



Adebisi, F. (2021). Should We Rethink the Purposes of the Law School? A Case for Decolonial Thought in Legal Pedagogy. *Amicus Curiae*, 2(3), 428-449. <https://doi.org/10.14296/ac.v2i3.5309>

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SHOULD WE RETHINK THE PURPOSES OF THE LAW SCHOOL? A CASE FOR DECOLONIAL THOUGHT IN LEGAL PEDAGOGY

FOLUKE ADEBISI

The Law School, University of Bristol

Abstract

This article argues that there is a need for more transdisciplinary and decolonial approaches to knowledge production in law. These approaches need to go beyond a focus on diversity which only seeks ways for marginal voices and experiences to be absorbed into a hierarchized structure of knowledge production that in turn [re]produces a hierarchized world. New ways must be sought to ensure that, in reconsidering the purposes of law and law schools, legal education does not reproduce inequalities but unravels them. Thereby legal education may do more than just add to and diversify the profession but may aspire to transform the world.

Keywords: decolonization; legal education; decolonial thought.

[A] INTRODUCTION

When we think of the purpose of law schools, legal academics are often caught somewhere between the seemingly opposing positions of 'legal education as certification', on the one hand, and 'legal education as a means of societal transformation' on the other (Twining 1994: 58). Put differently, in engaging with legal pedagogy, our work is often infused by the need to mix the ends of social justice/order/transformation with the need to produce competent legal professionals, as well as the suggestion that there is a tension between these two ends. This suggested tension is often exacerbated by assumptions of neutrality and universality in operationalizing the aims of legal education especially when such education is focused on doctrinal law. Thus, these assumptions obscure the means of achieving social change. Our supposedly neutral-universal position in legal education predominated by positivism stands in opposition to the ends of social justice. This is because our pedagogy remains perpetually in support of power and the injustices power produces. Consequently, it

could be contended that diversity in legal education would be a good way of bringing in a variety of voices into the field to ensure social justice. This has been the approach of many law schools in the UK, as they attempt to increase gender, class and ethnic diversity in their student and staff bodies. However, in this essay, I argue that to attain any transformative aims of legal education, we need to go beyond diversity and confront our discipline's entanglements with power. If the discipline instinctively aligns itself with power, diversity merely diversifies the face of power, but does nothing to fundamentally dilute its effects.

Knowledge production and transmission of law within legal education often erase law's own ontology and histories, producing an illusion of innocence, universality and neutrality (Peller 2015). Unsurprisingly, the 'core' legal curriculum is silent about the law's involvement in the way the world has, through colonial logics and for colonial purposes, been artificially binarily ordered, as well as the connection between the national and the international spheres of legal epistemologies and histories. The curriculum is therefore unable to draw connections between legal histories and legal presents that account for social injustice, global inequality, extreme poverty and environmental degradation. Consequently, doctrinal law is unable, of itself with only reference to itself, to provide a true self-portrait for educators to transmit to learners. Thus, unable to create a true picture of humanity, traditional legal education suffers functional decay, serving no other purpose than certification into a discipline which disciplines the world to conform to a seemingly perfectly pre-ordained but wholly unequal legal order.

The purpose of this essay is to explore how legal education, especially where the focus is on doctrinal law, exemplifies functional decay and to argue that more transdisciplinary and decolonial approaches to knowledge production in law are needed to counter this. Some transdisciplinary approaches within legal education have already been modelled by critical-legal and socio-legal scholarship within the field. I argue here that those models are exemplary but need to account more closely for coloniality in the field.

[B] THE PURPOSES OF LAW SCHOOLS IN UK HIGHER EDUCATION: A REFLECTION ON 'THE PRESENT SYSTEM'

The 'core' of legal education is a disputed concept, and debates about a core are increasingly affected by and reflected in the different approaches to legal education often found within law schools (Ansley 1991: 1513-1520). These approaches include the more predominant traditional

doctrinal approach to legal education (Thornton 1998: 372), which is often complemented by socio-legal and critical-legal approaches to legal study. The continued dominance of doctrinal law, as Thornton argues, arises from law's propensity to reflect the interests of the powerful (1998: 370-372). Consequently, capital interests and power direct the ontology of law and, therefore, legal education, causing a seeming commitment of doctrinal law to 'rules rationality' and protection of capital (Thornton 1998: 372). Darian-Smith, who describes the ontology of modern law as 'Euro-American', echoes and complements Thornton's argument, by tracing law's current origins to the economic power dictates of the colonial project (2013 and 2015). Thus, Euro-American law, according to Darian-Smith, is law which began in Europe, but also arose out of colonial activities in the Americas, Africa, Asia and Oceania, and whose ontology places Euro-America at the centre of the world (Darian-Smith 2013). This designation intimately ties law to coloniality's interests, origins and uses. Further to this is the fact that the outcome of the colonization of most of what is now designated the Global South was the transplantation of this ontology of law across the world (Darian-Smith 2015: 647). Thus, this globalization of a particular vision of law (and humanity) is implicated in the definition of coloniality—an ontological condition of modernity which outlives colonialism and describes 'long-standing patterns of power that emerged as a result of colonialism ... that define culture, labor, intersubjective relations, and knowledge production' (Maldonado-Torres 2007: 243). It is the long-standing patterns of power, the mechanisms for reproducing them and their outcomes, that are of concern here. Coloniality as a mechanism of material accumulation and dispossession of necessity produces specific inequalities.

In response to power-driven inequalities before and occasioned by law, critical-legal and socio-legal studies have leant heavily on the boundaries that law places between itself and social realities in their troubling of the 'core' and the predominance of legal positivism in legal education. Yet, even in adopting these approaches, law teachers are often also compelled, frequently by market forces, to apply rules-based approaches favoured by doctrinal law (Thornton 1998: 374). Furthermore, these non-traditional approaches, though critical of entanglements of power, being and knowledge in legal education, sometimes take an atomized approach to confronting power, either conceptually, jurisdictionally, spatially, or temporally. Decolonial approaches may bridge this gap.

As Thornton argues, adherence to 'rules-rationality' in legal education arises due to law's close alliance with corporate power and capitalist interests and desires to accumulate (1998: 373-375). Therefore, the

content of the disputed core of legal education (quite similar in the Euro-American legal academy) reflects imperatives that expedite the freedom of the market, private property ownership and the value of corporate power to capital (Thornton 1998: 373). Therefore, recognizing the law as a product of coloniality—that is, the fusing, globalizing and universalizing of the market and racialization as the dominate mode of control (Quijano 2000: 216, 230)—requires an exploration of legal education and the limits of inclusivity in confronting law’s coloniality. Strictly speaking, inclusivity on its own does not adequately address or confront the fusing of capital and racialization within legal epistemologies.

To begin, it is important to appreciate the context in which UK law schools operate at the end of the first 20 years of the 21st century. The world is faced with massive challenges such as global inequality, extreme poverty and environmental disaster. All these continue to occur, in a context of increasing requests for diversity in the content of legal education and in the composition of the professoriate, as well as calls for diversity in the profession—including the judiciary (Matiluko 2020: 558).¹ Furthermore, the debates as to what amounts to ‘decolonization’ in education—which have always been vocal in settler colonies and post-colonial states—have extended to the UK (Kwoba & Ors 2018: especially 3-5). The presence and silence of the nexus of law, power and subjectification in these discourses directs our enquiries as legal academics into the purposes of the law school. In other words, if law schools are to have any transformative effect on society, how have they responded and how can they respond to some of society’s most challenging questions?

In examining the purpose of law schools and the search for a core for legal education, Twining reflects, among other things, on the persistence of the presumed neutrality of law and legal education as he states that, ‘[t]he most common model for “legal science” is the idea of systematic, objective, neutral exposition of the law as it is’ (1994: 155). Nevertheless, this is not necessarily a perspective to be treated with suspicion, as it could be argued that, to teach law as transformative, ‘law as it is’ has to be taught first. Therefore, students must understand doctrinal law first, before they can go on to critique it, even where law schools aspire to transformative purposes of legal education. The positivist aspect of the law has frequently been intellectually critiqued, yet positivism, despite signs of decline, still retains a hold in legal education (Thornton 1998: 372; Tamanaha 2007: 35-38). Also problematic is the fact that presumed neutrality does not hope to teach the *world* as it is, but the world from

¹ On 8 March 2021, six Members of Parliament sponsored an Early Day Motion asking, *inter alia*, for an increase in ethnic diversity in the judiciary: [Representation and the Judiciary](#).

the perspective of power, calling into question our presumptions about the nature of law itself. As Twining explains, this focus on positivism may 'confine legal studies to exposition', demonstrating the epistemological universalization and expansion of the standards of the sciences to other fields (1994: 154-155).

Twining identifies two main cardinally opposite proposals for the purposes of law schools and several intermediate hybrid options. These two extremes are: on the one hand, law schools as a conduit to produce more practitioners for the profession; on the other, law schools as spaces for academic learning about law (1994: 52). He complicates these extremes by noting how the increase in different specialisms and multiple perspectives within the law is in tension with the elusive search for a core of legal study (1994: 153-154). However, he notes that to keep the law school economically and socially relevant there should be a diversity of perspectives about legal knowledge (1994: 197). Through their universities, diversity measures in UK law schools have included widening participation schemes, diversification of reading lists, and mentoring programmes, as well as inclusive recruitment policies (Hoare & Johnston 2011: 29; Ragavan 2012; Vaughan 2019; Pilkington 2020). In addition to this, various scholarly outputs have emerged over the last couple of decades that discuss how best to achieve diversity in the profession and in law schools (see, for example, Bhabha 2014; González 2018; Vaughan 2019).

There is, however, an oversight here. Firstly, there is no consensus on the objectives of diversity measures—apart from diversity itself. Thus, this type of diversity discourse seems to presume that all that is required for societal transformation is inclusion of a variety of suitable sources and voices into the pre-existing study of law, rather than engagement with any re-examination of the history and ontology of law and legal education. This consequently ignores the possibility that re-examination and then reconstruction of the discipline will bring about more organic diversity and inclusion. These diversity measures do not address why our discipline persistently reproduces inequalities, not just within the law school, but across the spectrum of the field, in the impact of law and in the profession. Therefore, critical pedagogists, within and outside legal education, have long asked us to query our presumptions of neutrality and objectivity in both the content and structure of educational systems. Hence, on the question of purported neutrality in education, Freire asserts:

There is no such thing as a neutral educational process. Education either functions as an instrument that is used to facilitate the integration of the younger generation into the logic of the present

system and bring about conformity to it, or it becomes 'the practice of freedom,' the means by which men and women deal critically and creatively with reality and discover how to participate in the transformation of their world (2018: 34).

Law is very strategically placed as a discipline and profession to contemplate the transformation of the world. In fact, one could argue that without some engagement with law—the tool of social order—societal transformation proceeds in vain. There is also a societal perception that one of the functions of law and the legal profession is to achieve social justice and societal transformation (Budlender 1992; Elsesser 2012). Yet it has been shown that legal education may actually move students away from social justice as a career expectation and closer to more corporate-focused careers (Sherr & Webb 1989; Chapman 2002; Sheldon & Krieger 2004). One may ask then to what extent legal positivism in legal education hinders it from producing social justice. Thus, Cownie & Ors suggest that if the study of law focuses solely on the black-letter tradition, we ignore the 'social effect and political impact' of legal study; consequently, they also posit, law schools often focus on what the law is, to the detriment of what law can or should be (2013: 126-127). It could be argued therefore that, to the extent that they focus on the black-letter tradition, especially as regards the interests of power, law schools privilege order over justice. Yet Gordon asks us to examine whether our understanding of 'justice' under the shadow of coloniality actually reflects what is 'right' and emancipatory (2020: 33-49). In other words, have we confused 'order-aligned-to-power' with 'justice'? Thus, in our present condition, if legal pedagogy and practice presumes politically neutral, value-free praxis (see hooks 2014: 37), 'order' requires increased deployment of state power in the face of racial, gender, class and other disparities. Nevertheless, the logics of the present system are inevitably unveiled in structurally produced disparities that do not require individual bias—for example, the racialized processes which led the Macpherson report (after the inquiry into the police investigation following the racist killing of Stephen Lawrence) to declare the police institutionally racist. The report defined institutional racism as:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people (Macpherson 1999: 49).

A more comprehensive definition was given at the inquiry, by the Commission for Racial Equality, as:

established laws, customs, and practices which systematically reflect and produce racial inequalities in society. If racist consequences accrue to institutional laws, customs or practices, the institution is racist whether or not the individuals maintaining those practices have racial intentions (Macpherson 1999: 47).

These structurally produced racial disparities are not confined to the legal system but were and are repeated in the ‘Windrush scandal’ and ethnically disparate vulnerability to Covid-19. Thus, institutional racism is one of the more fundamental logics of ‘the present system’ (Freire 2018: 34) that legal education reproduces, locally and globally. It cannot be denied that this ‘present system’ is becoming more inclusive and diverse, with legal academia in the Global North opening itself up to plural epistemologies (Darian-Smith & McCarthy 2016: 16-18). The increase in social-legal and critical-legal approaches in legal education demonstrates this increased inclusivity. However, inclusivity does not always address the inequalities power produces. Coloniality as an epistemological technology of power requires diversity within its work to normalize and normativize it. In other words, to be effective, coloniality must of necessity include those ‘othered’ (Maldonado-Torres 2017: 123). It is important therefore to not confuse *inclusivity* with *decoloniality*.

I focus here specifically on racial disparities precisely because of the entrenched enfoldment of racialization in the production of the coloniality in the present system. Law and the social construction of race are implicated in creating a nebulous scale of master, subject and object that contributes to creating and maintaining hierarchical binaries (Haney-Lopez 2006: especially 7-14; Gómez 2010). What we often conventionally understand as ‘race’ has already been established as having no biological meaning (Saini 2019). More accurately, the artificial production and historical use of race as a technology creates and reproduces contrived material distinctions between groups of humanity (Patel 2020: 1464). In the here and now, groups are more often racialized by skin colour, but historically also by ‘ethnic, linguistic, religious or cultural identity’ (Grosfoguel 2016: 11). Consequently, it must be understood that the logics of racialization overlap, albeit imperfectly, with creation of class divides—in fact the whole point of racialization (the creation of ‘race’ as a supposedly legitimate categorization of humanity) is to materially dispossess. Thus, the entanglement between race and class is more entrenched than social policy or public discourse often acknowledges. In other words, race was used to mark differences between who can be owned and who can own and who can own what; to mark differences between whose knowledges, practices and jurisprudences were considered ‘modern’ and whose were considered primitive; and to mark differences

between whose land could be appropriated and who could lay claim to territory (Harris 1993; Keenan 2017; Bhandar 2018). These processes and techniques of racialization required the legitimation of law, not just in legislation and judicial precedent,² but also in the development of seemingly race-neutral legal epistemologies that are actually racially contingent (Bhandar 2011; Bhandar 2014: 206-208). Ultimately, ‘race’ is a technology used to underpin the enfolded practices of accumulation and dispossession that characterize and reproduce this present system, creating and maintaining a binary world (Hickel 2017: chapter 3). In the words of Grosfoguel, ‘race constitutes the transversal dividing line that cuts across multiple power relations such as class, sexual and gender at a global scale’ (2016: 11). A predisposition to black-letter tradition, especially curricular absences on the social construction of race and its attendant effects, inescapably preserves ‘the present system’.

The plethora of racialized and gendered deficits and disparities within society is not accompanied by a deficit of data of those disparities. For example, the ‘End of Mission Statement’ of the Special Rapporteur on Contemporary Forms of Racism, at the end of her visit to the UK, reported significant racialized disparities in schooling, welfare, housing, employment, immigration policies, counterterrorism policies etc (Achieme 2017). The Lammy Review, which assessed racial disparities in the criminal justice system, also reported disparities at every stage, from investigation to sentencing (Lammy 2017).³ As racial disparities expose groups to increased structural vulnerability, it is not entirely surprising to note their replication in vulnerability to Covid-19. The 2020 Public Health England report showed that non-white populations in England had a ‘10 and 50% higher risk of death when compared to White British’ (2020: 39). Furthermore, in November 2020, the American Medical Association recognized racism—systemic, cultural and interpersonal—as a ‘public health threat’ (2020). Predictably, despite diversity, racial disparities also exist in higher and legal education, characterized in differences in representational and awarding outcomes, employment and progression to research degrees (Advance HE 2020a: 130-197; Advance HE 2020b: 126-165). It is important to interrogate assumptions that the replication of racial disparities is merely incidental and not produced by the dominant epistemologies and structures of the world. In fact, these

² See, for example, Charter granted to the Company of Royal Adventurers of England Relating to Trade in Africa, 1663; Slave Code for the District of Columbia; The Treaties of Utrecht (1713); *Gregson v Gilbert* (1783) 3 Doug KB 232 summary of first trial; French *Code noir* (1685).

³ The Lammy review has been criticized for not exploring the root causes of disparities and regressing understanding of institutional racism. See Fekete 2018: 76-79.

disparities, that we benignly refer to as institutional racism, are, in the words of Marchais:

neither a by-product nor ‘negative externality’ of otherwise inclusive systems, nor a remnant of old days that is dissipating with time and increased awareness. [Racism] is a resource, or a technology, on which institutions and organisations rely to achieve production (2020).

We must ask ourselves to what extent and why does our discipline exemplify this [re]production?

[C] THE FAILINGS OF DIVERSITY: EPISTEMIC INJUSTICE AND DISCIPLINARY DECADENCE IN LEGAL EDUCATION

To counter disparities within the legal system, systemic racial diversity has been promoted through widening participation, mentoring, targeted bursaries etc. For example, many of the Lammy Review recommendations propose more transparent and detailed collection of data as well as increased representation. Recommendation 16 asks for a more representative judiciary, while recommendation 29 asks for increased diversity in the leadership of the prison service (Lammy 2017). These recommendations find similar threads within the Special Rapporteur’s report on racism, which recommends in-depth assessment of data and inclusion of representatives of racialized communities in decision-making processes. However, it is argued that, despite the good intentions of diversity, there are two inherent limitations in this approach to transforming the present system of law, legal education and our world. Firstly, this approach does little to interrogate the processes by which legal education contributes to the [re]production of the present system. Currently legal education in UK law schools often only engages with scholarship on race and racialization in a limited way. Race, racism and racial inequality are not included in the ‘core’ curriculum. Stanley examines the general curricula of law schools in this regard, citing the tendency of law schools and qualifying law degree criteria to prioritize private law above public law and how this prioritization places emphasis on the needs of privileged sections of society (1988: 83). Thus, private law is focused on regulation of ownership of property, without considering, as has been discussed above, how the emergence of property is itself racially contingent. Therefore, our focus within private property legal education fails to acknowledge, in the words of Bhandar, ‘the constitutive relationship between property law and racial subjectivity’ (2018: 21). Consequently, the teaching of property law

is often directed towards power rather than away from it. For example, land law is part of the 'core' curriculum, while housing law is sometimes to be found as an option. Furthermore, even though the practices of slavery and colonial dispossession are germane to the development of the doctrines within real property, they are hardly to be found in main land law texts (Ansley 1991: 1523-1525; Bhandar 2018: 3-4). The second inherent limitation to representational diversity schemes is that, rather than engaging in any real structural change, this approach averts our gaze outwards, to create what DuBois calls 'problem people' who become the subject of our ineffectual benevolence (1897).

The real tangible question of 'justice' is thus reduced to a metricized or a 'tick-box' diversity scheme which ignores the many intersectional and variable ways in which structural and epistemic injustice is in turn epistemically produced, reproduced and experienced. Thus, Gordon critiques our understanding of 'justice' which is produced by and within colonial knowledge hierarchies when he asks: 'Are the norms for which many of us are fighting in the name of, say, racial justice or liberation from antiblack racism free of normative colonization ...?' (2020: 91). As Fricker maintains, epistemic/hermeneutical injustice is the obscuration of an othered group's social condition from hegemonical understanding (2007: 152-169). Therefore, those with power to influence change are unable (and unwilling) to transform the conditions of those othered. Consequently, epistemic erasures create an inherently unequal world. Furthermore, if legal education does not interrogate how the world is epistemically and structurally ordered, it contributes to reproducing Grosfoguel's dividing line that casts othered populations 'below the line of the human' (2016: 10); or Fanon's zones of nonbeing into which those who have been 'made black of the world' are placed (2008: 2); or de Sousa Santos' abyssal line which invisibilizes the effects of coloniality from those who benefit from coloniality (2015: 70-71). These demarcations manifest, for example, in how we define those who belong to certain spaces and can confidently claim the benefits of belonging. For instance, El-Enany explains how immigration laws have entrenched racialized thinking into their provisions, thus mirroring the Manicheanism inherent in the creation of race as a supposedly legitimate category of humanity (2020: 62).

Therefore, epistemic justice requires more than promoting diversity by focusing our gaze on those whom the structures of the world disadvantage, rather than on the structure of the world which disadvantages. In effect, this approach to racial inequality resorts to 'managing the demands for equality while keeping racial hierarchies intact' (Saha: 2017). Because diversity measures, as described, make no distinction between epistemic

and embodied difference, they operate as an inaccurate, limited-temporal and aesthetic solution to much more structural problems—concealing the *longue durée* effects of coloniality and its related practices (Raghavan 2018). Diversity measures, when proposed as a means for societal change, work on the presumption that objective epistemic knowledge is settled and naturally flows from particular bodies. For example, without interrogating further, an assumption that all women are feminists, all Black people are versed in critical race theory and all people from a working-class background are anti-capitalist would prospectively lead to recruiting women, Black and people with working-class backgrounds who have none of the aforementioned characteristics respectively, as they would be more likely to ‘fit’ into the hegemonical knowledge structure. Properly done, representational data should serve as a means of assessing how transformational and inclusive our structures are. But the data now operates as a *target*, thus drastically reducing the efficacy of such data as a *measure*. Therefore, we may adopt a tokenistic focus on producing good data rather than equitable structures. As hooks noted about such inclusive teaching in the USA, ‘many people supported inclusion only when diverse ways of knowing were taught as subordinate and inferior to the superior ways of knowing’ (2003: 47). Thus, diversity, without more, runs the risk of reifying hierarchical structures. We must not forget that ‘diversity’ is a natural characteristic of humanity; racial and other disparities result from our structural failure to recognize and communicate across pluriversal worlds to create a different global epistemic community than the one we have now (Kothari & Ors 2019: xxviii). The focus here is epistemological: why do the racialized absences within the law school curriculum seated within a typical UK law school seem to impede the curriculum’s ability to transform society effectively and positively? What is it about the related ontology and epistemology of law that reproduces disparities in the design of society?

Gordon calls this phenomenon ‘disciplinary decadence’, which he argues sets in because ‘we treat our discipline as though it was never born and has always existed and will never change or, in some cases, die’ (2015: 4). Building on DuBois’ conceptualization of ‘problem people’, Gordon describes how disciplinary practices elevate disciplinary methodology to a sacrament—complete, pure and perfect (2018: 233); this creates a problem for the discipline of populations not considered part of the core of humanity at the time the discipline’s method and thought was formulated. ‘Problem people’ will not ‘fit’ into the purportedly universal and objective method. So, we try in vain using diversity measures to fit such people into the strict dictates of the discipline, yet the field keeps on spitting

them out. Disparities remain and are reproduced, across time, across space. Consequently, within this intractable adherence to method, ‘non-normative people, become problems, instead of people who face problems’ (Gordon 2014: 84). Our legal epistemologies exist as if internally and immortally legitimized (Gordon 2011: 97), yet the scope of non-normative people increases, as does the scope of problems our discipline is unable to understand, including problems resulting from the ontology of our thought and method. Thus, our analysis of injustice faced by non-normative people descends into a form of victim-blaming. We do not revisit the foundational norms of our discipline such as liberty, freedom and justice. We are unable to adapt to changing sociological realities and realizations. This is what Gordon means by decay—turning from living thought. By trapping our discipline in thought that crystallized during a time when race science was used to abstract property out of humanity through the legalized processes of enslavement and colonial dispossession, we trap our world into reproducing the accompanying injustices of those epistemologies along those racial, gendered and geopolitical lines. Disciplinary decadence operates along colonial lines, creating zones of closure, settlement and negation of human possibility (Gordon 2018: 238). By trapping possibility within disciplinary dictates, transformation is rendered impossible. Rather than justice, anything that exists on the other side of Grosfoguel’s ‘dividing line’, beyond the abyssal line, in the zone of nonbeing, is eliminated or transformed to resemble this side of the line (numbers-diversity) (de Sousa Santos 2015: 120). This is what makes ‘the claim of the universal translatability of the English word “justice” ... an extraordinarily presumptive one’ (Gordon 2013: 70). Epistemic injustice that arises through the obscuring of racialized knowledge cannot be assuaged by obscuration of racialized knowledge. To mean anything at all, our quest for global justice must be preceded and accompanied by an exploration of how the law’s present ontology has been produced through colonial epistemologies of language use and practices.

[D] WHAT DECOLONIAL THOUGHT MEANS FOR LEGAL EDUCATION

If, as argued, legal ontology and epistemology systematically (re)produce coloniality and its attendant injustice, what would it mean to introduce decolonial thought into legal education? First, it is argued that, to avoid the data decay that is inherent in diversity measures, decoloniality cannot be approached as a tick-box exercise. To be effective, legal academics must familiarize themselves with decolonial theory and put that theory in conversation with areas of their pre-existing expertise. Secondly, it is argued that the use of the word ‘decolonization’ has proven misleading,

fungible and almost infinitely malleable. This confusion is evidenced in the use of phrases such as ‘decolonized curriculum’ or ‘decolonized law school’. Despite the variances within the schools of decolonial thought, at its heart it is a way of being and not a destination. At one end of the spectrum, decolonization (mainly articulated by post-colonial and anti-colonial scholars from Asia and Africa) seeks to repair the remnants of the colonial project as they appear and reappear in epistemic, political, legal and economic structures (see, for example, Nehru 1941; Nkrumah 1966; Cabral 1979; Sankara 1988). At the other end of the spectrum, decolonial scholars (mainly from the Americas and indigenous scholars) seek to identify and dismantle the permanence of coloniality and to build in its place flourishing planetary futures—‘worlds otherwise’ (Quijano 2000; Escobar 2007; González 2018). Decolonial thought is thus unified on the origins and manifestations of coloniality, but there is complexity in how the colonial condition is temporalized, contemporarily and historically. The desired outcome of decolonial thought also varies. This complexity further results in overlaps between these two extreme positions: however, both positions can be understood as material and epistemic repudiations of the colonial that seek within their positions an ‘after-colonial’ time and reality. Thus, taking decolonial approaches requires legal academics to continuously commit to communicate democratically across epistemological worlds without valorizing or universalizing Euro-American legal thought. Decolonial thought does not mean replacement but, instead, seeks ways to bring about new worlds of thinking and being that are inclusive of plural systems of (legal) thought and do not reproduce the harms of coloniality, which include racial, class and gender injustice, as well as the resulting global poverty and climate emergencies (Maldonado-Torres 2006: 117). So, we must trouble the ways in which the norms of our discipline and areas of expertise are complicit in that social reproduction of these structural injustices. This is the epistemological task. The structural and representational tasks of interrogating our institutional practices and ensuring epistemic diversity are instrumental to this. However, without the epistemological task, the structural and representational changes operate in vain.

It is further argued that, beyond identification of the norms of social reproduction, we must also theorize on what lies beyond. What other worlds of justice and freedom do we think our discipline can help bring about? On the one hand, there is the task of deconstructing the colonial, but, for the imperial world to not rebuild itself, we must replace it with new systems of thought, new relations between groups of humanity and new relations between humanity and other inhabitants and parts of the

planet. It is accurate practice and *theorization* of decolonial thought that confronts us with the history and effects of imperialism upon our academic practices (i.e. research and teaching) in law. It is both theory and praxis that lead us to new ideas. In a lot of the discourse on decolonization in UK higher education, there has been an overwhelming focus on decolonial practice and decolonizing in teaching, to the detriment of decolonial theory and research. To create radically different futures designed upon just legal ontologies and epistemologies, decolonial theory must take on a future-looking aspect regarding the survival of the earth and its inhabitants (Mignolo 2007:159). So, in rethinking the purposes of the law school, either in the fundamentals of what we teach—this includes the content of the disputed core—or the way in which we teach—with a focus on research or legal practice—we need to consider how legal education can, in being self-critical, disrupt normative universals complicit in the social production of epistemic and epistemically produced injustices.

There are three main themes through which, I argue, this social reproduction is articulated in law. The first is the body. A lot of legal thinking is parsed through what we could consider ‘the normative body’. This is the body of law’s ideal human, which, according to Douzinas, finds its closest representation in a White property-owning man (2000:7). The normative body is ‘rational’, seeks protection of his property and has converging interests and desires that find solace in the state. Thus, the normative body serves as the yardstick against which all negative and positive derogation is measured. The normative body gives us the template of the ‘reasonable man’ (more recently the critiqued ‘reasonable person’ (Moran 2003)) within the law of obligations. Due to the representational deficits in the legislative and judiciary, this normative body is the prism through which law is made, interpreted and enforced. The normative body achieves its positionality through the auspices of capital—this body is the one positioned to achieve the most capitalist value, not hindered by gendered roles, racialization, heteronormative assumptions, class distinctions or inflexible ideas of ability. As argued above, justice articulated from this personification of law’s human is not infinitely translatable.

The second theme of social reproduction is property. As mentioned above, the making of property in law happens contemporaneously with the emergence of law’s ideal human. Critical legal scholars, as well as postcolonial writers, have maintained a long trajectory of writing on the elision of body and property—especially the consequent Euro-modern manifestation of land as property. In her seminal work, Harris argues that ‘whiteness’, originally socially constructed as racial identity, morphed

into a form of property which, in the past and present is acknowledged and protected by law in the USA (1993). Moreton-Robinson makes a similar argument within the Australian indigenous context, contending that the interplay of socially constructed race and property law provides a biosphere of and for possession and dispossession (2015). These arguments are echoed by Bhandar, whose context includes indigenous Canada, apartheid South Africa and contemporary Palestine. She argues that racialization and property-making developed co-terminously (see, particularly, 2014: 211). Ways of using land by populations racialized as ‘not-white’ served to dispossess them of property which could then be appropriated by colonizing forces. These arguments about property are reflected in the concept of racial capitalism, theorized most notably by Robinson (2000) and described above by Marchais (2020) as an explainer of how racialization is itself a source of production. Foregrounding these arguments about the interrelation between the socially constructed body and the emergence of legal property forms is a history of non-European indigenous jurisprudence in which real property is understood differently. For example, indigenous knowledges either personified property, saw it as intimately tied to human relationality or communally held (not owned), and ecological protection was usually the purview of women (Dudgeon & Berkes 2003; NoiseCat 2017). Legal education’s preoccupation with private law and protecting the rights of law’s human in property leave untroubled the ways in which dehumanization enabled the tandem of dispossession and accumulation of land and capital and how this results in further dehumanization.

The last theme which I argue could be explored within decolonial thought is time. Of main concern here is the way in which the creation of modernity dislocates bodies from space and place while simultaneously producing artficed time demarcations to justify these dislocations. As Mignolo states, “Modernity” implied the colonization of time and the invention of the “Middle Ages” (Delgado & Ors 2000: 29). This is because an artificial Euro-modern timeline was colonially abstracted by the colonial enterprise. The result of which was to place colonized spaces/people in an earlier timeline, outside the development process of humanity (Alcoff 2007: 84), where they are eternally and futilely striving to reach Europe (both metaphorically but also physically). This temporal displacement obscures the contingent nature of the temporalities of colonized and colonizer spaces. In other words, left uninterrogated is how the colonized experience of modernity is contingent on the way in which the colonizer experiences modernity and *vice versa*. Or, as Olaniyan says, in explaining why African poverty is predicated on Euro-modern extraction

and accumulation, 'it is absolutely ridiculous to think that Congo is not modern, but Belgium is' (2014). Olaniyan is alluding here to Belgium's brutal colonial activities in what was called the Belgian Congo, which involved racialized use of enslaved, enforced and torture-compelled labour to work rubber and oil palm plantations, resulting in a population loss of roughly 50 per cent of Congolese (Hochschild 1999: 3, 233, 280). These epistemic creations of imagined temporality also manifest themselves in legal education in fragmentation within and across units/modules. For example, the distinctions we draw between, immigration, citizenship, the state and colonial histories. Decolonial thought requires unsettling those fragmentations.

I have used this tripartite thematic framework as an alternative to attempts to 'decolonize' units/modules rather than question the selection of and demarcation *within* the curriculum of legal education. Thinking more thematically prevents the atomization that characterizes contemporary decolonization discourse in UK higher education. These discourses focus on adding more authors from Black or Brown backgrounds to reading lists, as well as introducing, as supplements, topics that raise questions about racialization and empire. Thinking thematically allows us to simultaneously trouble the discipline while continually crafting decolonial thought. Therefore, rather than ask, for example, 'How do we decolonize the law of contract?', we are able to question the possibilities that eventuate the emergence and social production of the law of contract and its underpinning normativities, as well as conceptualize what future possibilities that questioning may lead us to. In this way, we can, thinking about the future of legal education and the world, within the scope of legal education, centre flourishing human futures of freedom and justice, and not the sacrament of the law of contract.

It should be noted that the massification of universities and consumerization of the student class present a significant deterrent to decolonial thought. This deterrence is exemplified by the various standardization measures across higher education. The Research Excellence Framework (REF) as well as the National Student Survey are both examples of this standardization. Sayer describes the process of evaluating research through the REF as impervious to critique of British research standards (2014: 40), indicating that the REF standards may be incompatible with the necessarily unsettling nature of decolonial thought. In other words, the types of rankings which universities increasingly rely on require favouring epistemologies and bodies already privileged, mainstream and highly regarded, and this will not lead us to 'worlds otherwise'. This deterrence also includes rising tuition fees,

casualization, unmanageable workloads, pay gaps, funding models and access to higher education. The university seems to be suffering an identity crisis. Is it a public good or a consumer good? The decolonial approaches recommended in the foregoing paragraphs seek to disrupt the colonial logics of commodification of space, nature, humanity and variably valued labour. But it seems that the neoliberal university can only survive through these very characteristics – namely, the colonial logics of commodification of space, nature, humanity and variably valued labour.

[E] CONCLUSION

This article has argued that law schools in the UK have failed to interrogate how colonial thought is embedded in legal education and that that embedment is complicit in producing this present system and its inequality. Diversity measures, without more, are insufficient to disrupt the reproduction of our unequal world and bring forth ‘otherwise worlds’. However, our engagement with decolonial thought must involve a fundamental rethinking of the purposes of legal education and how reconstructing legal epistemologies may result in flourishing futures for all. Therefore, our commitment to decolonial thought must be intellectually rigorous and sustained. It must also consider seriously the deterrence produced by the systems we are seeking to change. In other words, to be effective in transforming the world, decolonial thought in legal education must reach beneath the surface, continually reinvent itself and look beyond the present with radical imagination for the future at its core.

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