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# Rewards and Challenges of Teaching Comparative Law in the Commonwealth Caribbean

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# Rewards and Challenges of Teaching Comparative Law in the Commonwealth Caribbean

Asya Ostroukh\*

## INTRODUCTION

The need for comparative law in the age of globalization and internationalization of life in general, and legal development in particular, has been articulated in legal scholarship.<sup>1</sup> The importance of comparative law for training modern lawyers has been emphasized as well.<sup>2</sup> Nevertheless, these issues are still discussed mostly in relation to and in the context of larger countries and major legal systems, mostly Europe in whole, its largest countries (Germany, France, and the United Kingdom), and the United States. The importance of comparative law for small, marginal jurisdictions offers a fruitful field to explore.

This Essay discusses the Author's personal experience of teaching the course of comparative law at the Faculty of Law at Cave Hill Campus of the University of the West Indies (Barbados), focusing on the benefits and challenges of this teaching in this particular region. The discussion also includes the history and current development of comparative law in this part of the world as well as future prospects of this field of knowledge.

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1. JAAKKO HUSA, A NEW INTRODUCTION TO COMPARATIVE LAW 93 (2015); BÉNÉDICTE FAUVARQUE-COSSON, THE RISE OF COMPARATIVE LAW: A CHALLENGE FOR LEGAL EDUCATION IN EUROPE 3 (2007); *see also* Horatia Muir Watt, *Globalization and Comparative Law*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 582–83 (Mathias Reimann & Reinhard Zimmermann eds., 2006).

2. FAUVARQUE-COSSON, *supra* note 1, at 7; MARY ANN GLENDON, MICHAEL WALLACE GORDON & CHRISTOPHER OSAKWE, COMPARATIVE LEGAL TRADITIONS 2 (2d ed. 1994); Ugo Mattei, *An Opportunity Not to Be Missed: The Future of Comparative Law in the United States*, 46 AM. J. COMP. L. 709, 713 (1998).

I. THE TEACHING OF LAW, PARTICULARLY COMPARATIVE LAW,  
AT CAVE HILL CAMPUS

The Faculty of Law at the University of the West Indies (“UWI”) was established in 1970 in the midst of the acquisition of independence by most British Caribbean colonies.<sup>3</sup> The years that followed independence were formative years for regional legal systems and legal reforms. The idea behind the establishment of the Faculty of Law at UWI was to teach local law, to produce lawyers who would practice in the region and who would be able to adjust the existing law to the needs of the local society, and to create facilities for legal research pursuing similar objectives.<sup>4</sup> UWI currently has three campuses: Cave Hill in Barbados, Mona in Jamaica, and Saint Augustine in Trinidad and Tobago, with the faculties of law at the last two campuses established in 2012.<sup>5</sup>

Overall, the Faculty of Law at Cave Hill Campus follows the British curriculum in teaching law and offers basically the same courses as an average British university, subject to certain regional modifications. The same can be said about the teaching style at Cave Hill; it is very British in its curriculum—the teaching of law is more theoretical and academic than in the United States—and in the course materials. Lecturers use British-

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3. Faculty of Law, *About Us*, U. WEST INDIES CAVE HILL, BARB., <http://www.cavehill.uwi.edu/Law/about-us.aspx> [<https://perma.cc/2NRB-P333>] (last visited Jan. 19, 2016).

4. The Wooding-Marshall Report on West Indian legal education of 1967 sets up the following aims of legal research in the region:

- (i) the publication of a law journal to meet the badly felt need for critical appraisal of current legal developments in both case and statute law; (ii) a thorough examination and scholarly exposition of current West Indian law and West Indian legal history; (iii) fundamental enquiries, in cooperation with the relevant disciplines in the field of social studies, into the suitability of existing laws (most of which have been borrowed from the colonial powers) to meet the needs of developing societies; and (iv) assistance with research into specific proposals for law reform, if so requested by governments.

Howard N. Malcolm, *Towards the Emergence of an Anglo-West Indian Jurisprudence*, W. INDIAN L.J., Oct. 1993, at 53, 53 (quoting REPORT OF JOINT CONSULTATIONS BETWEEN SIR HUGH WOODING AND PROFESSOR MARSHALL ON THE QUESTION OF LEGAL EDUCATION IN THE WEST INDIES (1967)).

5. 1 UNIV. OF W. INDIES, THE STATUTES AND ORDINANCES AS OF 2012 ordinances 58, 59, at 139–40 (2012) (on file with Author).

style academic textbooks and not American textbooks in the literal sense of the word, which are collections of texts, cases, and materials. The major law program at Cave Hill is a three-year undergraduate L.L.B. with the first two years devoted to the study of basic compulsory courses and the third year to optional disciplines.<sup>6</sup>

The teaching of comparative law started at Cave Hill almost immediately after the establishment of the Faculty of Law in 1972 by a lecturer from Belgium, Jean-Pierre Fonteyne, who is an expert in international public law and who later taught at Australian National University.<sup>7</sup> He taught Comparative Law at Cave Hill until 1975.<sup>8</sup> Since then, the following local Caribbean lawyers have taught the course: Dorcas White, David Bradshaw, and Dr. Kenny Davis Anthony, who taught the course in the early 1990s.<sup>9</sup> The last year that comparative law was taught at the Faculty was 1996–1997, and it was reintroduced into the curriculum almost 20 years later in the academic year 2014–2015. Currently this is the only UWI campus that offers such a course.

Unlike many European or United States universities where comparative law is a graduate (or postgraduate) course, at UWI, comparative law is taught to undergraduate students, meaning that students lack some essential skills required for a course of this level of sophistication. Another challenge for teaching comparative law is that it is a one-semester course, which means that the time allocated for such a demanding subject is hardly adequate, and the lecturer is forced to be very selective in the choice of topics. Currently, the following topics are covered: History, Content, and Relevance of Comparative Law; Classification of Legal Traditions; Civil Law Tradition; Common Law Tradition; Mixed Legal Systems; Legal Traditions of the Caribbean; and Major Aspects of Comparative Property Law.

Another obvious challenge is that comparative law is taught to students with very little exposure to other legal traditions. Almost all

6. Faculty of Law, *Undergraduate Programmes: Structure*, U. W. INDIES CAVE HILL, BARB., <http://www.cavehill.uwi.edu/Law/programmes/undergraduate/structure.aspx> [https://perma.cc/54TP-245U] (last visited Jan. 19, 2016).

7. E-mail from Marguerite Knight-Williams, Attorney, to Asya Ostroukh (June 22, 2015) (on file with Author).

8. *Id.*

9. *Id.* The Author's Barbadian colleague, Marguerite Knight-Williams, and Chief Justice of Barbados Marston Gibson both took the UWI comparative law course with Jean-Pierre Fonteyne in the 1970s. *Id.* As the Author's conversations with Ms. Knight-Williams, and Ms. Knight-Williams's conversations with Justice Gibson suggest, both have many fond memories from their time in the course and provided information about the UWI comparative law courses.

Commonwealth Caribbean countries are pure common law systems, so comparative law is taught to common law students who are unfamiliar with the civil law tradition and civil law English, which makes teaching more challenging than in mixed jurisdictions like Quebec, Louisiana, Scotland, or South Africa. This means that when rendering civil law terminology to common law students, the lecturer has to either look for an equivalent in common law, which is not always possible, or give a descriptive translation. A similar challenge is experienced in civil law countries when a lecturer in comparative law has to introduce students to common law tradition.

## II. NECESSITY FOR STUDYING AND TEACHING COMPARATIVE LAW IN THE COMMONWEALTH CARIBBEAN

A rewarding aspect of teaching comparative law at UWI is that there is practically no need to explain the necessity of comparative law to Caribbean students as one would have to do in a large self-sufficient country with a relatively low level of international interaction and integration. This is especially true if a course is not taught at a top national law school. The necessity to study comparative law in the region is obvious for several reasons: geographical location, regional integration, and the international curriculum and students at UWI.

### *A. Geographical Location*

First, the geographical location of the Commonwealth Caribbean countries causes them to interact on a daily basis with other neighboring countries and territories on all levels: political, economic, legal, and cultural. The Caribbean islands and mainland countries are just too small for a secluded, self-sufficient life. They are much smaller than average European countries or states within the United States. Due to globalization and the ease of transportation, the Caribbean countries witness an unprecedented movement of people, businesses, and ideas.

This movement is complicated by the historical, political, and cultural diversity of the Caribbean islands. A map of the Caribbean reveals that languages, sovereignty, and systems of government alternate. For instance, Guadeloupe and Martinique are French-speaking territories that still belong to France. Dominica and Saint Lucia are independent states, members of the Organization of Eastern Caribbean States, and predominantly English-speaking, with some portion of the population still using French Creole. Barbados is an independent English-speaking state that has never changed its sovereignty during its colonial history. Aruba

and Curaçao are Dutch-speaking territories still forming parts of the Kingdom of the Netherlands, while Dutch-speaking Suriname is an independent state. Cuba and Puerto Rico are both Spanish-speaking but adhere to completely different political ideologies and systems of government, which influences their legal systems. The islands of Hispaniola and Saint Martin are both shared by two countries: Spanish-speaking Dominican Republic and French-speaking Haiti in the first case, and by France and the Netherlands in the latter case. Naturally, people from various Caribbean countries with different legal systems get married, have children, divorce, inherit, get into traffic accidents—in brief, they get into situations where a need for comparative law could exist. Thus, their geographical location simply forces the Caribbean countries and territories to interact on all levels—individual, governmental, and commercial—which generates a genuine need for comparative law.

### *B. Regional Integration*

Furthermore, the need for comparative law in the Caribbean is obvious due to various projects of regional integration and legal unification: Caribbean Community (“CARICOM”); the Organization of Eastern Caribbean States (“OECS”); the Caribbean Forum of African, Caribbean, and Pacific States (“CARIFORUM”); and the Association of Caribbean States (“ACS”).<sup>10</sup>

CARICOM was established in 1973 to promote economic integration and cooperation of its member-states.<sup>11</sup> Currently, the organization consists of 15 full members (Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago) and 5 associate members (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and Turks and Caicos Islands).<sup>12</sup> Originally consisting of exclusively common law countries, CARICOM now includes two non-English speaking countries that belong to the civil law tradition—

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10. For more about regional integration, see DAVID S. BERRY, *CARIBBEAN INTEGRATION LAW* (2014).

11. *History of the Caribbean Community (CARICOM)*, CARIBBEAN COMMUNITY SECRETARIAT, <http://www.caricom.org/jsp/community/history.jsp?menu=community> (last visited Jan. 19, 2016) [perma.cc/MC5R-YHKL].

12. *CARICOM Member States*, CARIBBEAN COMMUNITY SECRETARIAT, [http://www.caricom.org/jsp/community/member\\_states.jsp?menu=community](http://www.caricom.org/jsp/community/member_states.jsp?menu=community) [https://perma.cc/B9R9-5QST] (last visited Jan. 19, 2016).

Haiti and Suriname (French and Dutch civil law, respectively)<sup>13</sup>—and one of the judges on the Caribbean Court of Justice.<sup>14</sup> Justice Wit is from the Netherlands, which makes it more important for the region to be familiar with the civil law tradition.<sup>15</sup>

OECS was founded in 1981 to promote cooperation, unity, and solidarity among the Members<sup>16</sup> as well as to represent the interests of smaller states regionally and globally.<sup>17</sup> The Organization currently has 7 full members (Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines) and 3 associate members (Anguilla, British Virgin Islands, and Martinique).<sup>18</sup> Most members share the same currency—Eastern Caribbean dollar—and a common judiciary—Eastern Caribbean Supreme Court.<sup>19</sup>

Two other less significant projects of Caribbean integration are the CARIFORUM, founded in 1993, including 16 members and aimed at promoting trade between the African, Caribbean, and Pacific States and the European Union,<sup>20</sup> and the ACS, founded in 1994 to enhance economic

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13. *Haiti*, CARIBBEAN COMMUNITY SECRETARIAT, <http://www.caricom.org/jsp/community/haiti.jsp?menu=community> [https://perma.cc/B9R9-5QST] (last visited Jan. 19, 2016); Harold Fock Munneke, *Customary Law and National Legal System in the Dutch-Speaking Caribbean, with Special Reference to Suriname*, 51 EUROPEAN REV. LATIN AM. & CARIBBEAN STUD. [ERLACS] 91, 92–93 (1991).

14. This court is a final court of appeal for certain countries (Barbados, Belize, Guyana, and Dominica), which replaced the Judicial Committee of the Privy Council and a court of original jurisdiction for interpretation and application of the Revised Treaty of Chaguaramas (the treaty that established the Caribbean Community, signed in 1973 and revised in 2001).

15. ROSE-MARIE BELLE ANTOINE, COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS 41 (2d ed. 2008).

16. *About the OECS*, ORG. E. CARIBBEAN STS., <http://www.oecs.org/about-the-oecs/who-we-are/about-oecs#sthash.xDtmZA2E.dpuf> [https://perma.cc/7NR3-EUVX] (last visited Jan. 19, 2016) [perma.cc/PCC2-9LKN].

17. BERRY, *supra* note 10, at 25.

18. *Member States*, ORG. E. CARIBBEAN STS., <http://www.oecs.org/about-the-oecs/who-we-are/member-states> [https://perma.cc/ZQ26-B5Z3] (last visited Jan. 19, 2016); *President Letchimy Signs Documents Initiating the Accession to Associate Membership of Martinique*, ORG. E. CARIBBEAN STS. (Feb. 7, 2015), <http://www.oecs.org/media-center/press-releases/secretariat/939-president-lechimy-signs-documents-initiating-the-accession-to-associate-membership-of-martinique#sthash.bEXrSQ6o.dpuf> [https://perma.cc/Y5WF-GEXB].

19. BERRY, *supra* note 10, at 24–25.

20. *Id.* at 29–30.

cooperation between the states from the Greater Caribbean region, and including 25 members and 7 associate members.<sup>21</sup>

Many Commonwealth Caribbean countries are also members of the Organization of American States, which brings them into cooperation with legal traditions from North and South America. The decisions of the Inter-American Commission on Human Rights and the Inter-American Convention on Human Rights affect, although not always directly, the legal systems of the Commonwealth Caribbean countries, especially in the areas of human rights, constitutional law, and criminal law.<sup>22</sup>

### *C. Style of Teaching at the Faculty of Law at Cave Hill Campus*

A benefit of teaching comparative law in the Commonwealth Caribbean is that lawyers in these jurisdictions are comparatists by default. Practicing and studying law in the Caribbean in general, and in the Commonwealth Caribbean in particular, is comparative by definition due to both close interaction of these jurisdictions and similarities in legal systems of the countries belonging to the common law tradition. This particularity of the region is reflected in the law program at Cave Hill Campus of UWI, whose hallmark has always been teaching with a comparative perspective. The law courses cover all Commonwealth Caribbean jurisdictions and not just Barbados, where the campus is located.<sup>23</sup>

Of course, some comparative law is present in teaching law courses in every common law jurisdiction, as citing cases decided in other common law countries is an established practice. For instance, a Gambian case, *Manjang v Drammeh*,<sup>24</sup> is cited in British textbooks on land law when they deal with easements of necessity.<sup>25</sup> This said, faculties of law in common law countries do not teach the law of other common law countries, while Cave Hill does teach the law of other Commonwealth Caribbean countries and the British law if it is relevant to the region. Thus, this makes our

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21. *About The ACS*, ACS, <http://www.acs-aec.org/index.php?q=about-the-ac> (last visited Jan. 19, 2016) [perma.cc/Q4UH-4YHS].

22. ANTOINE, *supra* note 15, at 215.

23. Depending on its subject matter, a course may cover all or most of the following jurisdictions: Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Bermuda (which is not strictly speaking a Caribbean territory, but very often covered by our law courses), British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Trinidad and Tobago, and Turks and Caicos.

24. *Manjang v. Drammeh*, [1990] 61 P&CR 194 (P.C.) (Gam.).

25. *See, e.g.*, JOHN STEVENS & ROBERT PEARCE, *LAND LAW* 310–11 (2000).



teaching multisystemic. Given the presence in the Commonwealth Caribbean of two mixed jurisdictions with a civilian component, namely Saint Lucia and Guyana, many courses covering these two countries—the law of real property, for example—become not only multisystemic but also truly comparative as they introduce students to two different legal traditions. For this very reason, the Faculty of Law at Cave Hill has more international than Barbadian students. Students come to Barbados to study law from anywhere in the Commonwealth Caribbean from Belize to Guyana, although the three leading countries are Jamaica, Trinidad and Tobago, and Barbados, making teaching and learning law even more comparative.

Finally, a compelling reason to study comparative law in the Caribbean is that the diversity of legal systems in this region is unmatched anywhere else in the world.

### III. LEGAL MAP OF THE CARIBBEAN

The Caribbean region is truly unique for comparative law for two reasons. First, the variety of legal systems that are present here is hard to find elsewhere in the world. Second, despite such promising diversity of legal systems, the region is surprisingly one of the most marginalized in comparative legal research and teaching.

#### *A. Diversity of Legal Systems*

Although understudied in comparative law, the Caribbean region possesses a substantial potential for comparative legal scholarship. One can say that the map of the Caribbean basin is truly a mini-map of Western law. Here, one will find specimens of the French law (Martinique, Guadeloupe, Saint Barthélemy, Saint Martin, and French Guiana), the Roman-Dutch law (some elements in Guyana), the Dutch law<sup>26</sup> (Suriname, Aruba, Curaçao, Sint Maarten, Sint Eustatius, and Bonaire), the British law (Montserrat, the Cayman Islands, Anguilla and the British Virgin Islands as well as Commonwealth Caribbean countries that were largely influenced by the British common law) and the American law (American Virgin Islands and some elements of it in Puerto Rico).

In the region, both pure legal systems (common law and civil law) and mixed jurisdictions (mixed common law and civil law) can be found. The mixture is due to colonial context—a change of sovereignty from France to Great Britain as in the case of Saint Lucia, from the Netherlands to Great

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26. This is not the same as Roman-Dutch law.

Britain as in the case of Guyana, or from Spain and the United States in the case of Puerto Rico—which makes this experience similar to Scotland, Quebec, Louisiana, and South Africa. In the region, all types of civil–common law mixture are represented: English common law and French and Quebec civil law in Saint Lucia, which is similar to Quebec and Louisiana; English common law and Roman-Dutch law in Guyana, which is similar to South Africa; and American common law and Spanish civil law in Puerto Rico, which is unique to the region.<sup>27</sup> Nevertheless, the Caribbean mixed jurisdictions have demonstrated a substantially higher level of erosion—or as some of the Author’s Louisiana colleagues say, “commonization”—of the civil law, which makes these jurisdictions different from Quebec, Louisiana, or Scotland.<sup>28</sup>

The region can also be proud of having specimens of the socialist legal tradition, if one considers it as a separate tradition,<sup>29</sup> which has become almost obsolete elsewhere in the world. This tradition is either fully functional, as in Cuba, or historical, as in Grenada under the People’s Revolutionary Government in 1979–83 and in the Constitution of Guyana that formally claims to be a socialist state.<sup>30</sup>

Some Caribbean legal systems (Guyana, Trinidad and Tobago, and Suriname) accommodate some rights of certain religious groups, such as Muslims and Hindus, that have an important share in these countries’ population.<sup>31</sup>

Even more interesting for comparative law, the region has a range of legal systems, not only of independent states but also of territories belonging to larger states. Thus, a number of overseas French departments and collectivities (*départements et collectivités d’outre-mer*) exist: Martinique, Guadeloupe, and French Guiana (departments) and Saint Martin and Saint Barthélemy (collectivities). Dutch Bonaire, Saba, and St.

27. For more about Puerto Rico’s mixed legal system, see Luis Muñoz-Argüelles, *Puerto Rico*, in *MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY* 381 (Vernon Valentine Palmer ed., 2d ed. 2012).

28. For more about the erosion of the Civil Law in Guyana and Saint Lucia, see ANTOINE, *supra* note 15, at 61–71.

29. For criticism of the theory of the socialist legal tradition, see Asya Ostroukh, *Russian Society and Its Civil Codes: A Long Way to Civilian Civil Law*, 6 *J. CIV. L. STUD.* 373, 374–75 (2013).

30. For Grenada’s legal system under the People’s Revolutionary Government, see SIMEON C.R. MCINTOSH, *KELSEN IN THE ‘GRENADA COURT’: ESSAYS ON REVOLUTIONARY LEGALITY* (2008). For Guyana’s legal system see ANTOINE, *supra* note 15, at 46.

31. For more information about the influence of religion on Caribbean legal systems, see ANTOINE, *supra* note 15, at 49–54.

Eustatius form special municipalities within the country of the Netherlands, while Aruba, Curaçao, and Sint Maarten are countries constituting the Kingdom of the Netherlands.<sup>32</sup> Further, the United Kingdom (Montserrat, the Cayman Islands, Bermuda, Anguilla, Turks and Caicos, and the British Virgin Islands) and United States overseas territories (American Virgin Islands and Puerto Rico) are also located in the region.

### *B. Grouping the Caribbean Legal Traditions*

Such diversity of legal systems in the Caribbean brings another problem for comparative law. Diego López-Medina is correct in highlighting the fact that “there is no common Latin American and Caribbean legal tradition despite the geographical proximity.”<sup>33</sup> This Essay goes further by saying that no single Caribbean legal tradition exists either. Although cultural unity among Caribbean countries persists due to common historical past—colonialism; African, Indian, and American-Indian ancestry; slavery; plantation economy; cultural exchange; and lifestyle—these countries have no legal unity.

This said, former Iberian, French, Dutch, and British colonies show similarities in their groups and engage in legal exchange within their respective groups. The former Spanish colonies in the Caribbean (Cuba, the Dominican Republic, and even Puerto Rico) take part in a legal discussion with each other, with continental Iberian America, and even with continental Europe. The English Caribbean has followed the British common law developments quite closely with no substantial legal connection to Iberian America. These countries also rejected any significant break in the law between the colonial and the independent periods, with many laws being preserved from the British rule. The French and Dutch Caribbean, except for Haiti and Suriname, are still parts of France and the Netherlands, which means that the law of these countries—with regional adjustments—is still applicable there.<sup>34</sup>

This lack of interaction between Caribbean legal traditions among themselves and with Latin America is also clearly seen in legal research

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32. For the legal status of Dutch Caribbean territories, see Dimitry Kochenov, *Dutch Overseas Territories*, ACAD. FORESIGHTS (Sept. 2012), [http://www.academic-foresights.com/Dutch\\_Overseas\\_Territories.html](http://www.academic-foresights.com/Dutch_Overseas_Territories.html) [perma.cc/STA3-QYYZ].

33. Diego López-Medina, *The Latin American and Caribbean Legal Traditions: Repositioning Latin America and the Caribbean on the Contemporary Maps of Comparative Law*, in THE CAMBRIDGE COMPANION TO COMPARATIVE LAW 344, 349 (Mauro Bussani & Ugo Mattei eds., 2012).

34. *Id.* at 349.

and teaching. At UWI, students learn everything about the law of the Commonwealth Caribbean and nothing about the law of neighboring French, Spanish, and Dutch-speaking jurisdictions or about the legal regime of the United States Caribbean islands, let alone Latin American countries. The lawyers from these respective jurisdictions return the favor, learning little about the law of the Commonwealth Caribbean. This fact is completely unacceptable in our age of globalization of both the law and the legal education.<sup>35</sup> Further, the interaction of legal professionals from Commonwealth and non-Commonwealth Caribbean is virtually non-existent, which makes the teaching and researching of comparative law more challenging.

#### IV. CHOICE OF TEXTBOOKS AND OTHER READINGS

The major problem in teaching comparative law in the Commonwealth Caribbean is the choice of textbooks. Historically, European and American jurists have developed most of comparative law. Due to this history, one still finds a good deal of regionalism in a discriminative sense of the word in this field of knowledge. Most textbooks on comparative law are about legal systems of large, developed countries. Most textbooks on comparative law give a fairly good account of legal systems of large, developed countries—such as France, Germany, the United Kingdom, and the United States—while having a skeletal outline of some other legal traditions—such as Chinese, Scandinavian, Russian, Muslim, or Jewish law. Further, most textbooks on comparative law come either from Europe or from the United States, and, as a result, there are two groups of books on the market: eurocentric or americentric (meaning United States-centric).<sup>36</sup> A modern

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35. For more about the necessity of practicing, teaching, and researching law globally, see William Twining, *Globalisation and Comparative Law*, in *COMPARATIVE LAW: A HANDBOOK* 70–89 (Esin Örüçü & David Nelken eds., 2007).

36. Many comparative lawyers have criticized ethnocentrism in general and Eurocentrism in particular. See, e.g., Werner Menski, *Beyond Europe*, in *COMPARATIVE LAW: A HANDBOOK*, 190–91 (Esin Örüçü & David Nelken eds., 2007); Twining, *supra* note 35, at 71–72, 80; Nora V. Demleitner, *Challenge, Opportunity and Risk: An Era of Change in Comparative Law*, 46 *AM. J. COMP. L.* 647, 653 (1998). But one can also find dissenting voices in this mainstream. Brenda Cossman believes that “[w]ithin the context of comparative law, the geopolitical location of the author becomes the unstated norm against which the exotic ‘other’ is viewed. It is a project that is perhaps inherently ethnocentric—there is no way to escape or transcend the ethnocentric gaze.” Brenda Cossman, *Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies, and the Postcolonial Project*, 1997 *UTAH L. REV.* 525, 526. Basil Markesinis believes

European textbook<sup>37</sup> normally compares and contrasts the British Common Law with the European Romano-Germanic/continental/civilian legal systems and gives some account of United States law, while a United States textbook (or casebook that is more popular in teaching law than a European-style textbook) explains to United States lawyers both British and continental European law. A notable exception from this trend is *Legal Traditions of the World: Sustainable Diversity In Law* by the late Quebec Professor Patrick Glenn, which gives a good account of the following non-Western legal traditions: Talmudic, Islamic, Hindu, and Confucian.<sup>38</sup> Nonetheless, even though some books on comparative law do deal with legal systems that do not belong to the *Grands Systèmes*, the whole Caribbean region has been traditionally ignored in textbooks on comparative law.

Many possible reasons for this fact exist. First, when the seminal books on comparative law—David's; Zweigert and Kotz's; Schlesinger's; Arminjon, Nolde and Wolff's<sup>39</sup>—were being written, many of the Caribbean countries were not yet independent and did not possess their own original legal systems.<sup>40</sup> The structure of those books was set up some 60–70 years ago, and those who revised them, either the authors or their followers, were reluctant to go as far in their revision as to include new legal systems not covered in the original edition. Those classical books also shaped the structure of books in comparative law that followed. This is especially true for French textbooks in comparative law, with very few of them deviating from David's framework.

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that jurists should not condemn Eurocentrism so rigorously because the most developed legal ideas come from Europe and not all comparative scholars have enough time and resources to look at non-European law. BASIL MARKESINIS, *COMPARATIVE LAW IN THE COURTROOM AND CLASSROOM* 50–51 (2003).

37. Although the 12th edition of René David's *Les Grands Systèmes De Droit Contemporains*, to be published in 2016, gives a thorough account of non-Western legal systems, it can hardly be considered a modern book on comparative law.

38. H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW* (3d ed. 2007).

39. RENÉ DAVID, *LES GRANDS SYSTÈMES DE DROIT CONTEMPORAINS* (1964) (Fr.) (in English, RENÉ DAVID & JOHN E. C. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW* (1968)); RUDOLF B. SCHLESINGER, *COMPARATIVE LAW: CASES AND MATERIALS* (1950); 1 PIERRE ARMINJON, BARON BORIS NOLDE & MARTIN WOLFF, *TRAITÉ DE DROIT COMPARÉ* (1950) (Fr.); 1 KONRAD ZWIEGERT & HEIN KÖTZ, *AN INTRODUCTION TO COMPARATIVE LAW* (Tony Weir trans., 1977).

40. See Ezekiel Rediker, Note, *Courts of Appeal and Colonialism in the British Caribbean: A Case for the Caribbean Court of Justice*, 35 MICH. J. INT'L L. 213, 224 (2013).

Second, for European and North American comparatists, Caribbean islands are just too small to deserve even a cursory look at their legal systems. They are not major actors on the stage of international politics. Neither do they influence major legal developments in the modern world.<sup>41</sup> According to Diego López-Medina, even inside the region, the “non-Hispanic Caribbean functions as an internal periphery in political and legal terms.”<sup>42</sup> Comparatists do have limitations of time and topics, and omission of the Caribbean legal systems is understandable to this extent.

Finally, even now, not much research is available to international scholars on the law of the Caribbean to be integrated into their textbooks. In general, a substantial gap exists in comparative legal studies of post-colonial jurisdictions in the Caribbean, specifically those countries that were de-colonized in the twentieth century, regardless to which colonial powers they belonged—France, the Netherlands, or the United Kingdom. The Caribbean countries are not exceptional in this as the same trend is observed in relation to former colonies in Latin America, Africa, and Asia,<sup>43</sup> although these three regions have been studied much more extensively than the Caribbean. Thus, one can now ask a legitimate question: What kind of scientific literature about legal systems of the Caribbean region is available to a comparatist?

#### V. COMPARATIVE LAW ABOUT AND IN THE COMMONWEALTH CARIBBEAN

When talking about comparative legal scholarship concerning the Commonwealth Caribbean, one must distinguish between two things: the development of comparative law about the Commonwealth Caribbean and the development of comparative law in the Commonwealth Caribbean. Sometimes they overlap, but not always. The situation is far better with

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41. The emerging area of offshore law in the region, however, could be of interest to comparatists. This emerging legal subculture establishes a dualism in the legal system by creating a new legal regime for non-national investors that is used as an alternative to domestic law. The offshore law is also interesting because it transcends the boundaries of traditional branches of national law (banking law, the law of trusts, fiscal law, company law, and constitutional law) and becomes a new field. ANTOINE, *supra* note 15, at 13.

42. López-Medina, *supra* note 33, at 350.

43. Werner Menski justly comments that “law beyond the Bosphorus and Gibraltar, and similarly beyond the Mexican border, is still little known among most Western scholars, who tend to have outdated perceptions of what laws the people of these Southern regions actually follow.” Menski, *supra* note 36, at 190.

the comparative law *about* the Commonwealth Caribbean than with the development of comparative law *in* the Commonwealth Caribbean.

One can find some comparative legal research about British Caribbean territories starting as early as the nineteenth century. Historically, the development of comparative law in Great Britain stemmed from the needs of the colonial empire to govern dependent territories.<sup>44</sup> More specifically, British comparative law developed to provide the Privy Council, whose Judicial Committee was the highest court of appeal for colonies,<sup>45</sup> with the knowledge of local law, as stated in the founding documents of the English Society of Comparative Legislation.<sup>46</sup> In 1826–1827, West Indian laws were outlined in published reports of the Commissioner of Inquiry into the Administration of Civil and Criminal Justice in the West Indies.<sup>47</sup> The first scholarly attempt to give an account of the British West Indies' legal systems, to this Author's knowledge, was given by William Burge, who in 1838 published *Commentaries on Colonial and Foreign Laws*, which were based on the experience of the Privy Council as the appellate jurisdiction for the colonies. This book contains about 20 pages on legal systems of the British West-Indies.<sup>48</sup> According to Nicholas Liverpool, Burge's book was the only book that the Royal Court of Saint Lucia quoted between 1849–1872 due to the judges' inability to read in French.<sup>49</sup>

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44. L. Neville Brown, *A Century of Comparative Law in England: 1869–1969*, 19 AM. J. COMP. L. 232, 234 (1971); Walther Hug, Comment, *The History of Comparative Law*, 45 HARV. L. REV. 1027, 1064 (1932); John W. Cairns, *Development of Comparative Law in Great Britain*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 134, 138–41 (Mathias Reimann & Reinhard Zimmermann eds., 2006).

45. This still is the highest appellate court for most Commonwealth Caribbean countries, excepting Barbados, Belize, Guyana, and Dominica, which subjected themselves to the Caribbean Court of Justice as the highest judicial body. For comparison and a more complete description of the Judicial Committee of the Privy Council and the Caribbean Court of Justice see Rediker, *supra* note 40, and Leonard Birdsong, *The Formation of the Caribbean Court of Justice: The Sunset of British Colonial Rule in the English Speaking Caribbean*, 36 U. MIAMI INTER-AM. L. REV. 197 (2005).

46. Brown, *supra* note 44, at 236.

47. 24 COMM'RS OF INQUIRY INTO THE ADMIN. OF CIVIL & CRIMINAL JUSTICE, W. INDIES, TWO REPORTS OF THE COMMISSIONERS OF INQUIRY INTO THE ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE IN THE WEST INDIES (1827).

48. 1 WILLIAM BURGE, COMMENTARIES ON COLONIAL AND FOREIGN LAWS GENERALLY, AND IN THEIR CONFLICT WITH EACH OTHER, AND WITH THE LAW OF ENGLAND 237–60 (1838).

49. N.J.O. Liverpool, *The History and Development of the Saint Lucia Civil Code*, 14 REVUE GÉNÉRALE DE DROIT [R.G.D.] 373, 400 (1983) (Can.).

More detailed and truly academic comparative legal studies of West Indian countries started only after their independence. The most studied Commonwealth Caribbean jurisdiction is Saint Lucia,<sup>50</sup> mostly due to its Quebec connections. In 1879, the British administration promulgated for this island a civil code and a code of civil procedure that were largely based on the English version of the Civil Code and the Code of Civil Procedure of Lower Canada (now the province of Quebec) of 1866 and 1867, respectively, and to a much lesser extent on the revised Louisiana Civil Code of 1870.<sup>51</sup> This enterprise was mostly due to the efforts of two persons: James Armstrong, a lawyer from Sorel, Quebec, who became Chief Justice of Saint Lucia, and William Des Voeux, the island's Administrator who had received legal training at Osgoode Hall in Toronto.<sup>52</sup>

In the 1980s, this legal curiosity generated cooperation between legal professionals and academics in Quebec and Saint Lucia and comparative research of the two civil codes. Two seminars were held in Quebec in 1983 and Saint Lucia in 1984, and their papers were published as journal articles in the *Revue Générale de Droit* in 1983 and as chapters in *Essays on the Civil Codes of Quebec and St. Lucia* in 1984.<sup>53</sup> *Essays on the Civil Codes of Quebec and St. Lucia* includes contributions from three Caribbean scholars: Vincent Frederick Floissac, president of Saint Lucia Bar; the late Nicholas J.O. Liverpool, professor and Dean of the Faculty of Law at UWI; and Dr. Kenny Davis Anthony, former lecturer at UWI, who taught comparative law in the 1990s and is currently the Prime Minister of St. Lucia. In 1988, Anthony obtained his Ph.D. from the University of

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50. Saint Lucia is a small country even for Caribbean standards. The country's surface area is 539 square kilometers and the population size is 184,000. *Saint Lucia*, UN DATA, <http://data.un.org/CountryProfile.aspx?crName=Saint%20Lucia> [<https://perma.cc/XJA7-HRXY>] (last visited Feb. 12, 2016). Compare these figures with Jamaica's surface area, which is 10,991 square kilometers, and has a population of 2,799,000. *Jamaica*, UN DATA, <http://data.un.org/CountryProfile.aspx?crName=jamaica> [<https://perma.cc/XRD5-WTAY>] (last visited Feb. 12, 2016).

51. Liverpool, *supra* note 49, at 400–01. Saint Lucia historically belonged to France, was subject to French law, and had a substantial amount of French-speaking population.

52. *Id.* at 400–07; Raymond A. Landry, *Foreword*, in *ESSAYS ON THE CIVIL CODES OF QUEBEC AND ST. LUCIA* ix (Raymond A. Landry & Ernest Caparros eds., 1984).

53. Liverpool, *supra* note 49, at 400; V.F. Floissac, *The Interpretation of the Civil Code of Saint Lucia*, 14 R.G.D. 409 (1983) (Can.); Angers Larouche, *Legislation Derogating from the Quebec Civil Code*, 14 R.G.D. 431 (1983) (Can.); *ESSAYS ON THE CIVIL CODES OF QUÉBEC AND ST. LUCIA* (Raymond A. Landry & Ernest Caparros eds., 1984).



Birmingham for the thesis *The Mixed Legal System of Saint Lucia: Its Establishment and Decline* and later continued to write about this system<sup>54</sup> as well as about other aspects of comparative law in the Caribbean.<sup>55</sup> Another Caribbean scholar, Dorcas White, also taught comparative law at UWI and published *Some Problems of a Hybrid Legal System: A Case Study of St. Lucia*.<sup>56</sup> And a Quebec scholar, Jane Matthews Glenn from McGill University, also researches the Commonwealth Caribbean legal systems, writing mostly on St. Lucia but also on Guyana and Trinidad and Tobago.<sup>57</sup>

Apart from contributions to the study of Saint Lucia's legal system, lawyers from the Commonwealth Caribbean have not written much from a comparative legal perspective; however, a seminar, Comparison of Law and Legal Systems of the Member-States of the Organization of American States, was held in Barbados in 1983, and its proceedings were published.<sup>58</sup> Additionally, Rose-Marie Belle Antoine wrote a general outline of legal systems in the Commonwealth Caribbean, including their comparison with each other and the British law, in her textbook *Law and Legal Systems of the Commonwealth Caribbean*.<sup>59</sup> This book provides

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54. Kenny D. Anthony, *Which Estoppel in the Law of Saint Lucia?*, 2 CARIBBEAN L. REV. 154 (1992) (Barb.); Kenny D. Anthony, *The Courts and the Interpretation of a Civil Code in a Mixed Legal System: Saint Lucia Revisited*, 5 CARIBBEAN L. REV. 144 (1995) (Barb.).

55. K.D. Anthony, *Approaches to the Common Law Trust in Codified Mixed Jurisdictions*, in DROIT SANS FRONTIÈRES: ESSAYS IN HONOUR OF L. NEVILLE BROWN 53 (Geoffrey Hand & Jeremy McBride eds., 1991); K. D. Anthony, *The Identification and Classification of Mixed Systems of Law*, in COMMONWEALTH CARIBBEAN LEGAL STUDIES 179–218 (Gilbert Kodilinye & P.K. Menon eds., 1992); Kenny D. Anthony, *Aspects of the Evolution of Caribbean Legal Systems*, in COMPARATIVE LAW STUDIES: LAW AND LEGAL SYSTEMS OF THE COMMONWEALTH CARIBBEAN STATES AND THE OTHER MEMBER OF THE ORGANIZATION OF AMERICAN STATES 29–50 (1986).

56. Dorcas White, *Some Problems of a Hybrid Legal System: A Case Study of St. Lucia*, 30 INT'L & COMP. L.Q. 862 (1981) (U.K.).

57. See Jane Matthews Glenn, *Civilian Survival: Upper and Lower Canada and the Saint Lucia Civil Code*, in MÉLANGES PAUL-ANDRÉ CRÉPEAU 327 (1997); see also Jane Matthews Glenn, *Mixed Jurisdictions in the Commonwealth Caribbean: Mixing, Unmixing, Remixing*, 3 J. COMP. L. [J.C.L.] 53 (2008) (U.K.); Jane Matthews Glenn, *Saint Lucia: 'The Quebec Connection – Parallelism, Convergence and Divergence'*, in A STUDY OF MIXED LEGAL SYSTEMS: ENDANGERED, ENTRENCHED OR BLENDED 185 (Sue Farran, Esin Örucü & Seán Patrick Donlan eds., 2014).

58. See COMPARATIVE LAW STUDIES, *supra* note 55.

59. ANTOINE, *supra* note 15, at 41.

insights on the history and social functions of legal systems in the Caribbean and their possible future developments. A number of entries, such as “Saint Lucia,” “Dominica,” and “Suriname,” in *Legal Systems of the World: A Political, Social and Cultural Encyclopedia*,<sup>60</sup> were written by Caribbean scholars Nicholas J.O. Liverpool, Kenny Davis Anthony, and Eddy Ventose. A Caribbean scholar, Christine Toppin-Allahar, wrote a chapter on Guyana’s legal system “Guyana: ‘mosaic or melting pot?’” in a recent book *A Study of Mixed Legal Systems: Endangered, Entrenched or Blended*.<sup>61</sup> She also authored, jointly with Jane Matthews Glenn, an article on the legal regime of chattel houses in the Commonwealth Caribbean and mobile houses in Canadian law.<sup>62</sup>

Further, a chapter in *The Cambridge Companion to Comparative Law* that deals, to some extent, with legal systems of the Commonwealth and non-Commonwealth Caribbean written by Diego López-Medina under the title “The Latin American and Caribbean Legal Traditions: Repositioning Latin America and the Caribbean on the Contemporary Maps of Comparative Law.”<sup>63</sup> Although the title sounds promising, most of the text is about Latin America with a few minor examples from Caribbean jurisdictions, and the bibliography includes exclusively works on the law of Latin American countries.<sup>64</sup> A recent book written by David S. Berry, *Caribbean Integration Law*, takes a different approach to comparative law in that it does not compare national legal systems. Rather, the book compares the law of CARICOM and OECS with other international law instruments, especially the law of the European Union.<sup>65</sup>

The comparative legal scholarship both about and in the Commonwealth Caribbean is definitely insufficient. Most of the research, teaching, and scientific exchange was undertaken in the 1980s and 1990s,

60. 1 LEGAL SYSTEMS OF THE WORLD: A POLITICAL, SOCIAL, AND CULTURAL ENCYCLOPEDIA (Herbert M. Kritzer ed., 2002).

61. Christine Toppin-Allahar, *Guyana: ‘Mosaic or Melting-Pot?’*, in A STUDY OF MIXED LEGAL SYSTEMS: ENDANGERED, ENTRENCHED OR BLENDED 37 (Sue Farran, Esin Örüçü & Seán Patrick Donlan eds., 2014).

62. Jane Matthews Glenn & Christine Toppin-Allahar, *Chattel Houses and Mobile Homes: Fixtures in Caribbean and Canadian Law*, 7 CARIBBEAN L. REV. 368 (1997) (Barb.). For more about the problem of chattel houses in the Commonwealth Caribbean, see Simeon C.R. McIntosh, *The “Chattel-House” Case: A Reading in Hegelian Jurisprudence*, 5 CARIBBEAN L. REV. 432 (1995) (Barb.) and Asya Ostroukh, *Simeon McIntosh’s Contribution to the Solution of the Chattel-House Problem in the Commonwealth Caribbean*, 4 RECHTSPHILOSOPHIE ZEITSCHRIFT FÜR GRUNDLAGEN DES RECHTS [RPHZ] 393 (2015) (Ger.).

63. López-Medina, *supra* note 33, at 344.

64. *Id.* at 366–67.

65. BERRY, *supra* note 10.

which means that the scholarship is outdated. The region is awaiting a renaissance of comparative law. The constraints of this Essay do not allow a review of the literature concerning comparative research of non-Commonwealth Caribbean countries and territories, but the Author's own experience reveals that the situation in the French, Dutch, and Spanish-speaking Caribbean is not much better than in its English-speaking counterpart.

## VI. WHY ARE THE CARIBBEAN LEGAL SYSTEMS UNDERSTUDIED?

Apart from the lack of interest due to the natural marginalization of these legal systems,<sup>66</sup> two other important reasons why the Caribbean legal systems have not acquired much scholarly attention exist: their relatively recent independence and the resulting reliance on other legal systems for content as well as their inaccessibility.

### *A. Recent De-colonization and Lack of Legal Independence and Originality*

Legal systems of the Commonwealth Caribbean are still at a formative stage. Insufficient time has passed since their independence. Many West Indian statutes are slightly amended copies of relevant British statutes, and many local cases rely extensively on British cases. As Rose-Marie Belle Antoine correctly explains: "The countries of the Commonwealth Caribbean continue to exhibit perhaps excessive tendencies of reliance on the form, structure, substance and content of the law as expressed in England."<sup>67</sup> Furthermore, legal scholarship in the region is not yet very advanced in research of even fundamental branches of law, such as property, contracts, family, constitutional, and human rights law,<sup>68</sup> let alone comparative law. The teaching of law in the Commonwealth Caribbean started relatively recently—in 1970—which is incomparable to centuries-old European and American traditions of teaching and researching law. Still, this Author is convinced that this gap in legal literature will be corrected by just a few generations of West-Indian lawyers.

The historical evolution of the Caribbean jurisdictions and their future development can be of great interest to comparatists. The legal history of the Caribbean is closely connected to the history of colonization. The

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66. *See supra* Part IV.

67. ANTOINE, *supra* note 15, at 39.

68. Most basic branches of law have just one, sometimes two, textbooks, which is incomparable to the wealth of European or United States legal literature.

region historically had been a battleground of major colonial powers: France, Great Britain, the Netherlands, and Spain.<sup>69</sup> In many islands, various legal systems were superimposed, which sometimes resulted in the emergence of mixed legal systems—like in Guyana, St. Lucia, and Puerto-Rico. The colonial administrations could not care less about the preservation of the law of the first nations or of the enslaved African population, and as a result, the law was brought to the region by colonial powers. Even so, the development of post-colonial legal systems in the Caribbean has demonstrated a widespread voluntary reception of the law of not only former colonial powers but also other countries due to either technical excellence,<sup>70</sup> or to expression of universal values,<sup>71</sup> or to linguistic and cultural affinity,<sup>72</sup> or, finally, due to ideological reasons.<sup>73</sup> International law is also exercising substantial influence on the law of Caribbean countries.

An example of substantial deviation from the British common law in the Commonwealth Caribbean countries is their constitutional law. Unlike the United Kingdom, the Commonwealth Caribbean countries do have a written constitution, recognize the idea of constitutional supremacy—as opposed to the doctrine of parliamentary sovereignty in British law—and have established judicial (constitutional) review.<sup>74</sup> Due to the lack of relevant British caselaw and doctrine on this subject, Commonwealth Caribbean lawyers look for inspiration in European and United States law.<sup>75</sup>

Another interesting point about legal systems of the Commonwealth Caribbean is the resistance to movements and reforms in parent legal systems. These jurisdictions still firmly resist the abolition of the death penalty and corporal punishment at schools, as well as decriminalization

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69. *Id.* at 76. For example, Saint Lucia changed hands between the French and the British 14 times. *Id.* at 61.

70. For example, the reception of the French Civil Code in Haiti and the Dominican Republic or, more recently, of United States and Canadian condominium law in the Commonwealth Caribbean.

71. For example, the borrowing of United States constitutional and human rights instruments across the Commonwealth Caribbean.

72. For example, the influence of French, Quebec, American, British, and Spanish law in various Caribbean countries or territories.

73. For example, the reception of the Soviet law in Cuba.

74. *Id.* at 60.

75. *Id.* at 54–55.

of homosexuality—a topic that awaits a proper comparative and socio-legal research.<sup>76</sup>

### *B. Inaccessibility of Caribbean Legal Traditions*

The Caribbean legal systems are difficult to access in more than one way. They are quite remote geographically, as some of the countries do not even have direct flights to Europe or the United States. These jurisdictions are also inaccessible in terms of sources of legal research. Both primary and secondary sources of legal research concerning these jurisdictions are either absent, scarce, or inaccessible outside the region, especially given that the local formal sources of law are inaccessible through major electronic databases—such as LexisNexis or WestLaw—and must be searched in the local database—CariLaw. Many local law reviews have not yet been digitized. In a country such as Cuba, there are also political obstacles to legal research—the country still adheres to socialist political ideology—and there is little access to its legal literature and communication with legal professionals and academics. Another problem in researching Caribbean jurisdictions is the linguistic barrier. The Caribbean countries speak four languages—French, Dutch, Spanish, and English—and local legal scholars, and the population in general, do not master foreign languages as well as Europeans. All these problems present a challenge to a comparatist, requiring more effort to be put into research as compared to the study of the law of developed Western countries.

## CONCLUSION

This Essay has outlined the major advantages of and barriers to teaching comparative law in the Commonwealth Caribbean. Some of the challenges discussed are general challenges in teaching comparative

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76. For the population attitudes towards capital punishment see AMNESTY INT'L, DEATH PENALTY IN THE ENGLISH-SPEAKING CARIBBEAN: A HUMAN RIGHTS ISSUE 27 (2012), available for download at <https://www.amnesty.org/en/documents/amr05/001/2012/en/> [<https://perma.cc/JT99-NZLG>]. For attitudes towards decriminalization of homosexuality see Simeon McIntosh, *Sexual Orientation and the West Indian Constitution*, 37 W. INDIAN L.J. 29 (2012). For attitudes towards corporal punishments at schools see CARIBBEAN DEV. RESEARCH SERVS., CORPORAL PUNISHMENT AND OTHER MAJOR EDUCATIONAL ISSUES IN BARBADOS 14 (2009), available at <https://barbadosunderground.files.wordpress.com/2009/11/2009-final-barbados-national-survey-on-corporal-punishment-and-educational-issues-report.pdf> [<https://perma.cc/3BRJ-3ZTK>].

law—time constraints, choice of topics, and textbooks. Some of the challenges are local—lack of research on the Caribbean legal systems; diversity of legal systems, cultures, and languages; difficulties with accessing these legal traditions; and the lack of interaction of legal professionals in the Commonwealth and non-Commonwealth Caribbean and in Latin America. Still, many of these challenges are also rewards, and overcoming them makes teaching and researching comparative law in this region very enriching.

Clearly, comparative law in the Commonwealth Caribbean—both in terms of research and teaching—is definitely an underdeveloped area. But the region, due to its geographical location, legal history, cultural diversity, participation in the processes of globalization, and regional integration, is very promising to comparatists from both inside and outside the Caribbean. There are still blanks on the legal map of the region that must be filled, and certain parts of this map should be redrawn in a more accurate way. The region also needs to develop its own version of comparative law, as simply following European or United States developments has proven impossible. As Werner Menski correctly observes:

Presently, much existing scholarship is still not willing to . . . accept that people in Asia and Africa, and elsewhere in the erstwhile “Third World” have their own laws and claim ownership of their own ways of dealing with legal matters. We are often still just looking for traces of European transplants, and proudly clutch evidence of perceived success without examining how such positive results are achieved in socio-legal reality.<sup>77</sup>

The Author hopes that the efforts of the Faculty of Law at the Cave Hill Campus of the University of the West Indies in reintroducing the course of comparative law into its curriculum and in stimulating comparative legal research will help to fulfill these tasks.

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77. Menski, *supra* note 36, at 192.

