The World of Small States 1

Petra Butler
Caroline Morris *Editors*

Small States in a Legal World

Springer

Editors
Petra Butler
Faculty of Law
Victoria University of Wellington
Wellington, New Zealand

Caroline Morris
School of Law
Queen Mary University of London
London, United Kingdom

The World of Small States
ISBN 978-3-319-39365-0
DOI 10.1007/978-3-319-39366-7

ISBN 978-3-319-39366-7 (eBook)

Library of Congress Control Number: 2017937531

Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer International Publishing AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Contents

Chapter 9
Legal Education and the Profession in Three Mixed/Micro Jurisdictions: Malta, Jersey, and Seychelles

Seán Patrick Donlan, David Marrani, Mathilda Twomey, and David Edward Zammit

9.1 Introduction

> Among the many interesting research problems of a general nature found within the area of comparative law, two complex issues are particularly fascinating...: the problem of mixed (hybrid) legal systems and the problem for the so-called "small jurisdictions".—Bogdan (1989)

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 shores. This doesn't mean that they are isolated intellectually. Instead, their necessary engagement with outside traditions and influences makes them crossroads of interaction between peoples, jurisdictions, and powers. This is especially true of so-called mixed jurisdictions where the legal tradition is an explicit, obvious hybrid. With these encounters in mind, this chapter explores legal education and training and the legal profession in three mixed/micro-jurisdictions: Malta, Jersey, and Seychelles. The three provide a useful focus for comparative analysis. Each jurisdiction is an island or archipelago. Both Malta and

S.P. Donlan (✉)
School of Law, University of the South Pacific, Port Vila, Vanuatu
e-mail: sean.donlan@vanuatu.usp.ac.fj

D. Marrani
Institute of Law Jersey, St Helier, Jersey
e-mail: david.marrani@lawinstitute.ac.je

M. Twomey
Supreme Court of Seychelles, Mahe, Seychelles
e-mail: m.twomey@judiciary.gov.sc

D.E. Zammit
Faculty of Laws, University of Malta, Msida, Malta
e-mail: david.zammit@um.edu.mt

P. Butler, C. Morris (eds.), *Small States in a Legal World*,
The World of Small States 1, DOI 10.1007/978-3-319-39366-7_9

Jersey are within Europe, while Seychelles is a considerable distance away geographically, and arguably culturally as well. Jersey and Seychelles are particularly small jurisdictions with populations of less than 105,000 each. By comparison, Malta is significantly larger, with more than four times that number of people, though it is still well within common definitions of micro-jurisdictions. It is not unusual, for example, to limit that category to systems with fewer than 1,500,000 people. The legal traditions of both Jersey and Seychelles have important French influences. Malta has long had much in common with its Italian neighbour, both before and after the Risorgimento of the nineteenth century. As with much of Europe, it also drew inspiration from French developments in the same period. And Malta, Jersey, and Seychelles each have significant links, in both the past and the present, with Britain. The result is that comparison of these traditions provides us with the opportunity of observing their different responses to legal education and to the legal profession.

Our intention is to (1) broadly lay out the patterns of legal education and training and the legal profession in these jurisdictions and (2) briefly examine the degree to which legal education and training and the legal profession in them is dependent on external influences. For the former, the three systems have adopted related, but distinct approaches to education and training that are usefully compared. We also consider how insiders in these jurisdictions look abroad to orient their studies and practice and investigate the internal use of legal actors and sources from outside: jurists and doctrine, judges and jurisprudence, legislators and legislation, as well as foreign-trained practitioners. The effect of such external influences in small jurisdictions is profound, perhaps especially in explicitly mixed traditions. Indeed, in the words of Sue Farran, such influences—she was writing specifically about the provision of legal education by outside institutions in foreign and hegemonic and neo-colonial traditions—have the potential to act as 'trojan horses' for a sort of 'legal imperialism'.[1] Inevitably, our discussion will touch, if only lightly, on questions not only of self-government—indeed of legal purity, pragmatism, and pollutionism—but even of self-identity.[2]

9.2 Malta

The Republic of Malta (Malta) consists of three islands: Malta, Gozo, and Comino. They are administered collectively, have a combined population of 446,500, and cover only some 300 km^2. Sicily sits less than 100 km to the north and has long

[1]Farran (2013a), p. 350. See also the related plenary address from Farran (2013b).

[2]In discussing specific hybrids of European laws, Palmer (2012) refers to purists who want to protect the original layer of continental law, pollutionists who want to add more Anglo-American law (to the existing layer of such laws), and pragmatists who aren't committed either way, but who require reasonably clear answers to legal issues that arise in the jurisdiction.

played an important part in Maltese history. But Tunisia to the west and Libya to the south are not much farther away. Malta has a colourful past. Linked to Sicily until 1530, when it was gifted to the Knights of Malta by Emperor Charles V, the Knights were in turn expelled by Napoleon in 1798. The British arrived 2 years later, having helped the Maltese rebels evict the French. By 1815, the archipelago was effectively incorporated into the British Empire. The result was an essentially colonial relationship, where the island of Malta was utilised as a fortress and port for the British Empire from 1800–1979.[3]

Maltese colonialism was different, of course, from forms taken beyond Europe. Since Malta was already a densely populated island with a European culture, there was no sustained attempt to settle a large British population. And after initial confrontations with the Maltese legal elite about the language of the laws, the British largely accepted the continued operation of the Courts, staffed overwhelmingly by Maltese lawyers and judges, speaking Italian and administering a law rooted in the ius commune. Some of the Maltese leadership actively solicited British rule, expecting them to act as "il piu" paterno dei governi'.[4] Up to the 1940s, nationalists looked towards Italian language and culture as a source of identity and inspiration. Indeed, the so-called 'Language Question' dominated politics between the 1870s–1930s, revolving around whether Italian or English was to be the language of education, law, and administration. Maltese politics developed within this context, as did the eventual recognition of Maltese as an official language (rather than just an oral dialect). When, in the 1930s the British government changed the language of the laws and legal education from Italian to English, an Italianised Maltese remained the language of the Courts, the laws, and state administration. English remains widespread. Legislation is published in both Maltese and English; but where there is conflict between texts, the Maltese usually prevails. Italian is still widely known, but has no official status as such.

An inclination towards one or another external cultural and legal influences—Britain or Italian—has a long genealogy in the context of Maltese state building. In the 1950s, Malta's Labour Party argued for full political integration into the United Kingdom (UK). They also made secret plans to integrate Malta into Italy if this failed. Eventually, after integration with the UK was rejected in a referendum, the party advocated complete independence for Malta, coupled with strict neutrality in foreign affairs and closure of the British military base in Malta. The Nationalist Party advocated political independence, which was obtained in 1964; Malta remains a member of the Commonwealth of Nations. The Party subsequently advocated European Union (EU) membership. This was achieved in 2004.

[3]See Donlan et al. (2012) for an extended discussion of Maltese legal mixity. Much of the text on Malta draws from this article, though it is updated to reflect changes since 2012. See also Andò et al. (2012).

[4]"They (the Maltese leaders) expected Britain to safeguard their interests, to revive the economy and to grant some form of representative rights. But essentially they expected Britain to act as "'il piu' paterno dei governi" ["The most paternal of governments."] as they recognised the British king as their new sovereign'. Translation from Zammit (1984), p. 10.

Membership is seen, consistent with this history, as compatible with the exercise of Maltese sovereignty. Moreover, EU membership reconciled the various loyalties—British, Italian, and Maltese—adhered to in Malta. As a result, it was possible to be all three at once.

Malta is thus, with the Bailiwicks of Guernsey and Jersey, Cyprus, and Scotland, one of a handful of explicitly mixed legal systems within Europe. The jurisdiction combines a fundamentally continental civil law showing pervasive French and Italian influence with a modern commercial law which is predominantly borrowed from British law.[5] Delicts or torts has been significantly influenced by Anglo-British models. The trust has also been introduced, though relatively recently. Succession law has largely survived. Over time, especially since the mid-twentieth century, first legislation, then judicial development, brought about a major shift towards British models. Similarly, Maltese substantive criminal law blends continental traditions, especially the Italian, with British influence. Public law is more clearly British in both form and substance. Maltese procedures are mixed, too. Civil procedures are significantly judge-centred or 'investigative' in the continental manner, while criminal procedures owe more to British law. The entire mix also owes much to European law (of both the EU and the European Court of Human Rights (ECtHR)) and international law.[6] Much of its legislation, both substantive and procedural, is hybrid in character and, as with other explicitly mixed systems, Malta suggests the significant limitations of traditional comparative taxonomies.

These complexities extend beyond generalities to Maltese legal sources and legal practice. In addition to European law, its enacted law consists of several hundred 'chapters' arranged chronologically. The Constitution itself is quite long and arguably reflects the precision and detail of English statutory drafting. As in continental jurisdictions, however, Malta's written law includes continental-style codes (in contrast to mere restatements of law) as well as narrower, special legislation. Custom remains a binding source of law, but its role is fairly limited in practice. Even Roman law may occasionally be relevant as a direct source of Maltese law in its own right. While not an official source of law, Maltese jurisprudence carries greater weight than in continental jurisdictions. That is, its case-law is formally persuasive and non-binding rather than binding in the manner of Anglo-American stare decisis. But Maltese jurisprudence reflects other elements associated with Anglo-American judicial methods, e.g. the ratio decidendi/obiter dictum distinction may be invoked. Indeed, as in Anglo-American jurisdictions, the judiciary play a greater role in developing its law than do legal scholars. Especially since the end of the Second World War, the opinions of Maltese judges have increasingly resembled more the discursive pattern of the Anglo-American law than the more abbreviated form associated with the Franco-Romano (rather than Germanic) continental tradition. This reflects a wider Anglophone influence, but it is not total. As with continental practice, the judiciary issues collegial opinions,

[5]Castellucci (2014).

[6]See generally Donlan et al. (2012); Aquilina (2011), p. 261.

individual judges are not identified, and dissents are not issued. Codal and statutory interpretation can follow either continental and Anglo-American approaches, whichever is appropriate to the texts involved. And, unlike British and Irish practice, 'parliamentary history' is invoked in Maltese Courts.

Unlike Jersey and Seychelles, Maltese legal education and training, both academic and professional, is entirely domestic. Its only law faculty is based in the University of Malta. The faculty consists largely of part-time lecturers simultaneously engaged in legal practice, but full-time lecturers are increasingly common. The language of instruction is mainly English, not least to accommodate a significant number of foreign students in its law programme. At the same time, Maltese words may sometimes be used in the teaching of procedural law, where an English equivalent may not always exist. This is important as Court practice and jurisprudence are conducted almost wholly in Maltese.[7] Instruction occurs largely by lectures and tutorials, although courses based on experiential learning are now being developed in the context of a new Masters level course in Advocacy.

Legal education combines the reading of both foreign and domestic texts. Students are expected to be familiar with Court judgements delivered in Maltese, as well as with law books written in English and Italian, depending on the topic. Domestic texts include the lecture notes of leading (past) jurists and a developing body of locally-produced scholarship. Like legal education across the continent, law students complete an undergraduate degree in law followed by a graduate degree required for legal practice. Until recently, these degrees were the LLB and the LLD respectively. While these degrees developed from the Anglophone or British legal/academic tradition, Maltese study differed from (i) the British and Irish combination of university followed by professional study outside of the university and (ii) the three-year graduate study of law in North American law schools. During their LLD study, students would be apprenticed with practitioners.

In the last few years, a number of changes have occurred to bring Malta in line with the Bologna Process of the EU. That process was meant to harmonise, to a degree, legal education across Europe to facilitate movement across its boundaries and legal systems. The resulting reforms in Malta mean that students will study for less time than in the past. From 2017, the overall duration of their law studies has been reduced to 5 years, consisting of a four-year long LLB followed by a 1 year Masters course in Advocacy or Notarial Studies. And whereas past students produced lengthy academic dissertations of 35,000 words for the LLD, students now complete a much shorter, 10,000 word research paper. In addition, while Maltese advocates traditionally used 'Doctor' as their academic and professional title, that practice will, in future, be purely conventional and informal.

The required first year classes at the Faculty of Laws include:

1. Basic Notions of Commercial Law
2. Comparative Legal Systems & Legal Pluralism

[7]Admission to legal study requires high levels of facility in both Maltese and English.

3. Constitutional Law
4. Introduction to European Union Law
5. Introduction to Law
6. Introduction to Legal History
7. Philosophy of Law
8. Principles of Criminal Law
9. Roman Law I and II

To this already wide spectrum of required classes are a rich catalogue of electives, including classes in French and Italian. This is formally different from the 'trans-systemic' approach to legal education taken by, for example, McGill University in Quebec's mixed or poly-jural jurisdiction. There, multiple legal—and ideally other normative—orders are systematically taught within the same class. The Maltese approach is different, but nevertheless extends, on the whole, not only beyond state legal traditions, but into legal anthropology as well.[8]

Indeed, given the dominance of the domestic legal profession in legal education and the way in which the jurisdiction straddles and combines various legal traditions, it is not surprising that local educators do not perceive legal education as the wholesale adoption of a particular pedagogical model rooted in a homogenous understanding of law characterising a single dominant (external) legal tradition. Instead, they understand Maltese legal education as the elaboration of an indigenous model through selective borrowing from various sources, feeling empowered to draw selectively on foreign models.[9] Developments at EU level (including the Bologna process of harmonising, to a degree, legal education across Europe), in Anglo-American and Continental law, and Maltese statutes and jurisprudence are mined for inspiration. EU membership as a micro-state, the absence of a single dominant external power or 'Big Brother' on whom to model legal education, and the high degree of hybridity already present in the tradition fuse to promote a sense of empowerment in Maltese lawyer-lecturers and legal academics. They do not oppose the importation of foreign models, but arguably see themselves as actors of legal globalisation rather than its victims.[10] Apart from the revised, sui generis structure for the core law degrees which, this can also be illustrated by the eclectic use, referred to above, of English, Maltese and Italian texts in Maltese law-teaching.

Law students train as general practitioners or advocates. The Chamber of Advocates represents lawyers as a whole, particularly in relations with the government and regulatory bodies. There is neither an English-style distinction between

[8]See Donlan (2015) for a discussion of 'trans-systemic', 'supra-systemic', and even 'trans-temporal' legal education.

[9]Since 1993, over 2000 students have graduated with an LLD degree, making a total of more than 3000 individuals in possession of this degree relative to a population of 380,000.

[10]The Maltese language resulted from the bending of Semitic and Romance elements drawn from Arabic and Italian. Similarly, Maltese identity is asserted by fusing Semitic ethnic origins with European cultural influences embodied in English, the Catholic religion and Malta's defence of Europe from the Turks in early modern times and Nazi aggression in the Second World War.

barristers and solicitors nor an option for continental-style training for a judicial career. Given the difficulties of acquiring knowledge of both Anglo-American law and Continental legal rules and languages, as well as the use of Maltese in practice, outsiders find it almost impossible to meet the requirements for practice in Malta. Students may also opt to study to become notaries who, on the continental model, remain indispensable in legal practice, particularly as regards conveyancing, or even as legal procurators, who assist advocates and have some rights of audience in the lower Courts. Continuing education consists of a range of Masters degrees offered by the University, including Masters degrees in European and Comparative Law, European Business Law, Financial Services Law and Maritime Law. There is also the possibility of reading for a Masters or PhD degree in law by research. In order to specialise in certain fields which are not taught domestically, and to carve out an occupational niche for themselves in Malta's competitive professional environment, Maltese law graduates often go abroad for further education, with the UK and Italy being the preferred first and second choices to study for a Masters degree.

As in Anglo-American jurisdictions, Maltese judges are drawn from senior practitioners (rather than following the continental division, educational and professional, between magistrate and lawyer). Indeed, the Maltese Constitution requires 'Judges' to have at least 12 years experience in legal practice. By contrast 'Magistrates' are drawn from advocates who must have at least 7 years of experience of legal practice. The Courts, too, are more centralised than in most continental jurisdictions. Except for the division between civil and criminal matters, there are no specialised separate Court hierarchies. And unlike many jurisdictions, both Anglo-American and continental, there is no single superior Court over the ordinary civil and criminal Courts. There are, however, some specialised Courts within the ordinary Court structures. There are no, and have never been, Anglo-American Courts of Equity.

Unlike some other Commonwealth jurisdictions, Malta maintains neither an appellate link to Britain nor any institutional use of British or foreign judges. The possibility of appeals to the Judicial Committee of the Privy Council (hereinafter 'Privy Council') was removed when Malta became a republic in 1974; the main possibility of scrutiny by a foreign tribunal of decisions of the Maltese Courts is via the ECtHR and the European Court of Justice. In addition to some original jurisdiction related to Malta's House of Representatives, the Constitutional Court's appellate jurisdiction is limited to appeals from its Civil Court, First Hall. This includes matters regulated by the Constitution or Malta's European Convention Act, which incorporated the European Convention on Human Rights into Maltese law. Much more could be said about the Court, but it falls beyond the scope of this chapter.[11] And some questions remain about the Constitutional Court's role vis-a-

[11]See Donlan et al. (2012) for additional detail.

vis the Parliament; that is, whether the Constitution or Parliament is supreme (in the British manner).[12]

Given this context, globalisation has impacted on Maltese legislation and legal practice in ways which have been rather indirect and which have been buffered by choices made by local stakeholders. An example is the development of financial services. This required the enactment of detailed legislation and the establishment of the Malta Financial Services Authority in 2002. That sector has seen rapid growth over the past decade and a half. Initially financial services legislation was structured to cater for offshore registered companies. Later, however, the sector was unified as it was opened up to locally registered companies as well. In 2015/2016, the World Economic Forum's Global Competitiveness Index placed Malta amongst the top 20 financial jurisdictions in the world. Yet far from seeing this development as a threat to its legal tradition, most Maltese legal practitioners see the growth of the financial services sector as a process which has been guided by far-sighted reforms introduced by its legislators and which were themselves made possible by its mixed legal system.[13] This tendency to see financial services legislation as a natural development of the legal tradition rather than a foreign imposition can be seen in the way in which key elements of company and trust law have been integrated into the law curriculum alongside traditional civil law courses in Roman law, property law and the law of obligations. Thus students are taught to perceive principles of common law applicable to complex financial transactions as part and parcel of a broader set of Civilian legal rules and principles based on the Roman law. It can also be evidenced by the decision taken by the Law Faculty to offer a specialised Masters in Financial Services to be taken by students only *after* completing the LLD degree.[14] The degree complements rather than replaces the core law curriculum.

A similar approach can be seen in maritime law, another field which has grown substantially in recent years. In 2015, Malta's ship register was the largest in Europe and the sixth largest in the world. Here, too, the Government has built upon the early intervention of Arvid Pardo, Malta's ambassador to the United Nations (UN) in the 1960s, which eventually led to the drafting of the UN Convention on the Law of the Sea, to persuade the International Maritime Organisation (IMO) to establish a school at the University of Malta to offer an LLM in Maritime Law to law students from around the world. Directed by a Maltese legal academic, the

[12]This was debated in a series of articles and letters in *The Times of Malta* from April–June 2012. Giovanni Bonnello, former Judge of the ECtHR (1998–2010), argued that the Constitution was supreme (27 April, 2 May, 6 June, 20 June); Giuseppe Mifsud Bonici, Former Chief Justice and President of the Constitutional Court (1990–1995), argued that Parliament was supreme (2 June, 15 June). See also, Aquilina (2014) who more recently sides with Judge Bonello.

[13]Malta Financial Services Authority (2008), p. 4: 'It may be rightfully claimed that the Maltese legal system has been able to absorb a number of different legal and cultural influences from the two European countries which have shaped a large part of its history, and whose cultural influence remains very high to this day: Italy its closest neighbour to the north, and the United Kingdom'.

[14]The introduction of a new Masters in European Business Law also follows the same pattern.

school has since its inception offered two scholarships a year to Maltese law graduates. A similar story could also be told about e-gaming, another area of strong economic growth in Malta. On the whole, as in other areas of the legal system, globalisation is seen by the Maltese legal profession and domestic legal educators as reinforcing the Maltese tradition, rather than weakening it.

9.3 Jersey

The Bailiwick of Jersey is smaller still than the Republic of Malta, both in terms of population (100,000) and territory (118 km^2). Indeed, half of those on the island are not native to it. Nearly a third are from Britain or Ireland; 7% are from Portugal or Madeira. Jersey shares related histories and legal histories to the other Channel Islands, especially the Bailiwick of Guernsey, which includes Alderney, Sark, and other smaller islands. Each of these have broadly common histories and legal traditions, but differ in some respects and are largely governed by separate local institutions. Jersey is only 22 km from France and its legal history is closely related to continental developments, especially to Normandy. Part of the Duchy of Normandy, Jersey was held by the English Crown from 1066 and remained attached to it after the loss of Normandy. Jersey is neither part of the UK nor the EU. It is a 'Crown Dependency' of the former and has a special relationship to the latter, being treated as a member of the European Economic Community for the purposes of the free movement of goods. It is, however, self-governing, with its own Parliament (the 'States of Jersey') and ordinary Courts. There is a newfound sense of identity in recent decades; there has even been discussion of possible independence from the UK.[15]

As in Malta, language is an important aspect of the history of Jersey. The local language has never been modern standard French. Instead, it is Jèrriais, a variant of Norman. But both English and French are official languages in Jersey. English and Legal English began to displace both Jèrriais and French in the nineteenth century. This accelerated in the twentieth century, especially after the Second World War. As late as 2006, the conveyancing of immovable property was handled in French; since then it must be in English. Today, the languages of daily life and the law has shifted decisively to English. English has also been permitted in the States for over a century; French has little more than a ceremonial role there. As the knowledge of some French is still necessary for understanding its law, many practitioners have to have some training in French to pass their professional examination.

French remains relevant in a number of ways. A Jersey legal practitioner requires French, for example, for professional oaths. More importantly, French is needed to read many of its foundational texts of customary law and the commentary, from the sixteenth to the twentieth century, on those texts. It is required, too,

[15]See, for example, Bailhache (2010).

for most legislation before the 1940s, including some important matters, as well as amendment of that legislation. Almost all judgements of the Royal Court before 1950, as well as some into the 1960s, are in French, as is the *Tables des Décisions* (1885–1963), indices to unreported Royal Court judgements for that this period. And given the importance of French law and doctrine to Jersey, the language is also useful. But, as discussed below, a significant number of practitioners are not native to the jurisdiction and less likely than locals to read the language.

In addition to its local legal customs, Jersey law has drawn heavily on Norman customary law, modern French doctrine and law (including the *Code Civil* (1804)), and modern English legislation and jurisprudence.[16] As is the pattern in other mixed systems that experienced a superimposition of Anglo-American law on a continental foundation, English influence is especially strong in public and criminal law. Within private law, English influence is greatest in the area of torts. English-style trust law has also become important in the twentieth century. In contrast, French law has had a significant impact on Jersey's contract law. Not surprisingly, property law and succession law are the most resistant to English influence. Both reflect their Norman roots. Procedural law more clearly reflects an Anglo-British inheritance. As in Malta, there is no strict application of the doctrine of binding precedent or stare decisis within Jersey law. This was unclear until 1999. In *The State of Qatar*, the Royal Court rejected stare decisis by noting the Norman customary source of its law, the absence of the case law required for that doctrine, and the similarity of the Jersey tradition to the French tradition, in which binding precedent does not operate.[17] There remains, however, a strong presumption in favour of previous decisions, akin to the doctrine of jurisprudence constante of France and other continental jurisdictions. The Courts of Jersey are, however, bound by relevant decisions of the Privy Council. While Norman customary law remains important in the areas of property and succession, the modern sources of Jersey law reflect a strong English influence.

Unlike Maltese law and much of the law of Seychelles, Jersey law is largely uncodified, despite the influence of the *Code Civil* and the doctrine that informed it. And unlike the pull felt in Malta between the UK and Italy, there is little loyalty to continental law beyond those traditions already long-established in Jersey. A strong English influence is reflected in legislation enacted by the States. Since the 1930s, bills are drafted by individuals accustomed to the Anglo-American style of legislation where statutes are highly-detailed and precise. Legislated 'Laws' follow this style and are normally promulgated in English. In addition, Jersey legislation must be submitted to London for review by the Ministry of Justice and Royal Assent. The jurisprudence of the Jersey or Guernsey Court of Appeal and the UK Supreme Court is also important. Judgements of the Royal Court have, from the 1950s, adopted both the English language and the Anglo-American style. This is facilitated by the publication of the Jersey Law Reports since the 1980s. Doctrine

[16]This section draws on numerous sources, not least Bailhache (2014).

[17]*State of Qatar v Al Thani* (1999) JLR 118.

remains important. Indeed, its importance has arguably grown with the establishment of the *Jersey and Guernsey Law Review* in 1997 and the Institute of Law in 2008. And, a wealth of materials has been made available over the last decade online through the Jersey Legal Information Board.[18]

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 typically studied at British, especially English, universities or other Anglo-American jurisdictions. In fact, before 1997, becoming an advocate or a solicitor in Jersey was possible with British, French or Irish qualifications. In practice, French study through the University of Caen fell into disuse. Legal education and training changed significantly with the creation, in 2008, of the Jersey Institute of Law. The Institute's mission was to be the central nexus for education and training, both academic and professional, in Jersey law. The Institute, housed in St Helier, Jersey's capital and largest urban area, does this in numerous ways. In addition to the facilitation and provision of legal education and training, it also works to coordinate research in selected areas: the Channel Islands, on mixed systems more generally, on micro-jurisdictions, and on offshore finance. It hosts events geared to legal academics, to legal practitioners, including Continuing Professional Development (CPD), and to the general public (in its 'Law Made Simple' talks). The Institute also runs the island's Law Library and works closely with the Law Society of Jersey, the Jersey Legal Information Board, and the *Jersey and Guernsey Law Review*.

The Institute's approach to legal education and training differs in significant respects from that of Malta. It started as an education institution focusing on the ab initio training of local lawyers in Jersey law. It then became evident, because of the regulations and legislations on the qualifications required to become such a lawyer, that the Institute could also provide a degree in English law. Without a university in Jersey, the Institute uses an academic, undergraduate LLB developed out of the University of London's well-known International Programme. That programme is taught globally. But its content is deeply rooted in the English legal traditions. As its 'Foundations of Legal Knowledge' component, the foundation of England's Common Law, the programme includes topics required by English regulatory bodies:[19]

[18]More information about the JLIB is available at https://www.jerseylaw.je (last accessed 7 July 2016). It operates as a 'repository of all laws and judgments for the Island of Jersey. It is [also] a site presented to the local and related professions as well as to the public generally so as to maximise access to legal information and services'.

[19]These are listed by the Solicitor Regulation Authority (SRA) in a Joint statement issued 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. Available at http://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page. Accessed 7 July 2016.

1. Common law reasoning and institutions
2. Public law
3. Elements of the law of contract
4. Criminal law
5. Law of tort
6. Land law
7. Law of trusts
8. EU law

The programme also includes a class on Jurisprudence and Legal Theory, a dissertation (10,000 words), some optional subjects (Commercial law, the International Protection of Human Rights, etc.), and a 'Law Skills Portfolio' of legal research, oral communication, team working, information technology, and autonomy. Obviously these classes follow the English model, as if the graduate were to practice in England or Wales rather than in their native system. While most have some relevance in Jersey, others—particularly land law—are quite different. More generally, the result of these modules is to habituate students to Anglo-British conceptualisations about legal reasoning, the sources of law, and so on. While a more 'trans-systemic' approach is a possible option, other practical factors mean that that route has not been taken up to now.

Jersey's proximity to Britain means that the programme's faculty are largely drawn from there, even if teaching occurs in Jersey. Unlike ordinary university instruction of a few hours instruction during the week over the course of months, the classes are taught in longer, alternating blocks on weekends. This is necessitated by the number of non-resident 'flying faculty' and that students, largely drawn from the Channel Islands, are often employed during their studies, creating a very rich inter-connection between future employers and future lawyers. Given the small size of the student body—approximately 45 students a year for 2015–2016—teaching employs a mix of methods rather than pure lectures or tutorials, making the Institute one of the most successful registered centres of the entire international programme. The total number of student studying through the Institute is 180, which is quite large for a small island where approximately 450 students go to University annually (mainly in England). The Institute is now the largest provider of legal education on the island. The materials or study guides it produces are largely self-sufficient. Students with undergraduate degrees in other subjects have the option of an abbreviated Graduate Entry LLB. A Certificate in Higher Education in Law, also available through the University of London, may also be completed. It, too, focuses on English Law (same topics as the first year of the LLB). The Institute has also introduced a double degree in French and English laws. Students will be able to study both French and English law together. This may contribute to fostering a new kind of Jersey lawyer. Additional options for academic post-graduate study are available through the Institute's links with French and Spanish institutions.

But the Institute doesn't merely stand in for the academic component of legal education. It is also the hub for professional training in Jersey. Enrolment in its Jersey Law Course (JLC) is required for admission to the legal profession. This

takes between 1 and 3 years. Approximately 150 students have completed the course. As with the Institute's academic teaching, the JLC is taught by visiting academics and local practitioners in intensive, seminar-style study weekends. The JLC syllabus includes the following:

1. Jersey legal system and constitutional law
2. Civil and criminal procedure, including professional ethics
3. Contract law
4. Law of security interests and bankruptcy
5. Law of immoveable property
6. Testate and intestate succession
7. Company law, Family law, or Trusts law

Tuition in beginners French and French for the study of contract law is also included. The JLC leads to the Jersey Law Examinations and 2 or 3 years of work experience with a Jersey law firm. Using the same classes, the Institute established an LLM in Jersey Law in 2015. Unlike the use of the London Programme, which inevitably orients students towards Anglo-British modes of thought, management of the JLC by the Institute has the potential to significantly increase the number of lawyers conversant with Jersey's legal traditions. Much depends, of course, on the relationship between the Institute and the Bar and the number of foreign-trained lawyers who undertake the JLC.

Jersey has a bifurcated legal profession consisting of advocates and solicitors (ecrivains). This division may appear similar to that between English barristers (as well as some continental legal systems). But Jersey advocates have direct access to the public, form partnerships, and handle client money. In addition, while they may specialise in Court advocacy and the preparation necessary for such advocacy, many will never appear in Court, but focus on transactional work related to international finance. Solicitors provide more general legal advice and assistance to individuals and companies. Founded in 1899, the Law Society of Jersey governs both advocates and solicitors. They promote the rule of law, the high standards and interests of its members, and the study of law. Notaries exist, too, though they are less significant than in the Maltese, Seychellois, or continental traditions. And, as elsewhere, Jersey's lawyers are required to engage in CPD.

As in Britain—as well as in Malta and Seychelles—judges are drawn from legal practitioners. There is no separate, continental-style entry into the judiciary. Among other functions, the Bailiff is the head of the judiciary, acting as chief justice, as well as President of the States. Both the Bailiff and the Deputy Bailiff are Crown appointments. In addition, Jersey, like the other Channel Islands, also has 'jurats'. Rooted in traditional positions with counterparts in ancien régime France, jurats once had a legislative role. Today they form, along with the Bailiff, Jersey's Royal Court. They are lay people who act to decide questions of fact, decide damages in civil matters, impose sentences in criminal matters, and preside over land conveyances and liquor licensing. Twelve in number, they are indirectly elected by an electoral college of members of the States and the legal profession. They serve until retirement at the age of 72. Other legal offices, including the Attorney General and

Solicitor General, exist as well. The former gives legal advice to the government, as well as acting at the head of Jersey's prosecution service; the latter deputises for the former.

Unlike Malta, Jersey maintains an appellate link to Britain and employs British judges from beyond Jersey. Before 1949, appeals could move from one chamber of the Royal Court to another or to the Privy Council. In that year, a Channel Islands Court of Appeal was established, but never sat. In 1961, a Jersey Court of Appeal was established. It includes the Bailiff and Deputy Bailiff, as President and Vice-President respectively, along with other judges. These judges are often English, though Scottish judges have also played an important role. This link to expatriate judges is not generally seen as negative in Jersey. Indeed, judges of the Court of Appeal appear to have been attentive to Jersey's legal tradition, notwithstanding the fact that they are not trained in that tradition.

Economic globalisation is a significant influence on Jersey's economy, laws, and culture. The island's role as a centre of international finance and legal services, and arguably as a 'tax haven', has altered significantly in the last few decades. Economically, globalisation may be seen to strengthen the standard of living of all of those in Jersey—half native, half newcomers—the influence on its laws and culture is more mixed. In the last half-century, the local Bar has changed from a small, inward-looking body to a large group that includes many lawyers, almost entirely British Anglophones trained exclusively in Anglo-British law, from beyond the island. These individuals have few links or loyalties to the local tradition. They focus almost exclusively on commercial law, including trusts. And because engagement with such areas doesn't require much new professional knowledge and is largely conducted through English and English-style procedures, the local Bar has found it difficult to manage outside actors and influences. The gravitational pull of British culture and English laws have had a significant impact on the cultural and legal identity of Jersey. It remains to be seen whether local developments, most notably the creation of the Institute of Law, might stabilise the state of the law or even reverse the effect of outside influence.

9.4 Seychelles

With respect to population, the Republic of Seychelles is the smallest of the jurisdictions considered here.[20] With some 92,000 people, it is slightly less populated than Jersey and less than a quarter of the population of Malta. It is, however, the most extensive, a relatively isolated archipelago of 115 islands with a combined territory of some 459 km^2. It is also the only jurisdiction of the three that is outside of Europe. Indeed, set in the Indian Ocean, it is some 1500 km east of Africa. This

[20]For more information, see Twomey (2014). See also Twomey (2015); Donlan and Twomey (2017).

distance meant that Seychelles was uninhabited by humans, at least in any permanent settlement, for most of its history. The French eventually settled the islands by way of Mauritius (the Isle de France until 1810). European settlers, along with their African slaves and indentured Indians, made various settlements from 1770 onwards. With the French Revolution and the subsequent Napoleonic wars, the archipelago became a pawn of imperial expansion. The French eventually lost the islands to the British in 1810.

As a result, the laws of Seychelles were for decades a mix of the plural French colonial *ius commune*, including the *Code Noir* for slave affairs. In the aftermath of the French Revolution, its laws altered in line with the changes being experienced in Europe, i.e. legal centralism, nationalism, and positivism. The *Code Civil*, which established a common national law for France was in effect in Seychelles by 1810. The same was true of the metropolitan commercial, penal, and procedural codes. With British rule, an Anglo-French legal hybrid was born. British legal influence slowly increased. English-style judgements were adopted from the middle of the nineteenth century. The English language would also become more widely spoken, especially in the decades after 1903, when Seychelles became a British colony in its own right. The British influence on criminal law was particularly strong. An English-influenced *Penal Code* was promulgated, for example, in 1955.

By the early twentieth century, a hybridisation or creolisation of cultures—European, African and Asia—had resulted. While the experiences of both Seychelles and Mauritius were similar in many ways, their modern traditions are distinctive. Perhaps most importantly, the French language is more commonly spoken there and, as a result, more important to its legal tradition. Seychelles is multilingual, too. English and French are both spoken, but a Seychellois creole (Kreol) is the day-to-day language of the great majority of the country. Since 1981, it is also an official language. But the language of legal practice is largely English. The result is a gap between present legal language and both (i) the language of the people and (ii) the original language of the law. And while the native legal profession can bridge the former gap, fewer and fewer are able to work comfortably in French. This is more complicated by the fact that non-native or expatriate judges may require linguistic translations. When those judges have been trained in a different legal tradition, related terminological and conceptual translations may also be necessary for them to perform their functions. And Seychelles' private law remains largely rooted in the French tradition, the law is now largely expressed in English. Perhaps most importantly, the Seychellois *Civil Code* was translated into English in 1975. In terms of precedent, too, the vertical binding effect of judgements are adhered to both in criminal law and civil law in practice despite the fact that the *Civil Code* provides that judicial decisions shall not be absolutely binding in civil matters.[21]

Academic legal study for the Seychelles Bar traditionally occurred beyond the jurisdiction. Before 1996, those admitted to the Bar of England and Wales and who had obtained a law degree were entitled to practise in Seychelles. This process

[21]Civil Code of Seychelles Act 1976, art 5.

changed significantly when the University of Seychelles (UniSey) was established in 2010. Alongside that development was the establishment of an LLB programme managed by UniSey's new Faculty of Law. As with Jersey, this is rooted to the University of London's International Programme, but is targeted to local students. Teaching is in English and the curriculum is rooted in the English legal tradition. But English contract and tort law, land law, and equity and trusts, are all inapplicable in Seychelles. And unlike the use of that programme by Jersey's Institute of Law, the great distance between Britain and Seychelles means that far more local instruction occurs, at least for now. Until 2015, this was provided by local practitioners, especially the local Bar. As part of the expansion of the Faculty, however, there are now three non-native faculty members who will teach the London modules. Each is European, though they represent both the Anglo-American and continental traditions. They are, unlike Jersey's 'flying faculty', residents of Seychelles. For the moment, the jurisdiction lacks the equivalent of the Jersey Legal Information Board. A similar site committed to preserving texts relevant to practice in Seychelles could be a very valuable resource.

Recognising the substantive distance between the London curriculum and Seychellois practice, additional instruction has also been introduced. The Bar Vocational Course (BVC) is broadly similar to the JLC and attempts to prepare participants to take the Bar Examination. It largely focuses on Seychellois law, including:

1. Civil Code
2. Code of Civil Procedure
3. Property Law
4. Penal Code and Criminal Procedure
5. General Principles of the Law of Evidence
6. Commercial Code [and] Company Law
7. Family Law
8. Constitutional and Administrative Law

A vocational module also focuses on drafting and conveyancing, Alternative Dispute Resolution (ADR), ethics (including bookkeeping and anti-money laundering (AML)), and advocacy. Unlike the JLC, the BVC is concentrated in a single-year programme taught in extended, three-hour sessions. Of course, this still occurs *after* immersion in the London programme and, as a result, habituation to Anglo-American legal concepts and legal thinking. Even more than in Jersey, a more 'trans-systemic' approach would seem to be a more appropriate choice. While much is still to being worked out, the new non-native, but resident faculty already chosen might, in practice, be ideal for such an approach, even within the limits of the London Programme. In any event, if a partner university is desirable, more appropriate choices may be possible. The choice of McGill University, for example, would be no less respected than the University of London. And the Quebecois and Seychellois legal traditions would be broadly similar.

It also remains possible in Seychelles to qualify for practice with an appropriate UK law degree, a degree from a Commonwealth country, or a French university, followed by successfully completing the BVC or the UK's Legal Practice Course.[22] Similarly, individuals may practice with a law degree from the University of Mauritius, followed by successful completion of the Mauritian Bar Exams or completion of the education phase of qualifying as a lawyer in France, followed by successful completion of the Seychelles Bar Exams. In each of these situations, but especially where students train in Anglophone jurisdictions, there is the possibility that Anglo-American legal habits and understanding will influence the local law. In addition, successful completion of the Bar Exam requires a pupillage (apprenticeship) of 2 years in an approved chamber.[23]

Lawyers are designated attorneys-at-law. They are generalists; there are no distinct categories of legal practitioners as operated during French or British rule. There are, that is, no distinctions between lawyers generally and those that can act as advocates before the Courts, as was the case both in the French tradition (avoués and avocats) and remains significant within English law (the division between solicitors and barristers).[24] The Bar Association of Seychelles represents and promotes its members and fosters the diffusion of legal information. It was only established in 1988. Most lawyers operate as sole practitioners, though there a few law firms as well. In addition, as in Malta, notaries remain important for drawing up authentic documents and performing conveyances. And, as in most jurisdictions, a CPD programme also exists.

With respect to the judiciary, judges are largely drawn from practice. Of greatest significance is the fact that, in addition to the selection of local lawyers, many of the judges are drawn from the Bench of other Commonwealth countries: e.g. the UK, Mauritius, Botswana, Dominica, Ghana, Hong Kong, Kenya, Lesotho, Nigeria, St Lucia, South Africa, Sri Lanka, Swaziland, Tanzania, Trinidad and Tobago, and Uganda. This practice has a long history, both in continental Europe and in Britain's colonies. Such judges arguably have a broader perspective, greater objectivity, or special experience that local jurists in a small jurisdiction might not have. Jersey and a number of Commonwealth jurisdictions still utilise the UK Supreme Court for appellate matters.[25] Even so, this need not be a positive experience. The use of expatriate judges may reasonably be objected to as a loss of legal autonomy. And

[22]See Legal Practitioners Act 1996, s 5(1)(a)(iv) which provides that these are degrees at institutions and of a level approved by the Minister in consultation with the Chief Justice.

[23]It is also possible to qualify after acting as an articled clerk over a long period of local study, consisting initially of an Articleship Entrance Exam, followed by 6 years of study at an approved chambers and successful completion of the local Bar exams.

[24]Distinct professions continue to operate in Mauritius. In 2011, the French merged representation by the avoués with the avocats before the Courts of Appeal. Rights of audience before the Cour de Cassation are still restricted to specialist advocates who are accredited to argue cases before the Cour de Cassation and the Conseil d'Etat, referred to as avocats au Conseil d'Etat et à la Cour de Cassation.

[25]Some of the jurisdiction of the Privy Council transferred to the UK Supreme Court in 2009.

the negative effects of non-native jurists may be compounded where the judge is from a tradition unrelated or distantly related to the local jurisdiction. This is especially true where a judge does not sufficiently comprehend the source language of the law to be interpreted and applied. Like Malta and Jersey, Seychelles is both a micro-jurisdiction and a mixed legal tradition. In such a situation, there may be a special danger of the imposition, conscious or unintentional, of imported legal norms, especially from the Anglo-American traditions. Again, a system of continuous legal education exists for judges in Seychelles. This might provide a remedy to this problem.

Seychellois Courts include, in order of seniority, the Court of Appeal, the Supreme Court, the Magistrates' Courts, and other minor tribunals. The Court of Appeal is its highest Court of law and the final Court of appeal. The Court consists of a President, two or more Justices of Appeal and other judges who are ex-officio members of the Court. Until 2004, the Court of Appeal was not resident in Seychelles. The first Seychellois appellate judge was only appointed in 2005; its first Seychellois President in 2007. As a Court of last resort it has the opportunity and duty to correct mistakes and resolve conflicting decisions made by judges in previous cases. The hybrid nature of the law of Seychellois has, however, created tensions. The Supreme Court is the highest trial Court and the first Court of appeal from lower Courts and tribunals. The Supreme Court's jurisdiction is exercised in practice by a single judge. The Court can also sit as a Constitutional Court when handling public law matters. In this situation, at least two judges are required; normally three sit. Decisions of the Constitutional Court and the Supreme Court, in both civil and criminal matters either at first instance or on appeal, are subject to appeal to the Court of Appeal.

As with Malta and Jersey, globalisation has had a significant impact on the economy, laws, and culture of Seychelles. While this is unavoidable economically, it is also importantly a matter of law and legal traditions. The world economy and earlier Anglo-American legal influences have certainly affected Seychelles. In addition, however, the so-called new international rule of law dictated by organisations like the World Trade Organisation (WTO) and the International Monetary Fund (IMF) has also had an impact. These organisations often impose legal instruments foreign to the domestic legal system. In this way, policies rooted in Anglo-American doctrines and norms have proven to corrode the mixed nature of Seychellois law.[26] There are other more complex legal influences. Other international and regional organisations also have an impact on Seychellois law. These include the Commonwealth itself, as well as the Organisation Internationale de la Francophonie, the African Union, the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC). While Seychelles would admit into practice far fewer lawyers than Jersey, the fact that English—rather than Kreol—is used in practice means that there are more non-native attorneys than in Malta. With judges, however, Seychelles is far more

[26]See, for example, Mattei (2002).

open, arguably out of necessity given the small size of the Bar, to the influence, good or ill, of foreign judges. Finally, like Jersey, the creation of a new institution—here the Faculty of Law of UniSey—offers the possibility of generating lawyers more attuned, whatever their origin, to local needs.

9.5 Inside-Out/Outside-In

Micro-jurisdictions and small states engage with outside traditions and influences by necessity. Rather than making such systems marginal, this places them at the crossroads of interaction between peoples, jurisdictions, and powers. This is even more true of mixed legal systems. Those jurisdictions continue to draw on the complex, often colonial, legal traditions of other, parent states. The result of such legal, and often linguistic, borrowing is particularly obvious in micro/mixed jurisdictions like Malta, Jersey, and Seychelles. In each, legal ideas and institutions owe much to exterior actors and sources, especially perhaps those of the Anglo-British tradition. This reflects both their historical, colonial or quasi-colonial, links to Britain, as well as the continuing influence of Anglophone hegemony and the pan-national Anglo-American traditions. Such borrowing is particularly obvious in the legal education and training adopted and the organisation of the legal professions in those jurisdictions.

As indicated, Malta, Jersey, and Seychelles continue to orient themselves to other states, most notably Britain, but also to Italy and France. This is true of both substance and procedural law. But the professions themselves reflect their hybrid origins and the demands of their small jurisdictions. Perhaps as a practical matter, a bifurcated profession is less likely to arise in a micro-jurisdiction. In any case, both Maltese advocates and Seychellois attorneys-at-law are generalists. And if Jersey's advocates and solicitors superficially resemble British barristers and solicitors, it is important to note that such a division is not, or was not, unknown in France. Similarly, perhaps as a result of less pressure requiring the profound reform of legal orders that occurred elsewhere in the nineteenth century (centralism, positivism and so on), these extraordinary places may continue to maintain more archaic forms. And the relationship to Britain may take on many different shapes. This may involve a formal link to British appellate review, as in Jersey; this link is viewed positively. In Seychelles, while foreign Courts no longer judge local law, the judges themselves are often foreign. That this may be seen negatively may reflect the fact that those judges may be less committed to the local tradition than the senior jurists of the Privy Council in the past or the new Supreme Court in the present. These differences in perception may reflect the calibre of the judges chosen. They might also reflect linguistic obstacles, an issue that doesn't arise in Malta where fluent Maltese is required for practice at the Bar and on the Bench.

Of the three jurisdictions considered here, Malta is perhaps the least dependent on outside sources, in significant part because of a long-established, domestic third-level education in law at the University of Malta. Jersey and Seychelles, each

smaller than Malta, have been historically more reliant on legal education abroad. As noted, language is another important factor. The Maltese legal profession operates without difficulty in English, both because the language is common and their legal education takes place in that language. But familiarity with the Maltese language is essential given its place in litigation and adjudication, as well as in the jurisprudence the Courts produce. The generation of this jurisprudence may insulate the system somewhat, as well as generating a body of judicial doctrine especially important in a jurisdiction in which scholarship is limited, at least in contrast to larger systems (merely by virtue of their size). And reference to legal materials and sources in Maltese—a language difficult for many outsiders to learn—no doubt produces some difficulty for visiting students and, more importantly, for non-nationals who might wish to practice there. Perhaps more importantly, Malta's size and long experience with third-level education means that its Faculty of Law is entirely composed of Maltese nationals. As these individuals are also usually practitioners, the result is that outside influence is filtered through native, practical legal experience.

In both Jersey and Seychelles, the absence of local legal education, at least at third level, historically required study abroad. This meant that such education typically included no study of their native system (though it may have been required locally and independently of instruction abroad). Instead, they were instructed in the British, or more precisely the English, tradition and were expected to apply, to varying degrees, the principles found there to their native system. And if the language of both daily life and the law has been English for some time in Jersey, the situation is more complicated in Seychelles. There, Kreol remains the language of the people, while the French language, and more importantly English, have been the language of the law.

Both Jersey and Seychelles have now brought legal education into their respective islands. But the law taught there, at least at the LLB level, remains a foreign law that, at least in the texts employed, has not been adapted for the local tradition. Indeed, the texts for both are the same products of the University of London. As Sue Farran has written in considering education of this type beyond England:[27]

> Although UK universities may not be consciously seeking to colonise legal minds and hearts..., there is the danger that a failure to consider the comparative strengths and weakness, or advantages and disadvantages of any transplant, or to conjointly develop appropriate degree course with non-UK counterparts, is seen as an attitude of empire.

And perhaps by necessity, these small micro-jurisdictions also rely on faculty that are overwhelmingly drawn from beyond their shores. While not necessary, many of these individuals have never practised, either in the jurisdiction or any other. As a result, there is the danger that legal education may be abstract and less clearly tailored to practice, as well as foreign or modified through a foreign lens.

Legal educators in Jersey and Seychelles have sought to limit the impact of using foreign materials by requiring additional study of local laws. In Jersey, this occurs

[27]Farran (2013a).

in the JLC, as well as in the requirements of legal internship. In Seychelles, an additional year of legal education will occur after the London LLB; this is followed by preparation for bar examinations and internship. While the University of London programme brings obvious benefits, not least in making local legal study attractive to those who want some exterior validation of their work, perhaps with the prospect of practising in England, Wales, and Northern Ireland. Indeed, in Jersey at least, there is the real possibility of attracting non-national Britons to the island for their legal study before returning to practice in England, Wales, and Northern Ireland. But a more comparative, even trans-systemic, legal education might also be considered and be of more value to those who ultimately practice in Jersey and Seychelles. Malta has taken a similar approach already, even extending its programme beyond state law to legal anthropology. And if foreign validation is desirable, and it's reasonable to argue that it is, there might be more appropriate institutions with which the Jersey's Institute of Law and UniSey's Faculty of Law could ally themselves.

Finally, jurisdictions like Malta, Jersey, and Seychelles might also have important lessons to offer on globalisation. They are not, of course, the only legal systems influenced by exterior or foreign global forces. No state, however large, is immune from such influence. The particularly small size of micro-jurisdictions, however, and the place of mixed systems at the intersection of different legal traditions may make systems that combine these elements especially fragile. But as Malta and, to a lesser extent, Jersey suggest, their size and situation might allow such jurisdictions to act nimbly, as well as the luxury, or possibility, of knowingly choosing options drawn from more than one legal tradition. Finally, there is the question of access to sources, not least through source languages that may not, or may no longer, be understood by a nation's lawyers or its public. More importantly, such a gap between past and present raises complex questions about practical and prescriptive fidelity to tradition and, indeed, of the reification of legal traditions themselves. Legal hybridity or mixity invariably touches on issues of space (i.e. where the law has come from?), but also of time (i.e. when was the law received or the legal link established?). They raise the question of why the people of the present are ever attached to laws generated by the past. Indeed, whatever the link between state and society, meaningful self-government is more important, allowing nations to remedy deficits in their laws. All legal traditions are hybrid mixes of autochthonous and imported elements.[28] Handled with care, openness to outside influence need not prevent effective choices about the substance or spirit of the laws. It may even empower those choosing.

[28]See, for example, Donlan (2014).

References

Andò B, Aquilina K et al (2012) Malta. In: Palmer VV (ed) Mixed jurisdictions worldwide: the third legal family, 2nd edn. Cambridge University Press, Cambridge

Aquilina K (2011) Rethinking Maltese legal hybridity: a chimeric illusion or a healthy grafted European law mixture? J Civil Law Stud 4(2):261–283

Aquilina K (2014) Do pronouncements of the constitutional court bind *erga omnes*? The common law doctrine of *stare decisis* versus the civil law doctrine of nonbinding case law within a Maltese legal context. In: Palmer VV et al (eds) Mixed legal systems, east and west. Ashgate Publishing, Farnham

Bailhache P (ed) (2010) Dependency or sovereignty? Time to take stock. Jersey & Guernsey Law Review. Published transcript of conference proceedings, Institute of Law, Jersey, September 2010

Bailhache P (2014) Jersey: avoiding the fate of the dodo. In: Örücü E et al (eds) A study of mixed legal systems: endangered, entrenched, or blended. Ashgate Publishing, Farnham

Bogdan M (1989) The law of Mauritius and Seychelles: a study of two small mixed legal systems. Juristförlaget i Lund

Castellucci I (2014) San Marino, Città del Vaticano, Malta: Il diritto italiano nelle micro-giurisdizioni. In: Annuario di diritto comparato e di studi legislative. Edizioni Scientifiche Italiane, Napoli

Donlan SP (2014) Things being various: normativity, legality, state legality. In: Adams M, Heirbaut D (eds) The method and culture of comparative law: essays in honour of Mark van Hoecke. Hart Publishing, Oxford

Donlan SP (2015) Everything old is new again: stateless law, the state of the law schools and comparative legal/normative history. In: Deldek H, Van Praagh S (eds) Stateless law: evolving boundaries of a discipline. Ashgate Publishing, Farnham

Donlan SP, Twomey M (2017) Island, intersection, or in-between? Legal hybridity and diffusion in the Seychellois legal tradition, c1750–1950. In: Donlan SP, Mair J (eds) Mixity, metaphor, and marriage: Essays in honor of Esin Örücü. Routledge, Oxford

Donlan SP, Andò B et al (2012) "A happy union"?: Malta's legal hybridity. Tulane Eur Civil Law Forum 27:165–208

Farran S (2013a) The "age of empire" again? Law Teacher 47(3):345–367

Farran S (2013b) The age of empire. again: critical thoughts on legal imperialism. Plenary address delivered to the Irish Society of Comparative Law Annual Conference, Galway, Ireland, 24 May 2013. Available at https://www.youtube.com/watch?v=UcHLfEofEpo&list=PLHoyytvdqQKzUF79lmo5xdrjBrb5e59yC. Accessed 9 July 2016

Malta Financial Services Authority (2008) Malta: a framework for financial services. Available at http://www.simonestates.com/business2.pdf. Accessed 9 July 2016

Mattei U (2002) A theory of imperial law: a Study on US hegemony and the Latin resistance. Indiana J Glob Leg Stud 10:383–448

Palmer VV (ed) (2012) Mixed jurisdictions worldwide: the third legal family, 2nd edn. Cambridge University Press, Cambridge

Twomey M (2014) Seychelles: things fall apart? – The mixing of fate, free will and imposition in the laws of seychelles. In: Örücü E et al (eds) A study of mixed legal systems: endangered, entrenched, or blended. Ashgate Publishing, Farnham

Twomey M (2015) Legal salmon: comparative law and its role in Africa. In: Mancuso S, Fombad CM (eds) Comparative law in Africa: methodologies and concepts. JUTA and Company, South Africa

Zammit EL (1984) A Colonial Inheritance: Maltese perceptions of work, power and class structure with reference to the labour movement. Malta University Press, Malta