
- (c) passed the examinations and assessments included in any course –
 - (i) validated by the Law Society of England and Wales for admission as a solicitor of the Supreme Court of England and Wales (or the examinations formerly set by the Law Society of England and Wales for that purpose), or
 - (ii) accredited by the Law Society of Scotland for admission to the Roll of Solicitors in Scotland; or
- (d) passed the examinations and assessments included in any course –
 - (i) validated by the Bar Council for call to the Bar of England and Wales by any one of the Inns of Court in England (or the examinations formerly set by the Council of Legal Education for that purpose), or
 - (ii) validated by the Faculty of Advocates in Scotland for admission as a member of the Faculty of Advocates in Scotland; or
- (e) passed the examinations and assessments leading to the award of a Certificate of Professional Legal Studies by the Institute of Professional Legal Studies of the Queen's University of Belfast or met such equivalent requirements as may be recognized for the time being by –
 - (i) the Law Society of Northern Ireland, or

- (ii) the Executive Council of the Honorable Society of the Inn of Court of Northern Ireland.³⁸

A law degree should contain the following subjects according to Rule 2 (1):

- (a) the law of contract;
- (b) the law of tort;
- (c) criminal law;
- (d) equity and the law of trusts;
- (e) constitutional and administrative law; and
- (f) the law of the European Union.³⁹

Anyone familiar with the English legal training will recognise the similarity with what is found in English legal training. Indeed, one may want to compare these to the subjects included in the Joint Statement issued in 1999 by the Law Society and the General Council of the Bar on the completion of the initial or academic stage of training by obtaining an undergraduate degree.

The Foundations of Legal Knowledge are:

- a. The key elements and general principles of the following areas of legal study:
 - i. Public Law, including Constitutional Law, Administrative Law and Human Rights;
 - ii. Law of the European Union;
 - iii. Criminal Law;
 - iv. Obligations including Contract, Restitution and Tort;
 - v. Property Law; and
 - vi. Equity and the Law of Trusts.⁴⁰

It seems obvious that the 1997 Rules have been more or less mirroring the requirements for English practitioners. What was therefore referred to as legal qualification in the Jersey 1997 Rules highlights the domination of (English) common law in the initial training, by mirroring the English regulatory bodies “joint statement.”

38. *Id.* at r. 1 (2).

39. *Id.* at r. 2(1).

40. Solicitors Regulation Authority, *Academic Stage Handbook, version 1.4*, 18-19 (July 2014). <https://perma.cc/JC3S-N7YP>. (Last visited: July 5, 2022).

General qualification under the 1997 Rules: What was referred to as general education in the 1997 rules was a non-law degree (anything but a law degree). Someone with a general qualification would need to sit exams (“preliminary examination”) that specifically refers to English law. The Rules describe the content of the examination for non-law degree holders.

The preliminary examination consists of 6 papers on the following subjects:

- (a) the English law of contract;
- (b) the English law of tort;
- (c) principles of English criminal law and the law of evidence;
- (d) principles of English constitutional and administrative law;
- (e) principles of English equity and the law of trusts; and
- (f) the law of the European Union.⁴¹

It is left to the board of examiners (i.e., Jersey lawyers teaching and examining candidates, specialised in Jersey law) to assess candidates’ knowledge of English law. The board is defined under the “principal law,” article 9 of the 1997 Law.⁴²

Board of examiners

- (1) A board of examiners shall be responsible for the conduct of the qualifying examination.
- (2) The Board is to consist of –
 - (a) the Deputy Bailiff, as the President of the Board;
 - (b) the Attorney General;
 - (c) the Solicitor General;
 - (d) such advocates and solicitors of the Royal Court as are for the time being appointed for the purpose by the advocates and solicitors of the Royal Court generally; and
 - (e) any persons co-opted under paragraph (5)(b).

In S. 9 (3) and (4) of the 1997 Law, we can see that the board is the body that would assess candidates. In a way, this seems both coherent and quite illogical. It is coherent if one wants to move to a

41. The 1997 Rules *supra* note 34, at Rule 3(3).

42. The 1997 Law *supra* note 33, at art. 9(2).

mainstream English common law education but quite illogical for the micro jurisdiction to see its most important lawyers assessing students on English law.

The following table sums up the requirement for the foundation of common law under the 1997 Rules and the 1999 Joint Statement⁴³ for clarity:

| 1997 Rules § 2 (1) (Legal Qualification) | 1997 Rules § 3 (3) (General Qualification with Preliminary Examination) | 1999 Joint State- ment |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> - the law of contract; - the law of tort; - criminal law; - equity and the law of trusts; - constitutional and administrative law; - the law of the European Union | <ul style="list-style-type: none"> - the English law of contract; - the English law of tort; - principles of English criminal law and the law of evidence; - principles of English constitutional and administrative law; - principles of English equity and the law of trusts; and - the law of the European Union | <ul style="list-style-type: none"> - public law, including constitutional law, administrative law and human rights; - law of the European Union; - criminal law; - obligations including contract, restitution and tort; - property law; and equity and the law of trusts |

43. Joint statement on the academic stage of training (1999 JS). <https://perma.cc/4D3W-XYNB>. (Last visited: July 5, 2022).

Both qualifications, legal and general (together with the preliminary examination) in the 1997 Rules are in fact truly a prerequisite for Jersey future lawyers to study English common law. We have therefore here a full picture and illustration of the clash between legal identity of Jersey and the influence of (one of) the “big neighbours.” This was spotted by the legal profession as seen in Renouf:

At a time when much concern is expressed by members of the profession that the increasing influence of English law and practice upon Jersey’s lawyers is eroding our identity and legal roots, the system of education we implement is surely of paramount importance and worthy of substantial debate.⁴⁴

The idea was to revise the initial stage to push further the development of a proposer training in Jersey law. Indeed, Renouf noted that:

A major concern expressed frequently by the profession as a whole . . . is that Jersey is succumbing to a tide of English legal influence, largely resulting from the predominance of the English language and the English academic and professional training received by most Jersey lawyers. The result is that lawyers are often unwilling or unable to apply the traditional Norman French texts and instead rely too heavily upon English legal doctrines.⁴⁵

When that initial stage is completed, candidates should then study Jersey law.

Training in Jersey law: During the 1980s and before 1997, provision was made for candidates to take some certification in French and Normand legal studies at the University of Caen in place of a Jersey option subject, a route taken in fact by a small number of candidates that has fallen into disuse.⁴⁶ Between 1997 and 2007, the

44. Renouf, *supra* note 35, at § 3.

45. *Id.* at § 54.

46. Note that if the candidate for admission has passed by the Bar Professional Training Course to become a barrister in England or the Legal Practice Course in England to become an English solicitor, that period of Jersey work experience is two years; otherwise, it is three years. Almost all candidates work full-time in a law office while studying part-time for the Jersey Law Course. Call to

training in Jersey law was minute but examination in Jersey require candidates to be assessed without proper training for their examination. Prior to the Institute, candidates would more or less study on their own. Renouf's report highlights that:

even more striking than the significant failure rates were the threads of resentment towards the process running through many candidates' comments, and the reported effects that the ordeal of learning the totality of prescribed material had on the health of some. The experience was described as 'miserable', and 'a physical and mental ordeal that I have not experienced in any other situation' whilst the exams themselves were 'inconsistent, capricious and amateur in comparison [with the English equivalent exams]'. Experiences such as those recounted, reflected an unnecessarily arduous process which can only raise questions as to the purpose and legitimacy of the Jersey legal examination process.⁴⁷

The Institute of Law, the law school of Jersey, was set up then, under the leadership of one of the senior leading legal experts in Jersey, the former Bailiff Sir Philip Bailhache. As the local law school, the Institute aimed to make the process of training both smoother and more robust. Renouf added in his report that:

The notion of a law school in Jersey has, however, recently gained greater momentum under the auspices of the Bailiff who in November, [sic] 2007 announced the impending incorporation of a Jersey Institute of Law.⁴⁸

He added, that "[t]he great benefit of a law school would be the improvement in students' understanding of Jersey law and in particular the promotion of the island's Norman texts and customs."⁴⁹ Currently, admission to the legal profession requires enrolment on

the Jersey bar and admissions as solicitors take place at special sittings of the Royal Court. By convention, new advocates make 'courtesy calls' on other advocates, a practice made more onerous with the rapid growth of the legal profession. See also Renouf, *supra* note 35, at § 7.

47. Renouf, *supra* note 35, at § 16.

48. *Id.* at § 51.

49. *Id.* at § 55.

the Jersey Law Course (JLC) leading to the Jersey law examinations and two or three years of work experience with a Jersey law firm. The Institute became the approved provider of the JLC, with teaching done during intensive study weekends by visiting academics and local practitioners.

Rule 3(4) of the 1997 Rules, under the title qualifying examination, stated what the subject would be for the final examinations:

The final examination consists of –

- (a) 6 papers on the following subjects in Jersey law –
 - (i) Paper 1: the Jersey legal system (including the history of Jersey law, its sources, customary law, the writers on Jersey law and the relevance of Norman customary law, English common law and the law of other legal systems) and constitutional law;
 - (ii) Paper 2: the law of contract;
 - (iii) Paper 3: the law of testate and intestate succession;
 - (iv) Paper 4: the law of immovable property;
 - (v) Paper 5: civil procedure and criminal procedure, including legal professional ethics;
 - (vi) Paper 6: the law of security over movable property and bankruptcy; and
- (b) subject to paragraph (5), one paper on a subject chosen by the candidate from the following options –
 - (i) company law,
 - (ii) trust law, and
 - (iii) family law.

Again, very similar to what is considered to be the foundation of English common law by the 1999 Joint Statement, the 1997 Rules proposed six compulsory subjects in Jersey law and three options. Interestingly, the 1997 Law offered the possibility for a student under Rule 3(5) to be exempted from being examined for the three options (company law, family law, or trusts law) if the candidate obtained either the University of Caen *Certificat d'études juridiques françaises et normandes*, or the *Certificat d'études de droit français et normand*. This section proposed a very important point by bringing back I believe an archaic attachment to medieval Normandy and a more local and relevant aspect of legal education. But it is only a choice given to exempt candidates from studying some important

parts of Jersey law. In addition, it does not really eliminate the initial training in English law and the influence of the common law on the training of Jersey lawyers. It rather opens the possibility to be influenced by the other big neighbour. As Renouf noted, “in practice this is really the case.”⁵⁰

If it is sure that Jersey with its micro law school has now entered a route for a more local training for its lawyers, the “glocal legal” community does not work very coherently due to the mounting influence of English law on that legal training. The way the “glocal legal” community in Jersey has been influenced, between the “big neighbours,” is the result of the impact of ideology on legal education.

IV. IMPACTS OF IDEOLOGY ON LEGAL EDUCATION IN MICRO JURISDICTIONS

It is evident that legal education in Jersey is at the forefront of globalisation for many reasons. First, as mentioned previously, Jersey is an offshore international financial centre that is involved in many complex worldwide transactions and has many interactions with larger economies and large multinationals. In its study on offshore jurisdictions, Vlcek detailed what is an offshore archipelago: “The geographic imaginary of an offshore financial archipelago is intended to situate the multitude of jurisdictions labelled, by themselves or by others, as locations for offshore finance within the more extensive geography of global finance.”⁵¹

He added that like Jersey, “[a] non-sovereign territory becomes part of this global capital transportation network by exercising its capability to legislate for the territory and craft legislation conducive for the operation of a financial centre.”⁵² He explained that the offshore archipelago of offshore financial centers was characterized as

50. *Id.* at § 7.

51. Vlcek, *supra* note 22, at 174.

52. *Id.* At 175.

providing “conduits and sinks” for capital in support of a global corporate ownership network, with Jersey as one of the largest capital “sinks.”⁵³ The expression “global legal” that I have been using was precisely to highlight the attraction of the laws of Jersey, a mixed legal framework that has their roots in archaic time but used (and useful) in the contemporary global world because of the necessary pragmatism of the financial industry. For instance, one can obviously see the link between Jersey and the UK economy while not so much between Jersey and the French economy: one is more attractive. According to the think tank Jersey Finance, 42% of origin of wealth of investors and 49% of the destination of investment were from the UK.⁵⁴ In addition, “Jersey supports an estimated 250,000 British jobs, of which 190,000 from foreign investment alone, and adds £14 billion to the United Kingdom economy.”⁵⁵

Connections with larger jurisdictions, what I called the “big neighbours,” have their importance here. But those connections go further than just financial connections: they can be physical and historical connections too. There is therefore a specific context of the micro jurisdiction, like the slice of ham stuck between two slices of bread in a *jambon beurre* sandwich. We should go further here and consider how Jersey has been to some degree, not simply influenced, but contaminated by the “big neighbours,” even if only by evident necessity. According to Moréteau,

Contamination . . . is not a clean and comfortable word like hybrid, transplant, reception, or circulation. It has troubling, unhealthy overtones. . . . Contamination means ‘to enter in contact with’ Contact among human beings generates changes in identity and behavior and the same applies to human groups and societies. There is always a risk of being altered by the contact of another. Alter means otherness but leads to alteration, with its ambivalent

53. *Id.*

54. *Jersey’s Value to Britain, Evaluating the economic, financial and fiscal linkages between Jersey and the United Kingdom*, Capital Economics Report 11 (2016). <https://perma.cc/BLD5-QVN5>. (Last visited: May 12, 2022).

55. *Id.* At 5.

connotation. The same can be said of contamination. The identity of a group may be altered at the contact of another. Groups, societies, and individuals have fluctuating identities, and they change when influenced by other groups, societies, and individuals. The same applies to legal systems that grow organically in symbiosis with the group generating them and react to the contact with other social groups and legal systems. . . . Contamination refers to the less visible. Its effects, good or bad, may appear later on. A transplant may take place with all its visible effects, yet generating some invisible or less visible changes in the system of the recipient. This is where contamination takes place. It is important to identify contamination and be aware of it. When contamination has a negative effect, remedies or ways to lessen that effect may be found and implemented.⁵⁶

As one of the numerous consequences of this remark, we understand there exists an apparent ambivalence between the necessity of retaining a specific knowledge and expertise of the laws of Jersey, that we may name its “legal identity” and the centrifugal attraction of the large jurisdictions. The possible consequence here is the risk that the training of lawyers in Jersey introduces a contamination that ultimately will have the effect of departing from the legal identity of that jurisdiction.

Future Jersey lawyers have studied a foreign legal culture that is alien to their jurisdiction before starting to study the laws of Jersey. That has to do with an effect of the dominant legal culture that contaminates Jersey and needs to be known as a prerequisite. In short, most of the future Jersey lawyers must study for a LL.B. in English law before undertaking the Jersey law training. And we end up with a typical example of what Althusser meant by ideology here:

Law is an art of the asymmetry controlled. This asymmetry is the result of a hierarchy, a dogmatic appreciation of what is here, what the ‘local’ ideology voices as normal, against what is over there, that is not ‘as good as’, that is abnormal. . . . What we have is an acknowledgement of the

56. Olivier Moréteau, *An Introduction to Contamination*, 3 J. CIV. L. STUD. 10-11 (2010).

functioning of state apparatus, not the repressive state apparatus (RSA), but the ideological state apparatus (ISA), not the one functioning predominantly by violence, but the one functioning by ideology (predominantly so as Althusser stated). If in RSA, the state acts violently by laws and decrees, in ISA ruling ideology ‘voices’ what is ‘the best.’⁵⁷

Ideology shows that through—what Althusser called asymmetry—one law (the law of one jurisdiction) is going to be better than another one (the law of another jurisdiction): a hierarchy, a dogmatic appreciation of what is there. The asymmetry in the sphere of law of the micro jurisdiction is the fatal attraction towards one of the “big neighbours.” In addition, that law appears the good one versus the bad one. Jersey law becomes the victim of this asymmetry, which in turn proves to be a contamination of Jersey law. Of course, we first need to be clear about what “is” Jersey law. We have briefly defined the specific position it has above and as it was anticipated, there is a clear asymmetry. Insidiously, there is an assumption that one law is normal or good and that therefore, as a consequence, the other one is abnormal or bad. The law of England would be normal and good, as a result, while Jersey law would be abnormal and bad. Because of the mechanism of ISA, this interpretation will be coming “freely” from the “victims” who will believe freely and follow. The contamination is masked by ideology. To be more concrete with the case of our micro jurisdiction, a lawyer in Jersey, will *par défaut* believe that English law (the contamination) is normal or good and that the local Jersey law is abnormal or bad. This fact does not have to be a conscious one. Again, because of how ISA works, the ideology produces an effect on the minds that would make it “normal” to think that way. The contamination is hiding behind the ruling ideology.⁵⁸ Furthermore, a school leaver studying one legal culture, as it

57. ALTHUSSER, *supra* note 16, at 19.

58. To be more specific here, we will restrict the ‘messengers’ of the ideology to the ‘educated’ lawyers. But we could have added the political elite of the Island, the administration, the academic of the Institute although for those, like

is often the case, can only embrace the belief that this legal culture is the normal or good one, mainly because he or she would not be able to critically analyse whether this statement is valid. Then again, we may safely assume that a lawyer educated in English law will probably always favour the concepts of English common law, not because he or she “truly” believes this is the best law but because ideology makes him believe this is the best law.

To explain further my point on ideology, contamination, and legal education, I would like to give an illustration based on the law of contract in Jersey. This area of law has sustained a massive attack in Jersey as I will describe now. It has been complex for lawyers in Jersey to work with Jersey contract law for a while. Duncan Fairgrieve was the first academic involved in the teaching of Jersey contract law at the Institute of Law. He not only taught the future local lawyers but also designed the current study guide where he was trying to eliminate the illogical impracticality of the subject. John Kelleher wrote the following in a short article in the *Jersey and Guernsey Law Review*: “Long-time readers of this *Review* will have observed its commitment to promoting the development of the Jersey law of contract into something more accessible and coherent, with proper regard to the historical roots of our law. It has been a long process, but progress has been made.⁵⁹” He added in the second section that “[s]ince the seminal case of *Selby v Romeril*, the evolution of our contract law has had a decidedly French hue, recognising as it does our Norman roots and the Norman law reliance on the French common law (*ius commune*) for its law of obligations.”⁶⁰

Fairgrieve was adamant to find the “real” roots of Jersey contract law. To do so, he has been working on how Jersey contract law has

for the member of the judiciary, the connection with the ‘educated’ lawyers is quite clear.

59. John Kelleher, *Another Puzzling Contract Judgment*, 22 JERSEY & GUERNSEY L. REV. 78 (2018). <https://perma.cc/GB2S-LAME>. (Last visited: July 5, 2022).

60. *Id.* at 78.

drawn from the civil law tradition of France and the common law of England and what are the various elements that have now merged with the current Jersey contract law.⁶¹

Meanwhile, the work of the law commissioners in Jersey has been slightly different. In two documents, they considered the law of contract in Jersey. The position of the Law Commission has been summarised in the consultation paper on contract law (2002),⁶² the final Topic Report on Contract Law (2004)⁶³ and the Comments of Proposal for Reform of the Jersey Law of Contract (2019).⁶⁴ The commissioners in 2002 wrote the following:

It is interesting to note that prior to the time that English influence became particularly marked in Jersey law, local lawyers trained in France. Today, the majority of Jersey lawyers study law in England and obtain a professional qualification in that jurisdiction prior to training locally. The influence of English law today is therefore explicable on the same basis as the influence of French law referred to by the Commissioners of 1861 (*supra*).⁶⁵

This statement certainly contradicted Kelleher's statement on Fairgrieve's work. But in my opinion, this is the way ideology works. Jersey lawyers have been trained in common law countries that do share English common law but with the particularism of their places. As put by Kelleher in the book review made on the book of Fairgrieve:

The practitioner instructed to advise on an aspect of contract law was in great difficulty. Many, unsurprisingly, turned to the law in which they had almost always received

61. FAIRGRIEVE, *supra* note 17.

62. The Jersey Law Commission, The Law of Contract, Consultation Paper (2002), <https://perma.cc/Q2SG-SWQ2>. (Last visited: May 12, 2022).

63. The Jersey Law Commission, The Law of Contract, Topic report 10 (2004), <https://perma.cc/TJE5-2X3C>. (Last visited: July 5, 2022).

64. Comments of Proposal for Reform of the Jersey Law of Contract, 2019, <https://perma.cc/E7Q2-7H7W>. (Last visited July 5, 2022).

65. *Id.*

their legal education and recourse was had to *Chitty on Contract Law* and the like on English common law.⁶⁶

In the commission's 2002 consultation paper, the Jersey Royal Court cases on Jersey contract law was quoted:

Perhaps the most notorious cases which referred to the Code Civil are *Kwanza Hotels -v- Sogeo Co. Ltd* and *Selby -v- Romeril*. At first instance in *Kwanza -v- Sogeo* the court stated as follows:

Although the "Code Civil" represents the law of modern France and not the "Ancienne Coutume" of Normandy from which the law of Jersey is drawn, I feel that, on a question such as the one I now have to decide, he [sic] and the other authorities quoted are a surer guide to the discovery of the Law of Jersey than is the Law of England, where, as here, the Laws relating to real property have diverged to a real extent.⁶⁷

In the reported case, the Jersey judge was guided to make his decision and he decided not to replace the law of Jersey by French law or English law. That said, the law commissioners considered in their report that this was in fact a way of leaning toward French law. Therefore, the Jersey judge gave us a perfect illustration of what the "glocal legal" is about. Jersey contract law is Jersey contract law and nothing else. But the guidance towards the judicial decision seemed to be criticised by the law commissioners. Indeed, Sir Philip then Bailiff of Jersey, in *Selby v Romeril* made clear that the root of Jersey contract law are in French contract law. This is simply because Pothier who commented customary law was also a major influence on the draftsmen of the *Code civil* and, therefore, in his opinion, the current cases relating to the then art. 1108 of the Code that lays down the conditions for a convention to be valid should be regarded as

66. John Kelleher, *Comparative Law in Practice—Contract Law in a mid-Channel Jurisdiction*, 17 JERSEY & GUERNSEY L. REV. 267 (2017) (book review). <https://perma.cc/KG3J-PAEU>. (Last visited: July 5, 2022).

67. 2002 Consultation Paper *supra* note 62, at 5-6.

guiding Jersey contract law.⁶⁸ But even though that point could be viewed as valid, the commissioners concluded their consultation paper by a rather peculiar statement:

[W]e presently favour the incorporation of English law by statute on the basis of the relative speed by which it could be carried out, its lack of a negative effect in terms of the Island's suitability for doing business and the fact that it probably reflects the impression, albeit mistaken, that the majority of islanders have of the basis of the Jersey law of contract.⁶⁹

The commission's 2002 consultation paper was then not an exercise of clarification of Jersey law but more of its eradication. In fact, the law commissioners did recommend the disappearance of Jersey law here. This was developed further in the commission's 2004 report. The report took into consideration various variables, meaning the commissioners were less abrupt than in the consultation paper, due to comments they got. Even though the commission softened its approach, it considered that Jersey should adopt what was described as the Indian way, by recommending that "a statutory framework be adopted for the Jersey law of contract and the Indian Contract Act of 1872 be used as a model."⁷⁰ The main point made here was that Indian contract law was based "heavily on the English common law of contract as it stood in 1872," that the law would be familiar to "both local practitioners and residents alike" as the courts in Jersey were adopting "more and more of the elements of the English law of contract."⁷¹ The commission idea although slightly different than

68. See the 1804 version of French Civil Code, Art. 1108: Quatre conditions sont essentielles pour la validité d'une convention :

Le consentement de la partie qui s'oblige ;

Sa capacité de contracter ;

Un objet certain qui forme la matière de l'engagement ;

Une cause licite dans l'obligation.

<https://perma.cc/RCT4-RS9K>. Last accessed July 5, 2022.

69. 2002 Consultation Paper *supra* note 62, at 22.

70. 2004 Report *supra* note 63, at 7.

71. *Id.*

the 2002 consultation paper, also recommended the eradication of Jersey law.

It is quasi evident that for most lawyers, it makes sense, and it is certainly more efficient to adopt once and for all mechanisms, concepts, legal institutions of a legal culture they know best. Legal education and the language used by lawyers impacts on their understanding of legal mechanisms. This is not surprising in ideology. In fact, “[l]anguage and behaviour are the media, so to speak, of the material registration of ideology, this modality of functioning.”⁷² The behaviour of the lawyers and their language have to do with the way the good law in the asymmetry will eradicate the bad law. It is not surprising that one of the proposals of the commission was actually “a direct incorporation of the English common law of contract” although, according to the report, the Indian way felt more suitable.⁷³ It felt more suitable, as reaffirmed in the 2019 comments, simply because the commission advocated this time an “Anglo-Saxon” model.

[The Commission] would urge legislative reform based on an Anglo-Saxon model. Such a legislative reform would provide a modern framework for contract law, allowing Jersey businesses and individuals alike to go about their daily lives making and enforcing agreements in a way that they would expect.⁷⁴

Here, the dominant legal domain (English common law), of one of the “big neighbours” was to be the one crushing the local law of the micro jurisdiction Jersey. I am trying not to make any judgement of value here. There are arguments for and against in this illustration. But the point I would like to make is that the Jersey law commissioners were almost all English solicitors, and those who were already qualified Jersey lawyers had to be trained in English common law anyway. Althusser demonstrated the following:

72. Hall, *supra* note 9, at 99.

73. 2004 Report *supra* note 63, at 5.

74. 2019 Comments *supra* note 64, at 3.

Knowledge, whether ideological or scientific, is the production of a practice. It is not the reflection of the real in discourse, in language. Social relations have to be ‘represented in speech and language’ to acquire meaning. Meaning is produced as a result of ideological or theoretical work. It is not simply a result of an empiricist epistemology.⁷⁵

We understand here how legal education, product of a specific practice, is the legal knowledge. I do not wish to criticise or be too negative here, but simply to highlight the logic of the frame of mind, and its result. As legal education has been more professional than liberal, the scope for any critical analysis has been very slim. It has somehow become monopolistic and, as a result, we may be able to affirm that the knowledge of the “educated” lawyers is geographically conditioned: Where you are trained conditions what you know. This point modifies the perception (the meaning) of what should be right in the two-fold legal education. The “foreign law” experience (training in English law) that is consciously or unconsciously imposed (voluntarily or not) seems to take a major space. It even gives a more or less insidious belief to the trained students as it provides one global legal discourse, simply by mirroring what had been done in the dominant country. Ultimately, it is imposing hegemonic alien views on micro jurisdictions.

V. HOW IDEOLOGY IMPOSES ALIEN VIEWS ON MICRO JURISDICTIONS?

More than any other places, micro jurisdictions suffer the “traditional positivist national approach to law.”⁷⁶ This is a typical consequence of the monopolistic vision of the law carried by a national discourse of “big neighbours” that overflows. It overflows because of the requirement that the ab initio legal training be done

75. Hall, *supra* note 9, at 98.

76. Mark Van Hoecke, *Globalisation, Europeanisation and Legal Education in HIGHER LEGAL CULTURE AND POSTGRADUATE LEGAL EDUCATION IN EUROPE* 88, 83-89 (Vittorio Olgiati, ed, Edizioni Scientifiche Italiane 2007).

somewhere else. Jersey lawyers are positioned within an ideological structure, dominated by the law of the “big neighbours,” and the language, in their ideology. Indeed, as Hall explained, “some of the basic positionings of individuals in language, as well as certain primary positions in the ideological field, are constituted through unconscious processes in the psychoanalytic sense, at the early stages of formation.”⁷⁷

I gave the example of Jersey contract law particularly because it shows the tension, the conflicts between the dominant laws of the countries around Jersey and Jersey law: French law, English law, pulling apart Jersey law. The influence of the “big neighbours” conditions a certain perception of the law and a specific meaning of their law, the one of the other, creating unbalance, hierarchy, judgement of values between one law and the other law, between a good law and a bad law. This asymmetry defined by Althusser is produced and reproduced unconsciously. Legal education becomes an instrument of a domination of a place over another one, transpiring through gaps by the means of history and particularly language, as “[o]ne of the main challenges lying before law education . . . is related to law and language relationship.”⁷⁸

The relationship “law and country,” as an ideological relationship, expands to a masked contamination of the legal identity of Jersey.⁷⁹ And we clearly witness a reproduction of a specific vision, a specific domination, contaminations that go beyond the “law and country,” as it colonises spaces that are not supposed to be.

One could consider that it is a “good” thing to be educated in several legal cultures. It has for instance been argued that “[i]n legal education . . . , lawyers tend to analyse the law and to solve problems rather isolated from [the context of written law],” the “whole (social,

77. Hall, *supra* note 9, at 106.

78. Natalia Udina, *Law Education: Language and Legal Translation Perspectives*, *PROCEDIA – SOCIAL AND BEHAVIORAL SCIENCES* 214. 1138, 1134-1138 (2015).

79. Moréteau, *supra* note 56.

economic, historical, ideological . . .) context of written law” that represent the legal culture.⁸⁰ Then, having access to knowledge of English law (or French law for argument’s sake), as a pre-requisite to the access of micro jurisdictions law should be seen as a chance for critical learning rather than a challenge as I mentioned previously.

It is indeed a chance for micro jurisdictions to create an “in between” and contradict the strength of the “big neighbours” ideology, by critically looking at the law of the “big neighbours.” It also should help lawyers or candidate lawyers to compare and develop a critical mind on the one hand and, on the other hand, to raise awareness of what else is there. But the issue is the size of the jurisdictions involved and the question raised by Althusser about asymmetry. If Jersey lawyers would be trained in both French law and English law for instance, there would be scope to acknowledge that there is something “in between” that could guarantee an equilibrium and remove asymmetry. This is not currently the case. This “in between” is where the micro jurisdiction finds itself. In an ideal world, identity, and particularly legal identity should not disappear but be taken into account in a global world, as an added value, that is an adequate logical little addition, an addition of quality rather than quantity, an addition that is believed to be of importance.

We may well have French law and English law influence on the law of Jersey, but what is important here, is the rest, the “in between,” the important “nothing” as the psychoanalyst would say, that is Jersey law, the local extension of Normand customary law developed locally, that gives all its flavour to the legal culture of Jersey and gives its legal identity, its “glocal legal” dimension. However, that this is not that simple. Jersey faces internal influences that are repeatedly trying to undermine the “glocal legal” character of the island. We may illustrate this point once more by referring to

80. DAVID SHIFF & RICHARD NOBLES, *LAW, SOCIETY AND COMMUNITY: SOCIO-LEGAL ESSAYS IN HONOUR OF ROGER COTTERRELL* 273 (Ashgate 2014).

the Jersey law commission 2002 consultation paper. In section 12, the commissioners presented us the *Summary of present difficulties in ascertaining the law of contract*. The commission listed those difficulties: Accessibility of Norman texts, Language, The Difficulty of Applying Ancient Concepts, Uncertainty; A legal system for the modern world of commerce? As a preliminary remark, I would like to point out that what the commissioners listed would not be considered as such by comparative lawyers. Indeed, academics have ability to find texts. Legal historian can work on these. In addition, customary law is not strictly speaking a written type of law and using Norman text to describe it is quite untrue. Indeed, according to Ruiters:

The conceptual framework may be helpful in analysing written law, that is, legal conditions whose validity rests on the successful performance of legal acts. It remains to be seen, however, whether this framework can also be used to analyse legal conditions whose validity does not rest on the successful performance of legal acts, that is, unwritten law. Unwritten law can roughly be divided into two categories. The first is the category of legal principles. The second is the category of customary law.⁸¹

This is confirmed by Murphy who wrote that “custom . . . is unwritten law.”⁸² In the same logic, academics do not have many issues with applying concepts. And practitioners should not either. But I would like simply to conclude by considering further the comments made under the difficulties labelled language and efficient legal system.

Language

Apart from the translations to which we have referred in the preceding paragraph, works on Norman customary law and on more modern French law are almost exclusively written in the French

81. DICK W.P. RUITER, *LEGAL INSTITUTIONS* 119 (Springer 2001).

82. AMANDA PERREAU-SAUSSINE & JAMES B. MURPHY, *THE NATURE OF CUSTOMARY LAW: LEGAL, HISTORICAL AND PHILOSOPHICAL PERSPECTIVES* 65 (Cambridge U. Press 2007).

language. Despite the island's proximity to the coast of France, very few islanders are fluent in French and in the twenty-first century it may be difficult to justify a legal system where the laws are written in a language that is alien to the majority of the population. In addition, the educational system on the island is English-based, both in terms of language and content.

A Legal System for the Modern World of Commerce?

On an island predominantly inhabited by British nationals, it begs the question as to why contract law continues to lean towards French law and, on occasions, modern French law. Both statements relate. They are also both quite untrue. Jersey's population is quite diverse. About half of its population is "really" from Jersey. When the report of the commission was published it was exactly 53 % (it is 50 % now), whereas the rest were from elsewhere.⁸³ Of course, around 30 % of the population is from an English-speaking part of the world. Then again, the island is constitutionally bilingual. That kind of arguments would not stand the analogy for example of Canada. Canada is bilingual, most of Canada communicates predominantly in English and some part predominantly in French. The presence of a large English-speaking community does not oblige the people of Quebec to adopt common law contract, although it is not forbidden to do so, and vice versa.

If we can assume that higher legal education has moved to some extent to an internationalisation, within globalisation, then legal education of students in micro jurisdiction is at the essence. But the whole area of knowledge, again, is bathing in ideology from the large legal entities that are surrounding these micro spaces. Ideally, lawyers in Jersey must develop a critical mind and first acknowledge that law of the "big neighbours" only reflects one law, another foreign law. In ideology, with the point of asymmetry and hierarchy,

83. Island of Jersey, *Population Characteristics*, (2011), <https://perma.cc/YQA7-FPQV>. (Last visited July 5, 2022).

with the question of contamination surrounding the qualitative appreciation of the law, we observe the conflict of one law (or law of one) versus foreign law (or law of the other), the good versus the bad. That said, I am pretty sure that most future lawyers see only one thing that was well spotted by the commissioners: to study a legal system for the modern world of commerce. We can assume that this is one of the most important reasons here for the use of the English language, the new *lingua franca*, and the use of the English common law. The difficulty for an international financial centre like Jersey is to appear to have a legal system (rather than a legal culture) that is modern and sophisticated as the think tank Jersey Finance put it.⁸⁴ Unfortunately, these ideas contribute to an ambiance that advocates for the reduction of the legal identity of Jersey and therefore also opens the way to less attractiveness.

One may assume this is the result of the structural perception of what is hegemonic in the law. Because of this perception, most law students in Jersey expect to study the law of the English “big neighbour” even though their true *fonds de commerce* (*goodwill*) is in fact as I said above, “the rest”; that is their legal identity will appear only if Jersey legal culture was taught or if the legal cultures of both “big neighbours” would be critically taught, helping the fostering of the “in between.” It is a perception from the “globalisation” trend, but also, and maybe this is a related matter, because of the pressure of peer practitioners. The pair “law-country,” this monolithic, monopolistic approach of the law, created by a specific discourse, a national discourse is exacerbated in micro jurisdictions. In fact, by analogy, we might consider that it equates the violence described by Derrida on the way language was imposed in many societies. This vehicle has many considerations and assumptions that are wrong

84. Jersey the International Finance Centre, <https://perma.cc/XDX6-QV6D>. (Last visited: July 5, 2022).

(like the divide private/public for example), fostered voluntarily or not by the hegemonic dominance of the “big neighbours” law.

As law may be considered as a specific discourse of a vast discourse,⁸⁵ as the language carries the “always ready,” which is the impossibility to get out of the ideology, micro jurisdictions find themselves in the middle of a competition between hegemonic discourses. Jersey’s position amplifies this position because the micro jurisdiction itself competes with one competitor that does not have the same weight as the other and becomes the dominant legal culture, making Jersey law the foreign one. As a last illustration, I would like to add what the commissioners mentioned in their 2019 comments:

We therefore advocate legislation to establish a statutory model for Jersey’s contract law. In designing a statutory model, we recommend that the statute should not be based on principles of French law. It is not good policy to base a statute on alien concepts which are introduced deliberately for cultural, romantic or sentimental reasons to be different. Laws should serve the people and, so far, as is possible, meet their expectations and avoid unfamiliar concepts.⁸⁶

Jersey’s contract law should be Jersey’s, without any epistemological reference to French law, understanding that what they had in mind with a common law approach.

VI. CONCLUSION

To conclude, there are ambivalent aspects of legal training in Jersey (identity and the “big neighbours” dilemmas). It highlights the drama and the trauma of the 21st century legal education in the micro jurisdictions.⁸⁷ We are all aware that, to a certain extent, and I would not like to generalise too much here, the teaching of law has

85. ERNESTO LACLAU & CHANTAL MOUFFE, *HEGEMONY AND SOCIALIST STRATEGY* 96 (Verso 1985).

86. 2019 Comments *supra* note 64, at 3.

87. I would even attempt to generalise here by saying that this might be the drama and trauma of most micro jurisdictions.

become mechanistic. This seems to be a result of the necessity to develop “good” lawyers, “ready to go” lawyers, some sort of good new blue-collar workers for the structure. It also has become too restricted and too narrow, to fit nicely within the pair “law and country.” This has to do with efficiency. These remarks may not be a major shock in the legal profession and therefore in legal education in a large country. But these remarks need to be addressed and analysed carefully in micro jurisdictions. Jersey legal education is mostly based on ab initio training in English law prior to a local training in Jersey law. The entire training is mostly done in English if we exclude some teaching in French due to conveyancing documents still being written in French in Jersey. The domination of one “big neighbour” over the other is creating an imbalance that preclude Jersey from truly determining its “in between.” As a result, one legal identity is contaminating drastically Jersey’s legal identity. This identity is being erased by a contamination from English common law. Thanks to Althusser, we know that ideology masks reality, misrepresents reality, creating a fantasy world to allow the continuation of a system. The contamination is masked under the veil of efficiency and contemporaneity of English common law. English trained future lawyers in Jersey are not immune to this asymmetry and this operation. They are unconscious victims within this mechanism. To be complete, it should also be noted that at the time of the publication of this article, the local law school has somehow turned even more towards the English side, leaving almost completely the French side, and drastically diminishing its Jersey specificity.

Along its various incarnations, the discourse of a society is manifested, through ideology, relayed by the law, also as ideology “which forms the ‘common sense’ of a period and thus appears natural, normal, right.”⁸⁸ The trouble is that what appears natural,

88. Alan Hunt, *Marxist Theory of Law*, in A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 361, 355-374 (Dennis Patterson edocal, Blackwell 1996).

normal, right for those studying English law, clashes with the legal identity of Jersey, which is in fact as I mentioned, the real *fonds de commerce* of Jersey lawyers. Žizek would say that this sounds really like “shooting oneself in the foot”; this is indeed sacrificing what is most precious, doing the impossible.⁸⁹ I think this is self-explanatory.

89. Jodie Dean, *Žizek on Law*, 15 LAW AND CRITIQUE 1, 21-22 (2004).

