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ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY

Western centrism, contemporary international law, and international courts

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Abstract

The article unpacks the notion of western centrism in contemporary international law by developing a framework to capture its varied patterns. It argues that western centrism can have three different manifestations – systemic, evaluative, and professional – depending on whether it refers to the rationality, the narratives, or the actors at play in the international legal field. The article then discusses three theoretical approaches that can help scholars dealing with western centrism in international (legal) scholarship. These are: (i) the critical readings of those scholars that explain international law through the lens of power and domination; (ii) the Stanford school of sociological institutionalism, which explains international institutions and norms through the role of culture and global scripts; and (iii) post-Bourdieusian reflexive sociology, which analyses the roles of transnational legal elites in colonial and post-colonial settings. Finally, the article reconstructs the experience of the Caribbean Court of Justice in the light of western centrism, demonstrating that, different from what is often argued in the literature, the Court is not a failed replica of the Court of Justice of the EU, but an institution in its own right, with its own approach to international law, its own successes and failures.

Keywords: Caribbean court of Justice; Eurocentrism; international legal theory; sociology of law; western centrism

1. Introduction

Western centrism[1] has been central to the development of international law.[2] Although the second part of the twentieth century has put an end to imperialism, transforming international law into an inclusive order between sovereign nations,[3] its structures and actors remain prevalently western.[4] Despite this, international law and its institutions maintain a certain

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[1]In the literature, the term often used to describe this phenomenon is Eurocentrism. I prefer the term western centrism because, in my view, this term best represents the state of the art of the exercise of global power and the construction of its narratives. While almost synonyms, I would still argue that the two terms differ. Eurocentrism refers back to colonial times, where European powers dominated the world. In a world like the present one, in which new centres of (western or westernized) powers have come to impose their cultural, economic, and legal models, the term western centrism seems more appropriate. Although colonial constructions and patterns did survive the end of empires, see E. Said, *Orientalism* (1978).

[2]See, among many others, J. Gathii, 'International Law and Eurocentricity', (1998) 9 *European Journal of International Law* 184.

[3]See, for instance, W. Jenks, *The Common Law of Mankind* (1958). For a critique of this view see S. Pahuja, *Decolonising International Law - Development, Economic Growth and the Politics of Universality* (2011); M. Mazower, *No Enchanted Palace. The End of Empire and the Ideological Origins of the United Nations* (2009).

[4]See, among others, D. Otto, 'Subalternity and International Law: The Problems of Global Community and the Incommensurabilty of Difference', (1996) 5(3) *Social & Legal Studies* 337.

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appeal among non-western actors and states, who often use them to pursue their goals.[5] While the examples in this regard are many,[6] the recent global spread of international courts confirms the attraction that western-derived international laws and institutions maintain in non-western contexts.[7] This shows the unresolved tension embedded in the institutional structure of contemporary international law between its imperial/western origins and its counter-imperial universalistic spirit; that is to say, between its reproduction of unequal hierarchies of power and its relationship with higher ideas of justice and humanity. This also shows that, despite international law's new clothes of true universality, western centrism remains a central, if not constitutive, aspect of the international legal order's rationality.

In dialogue with a number of approaches already tackling similar issues,[8] this article seeks to further nuance how we are to understand western centrism in contemporary international law. To this purpose, in the first section, I propose a three-fold division by which western centrism may manifest itself in practice. I argue that that western centrism can be *systemic*, *evaluative*, and *professional*, depending on whether it operates at the level of the intrinsic rationality of the system, characterizes the narratives on international law and institutions, or is reflected in the professional and cultural backgrounds of the agents at play in the international legal field. While by no means the only way to approach western centrism in international law, this conceptualization is, in my view, valuable as it allows for moving beyond the usual dichotomies (i.e., centre vs. periphery, adaptation vs. resistance, universal vs. particular, modern vs. traditional, civilized vs. uncivilized, hegemonic vs. subaltern, etc.) through which western centrism is often approached in the literature. In so doing, my conceptualization allows not only for a more nuanced understanding of the phenomenon itself but also for setting the basis for explaining more thoroughly how the trajectories of contemporary international law and institutions are presently shaped by western centric dynamics, regardless of international law's claim of inclusivity and universality.

In the second section, I discuss three theoretical approaches, which have helped me deal with western centrism in my research on international courts in non-European contexts. These approaches are (i) the critical readings of those scholars that explain international law through the lens of power and

[5]The appeal that international law has on non-western actors can also be seen in that often the disappointments generated by the inefficiencies of international law in non-western contexts are explained in terms of distorted practical applications of such law, and not by its inherent fallacies and/or by its complicity with powerful actors. See Pahuja, *supra* note 3, at 1.

[6]International law was central to the decolonization process, when the so-called Third World appropriated the idea of self-determination to vest claims of independence with legal clothes. R. Holland, *European Decolonization 1918-1981: An Introductory Survey* (1985), at 112.

[7]C. Romano, 'The Proliferation of International Judicial Bodies: The Pieces of the Puzzle', (1998) 31 *NYU Journal of International Law & Politics* 709. See K. Alter, 'The Global Spread of European Style International Courts', (2012) 35(1) *West European Politics* 135. See also A. Jetschke and T. Lenz, 'Does Regionalism Diffuse? A New Research Agenda for the Study of Regional Organizations', (2013) 20 *Journal of European Public Policy* 626.

[8]Researchers in the fields of third world approaches to international law and historical sociology have contested the privileged role of the West in constructing international law and provided alternative histories to the conventional narrative according to which international law has spread from Europe to the rest of the world: S. Seth, 'Historical Sociology and Postcolonial Theory: Two Strategies for Challenging Eurocentrism', (2009) 3(3) *International Political Sociology* 334; B. Chimni, 'Third World Approaches to International Law: A Manifesto', (2006) 8 *International Community Law Review* 3. Comparative international lawyers have demonstrated how international law practices vary due to national adaptations: A. Roberts, *Is International Law International?* (2017); M. Koskenniemi, 'The Case for Comparative International Law', (2009) 20 *The Finnish Yearbook of International Law* 1; A. Lorca, 'Eurocentrism in the History of International Law', in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012); A. Lorca, *Mestizo International Law* (2014). Post-colonial theorists have argued that the very concepts upon which international law is built are inherently western centric, and thus not adequate to regulate non-western contexts: D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (2008); W. Mignolo, *Local Histories/Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking* (2000). Finally, legal pluralists have questioned the monolithic nature of many international legal concepts, demonstrating that these instead derive from various legal principles and cultures: S. Merry, 'Legal Pluralism', (1988) 22 *Law and Society Review* 869; H. Quane, 'Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?', (2013) 33(4) *Oxford Journal of Legal Studies* 675. From the perspective of fragmentation and pluralism see D. Kennedy, 'One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream', (2007) 31 *New York University Review of Law and Social Change* 641.

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domination;[9] (ii) the Stanford school of sociological institutionalism, which explains international institutions and norms through the role of culture and global scripts;[10] and (iii) post-Bourdieusian reflexive sociology, which among other things analyses the roles of transnational legal elites in colonial and post-colonial settings.[11] In providing a sociologically grounded analysis of international law and institutions, these approaches allow scholars to objectivize the socio-political and cultural dynamics responsible for the global imposition of certain norms and institutions, thus displaying in a more empirically correct manner the role played by western centrism in this context.

In the final section, I use the threefold division of western centrism developed in Section 1, along with the theoretical insights discussed in Section 2 of the article, to provide a deeper understanding of the phenomenon of the spread of international courts outside Europe. The goal is to show that the suggested approach has the potential for enriching existing theories on international courts and adjudication, which, while providing a great deal of knowledge on these recently established institutions, have often approached them from a western Centric perspective, and, for this reason, have provided accounts that are not entirely in synch with the empirical reality in which these institutions are called to act. To this purpose, after discussing some of the methodological and epistemological issues I have encountered in my research, I take as a case study the Caribbean Court of Justice (CCJ), a regional court with jurisdiction over several Caribbean states for economic and constitutional matters.[12] The CCJ has often been considered a failed replica of the Court of Justice of the European Union by scholars, who have argued that the former has, arguably, failed to deepen economic, political, and legal integration in the Caribbean Common Market (CARICOM).[13] Yet, once we have unravelled the role that western centrism has played in the establishment and subsequent operation of the Court, the CCJ appears in a different light. Rather than being a failed copy of the Luxembourg Court, the CCJ is an institution in its own right, with its own approach to international and regional laws, its own successes and failures, its own agency and trajectory, and a relatively noteworthy impact on Caribbean societies and laws.

2. Unpacking western centrism in international law

Whether a product of the modern world system,[14] a spillover of colonialism,[15] or the consequence of the universalization of the capitalist economy,[16] western centrism has played – and continues to play – a central role in international law. Broadly defined, western centrism is an aspect of ethnocentrism, as it relates to the theory and practice of privileging western norms, categories, and narratives in the construction and development of international laws and institutions.[17] This general understanding of the concept, however, constitutes only the first step toward a more nuanced

[9]See, among others, A. Quijano, 'Coloniality of Power and Eurocentrism in Latin America', (2000) 15(2) *International Sociology* 215. See also A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (2004); B. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2017).

[10]See, among others, J. Meyer, J. Boli and G. Thomas, 'Ontology and Rationalization in the Western Cultural Account', in W. Scott and J. Meyer (eds.), *Institutional Environments and Organizations* (1994).

[11]Y. Dezalay and B. Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (2002); Y. Dezalay and B. Garth, *Asian Legal Revivals: Lawyers in the Shadow of the Empire* (2010); M. Madsen and Y. Dezalay, 'The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law', (2012) 8 *Annual Review of Law and Social Science* 433.

[12]The CCJ is the judicial organ of the Caribbean Common Market (CARICOM). See D. Simmons, 'The Caribbean Court of Justice: A Unique Institution of Caribbean Creativity', (2005) 29 *Nova Law Review* 69.

[13]For instance, D. O'Brien and S. Foadi, 'Caricom and Its Court of Justice', (2008) 37(4) *Common Law World Review* 334. See also D. O'Brien and S. Morano-Foadi, 'The Caribbean Court of Justice and Legal Integration within Caricom: Some Lessons from the European Community', (2009) 8(3) *Law & Practice of International Courts & Tribunals* 399.

[14]I. Wallerstein, 'Eurocentrism and Its Avatars: The Dilemmas of Social Science', (1997) 46(1) *Sociological Bulletin* 21.

[15]J. Blaut, *The Colonizer's Model of the World: Geographical Diffusionism and Eurocentric History* (2012).

[16]N. Hostettler, *Eurocentrism: A Marxian Critical Realist Critique* (2012).

[17]G. Joseph, V. Reddy and M. Searle-Chatterjee, 'Eurocentrism in the Social Sciences', (1990) 31(4) *Race & Class* 1.

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elucidation of how western centrism operates in practice. This generalist view, in fact, associates western centrism with narratives of material domination of the West upon the rest of the world, resulting, among other things, in structural homologies between institutions and/or limited agency of local actors. While it is undeniable that this form of power does indeed play a role in producing and reproducing western centrism in international law,[18] reducing this phenomenon to a mere discourse of domination runs the risk of homogenizing, and to a certain extent, romanticizing the alternative (and subaltern) visions of international law.[19] For this reason, this section unpacks the notion of western centrism in three categories that grasp different, although at times overlapping, aspects of its dynamics. The three categories are *systemic*, *evaluative*, and *professional* western centrism as discussed below. Importantly, while these three categories can be analysed separately, they are strongly interlinked. In particular, the evaluative and professional may be considered as an implicit consequence of systemic western centrism. This is because, by permeating the inherent rationality of international law, systemic western centrism constructs international law's structures, subject, norms, and categories of thought, thus enabling and shaping the agency of the actors at play in the international legal field.

2.1 Systemic western centrism

Systemic western centrism is similar to what Sundhya Pahuja termed international law's 'ruling rationality'; namely, the latter's capacity to constitute its own subjects and objects as well as to translate 'provincial' values, local claims of universality, and even critiques into its language.[20] What the idea of systemic western centrism adds to this concept is that the language into which international law translates such values, claims, and critiques is inherently western, as western are its dominant concepts and norms.[21] Perhaps the most important example of the western-centric language used by international law is provided by the concept of sovereignty, which occupies a central position in the system.[22] As known, the idea of sovereignty became one of international law's pillars during the colonial encounter, when it was used to regulate the relations between European and non-European worlds in a way that would place the former in a prominent position.[23] In that period, the idea of sovereignty was coupled with the concept of standard of civilization and the principle of recognition, which were part of 'the grand redeeming project of

[18]As I discuss in Section 3.1. This form of power is what has been label by Mark Haugaard, *power over* or coercion; that is the military, economic, and/or political domination of the West in international law and relations: M. Haugaard, 'Rethinking the Four Dimensions of Power: Domination and Empowerment', (2012) 5 *Journal of Political Power* 1. On this form of power see also R. Dahl, 'The Concept of Power', (1957) 2 *Behavioral Science* 3. See also H. Arendt, *The Human Condition* (1958); T. Parsons, 'On the Concept of Political Power', (1963) 107 *Proceedings of the American Philosophical Society* 1.

[19]On this see K. Tucker, 'Unraveling Coloniality in International Relations: Knowledge, Relationality, and Strategies for Engagement', (2018) 12(3) *International Political Sociology* 215.

[20]See Pahuja, *supra* note 3. See also Chakrabarty, *supra* note 8.

[21]See Anghie, *supra* note 9. See also Gathii, *supra* note 2; M. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (2008); A. Pollis and P. Schwab, 'Human Rights: A Western Construct with Limited Applicability', in C. Koggel (ed.), *Moral Issues in a Global Perspective I: Moral and Political Theory* (2008); H. Christie, 'The Poisoned Chalice: Imperial Justice, Moral Relativism, and the Origins of International Criminal Law' (2010) 72, *University of Pittsburgh Law Review* 361.

[22]The examples are many. For instance, western categories, values, and norms constitute the main pillars upon which human rights are based, as these, in essence, promote western (and universalized) ideas of individual autonomy, equality, and secularism: S. Merry, 'Human Rights and Transnational Culture: Regulating Gender Violence Through Global Law', (2006) 44(1) *Osgoode Hall Law Journal* 53. Recently, the International Criminal Court has been criticized by African states for reproducing colonial inequalities. See, W. Wouter, 'The Clash of Civilisations in International Law', *E-International Relations*, 25 April 2018, available at www.e-ir.info/2018/04/25/the-clash-of-civilizations-in-international-law/.

[23]Anghie, *supra* note 9, at 1. See also B. Bowden, 'The Colonial Origins of International Law: European Expansion and the Classic Standard of Civilization', (2005) 7(1) *Journal of the History of International Law* 1; F. Johns, R. Joyce and S. Pahuja (eds.), *Events: The Force of International Law* (2011). A confirmation of this is also provided by Grewe's ultra-realist account of international law built upon Carl Schmitt's *Nomos de Erde*. See W. Grewe, *The Epochs of International Law* (2000).

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bringing the marginalised into the realm of sovereignty'.[24] This meant that full recognition in international law, at least in these early days, was limited to those states with European 'civilization'.[25] Put differently, international law's universality was unidirectional, as non-European states were admitted to the 'club' only when conforming to European rules and values.[26]

While contemporary international law has moved away from this brutal rationality, it nevertheless reflects some of its aspects. Remnants of the idea that international law is a matter of 'civilized nations' are found in Article 38 of the Statute of the International Court of Justice, which, among the sources applicable by the Court, lists 'the general principles of law recognized by civilized nations'.[27] More importantly, colonial concepts like the standard of civilization have been replaced with less contentious, yet nevertheless western-centric, terms, such as international law as a modernizing, state-building, and development project. As Martti Koskenniemi puts it:

> The narrative of international law that depicts progress in terms of a unified "international community" emerging from functional differentiation and technical professionalism speaks a thoroughly Eurocentric language. When international institutions delineate their jurisdiction through "human rights", "free trade", "fight against impunity", "protecting the environment", "advancing investment", or think their activity in terms of "modernization", "sustainable development", "state-building", "structural adjustments" or "responsibility to protect", they subscribe to languages whose native speakers come from universities, think-tanks and civil society institutions in Europe and the United States.[28]

In conclusion, although today international law has developed a more inclusive, human, justice-related, and universal language, its rationality – embodied in its language and structures of thought – remains deeply western-centric. As I discuss in the next two sections, systemic western centrism of international law is responsible for the two additional practical manifestations of the phenomenon, namely evaluative and professional western centrism.

2.2 Evaluative western centrism

Evaluative western centrism refers to the narratives concerning international law and its institutions, and to the fact that western institutions are often set as the standard against which their non-western counterparts are scaled and ranked. Evaluative western centrism presupposes an underlying (but false?) identity between different cultures and societies, reducing these differences to a greater or lesser degree of approximation to or deviation from the ideal. In other words, divergence from the dominant western script is treated as either absence of civilization, a problem, or a failure to comply with it. An example of evaluative western centrism can be found in the scholarship on regional economic and human rights courts, which often assesses these institutions on the parameters set out by the two most well-known European courts, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). The narrative of these scholars is that, nowadays, there are at least 12 institutional copies of the Luxembourg Court and two adaptations of the Strasbourg Court spread across Africa, South America, and the Caribbean.[29] While entrenched in unique socio-political contexts, these courts are generally believed to have failed to replicate the success story of their European

[24]See Bowden, *supra* note 23.

[25]J. Westlake, *The Collected Papers of John Westlake on Public International Law* (1914), L. Oppenheim (ed.).

[26]See Anghie, *supra* note 9.

[27]For a broader discussion of Eurocentrism, the sources of international law, and the role of history, see R. Parfitt, 'The Spectre of Sources', (2014) 25(1) *The European Journal of International Law* 297.

[28]M. Koskenniemi, 'Histories of International Law: Dealing with Eurocentrism', (2011) 19 *Rechtgeschichte* 152, at 160. See also Pahuja, *supra* note 3.

[29]For a general introduction on the phenomenon of proliferation of international courts see Romano, *supra* note 7. See also K. Alter, *The New Terrain of International Law: Courts, Politics, Rights* (2013).

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cousins. These scholars corroborate their analyses by arguing that these courts have many institutional and legal features in common with the European courts which, however, they have failed to operationalize satisfactorily. For instance, the Latin America and African economic courts are often criticized for erroneously borrowing EU law principles and/or for not being able to leave a significant mark on their operational contexts.[30] Moreover, these courts puzzle scholars, as they have often developed expertise in areas not usually associated with European-style market integration, such as human rights,[31] the enforcement of democratic values and the rule of law within its member states,[32] and even intellectual property.[33] Similarly, the Inter-American Court of Human Rights and the African Court of Human and People Rights are often criticized for failing to secure compliance with their judgments or for not living up to western ideas of what regional human rights courts should actually do.[34]

2.3 Professional Western centrism

Professional western centrism relates to the actors of the international legal field that are, for the most part at least, either western or educated in western institutions.[35] A recent survey on the international lawyers appearing before international courts showed that these are largely male professors from developed states, most notably, the United Kingdom, the United States, and France.[36] Similar patterns illustrate the global movements of international law students and academics, characterized by a constant flow of individuals from peripheral and semi-peripheral states to universities located in core states, mostly in the United Kingdom and the United States.[37] The dominance of western actors in international law is further corroborated by a study on the educational capital of international judges. By collecting data on where the members of the international bench have pursued their studies prior to their appointment as judges, the survey shows that western universities dominate the picture. The data are even more striking once analysed in detail for each international court. The survey shows that the judges of European international courts have been predominantly educated either in their home states or in other core European universities, while African and Latin American judges have chiefly studied at universities of core states, such as the United Kingdom, the United States, France, and Spain.[38] While supporting the thesis that international lawyers do not belong to an entirely uniform field, the examples discussed in this section reveal that the West occupies a central position in terms of the dominance of western actors in international legal practice and academia and providing legitimizing capital for those coming from peripheral and semi-peripheral states.

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[30]See, for instance, empirical chapters in K. Alter, L. Helfer and M. Madsen, *International Court Authority* (2018).

[31]This is the case of the East African Court of Justice and the Economic Community of West African States Court of Justice. See J. Gathii, 'Mission Creep or a Search for Relevance: The East African Court of Justice's Human Rights Strategy', (2013) 24 *Duke Journal of Comparative and International Law* 249; S. Ebobrah, 'The Ecowas Community Court of Justice: A Dual Mandate with Skewed Authority', in Alter et al., *supra* note 30.

[32]Like in the case of the Central American Court of Justice and of the Mercosur Permanent Review Court. G. Vidigal, 'Paraguay's Suspension before the Mercosur Court', (2013) 2 *Cambridge Journal of International and Comparative Law* 337.

[33]Like for the Andean Tribunal of Justice. K. Alter, L. Helfer and M. Guerzovich, 'Islands of Effective International Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community', (2009) 103(1) *American Journal of International Law* 1.

[34]See C. Bailliet, 'Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America', (2013) 4(31) *Nordic Journal of Human Rights* 477.

[35]O. Schachter, 'The Invisible College of Lawyers', (1977) 72(2) *Northwestern University Law Review* 217.

[36]S. Kumar and C. Rose, 'A Study of Lawyers Appearing before the International Court of Justice, 1999–2012', (2014) 25(3) *The European Journal of International Law* 893.

[37]See Roberts, *supra* note 8.

[38]M. Madsen, 'Who Rules the World? The Educational Capital of the International Judiciary', (2018) 3 *University of California Journal of International, Transnational, and Comparative Law* 97.

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3. Dealing with western centrism in international (legal) scholarship: Power, culture, and elites

This section discusses three approaches that have helped in dealing with the three above presented manifestations of western centrism in this research on non-European international courts. The three approaches are: (i) critical readings of those scholars that explain international law through the lens of power and domination;[39] (ii) the Stanford school of sociological institutionalism, which explains the isomorphism of international institutions and norms by looking at the role of culture and global scripts;[40] and (iii) post-Bourdieusian reflexive sociology, which analyses the roles of transnational legal elites in colonial and post-colonial settings.[41] Although from different perspectives, these approaches allow the breaking of dominant narratives constructed by the discipline, thus allowing the unveiling of aspects that are crucial for a better understanding of international laws and institutions, such as the existence of communities struggling to impose their 'episteme' of international law;[42] the intellectual habits of the actors practising law internationally;[43] the power relationships responsible for international law's creation and gaining of authority;[44] and the shifting uses of international norms between hegemonic and non-hegemonic actors,[45] and so on. Importantly, while it is perfectly plausible to study western centrism in international law by separately relying on each of these approaches, I believe that a combined approach is to be preferred. This is because, at their cores, these theories are suited to study different aspects of the phenomenon. Thus, the scholarship on power and domination is more tailored to unravel the systemic aspects of western centrism and how this has been – and still is – constructed in practice; the Stanford school can be better deployed to grasp how evaluative narratives on international laws and courts are constructed globally and regionally; while post-Bourdieusian reflexive sociology allows for unpacking the black box of international legal actors as part of a global and relatively uniform western or western-educated power elite.[46]

3.1 Power and the structures of international law

An important entry point for understanding how western centrism operates in practice is provided by the ideas of power and domination, which allow us to unravel the systemic western centrism of international law and how its structures and norms reflect the power of the West in setting the internationalist agenda. In this regard, a relevant author to discuss is Aníbal Quijano, who produced important works on the coloniality of knowledge and power.[47] In Quijano's view, the modern system of international law stems from two mutually reinforcing elements: a new structure of modern capitalism (world capitalism) and the relation of dominance established by the idea of 'race', which was used, not only to describe biological dissimilarities, but also the mental and cultural differences between dominant and dominated societies.[48] In turn, world capitalism and race – together with colonial domination – contributed to the material concentration of capital in Europe, which 'emerged as a new historical entity and identity and as the central place of the new pattern of

[39]See Quijano, *supra* note 9. See also Anghie, *supra* note 9.

[40]See Meyer et al., *supra* note 10.

[41]See, Dezalay and Garth, *supra* note 11. Madsen and Dezalay, *supra* note 11.

[42]E. Haas, *The Uniting of Europe: Political, Social, and Economic Forces* (1968). M. Keck and K. Sikkink, *Activists Beyond Border: Advocacy Networks in International Politics* (1998).

[43]M. Madsen, 'Reflexivity and the Construction of the International Object: The Case of Human Rights', (2011) 5(3) *International Political Sociology* 259.

[44]On this, the scholarship on the power and authority of international courts is relevant. See Alter et al., *supra* note 30.

[45]See Koskenniemi, *supra* note 28.

[46]There is by no means of theology in the categorization of this literature. The argument I make here is that each of these theoretical approaches take as a starting point aspects that are more linked to one manifestation of western centrism, thus being, in principle, more suited to deeply engage with that particular aspect rather than with all of them.

[47]See Quijano, *supra* note 9.

[48]Ibid., at 216.

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world-Eurocentric colonial/modern capitalist power'.[49] This allowed Europe both to impose a new process of re-identification to other regions of the world – which were then artificially constructed as Latin America, Asia, and Africa despite internal differences – and to create a new world order characterized by an extreme imbalance of power between the West and the rest of the world. Quijano further argues that, once colonialism terminated, the material relations established by the colonial model of power – characterized by a racialization of politics and racial hierarchization of peoples – together with a particular form of Eurocentric knowledge, remained central to global politics, economics, and laws.[50] In a similar vein, one can read the work of Anthonie Anghie, with his idea that international law relies on the dynamic of difference; that is the endless and conscious process of separating societies and cultures, labelling some of them as universal and civilized, while others as particular and uncivilized.[51]

The impact of this coloniality of knowledge can be, for instance, seen in how the systemic western centrism of international law was inherently linked to the construction of an intellectual narrative, which linked the emergence of the present system of international law to purely European developments (i.e., the rise of the modern state in the aftermath of the Treaty of Westphalia in 1648). Illustrative in this regard is, among other works, Immanuel Kant's *Idea for a Universal History with a Cosmopolitan Purpose*, in which, while sketching the future of humanity in terms of cosmopolitan existence, it was assumed that this could only happen through an operationalization of international norms and forms created by Europe for all other continents.[52] Similar narratives are found in the classical works of Adam Smith, Samuel Pufendorf and Henry Sumner Maine, which laid down the philosophical foundations of the present international law. In 1887, Maine even reduced the history of international law to the spread of Roman law over Europe.[53] The 'imposition' of such narrative had two important consequences: firstly, it widely disregarded other forms and manifestation of international law, some of which even pre-existed these developments;[54] secondly, it rendered international law's historical trajectory principally European in character, pushing to the margins the experiences of African, Asian, or South American societies that, up to that point, had played an important role in contributing to the development of international norms.[55] Similar considerations can be made in relation to the more recent developments related to the universalizing project of human rights, which, while promoting universal ideas of individual autonomy, equality, and secularism, often clashes with alternative visions of social justice focused on communities and responsibility.[56] Exemplary in this regard is the work of Sally Engle Merry, who reported a clash between Fijian society and the United Nations Committee on the Elimination on Discrimination against Women in relation to the legality of the *Bulubulu*, a traditional village custom for reconciling differences in cases of rape outside the ordinary avenue of court cases.[57] In a comparable vein, the Islamic critique of international human rights treaties such as the Universal Declaration of Human Rights and the two 1966 Covenants on Economic, Social, and Political Rights can be read as an instance of cultural dissonance between the western and non-western legal cultures.[58]

[49]Ibid., at 217–18.

[50]A. Quijano, 'Coloniality and Modernity/Rationality', (2007) 21(2-3) *Cultural Studies* 168.

[51]See Anghie, *supra* note 9.

[52]M. Koskenniemi, 'Histories of International Law: Dealing with Eurocentrism', (2011) 19 *Rechtgeschichte* 152. See also M. Koskenniemi, 'On the Idea and Practice for Universal History with a Cosmopolitan Purpose', in B. Puri and H. Sievers (eds.), *Terror, Peace and Universalism. Essays on the Philosophy of Immanuel Kant* (2007).

[53]H. Maine, *International Law. A Series of Lectures Delivered before the University of Cambridge* (1887).

[54]See, for instance, D. Bederman, *International Law in Antiquity* (2004).

[55]On this point see M. Craven et al., *Time, History and International Law* (2007), 8.

[56]On this point see E. Merry, (2006) *Osgoode Hall Law Journal* 58.

[57]Ibid.

[58]See, for instance, M. Berween, 'International Bills of Human Rights: an Islamic Critique', (2003) 7 *The International Journal of Human Rights* 129.

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3.2 Global culture and the taken-for-grantedness of international law

Another relevant entry point to deal with western centrism is provided by the Stanford school of sociological institutionalism. This approach explains the isomorphism of international norms and institutions by looking at the relationship between local practices and global scripts. As Foucault argued, modernity entailed a transition from power intended as domination to a more subtle constitutive, positive, and disciplinary form of power based on knowledge.[59] Hence, obedience occurs not only out of imposition but also through internalized self-restraint of certain structures that are perceived as the natural order of things.[60] To this purpose, the Stanford School considers individuals not as mere strategic and rational actors.[61] Rather, social action is influenced by the cultural environment in which actors are embedded.[62] As expressed by some exponents of this school:

> Worldwide models define and legitimate agendas for local action, shaping the structures and policies of nation-states and other national and local actors in virtually all of the domains of rationalized social life—business, politics, education, medicine, science, even the family and religion.[63]

Hence, the social environment is not just a material constraint to social action, but it instead constitutes agency; meaning that social action is constructed and legitimated by the wider milieu in which it takes place.[64] In Bourdieusian terms, this is called orthodoxy, that is the resulting bias toward certain forms of distribution of power and institutional forms that stems out of the structuration practices of a given field.[65] This orthodoxy leads a variety of actors to endorse the scripts belonging to the global cultural environment in their practices to legitimize themselves. The result is an institutional isomorphism, that is, institutions, norms, and practices in the contemporary world are increasingly similar to one another.[66] Hence, as international law has developed to become a structured field, its norms and principles are now part of a global cultural environment, and they play a fundamental role in legitimizing social behaviour.[67] Put differently, as individuals and groups in social life enact roles as actors in theatre pieces,[68] and accordingly, as the theatre of international law is western-centric, the scripts that actors engaging with international law enact are western-centric, with the result that western centrism is regenerated constantly. This process of enactment, however, is not purely mechanical or consensual, as the principles of international law are contested and their applicability varies from place to place. Yet, 'once institutionalized . . . world cultural principles become taken for granted as meaningful and legitimate'.[69] This taken-for-grantedness is the main reason why actors from different parts of the globe willingly buy into the normative aspects of international law, regardless of its western centrism.

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[59]M. Foucault, *Discipline and Punish* (1979). M. Foucault, *Power/Knowledge* (1980).

[60]N. Elias, *The Civilizing Process: The Development of Manners* (1978). On the notion of *habitus*, see P. Bourdieu, *Outline of a Theory of Practice* (1977).

[61]P. Hall and C. Rosemary, 'Political Science and the Three New Institutionalisms', (1996) XLIV *Political Studies* 936.

[62]See Meyer et al., *supra* note 10.

[63]J. Meyer et al., 'World Society and the Nation State', (1997) 103(1) *American Journal of Sociology* 144, at 145.

[64]J. Meyer and R. Jepperson, 'The "Actors" of Modern Society: The Cultural Construction of Social Agency', (2000) 18(1) *Sociological Theory* 100.

[65]P. Bourdieu, *On the State: Lectures at the College De France* (2012).

[66]D. Buhari-Gulmez, 'Stanford School on Sociologial Institutionalism: A Global Cultural Approach', (2010) 4(3) *International Political Sociology* 253. See also, P. DiMaggio and W. Powell, 'The Iron Cage Revisited: Institutional Isomorphsim and Collective Rationality in Organizational Fields', (1983) 48 *American Sociological Review* 147.

[67]J. Beckert, 'Institutional Isomorphism Revisited: Convergence and Divergence in Institutional Change', (2010) 28(2) *Sociological Theory* 150. See also, J. Meyer and B. Rowan, 'Institutionalized Organizations: Formal Structure as Myth and Ceremony', (1977) 83(2) *American Journal of Sociology* 340.

[68]See Meyer et al., *supra* note 63, at 4.

[69]M. Elliot, 'Human Rights and the Triumph of the Individual in World Culture', (2007) 1(3) *Cultural Sociology* 343, at 350.

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While this has implications both in practical and theoretical terms, evaluative western centrism plays a prominent role in scholarly works. Clear evidence of this is found in the way in which the various regional courts outside Europe are assessed by the literature on the proliferation of international courts. The narrative brought forward by these scholars is that, nowadays, there are at least 12 institutional copies of the Luxembourg Court,[70] and two copies of the Strasbourg Court in Africa and Latin America. The same literature also concludes that these courts have largely failed to replicate the success story of their European counterparts. The various economic courts in Latin America and Africa are often criticized either for not being able to leave a significant mark on their operational contexts[71] or for ruling on issues that have little to do with actual economic integration. The East African Court of Justice and the Economic Community of West African States Court of Justice have moved from being trade law to human rights courts, hence, raising doubts on their capacity to actually contribute to the integration of the two regions.[72] Similarly, the Latin American and Caribbean economic courts have departed from their role as economic courts. The CCJ has often ruled on human and fundamental rights. The Central American Court of Justice (CACJ) has ruled on the enforcement of democratic values and the rule of law within the constitutional systems of its member states. The Andean Tribunal of Justice (ATJ) has become an island of effective adjudication on intellectual property issues,[73] while the Mercosur Permanent Review Court (Mercosur PRC) has ruled on an alleged coup d'état in Paraguay.[74] Similar considerations could be made in relation to the Inter-American Court of Human Rights and the African Court of Human and People Rights, which are often criticized for failing to secure compliance with their judgements.[75]

While it is true that regional courts across the globe have struggled to impose themselves as authoritative institutions, the explanations provided by scholars often fail to grasp the real reasons behind these struggles, as will be explored in greater depth in the final section of this article. Regional courts outside Europe are struggling neither because they have not properly adopted European laws nor because they fail to live up to western standards. Rather, their struggles are chiefly due to the peculiar dynamics of their socio-political contexts, often characterized by weak, divided, and inefficient systems and by member states with conflicting views on regional policies. These courts are also located in developing-country contexts, which are often characterized by a fragile rule of law, weak democratic institutions, authoritarian governments, and uncertain state support for judicial institutions. Put differently, the various Latin American and African courts struggle because they are entrenched in contexts that are not entirely conducive for international judicial institutions to flourish, as these must rely on common and recognizable procedures associated with the rule of law and on functioning democratic structures in order to perform their functions appropriately.

3.3 Transnational elites and the practices of international law

A final relevant approach is that ofpost-Bourdieusian reflexive sociology on transnational legal and power elites. The main claim of this theory is that, to understand the shifting aspects of power and the evolution of national, regional, and international societies, one must grasp how these are transnationally constructed, partly as a product of their national origins and partly as a reaction to new global structures.[76] Particular importance is given to the role of transnational power elites, namely, of groupings of professionals competing for the control of certain social fields through the

[70]See Alter, *supra* note 29.

[71]See the various empirical chapters in Alter et al., *supra* note 30.

[72]See Gathii, *supra* note 31. See also Ebobrah, *supra* note 31.

[73]See Alter et al., *supra* note 33.

[74]See Vidigal, *supra* note 32.

[75]See Bailliet, *supra* note 34.

[76]N. Kauppi and M. Madsen (eds.), *Transnational Power Elites: The New Professionals of Governance, Law and Security* (2013).

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use of their national and international connections granted to them by a variety of capitals that they strategically deploy to legitimize themselves. Illustrative in this regard are the works of Yves Dezalay and Bryant Garth on Latin America[77] and Asia.[78] In these studies, the authors explored the dynamics accounting for the export of institutions and practices intended to build the rule of law in the two continents. Through extensive empirical examinations of the actors at play in these contexts, they conclude that these imports were chiefly steered by the activity and interests of a variety of western-educated local elites, which by showing the ability to master western principles and scripts, used these to win their battles for control of national legal fields.[79] A fundamental concept in this regard is that of international strategy, that is, a process by means of which 'national actors seek to use foreign capital, such as resources, degrees, contacts, legitimacy and expertise to build their power at home'.[80]

While these works focused on the transformation of nation-states, their findings are also relevant for elucidating why western-centric international laws and institutions are endorsed by non-western actors. For the most part, the dominant elites in such contexts have been educated in western universities both in Europe and in the United States. In turn, this has provided them with the tools (i.e., knowledge, professional interests, networks, ideologies, and so on) to use international law to maintain – if not build – their positions in the field of state power at home and in international settings. Examples of this are, among others, the use of international human rights law by the opponents of the Pinochet regime in Chile and the creation of a variety of regional trade and human rights courts in Latin America and Africa, which while not entirely copies of the two main European scripts – the CJEU and the ECtHR – emerged out of the activity of a variety of western-educated transnational power elites.[81]

Post-Bourdieusian sociology is also important as it provides a number of methodological tools and concepts, which may help researchers to unmask the western-centric dynamics of international law. Particularly relevant is the concept of field, which this literature conceptually defines as a place for the struggle between different agents where different positions are held based on the amount and forms of capital. These positions are objectively defined by their present and potential situation (*situs*) in the structure of the distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake in the field, as well as by their objective relation to other positions (domination, subordination, homology, etc.).[82] Hence, as a network of objective (often adversarial) relation, the field allows for an empirically driven (yet theoretically informed) analysis of how international legal practices and academia are dominated by groups of individuals possessing the right forms of capital (i.e., transnational professional networks, elite education, family links, etc.). While the dynamics of the field operate both in western and non-western contexts,[83] these become all the more obvious in Africa, Latin America and Asia, especially in relation to revealing western centrism. As shown by a number of studies, in fact, the majority of actors practising or teaching international law, have not only been educated in a key western institution, but also belong to a transnational elite of individuals with close ideological and personal ties with the West.

[77]See Dezalay and Garth (2002), *supra* note 11.

[78]Ibid.

[79]Ibid., at 5.

[80]Ibid., at 7.

[81]See Alter, *supra* note 7.

[82]P. Bourdieu and L. Wacquant, *An Invitation to Reflexive Sociology* (1992), at 97.

[83]Ultimately, the concept of field was developed to explain the rise of the French state. P. Bourdieu, 'Les Juristes, Gardiens De L'hypocrésie Collective', in F. Chazel and J. Commaille (eds.), *Normes Juridiques Et Régulation Sociale* (1991).

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4. Western centrism and the sociology of the Caribbean Court of Justice

This section applies the three concepts introduced in Section 2 along with the theoretical insights developed in Section 3 of this article to the Caribbean Court of Justice (CCJ), a regional court established in 2005 as the judicial organ of the CARICOM and, as such, set up to contribute to the Caribbean project of regional economic integration. Interestingly, different from other economic courts, the CCJ has a unique double jurisdiction. In its *Appellate Jurisdiction* (AJ), the Court replaces the appeals to the Judicial Committee of the Privy Council (Privy Council) in London as the highest court for criminal and civil matters for those Caribbean countries that have ratified such jurisdiction through constitutional amendments.[84] In its *Original Jurisdiction* (OJ), the Court addresses trade law matters arising within the CARICOM and general issues of public international law.[85]

Scholars of international courts have often argued that the CCJ has failed to maintain the promises associated with its establishment.[86] To date, the AJ has only been ratified by four states; Barbados and Guyana (2005), Belize (2010), and Dominica (2015),[87] while the OJ has struggled to receive a sufficient number of cases to adjudicate upon. The difficulties of the AJ have been explained by looking at the adversarial nature of Caribbean politics, in which very often arguments pro and con the CCJ's AJ have been used strategically by different national political parties as tools to oppose their temporary political enemies.[88] Certain erroneous transplants of the EU model to the CARICOM (i.e., among others, the lack of an executive commission with powers to file cases before the Court, the lack of interaction between the CCJ and national judges, etc.) have been instead brought up to make sense of the OJ's difficulties.[89]

Once the role of western centrism in the creation and subsequent operation of the CCJ is revealed, the Court appears in a rather different light. The CCJ is, in fact, not as unsuccessful as portrayed, but rather an institution in its own right, with its own approach to international and regional laws, its own successes and failures, its own agency and trajectory, and a noteworthy impact on Caribbean societies and laws. Below, after reflecting upon my position as a scholar in relation to both the CCJ and western centrism, I provide an alternative reading of the Court.

4.1 Methodological and epistemological underpinnings

Before digging into the CCJ, a few words on the methodological and epistemological processes of my research with the goal of elucidating my positioning vis-à-vis the CCJ and western centrism are in place. This reflexive exercise is crucial as the question of international law is highly politicized, embodying, as it does, competing normative stakes and social practices. Moreover, as the actors of the international legal field often rely on academic resources for legitimizing their

[84]Acting in its AJ, the CCJ is also competent to interpret the constitutions of those states. See, Art. XXV of the Agreement.

[85]In this function, the Court has been accorded 'compulsory and exclusive' power to solve disputes concerning the interpretation and application of the Revised Treaty of Chaguaramas (RTC). In this function, the Court rules over controversies between the CARICOM member states and between them and the Community. The CCJ can also rule over referrals presented by the national courts of the member states and over applications presented by individuals (Art. 211 of the RTC). The RTC, ratified in 2001, reformed the original Treaty of Chaguaramas (TOC), which established CARICOM in 1973 and, to the present day, constitutes the founding legal document of the CARICOM. See, generally, D. Berry, *Caribbean Integration Law* (2014).

[86]See O'Brien and Foadi, *supra* note 13. Although not directly linked to the CCJ, a rather critical view on regional courts outside the EU is present in various forms and degrees in generalist scholarship on international courts. See, for instance, C. Romano, 'A Taxonomy of International Rule of Law Institutions', (2011) 2 *Journal of International Dispute Settlement* 241. See Alter, *supra* note 29.

[87]This means that the two most influential and populous states in the region – Trinidad & Tobago and Jamaica – remain outside the reach of the CCJ's AJ.

[88]D. Pollard, 'The Caribbean Court of Justice: Who Stands to Gain?', in *Fifteenth Public Lecture of the Managment Institute of National Development (MIND)* (2008).

[89]See O'Brien and Morano-Foadi, *supra* note 13.

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practices, academic work does not occupy a position of neutrality in the field,[90] and it often becomes integrated into the social practices related to the actual object it is set to study.[91]

Bearing this in mind, I am a white, male, European researcher, employed in a European elite research centre, and with degrees from both European and American universities. In other words, I am the prototype of the western scholar. And indeed, this cultural and professional background shaped my initial approach to the CCJ. While writing this article, I went back to my initial PhD project on the CCJ, which was aimed at precisely explaining the reasons why the CCJ had failed to reproduce the success story of the CJEU, and at understanding what the Court could learn from the Luxembourg Court [sic!]. Yet, once I started researching the CCJ during my years as a PhD student, I realized the baggage of normativity that such a research question carried with itself and, ultimately, started wondering whether such a project would give justice to the CCJ and, more generally, to Caribbean societies. I thus drafted a new project to investigate the CCJ on its own terms. However, I was now facing the dilemma of how to materially proceed to break the patterns set by the authoritative scholarship in my field. The answer came from methodology,[92] most notably from sociological institutionalism and post-Bourdieusian reflexive sociology. Following these approaches, I adopted a broad definition of institution, comprising not only formal rules, procedures, and norms, but also symbolic systems, cognitive scripts, and moral templates.[93] I also framed the social space surrounding the CCJ as a Bourdieusian field; that is a symbolic space constituted by a network of objective (adversarial) relations over the meaning of Caribbean law and on the purpose of the CCJ.[94] I then mapped this field through a number of semi-structured qualitative interviews with major stakeholders of the Caribbean fields of economic, political, and legal integration.[95] Through the interviews I gathered the collective-relational biographies of the agents at play in the operational context of the Court,[96] and re-constructed the social continuities (and discontinuities) in the construction of professional practices as well as the ideologies and interests of the actors around the Court. In other words, I shifted focus from studying the CCJ as a self-standing and autonomous legal institution to envisioning it as a social phenomenon entrenched in hierarchical power structures, historical legacies, and determined profession interests of agents. In what follows, I describe the narrative that emerged from this research.

4.2 Systemic western centrism and a structural history of the Caribbean legal field

One finding of my research is that the CCJ is entrenched in a context, the Caribbean legal field, characterized by a profound systemic western centrism. This shaped many aspects of the present Court, such as its institutional design, the legal culture it embodies, the models it tends to reproduce, its practices, and its struggles to gain authority. In this regard, issues of power and domination (see Section 3.1) and of global culture (see Section 3.2) are of central importance as I explain below.

When I began my research on the CCJ, the general narrative around the Court was that this institution was a product of the legalization of international relations, a phenomenon that occurred at the end of the Cold War as a consequence of the global spread of neoliberal

[90] It never does really, but in international law these dynamics are more evident and impactful.

[91] A similar point is expressed in Madsen, *supra* note 43.

[92] Previous versions of this paper emphasized the role of methodology more strongly than the paper does now. This downsizing of the role of methodology in countering western centrism is directly linked to the many comments received in various fora, not the least by some of the reviewers of earlier drafts of the paper. While I agree that western centrism in international (legal) scholarship cannot be reduced to a mere question of methodology, I cannot avoid returning to the consideration that, in truth, what allowed me to minimize the western centric pull inherent in my research was precisely the methodology chosen to conduct the study.

[93] See Hall and Rosemary, *supra* note 61.

[94] See Bourdieu and Wacquant *supra* note 82.

[95] The interviews were conducted during three field trips in Trinidad & Tobago, Barbados, Guyana, Nicaragua, and El Salvador between 2013 and 2015.

[96] See Madsen and Dezalay, *supra* note 11.

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economy.[97] While these dynamics indeed played a role in the creation and subsequent beginning of operation of the CCJ, my interviews revealed something that, while clear to local actors (yet, somewhat uncritically accepted by them), was inexplicably underplayed by existing approaches on the Court, namely that its trajectory was shaped by longstanding issues of Caribbean decolonization from the United Kingdom and, thus, by an imbalance of power between the West and the Caribbean. Interestingly, as predicted by Quijano (see Section 3.1) these dynamics made sure that, even after colonialism, a particular form of western-centric knowledge – in the specific case of the Caribbean, mainly British – remained central to regional politics, economics, and laws.

By discussing the origins of the idea of integration through law and the dynamics characterizing the Caribbean legal field with my interviewees, I discovered that the idea of a Caribbean court largely predates the end of the Cold War.[98] The first attempt to establish such an institution was made in 1901, when an editorial in a well-known Jamaican newspaper, *The Daily Gleaner*, suggested that the time for replacing the Privy Council with a local court had come, as the Caribbean region needed a judicial institution able to reflect local sensitivities and legal cultures.[99] Other proposals in this direction were made at the Conference of Roseau (1932) and at the Montego Bay Conference (1947) in the context of the drafting of a constitution for what would later become the West Indian Federation.[100] When, in 1958, the Federation of West Indies came into place, this was indeed equipped with a supreme court with jurisdiction over the federated states. The Federation, however, collapsed in 1962, and as a result, the Caribbean states achieved independence singularly, maintaining the Privy Council as their court of last resort.[101]

Alongside these events, proposals for establishing an international court with an economic focus in the region were also discussed in the context of the establishment of the Caribbean Free Trade Agreement (CARIFTA) (1965), which transformed into the current CARICOM (1973).[102] As revealed in the interviews, both the CARIFTA and the CARICOM were also shaped by colonial and post-colonial concerns as these organizations were created out of the fear of losing the economic preferential treatment which the Caribbean countries still enjoyed with their, now former or soon to be former, colonial power, which, at that time, was in the process of acceding to the EEC.[103] In 1972, the Organisation of the Commonwealth Caribbean Bar Association presented a report in which an original (international) jurisdiction for a court of this nature was envisioned. This report suggested in Recommendation No. 16:

> that the Court be vested with original jurisdiction in respect of matters referred to it by agreement between the Caribbean States, or by any two or more of them, arising out of such original treaties, as the Carifta Agreement or by the Council of the Area, or such matters as the interpretation of the Agreement.[104]

A similar proposal was made in 1988 at the Eighth Meeting of the Conference of the Heads of Government of the CARICOM, during which the delegation of Trinidad & Tobago proposed the establishment of a regional court entrenched in the regionalist enterprise.[105]

[97] On legalization see J. Goldstein et al. (eds.), *Legalization and World Politics* (2001).

[98] An overview of the longstanding debate of the Court can be found at H. Rawlins, 'The Caribbean Court of Justice: The History and Analysis of the Debate', available at ccj.org/papersandarticles/ccj_rawlins.pdf.

[99] Available at www.caribbeancourtofjustice.org/about-the-ccj/ccj-concept-to-reality.

[100] P. Lewis, *Surviving Small Size: Regional Integration in Caribbean Ministates* (2002); see also H. Springer, 'Federation in the Caribbean: An Attempt That Failed', (1962) 16(4) *International Organization* 758.

[101] Guyana abandoned the Privy Council in 1970, while Grenada suspended the appeals from 1979 to 1991 as a result of the Grenadian Revolution.

[102] A. Paine, *The Political History of Caricom* (2008).

[103] Interview with former officer of the CARICOM Secretariat, 23 October 2013. See also E. Williams, *Reflections on the Caribbean Economic Community: A Series of Seven Articles* (1965).

[104] See Appendix V of the Report of the OCCBA, at 66.

[105] Report of the 8th Meeting of the Conference of Heads of Government of CARICOM – REP.87/8/50 HGC, 27/01/1988, at 34.

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Despite these numerous attempts, the CCJ did not manage to find the support necessary to come into place in these early days. Yet, certain events occurring during the 1990s and early 2000s refuelled the interests of local actors in establishing a judicial institution in the region. Interestingly, these events were also shaped by postcolonial dynamics and legacies. The first development in this regard was the rise of a heated conflict between the Caribbean elites and the Privy Council after the latter's human rights turn on cases dealing with capital punishment.[106] Of pivotal importance was the 1994 ruling of the Privy Council, *Pratt and Morgan* v. *Attorney General of Jamaica*, in which the English Court established that a prolonged delay of more than five years in carrying out a death sentence, constituted 'inhuman and degrading punishment'.[107] Following *Pratt and Morgan*, two further cases in which the Privy Council intervened contributed to fostering the movement toward the CCJ in Trinidad & Tobago, and Barbados. The cases in point were *Guerra & Wallen* and *Bradshaw*,[108] in which the Privy Council protected the fundamental rights of two individuals on death row by calling for special reference to the due process. In addition to this first set of ground-breaking cases, in 2002, in three separate appeals from Belize, St. Kitts, and St. Lucia, the Privy Council ruled that the mandatory death penalty for homicide constituted an inhumane and degrading treatment and, as such, violated the constitutions of several Caribbean states.[109] Ultimately, the Privy Council's involvement in this set of cases went beyond the extent of intervention that Caribbean legal elites were willing to accept from their former colonial power.[110] The result was that the old idea of replacing the Privy Council with a local court was resurrected and returned to be widely supported in academic circles, and even among the general public.[111]

The second development was the deepening of the economic and political relationship between the United Kingdom and continental Europe after the signing of the Treaty of Maastricht in 1992; a fact that resurrected the fear of the Caribbean of being marginalized in the rising global economy.[112] As reported by one of the most prominent Caribbean executives at the time, regional economic integration resurfaced as a key issue during this period because experts believed that a series of microstates like the Caribbean could only survive in the new global economy by creating an economic union to collectively contract with major economic partners.[113] In 1989, the Grand Anse Declaration set the stage to reform the CARICOM 'to respond to the challenges and opportunities presented by the changes in the global economy'.[114] Almost at the same time, a commission of experts – The Ramphal Commission – was assembled to propose reforms to the Caribbean system of regional integration.[115] In relation to the Court, the Ramphal Commission stated that: '[t]he case for the CARICOM Supreme Court, with both a general appellate jurisdiction and an original one, is now overwhelming – indeed it is fundamental to the process of integration itself'.[116] It is at this point that the structural movements of the Caribbean legal field – the one linked to the replacement of the

[106] L. Helfer, 'Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash against Human Rights Regimes', (2002) 102 *Columbia Law Review* 1832.

[107] *Pratt v. A-G for Jamaica*, [1994] 2 A.C, at 30–3.

[108] *Guerra and Wallen v. The State*, [1993] 45 W.L.R. 370 and *Bradshaw v. Attorney General of Barbados*, [1995] 1 W.L.R. 936.

[109] The cases are known as the 'Trilogy Cases'. Respectively, they are *Reyes v. The Queen* [2002] 2 W.L.R. 1034, [2002] UKPC 11, [2002] 2 AC 235; *The Queen v. Hughes* [2002] 2 W.L.R. 1058, [2002] UKPC 12, [2002] 2 AC 259; and *Fox v. The Queen* [2002] 2 W.L.R. 1077, [2002] UKPC 13, [2002] 2 AC 284.

[110] Interview with a former judge of the CCJ and well-known Caribbean lawyer, 21 October 2013.

[111] Interview with a Caribbean lawyer belonging to the old English educated legal elite, 21 October 2013. A viewpoint confirmed by all the interviewees.

[112] S. Ramphal et al., *Report of the West Indian Commission: Time for Action* (1992).

[113] Interview with former CARICOM official, 26 October 2013.

[114] *Grande Anse Declaration and Work Programme for the Advancement of the Integration Movement*, Issued at the Tenth Meeting of the Conference of Heads of Government of the Caribbean Community, Grand Anse, Grenada, July, 1989. The Ramphal Commission proposed the creation of a CARICOM Secretariat vested with executive and administrative powers, the introduction of a regional legislative system, the establishment of the Common Market and Single Economy, and the creation of an international court entrenched within the process of regional integration. See Ramphal and al., *supra* note 112.

[115] See Ramphal et al., ibid.

[116] Ibid., at 498.

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Privy Council and the one related to regional economic integration in the shadow of the United Kingdom's deepening integration with the EEC/EU – met, and the CCJ was formally established by the Revised Treaty of Chaguaramas in 2001. Four years later, the Court began its operations in Port of Spain, Trinidad & Tobago, cheered locally as the final act of the long-lasting process of Caribbean decolonization.[117]

This structural history of the Caribbean field and its strong links to the process of decolonization from the United Kingdom reveal an important particularity of the idea of Caribbean integration through law, which is central to understand the CCJ. This becomes particularly evident especially in comparison with the EU model of regional integration through law. While in the EU, at least in the early days, regional law meant the development of a system characterized by a technical, but hierarchically strong, norms with precedence over national ones (from here the prominence of the principles of direct effect and supremacy, which are substantively neutral principles), in the Caribbean it entailed the development of thick(er) individual and fundamental rights standards able to provide the Caribbean countries with a system that would allow them, on the one hand, to provide legal standards comparable to that of the Privy Council and, on the other hand, to remedy the inefficiencies of national judicial systems in CARICOM member states. As I shall explain in Section 4.4, the particular nature of the CARICOM law deduced from an analysis of the Caribbean legal field's systemic western centrism will prove central to explain the direction of the present Court in a way that goes beyond the evaluative western centrism of much of the scholarship on the Court. In particular, it provides important data for explaining why the CCJ has turned its OJ into a venue to enforce fundamental rights and not just economic and trade law. Before doing so, it is necessary to discuss another aspect of the western centrism of the Caribbean legal field; an aspect related to the professional and educational capital of the actors populating such a field. It is to this topic that I now turn to.

4.3 The professional western centrism of two generations of Caribbean lawyers fighting for control of the Caribbean legal field

The above outlined structural history of the Caribbean legal field provides important insights on the professional western centrism of the agency surrounding and constituting the CCJ. In this regard, issues related to the construction of transnational elites and their struggles as well as strategies to control the Caribbean legal field (see Section 3.3) are of central importance to explain the trajectory taken by the Court once operational. Through my interviews, I discovered that the two structural paths leading two the creation of the CCJ (see Section 4.2) were mirrored by the existence of two groups of Caribbean elite lawyers fighting for control of the Caribbean legal field. This is very important as each group had very different professional trajectories, networks, and interests and, thus, also diverging ideas on Caribbean integration through law. Initially, the field was dominated by a relatively small, but influential, group of lawyers, who, because of the lack of a Faculty of Law in the region, had pursued their legal education in the United Kingdom.[118] During their studies in the universities of the metropolitan power, these individuals developed a shared Caribbean identity, together with common networks, ideologies, and professional interests. Importantly, they matured a particular way of conceptualizing Caribbean law in terms of fundamental rights, which, in their view, served to challenge colonialism.[119] Once back in the Caribbean, most of these (now) lawyers developed a regional career by practising law in different local jurisdictions making use of their superior knowledge of English and Caribbean law. While developing such careers, however, some of them maintained strong professional ties with the, now former or soon to be former, metropolitan

[117]D. Pollard, *The Caribbean Court of Justice: Closing the Circle of Independence* (2004). See also L. Birdsong, 'The Formation of the Caribbean Court of Justice: The Sunset of British Colonial Rule in the English Speaking Caribbean', (2005) 36 *Miami Inter-American Law Review* 197.

[118]The first local Faculty of Law was established in 1970 in Barbados: www.cavehill.uwi.edu/Law/about-us.aspx.

[119]Interview with a Caribbean lawyer belonging to the old English educated legal elite, 21 October 2013.

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power, indirectly reinforcing the colonial relationship.[120] This can be see, for instance, in that, for a long time, a number of Caribbean lawyers and firms have developed the remunerative practice of handling Caribbean cases before the Privy Council.[121] The strong connection between this old generation of lawyers and the United Kingdom instilled in them a strong scepticism related to local legal knowledge, the national judiciary, and their fellow Caribbean-educated lawyers.[122] This is best revealed by a statement made by a well-known Caribbean lawyer in an interview, according to whom, the Privy Council was the place for progressive lawyers to get justice. In her experience, in fact, basic (and easy) fundamental rights cases were lost at the local level, to be then reversed by the English Court.[123] All of the above led this older generation of lawyers to perceive the project of a Caribbean court with suspicion, as they feared that replacing the Privy Council with a local court would jeopardise the level of law in the Caribbean and, ultimately, would erode the monopoly on legal practice that they had enjoyed for a long time.[124]

From the 1970s, the unique position of power in the field of the old lawyers began to be challenged by the emergence of a new social grouping of attorneys educated at the Faculty of Law of the University of the West Indies (UWI), which in the meantime had been established. While not opposed to English law,[125] these lawyers did not have the same vested interest in maintaining the Privy Council as the apex court of the Caribbean as the practice before such institution was still in complete control of the old lawyers. Moreover, due to their studies at the UWI, these younger lawyers developed a far more favourable view on the project of establishing a court in the CARICOM. For them, fostering of legal integration constituted, among other things, a concrete avenue to challenge the control over the practice of the law which the old generation of English educated Caribbean legal elites held, and an opportunity to enlarge, and even democratize, the Caribbean professional market.[126]

As I have explained elsewhere, for a long time this turf battle between the two main social groupings of Caribbean lawyers did not allow the court to come into existence. Yet, the structural movements of the Caribbean legal field occurring at the end of the 1990s and early 2000s discussed in Section 4.2 (namely, the human rights turn of the Privy Council on capital punishment cases and the post-Cold War need to reform the CARICOM) caused the views of these lawyers to momentarily converge in favour of the CCJ, thus allowing the Court to come into existence. Importantly, however, while supporting the Court, the old and the younger lawyers maintained their own visions in relation to the direction regional law had to take once the CCJ would be operational. For the old lawyers, the CCJ needed to become a fundamental rights court that would live up to the legal standards set up by the Privy Council. For the younger lawyers, the CCJ needed to play the more classical role of regional economic court and to solve disputes arising within the CARICOM. In other words, the divided constituency that had characterized the structural history of the Caribbean legal field for more than a century, although now formally aligned in support of the CCJ, remained substantively divided on the substance of what the CCJ was set up to do. This created several problems for the CCJ even before it opened its doors in 2005. For instance, in the

[120]This double role played by lawyers in colonial and postcolonial context is explored in L. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (2002). See also, Dezalay and Garth, *supra* note 11.

[121]According to one informant, in Trinidad there are several law firms specializing in cases before the Privy Council. They have generally been opposed to the CCJ out of fear of losing clients. Interview with former Attorney General of Barbados, 6 November 2013.

[122]Interview with a Caribbean lawyer belonging to the old English educated legal elite, 21 October 2013.

[123]Interview with Trinidadian human rights lawyers, 22 October 2013.

[124]Interview with a Caribbean lawyer belonging to the old English educated legal elite, 21 October 2013. Interview with a former judge of the CCJ and well-known Caribbean lawyer, 21 October 2013. Interview with Trinidadian human rights lawyers, 22 October 2013.

[125]English common law was and still is part of the curriculum at the UWI. Moreover, many of the younger lawyers pursued LL.M.s and other forms of postgraduate studies in the United Kingdom.

[126]Interviews with two lawyers participating in the drafting of the Statute of the Court, 21 October 2013.

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early 2000s, a new set of critics started criticizing the nascent court for potentially becoming a 'hanging court', namely, an institution set up to overcome the limitations on capital punishment recently decided by the Privy Council in the above-mentioned cases. In other words, at its inauguration in 2005, the CCJ was placed in the very difficult position of not only having to establish its authority on CARICOM law, but also of finding a solution to the longstanding question of capital punishment that both appeased its advocates and met international human rights standards. In the next section, I explain how the CCJ managed to navigate the difficulties created by the systemic and professional western centrism of its operational context, and to impose itself as a relatively authoritative institution.

4.4 The CCJ today: A regional economic court with a focus on fundamental rights

The analysis conducted above provides key data for understanding the practices of the present CCJ; it especially allows for better understanding the reasons why the CCJ developed a strong profile on fundamental rights in the OJ, which is in principle set up to only deal with economic and trade law. A particularly qualified entry point to discuss this is provided by the judges eventually appointed at the CCJ. These, in fact, constitute a microcosm of the (western centric) dynamics characterizing the agency of the Caribbean legal field, with judges belonging to two most important social groupings of lawyers. To the older generation of lawyers belong the first two Presidents of the Court, Michael de la Bastide and Sir Dennis Byron. Prior to his appointment at the CCJ, de la Bastide was a well-known pan-Caribbean lawyer, former President of the Law Association, and former Chief Justice of Trinidad & Tobago, who graduated top of his class from Oxford in 1959/60, he was a member of Gray's Inn in London (1956). He even became a member of the Privy Council in 2004, less than three weeks before being appointed at the CCJ. In addition, his career spanned all the key venues of the legal (and political) elite in Trinidad & Tobago: he had been Queen's Council, an independent Senator, a member of several key government commissions, Crown Counsel in the office of the Attorney General, and finally, Chief Justice of Trinidad & Tobago from 1995 to 2002. A similar profile, but with a more international flavour, is Sir Byron's. A University of Cambridge graduate (1964), he also practiced law in several jurisdictions of the Caribbean as did many lawyers of his generation, in particular throughout the Leeward Islands. In this respect, he developed a strong regional career, a fact that led him to be appointed a High Court Judge of the Eastern Caribbean Supreme Court, before subsequently becoming Chief Justice in 1999. In 2004, Sir Byron was also appointed to serve both as judge of the United Nations International Criminal Tribunal for Rwanda (ICTR) and as a member of the Privy Council. To the old generation of lawyers belong also Rolston Nelson, who, after having studied at the University of Oxford and University of London, practiced and tutored law in Jamaica and Trinidad & Tobago, and Desiree Bernard, who studied law at the University of London, before being appointed as Chief Justice, and Chancellor of the Judiciary of Guyana.

The Caribbean-educated lawyers are best represented by the present President of the CCJ, Adrian Saunders, who studied at the University of the West Indies and the Hugh Wooding Law School of Trinidad & Tobago, before being appointed Chief Justice of the Eastern Caribbean Supreme Court. To the younger generation of lawyers also belong the more recently appointed Maureen Rajnauth-Lee, who received her law degrees from the Hugh Wooding Law School of Trinidad & Tobago and the UWI in 1976, before becoming Justice of Appeal of the Judiciary of Trinidad & Tobago (from 2012), and a Judge of the High Court from 2001 to 2012, and Denys Barrow, who graduated from UWI and received a Legal Education Certificate from the Norman Manley Law School. He was admitted to the practice of law in Belize in 1977, and in 1990 started his own law firm, Barrow and Company. Justice Barrow's judicial career included: service as High Court Judge in St. Lucia, Grenada, Belize, and the British Virgin Islands between 2001 and 2005; Justice of Appeal of the Eastern Caribbean Supreme Court from 2005 to 2008; and Justice of Appeal of the Court of Appeal of Belize from 2010 to 2012.

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Two figures bridging the old and the new generation are Duke Pollard, who studied at the University of London, and having been the Legal Advisor of the Commonwealth Secretariat as well as the CARICOM Secretariat, played a key role in the negotiations and drafting of the Treaties related to the CCJ, and Winston Anderson, who, although he studied in the United Kingdom, developed a strong career within the CARICOM Secretariat. Important for our discussion on western centrism is the fact that two European judges have been appointed to the bench. These were Jacob Wit from the Netherlands, who studied law at the Vrije Universiteit of Amsterdam, and had previously been a Judge at the Joint Court of Justice of the Netherlands Antilles and Aruba, and David Hayton, from the United Kingdom, who prior to his appointment to the CCJ was a law professor and former Dean of the Faculty of Law at King's College London.

Through my interviews, I managed to reveal some of the dynamics characterizing the bench, which are important to explain the fundamental rights turn of the Court's OJ. Importantly, in the early days of the Court, two judges belonging to the old English-educated Caribbean elites, Justices de la Bastide and Byron, influenced significantly the direction of the Court. In particular, these two judges made their primary mission not only to expand the outreach of the Court's AJ, but also to push the OJ toward developing a fundamental rights-oriented version of CARICOM law; a development that was believed to bring legitimacy to the Court, at least in the eyes of the renewed criticism raised toward the Court by local human rights lawyers.[127] The influence of de la Bastide in the early days of the Court is remarkable. While playing a central role in setting up the new-born Court and in appointing the other judges of the bench, he also made important contributions to allow the CCJ to become the ultimate arbiter of a purely Caribbean jurisprudence on fundamental rights.[128] For instance, de la Bastide was one of the judges that delivered one of the most important judgments of the CCJ in its AJ, *Joseph and Boyce*,[129] in which the Court set up its own standards concerning capital punishment, thus rejecting the critique that labelled it a 'hanging court'. De la Bastide Court was also important for the OJ. It is under his Presidency that the CCJ established a central, and at the time controversial, principle of CARICOM law, which would be later used by the Byron Court to deepen the protection of fundamental rights in the system. This principle is the one of 'correlative rights', according to which the Court established that the CARICOM grants rights to individuals each time that its treaties impose obligations on member states.[130] A similar role was played by Sir Byron, who, since the beginning of his Presidency, manifested the intention of expanding the outreach of both jurisdictions of the Court toward encompassing fundamental rights.[131] In particular, Sir Bryon completed the process initiated by the de la Bastide Court in turning the OJ from a mere venue for CARICOM-related disputes, into a site for the protection and enforcement of fundamental rights for Caribbean citizens. This was chiefly done through two central judgments, the *Myrie*[132] and *Tomlinson*[133] cases, which I briefly discuss below.

Myrie, perhaps the most important ruling of the CCJ in its OJ, is a freedom of movement case decided by the Court in 2012. The case was filed by a Jamaican citizen, who after having been denied entry by the border officials of Barbados, sued the latter for having violated her right to free movement as a CARICOM national. While the case had many aspects, for our purpose the most important issue at stake was whether the right to free movement, which was entrenched in CARICOM secondary legislation and had not been implemented by Barbados into national law, was binding upon the latter. In other words, whether CARICOM law was directly applicable and

[127] Interview with regional academic, 31 October 2013. A view that was confirmed by many of the interviewees.

[128] Interview with a former judge of the CCJ and well-known Caribbean lawyer, 21 October 2013.

[129] *The Attorney General of Barbados v. Joseph and Boyce*, [2006] CCJ 3 (AJ).

[130] *Trinidad Cement Ltd. & TCL Guyana Incorporated v. The Co-operative Republic of Guyana*, [2009] CCJ 1 (OJ), at 33.

[131] Interview with a Caribbean lawyer belonging to the old English educated legal elite, 21 October 21 2013.

[132] *Myrie v. Barbados*, [2013] CCJ 1 (OJ) and *Myrie v. Barbados*, [2013] CCJ 3 (OJ).

[133] *Maurice Arnold Tomlinson v. Belize*, OA 001 of 2013, and *Maurice Arnold Tomlinson v. The Republic of Trinidad and Tobago*, OA 002 of 2013.

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effective in national legal arenas and ultimately, whether the CARICOM was informed by a dualist or monist approach to international and regional law.[134]

Considered the nature and the salience of the questions faced by the Court, it would have been tempting to provide a ruling in line with the case law of the CJEU, thus importing to the CARICOM the principles of direct applicability, direct effect, and supremacy of community law. Yet, the CCJ preferred to develop its own unique approach; an approach that, according to the judges, was more attuned to the socio-political and legal features of the Caribbean. More specifically, the Court ruled that:

> Although it is evident that a State with a dualist approach to international law sometimes may need to incorporate decisions taken under a treaty and thus enact them into municipal law in order to make them enforceable *at the domestic level*, it is inconceivable that such a transformation would be necessary in order to create binding rights and obligations *at the Community level* . . . If binding regional decisions can be invalidated at the Community level by the failure of the part of a particular State to incorporate those decisions locally the efficacy of the entire CARICOM regime is jeopardised and effectively the States would not have progressed beyond the pre-2001 voluntary system that was in force.[135]

From these words, we deduce that, different from EU law, CARICOM law produces direct effects only on the regional plane.[136] While this may seem a limitation, if read in conjunction with the doctrine of 'correlative rights' established by the de la Bastide Court (see above), this unique doctrine reinforces the fundamental rights protection afforded in the CARICOM. Concretely, the principle expressed in *Myrie* entails that the rights recognized by CARICOM law can be enforced at the Community level by private litigants bringing cases directly before the CCJ. The result is a unique regime of Community rights which expands the tools in the hands of Caribbean citizens for getting their fundamental rights enforced and protected.

The principles expressed in *Myrie* were confirmed in a following OJ ruling, the *Tomlinson* case. In this case, the Court was asked whether the immigration statutes of Belize and Trinidad & Tobago, which prohibited the entrance of homosexuals in the two countries, violated the right to free movement recognized by CARICOM law.[137] In its decision, the CCJ evoked its earlier case law for the proposition that wherever CARICOM law imposes binding obligations on member states, those obligations are mirrored by 'correlative rights' of CARICOM nationals, which, after *Myrie*, 'are capable of direct application' before the CCJ.[138] While the CCJ dismissed the case on the merits, arguing that the Trinidadian and Belizean statutes were not de facto applied by the two states,[139] in other parts of the ruling confirmed its role of enforcer of fundamental rights in the OJ. Firstly, in an *obiter dictum*, it recommended that Trinidad & Tobago and Belize change their legislation on the ground that the laws of the member states must comply with the main tenets of CARICOM law. Secondly, it provided an interesting, and original, reading of its hybrid jurisdiction. In general, the CCJ observed, that an international tribunal does not interpret national law, but only establishes the meaning of national law as a factual element of state practice. Therefore, when ruling in the OJ, the Court must give 'considerable deference to the views of domestic courts on the meaning' of domestic laws; under specific circumstances, it may 'select the interpretation

[134]The secondary legislation involved in this case was a 2007 Resolution of the Conference of the Heads of Government of the CARICOM which was not transplanted into national law by Barbados. *Myrie v. Barbados*, [2013] CCJ 1 (OJ), and *Myrie v. Barbados*, [2013] CCJ 3 (OJ).

[135][2013] CCJ 3 (OJ), at 50, 51, 52 (emphasis added).

[136]See Berry, *supra* note 85.

[137]*Maurice Arnold Tomlinson v. Belize*, OA 001 of 2013, and *Maurice Arnold Tomlinson v. The Republic of Trinidad and Tobago*, OA 002 of 2013.

[138]Ibid., at 19–20.

[139]Ibid., at 24.

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that it considers most in conformity with the law'.[140] The CCJ continued arguing that, in the case at hand, this applied to Trinidad & Tobago, as the latter had not ratified the AJ. Yet, since Belize has accepted the CCJ as its highest court, when ruling in the OJ, the CCJ is empowered to do more than merely look at state practice as a factual element; it can also authoritatively interpret the meaning and application of domestic law and, thus, play a bolder role in the enforcement of fundamental rights.[141]

From the perspective of critical sociology, these developments are to a large extent explainable as an explicit attempt by the Court at legitimizing itself vis-à-vis the various constellation of actors of the Caribbean legal field and, ultimately, at reflecting the structural issues involved in such field. In other words, by the means of turning its OJ into a fundamental rights venue, the judges sought to place the Court's practices at the core of the Caribbean legal field and at making it palatable to the different legal elites dominating that field. This included both those lawyers advocating for severing the ties with the Privy Council and those that feared that by abandoning the British judicial system the level of legal protection in the Caribbean would be jeopardized. Basically, pre-existing power structures and legal cultures have influenced the course of the court's adjudicative practices.

Importantly, this analysis reveals the centrality of systemic and professional western centrism in the developments of the CCJ and the paradoxes that these dynamics carry forth. The CCJ originated, and presently acts, in a context deeply shaped by the process of Caribbean decolonization from the United Kingdom. Yet, while often presented as the solution for fostering Caribbean independence, autonomy, and legal culture, the CCJ ended up reflecting some of the western centric dynamics characterizing its operational context. While this may be seen in negative terms, and indeed the CCJ is often criticized in national arenas for reproducing colonial structures and dynamics, the ultimate capacity of the Court to navigate the systemic and professional western centrism of the Caribbean legal field, allowed it to gain authority and legitimacy. In particular, by developing into a fundamental rights institution, the CCJ has succeeded in creating an intersectional constituency of support among the various sectors of the Caribbean legal profession by stimulating both the interest of the old Caribbean legal elites in seeing fundamental rights protected, and the concern of the young Caribbean lawyers related to the development of a common market that would both ameliorate the economy of the region and would raise the bar in terms of respect of fundamental rights. Importantly, through this strategy, the CCJ also initiated the process of gaining the trust of the peoples of the region by providing effective legal protection to individuals where there was none or where it was difficult and expensive to get.[142]

5. Conclusion

This article identified three main manifestations of western centrism in international law: (i) *systemic* as the ruling rationality of international law is shaped by western ideas and constructions; (ii) *evaluative* as western institutions are often the standard against which their non-western counterparts are scaled and ranked; and (iii) *professional* as the actors at play in the international legal field are either western or western-educated. The article also discussed three theoretical approaches that can help scholars to constructively deal with western centrism. These are: (i) power-based critical approaches; (ii) sociological institutionalism, and (iii) post-Bourdieusian reflexive sociology. Finally, the article reconstructed the experience of the CCJ by applying to the Court the tripartite aspects of western centrism and the theoretical approaches developed in the article. Structurally, the

[140] Ibid., at 29.

[141] Ibid., at 37.

[142] According to a study, the cost of filing an appeal with the Privy Council is about US$65,000, more than five times greater than filing an appeal with the CCJ. See A. Maharajh, 'The Caribbean Court of Justice: A Horizontally and Vertically Comparative Study of the Caribbean's First Independent and Interdependent Court', (2014) 47 *Cornell International Law Journal* 735.

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CCJ has come into place in a system characterized by a strong systemic western centrism as it was deeply shaped by long-lasting issues of Caribbean independence from the United Kingdom. In turn, as shown in the article, this systemic western centrism has shaped the evaluative and professional western centrism surrounding the Court. As to the former, prior to my work on the CCJ, scholars had considered this Court as a failed replica of the CJEU and, all in all, an institution that had failed to leave a significant mark on its operational context. As to the latter, the article has shown that the structural history of the Caribbean legal field strongly reflected on the CCJ and its practices, pushing its judges to turn a regional economic court into a venue for the enforcement of human and fundamental rights in the region. The result is that, rather being than a failed replica of the Luxembourg Court, the CCJ has been able to meaningfully address several important issues for Caribbean society due to its capacity to navigate the variety of interests and visions of law of the actors at play in its operational context. All of the above has been revealed only after unveiling the modalities in which western centrism operated – and still operate – in the Caribbean legal field.

Western centrism is a constituent feature, not only of international law, but of the world in which we live, and as such, escaping its dynamics is not a trivial task. This article suggested that a way of minimizing, or at least of better understanding, its effect is to take western centrism seriously by making it part of the object of study when dealing with international laws and institutions. Only in this way, are scholars more likely to unmask the unjust, partial, and incorrect narratives western centrism constructs, and thus provide more nuanced accounts of international law and its institutions.

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