Editorial - Education as the practice of freedom

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The intellectual project of decolonizing has to set out ways to proceed through a colonizing world. It needs a radical compassion that reaches out, that seeks collaboration, and that is open to possibilities that can only be imagined as other things fall into place.

Linda Tuhiwai Smith, *Decolonizing Methodologies*

Perhaps a poignant contemplation for academics today is the notion of the Covid-19 pandemic as epistemicide. In an op-ed titled 'Tribal elders are dying from the pandemic, causing a cultural crisis for American Indians', Indigenous Americans are said to be facing an epistemic threat. According to the tribal spokesperson, 'It's like we're having a cultural book-burning … We're losing a historical record, encyclopaedias' (Healy 2021). Indigenous knowledge, laws and healing practices have largely been excluded from national heritage and use in settler colonies because of the civilisational conceit that exists in western cultures, knowledge and scientific practices. In the western imagination, the law is considered a respected tool and valued instrument of western civilization. It is this tool that imposes a particular vision of 'truth' on colonised/non-white peoples and then acts as a form of domination. Tribal elders constitute an intellectual heritage associated with a particular people, ways of being, laws and customs. This heritage and knowledge have evoked many decolonial debates as regards African customary law and African languages and resonates with some of the contributions in the papers in this volume. These papers represent steps toward action and offer no single 'one-size-fits-all' template for decolonising the academy. Decolonising the curriculum is a process, in concert with decolonising institutional culture, politics and pedagogy and these processes embody 'radical compassion', 'seek collaboration' and interventions and are driven by a creative imagination. One such intervention is the creation of a biocultural-knowledge-

commons for the systematic sharing of knowledge in Mpumalanga province, a project initiated by eighty traditional healers. These healers described knowledge as, 'An outcome of virtuous relationships with the land, the plants and the animals. It is not property to be bought and sold. It is simultaneously cultural and spiritual, and its movement and application promotes a kind of virtuous cohesiveness' (Abrell 2009). Such values contribute to a different reading of the law, especially where there are conflicts and tensions between the text and its application in matters related to, for instance, public or private law.

If knowledge is supposed to promote virtuous cohesiveness, then knowledge systems such as curricular and pedagogical practices, especially in the Faculties of Law, should embody this ideal and intent. Notably, the call for decolonisation of the curriculum

> *is neither an advocacy to be anti-West, nor is it discouragement to learn from the West and the rest of the world. It is a call to make higher education relevant to the material, historical and social realities of the communities in which universities operate.* (Letsekha 2013: 14)

Furthermore, 'decolonization is not a metaphor … Decolonization is accountable to Indigenous sovereignty and futurity' (Tuck & Yang 2012: 1, 35). It opposes the neoliberal conceptualization of knowledge and knowledge systems that commodify knowledge. In this instance, decolonisation is aligned with the idea that knowledge 'is not property to be bought and sold'.

Such an education is crucial for legal studies as one needs to articulate and promote virtuous cohesiveness from beyond the narrow scope of the text of the law. The law needs to be relevant, relatable and responsive to the society it serves. It cannot be an aberration like the apartheid legislation. It must be meaningful and have legitimacy. A society that operates under the threat of the law rather than out of integrity and a moral compass is a society that can easily disintegrate once the law is weakened or infiltrated. Consider the extent of state capture in South Africa during the Zuma administration, and the dismantling and weakening of significant structures and institutions that are concerned with law and order. The revelations from the Zondo Commission on the happenings in the State Security Agency are telling. Here we witnessed a rapid deterioration of ethical governance and a collapse in the legitimacy of the state. The deterioration of ethics and values in society is

linked to the wider issue of the ethics of knowledge, the transfer of knowledge and the value of knowledge, besides the corresponding economic, social and political issues. I stress this point because knowledge and education, like the law, are political. Considering the inter-connectedness of issues, decolonial scholars should consider the challenges to higher education within the context of deep global issues such as the destruction of the planet, inequality, violence against women and the exploitation of labour so that there is a push to turn to communitarian values rather than market priorities. Legal Studies should be concerned with these issues. It is here that curriculum transformation in the Faculty of Law is key to charting a way forward that embraces the human reality of all South Africans. The decolonisation of human reality is 'that one must build new concepts and be willing to revise critically all received theories and ideas" (Maldonado-Torres 2011: 4).

Covid-19 has revised how we teach, where we teach, what we teach and with what impact and effect. It is an unprecedented moment in modern living that has interrupted all forms of social intercourse. Its effect has generated high levels of uncertainty whilst jolting South Africans to acknowledge that waiting to return to 'normal' is in fact a denial of the reality that South Africa is in many instances an abnormal nation. What we hanker to return to is in actual fact a status quo which is the cause of the unfolding social problems of today. Many South Africans do not internalise this notion because we have not been taught to think about these issues, let alone critique them. The pandemic has forced us into alternate modes of teaching, assessing and interaction. How the lecturer and student communicate ultimately determines how knowledge is transmitted and accepted. But what is communicated determines the future of the nation. Despite the opportunity that presented itself – to strive for that virtuous cohesiveness – in many instances, we have continued with short-sighted approaches that exacerbate the inequalities deeply embedded in our nation. This academic short-sightedness represents a form of resistance to decolonisation, where decolonisation has been said to be 'working toward a vision of human life that is not structured by the forced imposition of one ideal of society over those that differ' (Mignolo 2007: 459).

Yet we continue in this vein. If one considers that a success of colonialism has been to make the colonised think and, often, act like the coloniser, the responses from law enforcement during the different Covid-19 lockdown stages (think how the police and military operated in the largely black-inhabited settlements and Bantustans known as townships) highlights this 'colonial' victory. In our country, colonial victories

seem to abound. Take for example the actions, attitude and responses from senior management in the Universities and politicians during the #MustFall protests. Far from being a meritocratic system, academia is still struggling to overcome ingrained structural inequalities where students are taught to be 'nuanced' (temper your claims) or philosophical (regurgitate the revered western canon) rather than to be innovative, creative and even radical. Radical, it should be noted, can be good when it fosters positive, powerful, pragmatic and practical solutions and ideas. Karibi-Whyte's paper questions the nature and ontology of the law and how decolonisation of the law curriculum can be conceptualised. He states that the law permeates all realms of social behaviour and is a tool of social engineering. The paper provides a rationale for why law and legal education must be decolonised together with the ideology and strategies that are needed to decolonise law in Africa. This decolonisation of legal systems links with the need to centre all forms of knowledge by decentring western legal ideologies and thinking, and shifting to an inclusive educational approach; one that incorporates local African traditions, customs and ideologies that existed prior to colonial imposition. Many such questions are interrogated in the papers in this collection. Kok and Oelofse analyse the relationship between teaching legal skills and social justice whilst Sindane considers an African approach to humanity. The first paper in this collection by Michelle van Eck, entitled 'Decolonising legal education in South Africa: Is it time to press the reset button?', considers the country's legal framework and the reality of its structuring as reflective of societal change. It is necessary to recognise plurality in the South African legal culture(s) as opposed to apartheid legislation which was embodied in the notion of the superiority of white peoples and European culture. This recognition is predicated on the ideological shift (decolonisation) proposed for legal education based on the changing socio-political landscape in the country.

This change and ideological shift became evident during the #MustFall protests where the disjuncture between the institutions of learning and its learners came into sharp focus. Universities are not immune to the national condition and their colonial design and structure makes this visible (Maldonado-Torres 2012: 91; Mamdani 2016: 69–71;). Despite an ethical and I would say patriotic call by the students to decolonise the university and make education affordable if not free, the state and university dealt with this 'national condition' antagonistically. It is therefore unsurprising that universities (the micro-state) and the South African government (macro-state) have failed to chart the path for a decolonisation of human reality. It is here that

law professors and legal scholars are faced with the arduous task of questioning old, perhaps entrenched, modes of legal education that have not unravelled the biases around the human question.

Strategy and identification are tools of decolonisation and Tuhiwai Smith (2008: 146) offers twenty five approaches for the decolonisation of knowledge to occur. These practices form part of what she calls a series of 'indigenous projects', which serve as tools for contesting the social reality that sustains (legal) knowledge. In the case of legal studies, interrogating who the law works for and against is essential in answering questions of law's ontology and historical use. This is where the third paper, 'Teaching and inculcating (decolonised) legal skills in the LLB curriculum at the University of Pretoria?' by Kok and Oelofse can perhaps be considered a practical and localised 'project' that will serve as a tool for contesting the way 'things have always been done' in the Legal Skills module at the University of Pretoria's Faculty of Law. To diversify our curriculum is to challenge power relations and call for critical reflection on the content of the courses being taught and how we teach them. Significantly, the paper is about challenging ingrained biases and omissions that distort how we understand politics and society. This understanding is entwined with the law and the operation of the law where law has been a product of a prejudiced and biased society. All six papers include aspects of these arguments.

South Africa is a settler colony and settler colonialism has shaped schooling and educational research. With regard to schooling, the 'dynamics of settler colonialism mark the organization, governance, curricula, and assessment of compulsory learning', and with regard to education, research has been concerned with how 'settler perspectives and worldviews get to count as knowledge and research and how these perspectives – repackaged as data and findings – are activated in order to rationalize and maintain unfair social structures' (Tuck & Yang 2012: 2). To topple these unfair social structures and to ensure some protection from a recurrence of epistemicide, as is being experienced by the Muscogee (Creek) Nation as shown in the op-ed mentioned above, indigenous knowledges, traditions and practices need to be a constitutive element of a higher education curriculum, whether in the Law Faculty or Humanities. This is to reinforce the shift from a culture of denial and exclusion to a consideration of different traditions of knowledge. Paper four, entitled 'The importance of considering African indigenous languages in the decolonisation of legal education and practice', argues this point. The authors stress that indigenous languages are essential to the promotion and teaching of African Customary Law as

both are intimately connected. The nuances and codes in the African language give meaning and add to the interpretation of the customary law. This paper complements a key conceptual argument in Volume One where Kumalo and Praeg extrapolate on translation as epistemic justice, inviting debates on the intellectualism of African languages, and the role for and contribution of African languages to decolonial theory. Language, culture and tradition constitute strong points of identity and (should) occupy a meaningful space for debate in legal education. Students need to see themselves reflected in the curriculum as legitimate creators of knowledge. However, in South Africa where the common law was central to the "creation of white memory and [the] racial and national identity" (Chanock 2001:527) of European settlers, a disjunction is palpable. The demographic whiteness of the legal academy and the Eurocentrism of South African jurisprudence scholars' projects South African law as 'white law' (Chanock 2001:527) and this would then be one of the tensions in the curriculum for the majority-Black students.

Sindane's paper, 'Morena Mohlomi le Badimo: Reading decoloniality into the intellectual property law curriculum and Motshabi's Decolonising affirmative action in 21st century Africa: Reparatory alternatives for affirming South Africa' addresses aspects of the law and legal studies as experienced and internalised by law students. Sindane's (re)mebering is linked with traditions of humanity and critical thinking which (should) constitute a critical component of legal study and is also an example of one of Tuhiwai Smith's Indigenous projects. Motshabi's critique of the benefit and envisioned outcome of Affirmative Action as a tool of redress developed within legal parameters adds radical compassion to the desire for healing and redress. By centring himself/Africans in the process and impact of trauma, Motshabi argues that the claim that Affirmative Action facilitates socio-economic mobility and "voids the most extremely perverse inequalities" falls short. For him, 'wholeness' and 'reparation' are more substantive concepts offering greater resolve when conceptualising 'a return of something to its original condition and the provision of satisfaction for the interim breach'. (Re)membering also creatively animates the stark historical and cultural problematicity of South African law.

Ultimately, it should be noted that the decolonial journey is fraught with exciting possibilities and hidden tensions, but it is a journey that needs to have begun. We should not still be discussing the possibility of undertaking the task, nor should we be arguing about what needs to be decolonised first. Decolonisation is one big dance of many moving parts each driven by a particular momentum and a very specific

end goal: the realisation of the human and their potential. The series of outputs in this journal embody this understanding and each volume contributes to that momentum, adding to the swirl of thought and debate. It is our hope that every output represents "a radical compassion that reaches out, that seeks collaboration" to imagine the possibilities of achieving freedom by contributing to the decolonising intellectual project. We must be cognisant of the fact that it is in the ability to realise our potential that the path to freedom is charted, and that knowledge and the law are about freedom. Law and its instruments ultimately function to facilitate such freedom and potential. Or as bell hooks (1994: 207) explains:

> *The academy is not paradise. But learning is a place where paradise can be created. The classroom, with all its limitations, remains a location of possibility. In that field of possibility we have the opportunity to labor for freedom, to demand of ourselves and our comrades, an openness of mind and heart that allows us to face reality even as we collectively imagine ways to move beyond boundaries, to transgress. This is education as the practice of freedom.*

In South Africa, the ultimate victory is freedom.

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