

An integrated pedagogical framework for South African legal education: A proposed model combining reflective practice, problem-based learning, and transformative constitutional principles

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1 Introduction

Traditional legal education, characterised by doctrinal focus and passive learning methods, has been widely criticised for failing to prepare graduates with the critical competencies required by legal practice whilst simultaneously addressing historical inequities and social justice imperatives.¹

The challenge is compounded by South Africa's unique constitutional context. The constitutional vision of a society that frees the potential of all demands legal practitioners that are skilled in navigating complex social problems, having the capacity to challenge inequality, and contribute to building a more just society.

The 2018 Council on Higher Education (CHE) review of the Bachelor of Laws (LLB) degree underscored the need for a legal education that is responsive to societal needs and producing graduates who are

¹ M Leering 'Integrated reflective practice: A critical imperative for enhancing legal education and professionalism' (2017) 1 *Canadian Bar Review* 50; M Reuter 'Assessing law students as reflective practitioners' (2017) *New York Law School Law Review* 50; M Christie & E Graaf 'The philosophical and pedagogical underpinnings of Active Learning in Engineering Education' (2017) 1 *European Journal of Engineering Education* 7-8.

capable of advancing social justice.² Similar concerns have been raised in other jurisdictions regarding the pedagogical limitations of conventional teaching approaches which manifest themselves in graduate inability to apply theoretical knowledge in practical contexts; limited capacity for interdisciplinary thinking and often lacking the reflective capabilities necessary for ethical decision making and professional growth.

International legal education reform initiatives offer valuable insights into addressing these challenges. The Carnegie Foundation's influential 2007 report on American legal education identified similar gaps between academic training and professional practice, leading to widespread adoption of experiential learning approaches, including reflective practice and problem-based learning.³ Australia's development of Threshold Learning Outcomes (2010) incorporating reflective practice as an assessment strategy demonstrates systematic integration of these pedagogical approaches.⁴ The United Kingdom's 2013 Legal Education and Training Review similarly emphasised the importance of reflective learning and problem-solving competencies for legal practitioners.⁵

These international models, as insightful as they are, emerge from different political and social contexts. 'Cutting and pasting' risks overlooking the unique demands of South Africa's specific social justice imperatives. There is therefore a need for a comprehensive framework that integrates proven international pedagogical approaches with South Africa's distinctive transformative constitutional principles.

This chapter is developed around the intersection of three theoretical traditions, that is Mezirow's transformative learning theory and its facilitation of perspective transformation;⁶ Piaget's adapted constructivist

2 Council for Higher Education (CHE) The State of the Provision of the Bachelor of Laws (LLB) Qualification in South Africa Report 2018 (CHE Report 2018) <https://www.che.ac.za/sites/default/files/Final%20re-accreditation%20outcomes%20of%20the%20Bachelor%20of%20Laws%20%28LLB%29%20National%20Review%20as%20of%2007%20June%202018%20%20docx.pdf>.

3 WM Sullivan and others 'Educating lawyers: Preparation for the profession of law (2007) The Carnegie Report.

4 Australian LLB standards statement 'Learning and Teaching Academic Standards Statement' (2010)

5 The future of legal services education and training regulation in England and Wales June (2013) *Legal Education and Training Review* (LETR).

6 J Mezirow & Associates *Fostering critical reflection in adulthood: A guide to transformative and emancipatory learning* (1990).

learning theory which supports the problem-based learning approach;⁷ and Klare's transformative constitutionalism which distinguishes South African legal education requirements from international models, demanding pedagogical approaches that prepare graduates to advance social justice.⁸

In an attempt to meet the demand for a uniquely South African transformative legal pedagogy, this chapter proposes a framework that promotes authentic assessment, allowing students to develop the critical consciousness and innovative problem-solving skills necessary for addressing what policy scholars term 'wicked problems' – complex, interconnected social challenges that resist conventional solutions.⁹

2 Curriculum reform and challenges posed by traditional legal education

There are several significant teaching and learning challenges that are often encountered in traditional educational settings in tertiary education. Greenbaum & Quinot and various others¹⁰ have highlighted concerns about the Bachelor of Laws graduate knowledge and skills. The Council on Higher Education (CHE) 2018 review of the South African Bachelor of Law (LLB) degree¹¹ highlighted graduate attributes, noting

7 J Piaget 'Part I: Cognitive development in children: Piaget development and learning' (1964) *Journal Research in Science Teaching* 178-184. Although the article is based on cognitive development in children, it forms the basis of constructing knowledge. The author says on page 184 '[L]earning is possible if you base the more complex structure on simpler structures, that is when there is a natural relationship and development of structures...'; M Barak 'Problem-, project- and design-based learning: Their relationship to teaching science, technology and engineering in school' (2020) 2 *Journal of Problem Based Learning* 95-96.

8 KÉ Klare 'Legal culture and transformative constitutionalism' (1998) *South African Journal on Human Rights* 147-150.

9 Australian LLB standards statement (n 4).

10 Klare (n 8); G Quinot 'Transformative legal education' (2012) *South African Law Journal* 413; Modiri (n 1) 2-3; G Quinot & L Greenbaum 'The contours of a pedagogy of law in South Africa' (2015) *Stellenbosch Law Review* 29-30; L Greenbaum 'Legal education in South Africa: Harmonizing the aspirations of transformative constitutionalism with our educational legacy' (2016) *New York Law School Review* 464; J Klaaren 'South Africa: A profession in transformation' in RL Abel and others (eds) *Lawyers in the 21-st Century Societies: Vol 1* National Reports (2020) 544; R Maphosa & N Nhlapo 'Transformative legal education in the South African context' (2020) *Pretoria Student Law Review* 12-14.

11 CHE Report (2018) (n 2). The report produced as a consequence of a nationwide review of the Bachelor of Laws (LLB) degree. The Qualification Standard for the Bachelor of Laws (LLB Standards 2015) was developed in the period 2013

an important deficit in the legal education system was the fostering of critical thinking skills.¹² Other applied competencies listed in the Bachelor of Laws Qualification Standard (LLB Standards) was the problem-solving, the ability collaborate and awareness of social justice imperatives.¹³ The preamble of the LLB Standards document describes legal education as ‘public goods’ which needs to be responsive to the country’s economic and social needs. The standards highlight the need for graduates to be critical thinkers and enlightened citizens who will advance the cause of social justice.¹⁴ With reference to assessments, the LLB Standards require a variety of assessments that provide the opportunity for authentic problem-solving skills in real life work contexts or simulated teaching and learning activities.¹⁵

Similar to the South African review of qualifications and training, the United Kingdom’s 2013 Legal Education and Training Review (LETR) report identified outcomes which included problem solving skills, critical analysis, reflective learning, work-based learning competencies to either be deliberately included or imbedded in undergraduate and postgraduate qualifications as well as continuous professional development training curricular.¹⁶ Under the heading of evidencing competence, the report identified key attributes that translate into ‘thinking like a lawyer’. The capacity to appropriately problem-solve within particular situational complexities and to synthesise domain knowledge, possessing an understanding of operational context and parameters were highlighted. Reflecting on own knowledge and knowledge required to affectively

to 2015 and the national review of 17 public institutions commenced 2015 and concluded in November 2016. The CHE report highlighted graduate attributes noting the sharpest divide in the legal education system was the fostering of critical thinking skills.

12 CHE Report 2018 (n 2) 35.

13 Qualification Standard for the Bachelor of Laws Degree 2015 (LLB Standards 2015) 3-4. The LLB Standards 2015 describes a qualification standard as ‘a statement that indicates how the purpose of the qualification, and the level on the NQF at which it is awarded’ and the focus as ‘a standards statement is the relationship between the purpose of the qualification, the attributes of a graduate that manifest the purpose ...’

14 LLB Standards 2015 (n 13) 7, 9 & 11.

15 LLB Standards 2015 (n 13) 12-15.

16 LETR (n 5) The review was initiated by the Solicitors Regulation Authority, Bar Standards Board and ILEX Professional Standards (commissioning regulators) for the joint review of legal education and training requirements for individuals and entities delivering legal services. See p.67- Annex I.

solve problems was described as an element of professionalism along with resilience and social responsibility. The report further took note of the use of reflective practice in other disciplines as a 'habit of mind', reinforcing its relevance in professional training and professional practice. Of significance is the recognition that some attributes of professionalism which are regarded as the norm by regulators, did not lend themselves to assessment through conventional means.¹⁷

In what follows, the chapter will explore the common issues found in traditional teaching practices as a foreground to discussing the integration of two pedagogical approaches that contribute to the development of critical thinking, deep learning and knowledge retention. I will then look more closely at the South African context and how these integrated teaching approaches together with transformative legal education, may potentially contribute towards attaining of the graduate attributes envisioned by the Bachelor of Laws Standards.

3 Problematising traditional legal education

Traditional legal education does not lend itself to instilling a deeper understanding of the broader implications of the law, applying and even contesting it in specific and often complex contexts. These objectives cannot be achieved through standard examinations and memorising legal sources.¹⁸ The focus on the transmission of knowledge occurs at the expense of developing critical thinking and problem-solving skills.¹⁹ These skills are critical for practicing law, where complex issues are encountered in unpredictable contexts. The reports referred to in this chapter recognise a critical gap between theoretical knowledge and its practical application, which hinders students' ability to transition from academic study to actual legal practice.²⁰

17 LETR (n 5) ch 5 sec 4 132-152.

18 JB Biggs *Teaching for quality learning at University* (2003) 3. The author compares various assessments types and the extent to which deep learning is elicited in each instance.

19 PA Facione 'Critical thinking: A statement of expert consensus for purposes of educational assessment and instruction' (the Delphi report) (2011) University of Santa Clara. The report problematises the absence of curricula efforts to develop critical thinking, suggesting that this begin at the level of basic education. The report makes recommendations of critical thinking could be developed.

20 H McEwen 'Reflection in legal education – so what, now what? An academic's reflection on the benefits and challenges of implementing reflective practice in an

Law students often face disengagement or a lack of motivation, especially when education feels disconnected from the real world or when learning is perceived as rote memorisation rather than an exciting intellectual challenge.²¹

Law is increasingly interconnected with various other fields, including economics, sociology, politics, engineering, forensics, information technology, health sciences, natural sciences, criminology – many of these disciplines may converge to shape the way in which evidence for example is interpreted and defences formulated. However, traditional legal education may focus narrowly on doctrine and case law, often leaving students underprepared to navigate complex, interdisciplinary legal issues. Jacob describes siloed learning as ‘single disciplinary source’ education and argues that interdisciplinary approaches to education are crucial to meeting rapidly changing social and economic needs.²²

Law schools are criticised for not adequately preparing students for the realities of legal practice, including client interaction, legal ethics, and decision-making under pressure. Boud and Walker assert that the focus on theory and case analysis does not simulate the full complexity of professional legal practice.²³ Biggs laments this approach arguing that a graduation certificate is merely evidence of declaratory knowledge that remains untested by the unpredictable complexities of practice.²⁴ Sullivan commenting on various studies conducted by the Carnegie Foundation into professional programmes, notes that the research focused on the efficacy of formal university programmes in preparing graduates to

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- online law degree’ (2022) *Journal of the Australian Law Academic’s Association* 67.
- 21 DL Kirkpatrick & JD Kirkpatrick *Evaluating training programs: the four levels*. (2006) 40. The authors problematise disengagement as a reaction to learning content noting that interest, attention and motivation of participants has much to do with learning.
 - 22 WJ Jacob ‘Interdisciplinary trends in higher education’ (2015) *Palgrave Communications* 3.
 - 23 D Boud & D Walker ‘Promoting reflection in professional courses: The challenge of context’ (1998) *Studies in Higher Education* 191–206. The authors explore simulation as a value-add to professional courses. Aspects of apprenticeship that link to identity formation and the so-called ‘thinking like a lawyer’ also do not form part of law school curricula unless the student had the opportunity to attend practical legal training through a campus law clinic.
 - 24 J Biggs ‘What the student does: Teaching for enhanced learning’ (1999) *Higher Education Research & Development* 71. The author states that to practice a particular profession requires the ability to solves the problems that belong to that profession.

‘develop and bring together knowledge, skill, and moral purpose in ways that advance the aims of the several professions within a democratic society.’²⁵

4 Integrated pedagogical approaches explored

Problem based learning, reflective practice and their offshoots have great value in legal education and for achieving the aims of legal apprenticeship.²⁶ Much has been written on reflective practice already and alluded to in this chapter. The purpose here is to simply recap the dimensions of these pedagogical approaches without exploring the history or bio-technical aspects of the process of learning. I include in this discussion ‘critical reflection’ as well as ‘transformative legal education’, setting the stage for a later discussion on the possibilities for integrating various forms of reflective practice and problem-based learning.

4.1 Reflection

Typically and in the context of experiential learning, reflection is incorporated into assessment through reflective journals, reflective preassessments, and reflective post-assessments.²⁷ Moon defines reflection as purposeful mental processing (as opposed to nostalgic processing) connected to the resolution of a situational complexity the proportions of which are sometimes undefined.²⁸ Veine and others state that reflection cannot be disengaged from integrating theory and the competencies necessary for practice in any discipline.²⁹

Kolb’s cycle describes reflection as a combination of experience, perception, cognition and behaviour; an integrated perspective of learning as a conversion of abstract concepts into concrete action

25 WM Sullivan ‘After ten years: The Carnegie report and contemporary legal education’ (2018) *University of St. Thomas Law Journal* 333.

26 The Carnegie Report (n 3) 4.

27 S Veine and others ‘Reflection as a core student learning activity in higher education - Insights from nearly two decades of academic development’ (2019) *International Journal for Academic Development* 148.

28 JA Moon ‘Reflection in Higher Education Learning’ (2001) PDP Working Paper 4 LTSN Generic Centre.

29 Veine and others (n 27) 148.

followed by evaluation.^{30 31} Reflection therefore also involves situational evaluations, developing and altering perspectives as meaning is made and new knowledge constructed³² deliberately as an outcome of an assessment.³³

4.2 Problem-based learning (PBL)

Biggs describes PBL as learning through a carefully crafted sets of facts or simulations which cover the traditional curriculum content but the nature of the knowledge acquired is different.³⁴ Due to the way in which the knowledge was acquired, both high and acceptable achievers in the PBL context would have a sense of 'familiarity in practice' when what was once simulated becomes real, even though their range of ability to resolve the issue may differ.

As a form of inquiry-based learning, PBL is student centred and encourages critical thinking through collaborative investigation.³⁵ Barak outlines seven steps taken in problem-based learning inquiries which include students identifying what they already know, defining the issue, research and presenting a solution.³⁶ Similarly Grimes outlines a ten-step process which includes mind-mapping issues and developing themes for investigation.³⁷

30 DA Kolb *Experiential learning; experience as the source of learning and development* (1984) 27-30.

31 J Dewey *Experience and Education* (1938) 69.

32 Veine and others (n 27).

33 Biggs (n 18). The author refers to intentionally creating opportunity for reflection as an outcome of assessment and not a by-product. Reflection for Biggs is a consequence of constructive alignment.

34 Biggs (n 18). Knowledge is applied and the problem is solved. Students are assessed on how well they are able to solve the problem whilst simultaneously developing self-management and self-directed learning skills.

35 Mulholland 'Problem-based and inquiry-based learning: what is the difference?' Notes on teaching and learning (web blog) 30 September 2019, <https://sites.nd.edu/kaneb/2019/09/30/problem-based-and-inquiry-based-learning-whats-the-difference/> (accessed 30 January 2025).

36 Barak (n 9). The author is careful to emphasise the shortcomings of constructivist approaches to learning and asserts the importance of instructor guidance in the construction of knowledge.

37 RH Grimes 'Problem-based learning and legal education – a case study in integrated experiential study' (2015) *Revista de Docencia Universitaria (REDU)*.

4.3 Deep learning

Fullan and Langworthy describe 'new pedagogies' as 'powerful models of teaching and learning' which together with digital tools support deep learning.³⁸ It is premised on the unique powers of human enquiry and the core motivation to engage deeply in those things that make a difference.³⁹ Considered as innate, pedagogical approaches must stimulate what is already there. Deep learning is the consequence of the ability to integrate knowledge, to problem solve and think critically, qualities that are consistent with higher order thinking and higher order graduate competencies.⁴⁰

4.4 Critical reflection

Mezirow described critical reflection as revising prior assumptions that shape our world-view. Our perceptions and therefore expectations of the other are shaped by our world view or frame of reference.⁴¹ Since meaning making involves interpretation, reflective interpretation involves critical reflection. Retrospective interrogation as an expression of critical reflection may include two processes. The first being an internal interrogation of one's own perspectives with regards to the problem. The second involves an external interrogation regarding the legal position as impacted by policy, legal process and procedure, or the lack thereof and the socio-political factors that exacerbate and perpetuate the issue's existence.⁴² Critical reflection is inextricably linked to the critique of the social and the political which converge to create new and unique complexities.⁴³

38 M Fullan & M Langworthy 'A rich seam: How new pedagogies find deep learning' 2014, https://www.michaelfullan.ca/wp-content/uploads/2014/01/3897.Rich_Seam_web.pdf (accessed 12 June 2025).

39 Fullan and Langworthy (n 38) ii and 2.

40 C Weng, C Chen and X Ai 'A pedagogical study on promoting students' deep learning through design-based learning International' (2023) *Journal of Technology and Design Education* 1654.

41 Mezirow (n 6) 1-4.

42 Mezirow (n 6) 2, 4 and 5. Reflective action focuses on the substance as well as whether a presupposition as the basis of meaning making is capable of justification and involves perspective transformation to arrive at innovative resolutions based on new understandings of old issues.

43 O Susler & A Babacan 'Embedding critical reflection in legal education' (2021) *Law in Context* 13.

4.5 Transformative legal education

Quinot describes transformative legal education (TLE) as a theoretical framework within which law is taught in South Africa.⁴⁴ TLE as a pedagogical approach is a method for implementing a constitutionally-inspired curriculum and which contributes to learner agency as a graduate attribute. TLE cannot be discussed without discussing the basis for its existence, that is transformative constitutionalism and its imperatives. Klare's notion of transformative constitutionalism is described as a 'long-term large-scale project for reforming political and social institutions; shifting of power relations to create an egalitarian society based on mutual care, mutual respect, morality and respect for the rule of law'.⁴⁵ TLE encourages the learner and prospective legal practitioner to critically imagine society through a transformative constitutional lens, seeing the law for its transformative capacity.⁴⁶

Graduate agency is one of the desired attributes described by the CHE Report. Vandayar describes a transformative curriculum as one that enables critical consciousness, stirring awareness of social injustice and its causes. It enables the recognition of inequality and deprivation and weaponising the law to bring relief.⁴⁷ Achieving the objectives of transformative learning requires changing the ways that teachers teach and learners learn.⁴⁸

5 An overview of reflective practice and its variants in other jurisdictions

Leering in her seminal work on reflection has highlighted several benefits to the incorporation of this pedagogical approach,⁴⁹ identifying reflection

44 Quinot (n 10) 412.

45 Klare (n 8) 150.

46 A Kinners 'Re-defining the normative values underpinning South African legal education through transformative constitutional pedagogy: An excursion of iie bachelor's degree offerings' Unpublished conference proceedings. Paper presented at the 12 Annual Celebrate Research and Teaching and Learning Symposium, 2022.

47 S Vandayar 'Why decolonising the South African university curriculum will fail Teaching' (2019) Higher Education 2.

48 Vandayar (n 47) 4.

49 Leering (n 1) 49-89.

as a capacity builder for solving ‘wicked problems.’⁵⁰ Building on the work of pioneers in this field, Leering explores the benefits of reflective practice and reflective enquiry as a two-pronged capacitor of students and practitioners, equipping them as creative leaders able to develop constructive responses to new problems.⁵¹ Like any muscle, reflective competency increases over time, becoming a professional development tool leading to mastery. While laws schools’ experiential learning programmes have focused on creating practice ready students, Leering suggests that the twin focus of reflective practice and reflective inquiry converge to produce graduates who are also justice ready,⁵² concurring with others including Sullivan that reflection contributes to identity formation, self-development and self-sufficiency. Reflective inquiry, sharing attributes with critical reflection and critical enquiry, increases the aptitude for innovative reimagining of resolute approaches. This reimagining has been described as a ‘shift in professional consciousness to a new way of being and thinking’ for reforming legal culture and meeting the need for access to justice.⁵³ Therefore, reflective practice and reflective inquiry capacitate students and practitioners to challenge the *status quo*, disrupts entrenched mind-models by empowering them to question assumptions about how justice ought to manifest and whether existing legal frameworks promote or hamper access to justice. Leering describes these disruptive consequences of integrated reflection as providing students and practitioners with a ‘spectrum of strategies’ to improve and deepen knowledge gained.⁵⁴

50 (n 2) 3-5. The phrase originates in decision making theory where it is defined as having a level of complexity that is resistant to resolution. The characteristics of a wicked problem were incorporated in the Canadian Bar Council (2013) Reaching Equal Justice Report. (Canadian Bar Report 2013) 2. https://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf.

51 Leering (n 1) 76.

52 Leering (n 1) 54. The author adds the notion of ‘justice readiness’ as an additional apprenticeship to outcomes of the Carnegie Report as a practitioner attribute.

53 Access to civil & family justice: A roadmap for change report of the action committee on access to justice in civil and family matters canadian forum on civil justice 2013 Osgoode Hall Law School of York University (Canadian Roadmap for Change); Leering (n 1) 51.

54 Leering (n 1) 49-51.

5.1 Reflective practice promotes legal apprenticeship

The motivation for the incorporation of reflective practice as an assessment strategy in the law qualifications of the United States and Australia is discussed below. The recommendations of the Carnegie Report (2007) did not only impact the law schools of the United States but impacted Australian law schools through adoption by the Australian standards setting bodies into the Threshold Learning Outcomes for the Australian Bachelor of Laws degree.⁵⁵ I included the York Law School as an innovative outlier having gone what I believe much further than law schools in other jurisdictions.

5.2 American Bar Association law schools

The Carnegie Report argued that traditional legal education neglected practical skills, professional moral responsibility and identity formation.⁵⁶ Three key areas of legal training, which it calls the 'Three Apprenticeships' were identified, including an apprenticeship of identity where students are challenged in terms of professional values such as ethical obligation and a commitment to social justice.⁵⁷

One of the shortcomings highlighted in the Carnegie Report was the failure of law schools to engage the 'moral imagination' of law students as a key component of preparation for professional practice.⁵⁸

Balsam and others concur with Leering regarding the efficacy of reflection in experiential learning modules, which was incorporated into the curriculum as a result of the American Bar Association's (ABA) response to the Carnegie Report.⁵⁹ ABA affiliated law schools incorporated reflective practice into their curricula as means of supporting identity formation through experiential learning and professional ethical

55 Australian LLB standards statement (n 4). The consultation and development process included representatives from several jurisdictions including the United States. The report setting out the collaborate procedure for the development of the Threshold Learning Outcomes references to both the Carnegie Report and the American Bar Association (ABA), *Standards and Rules of Procedure for Approval of Law Schools* (2010-2011) in several other footnotes.

56 The Carnegie Report (n 3) 8; Australian Standards Statement (n 4) 11.

57 Sullivan (n 3) 335.

58 Carnegie report (n 3) 6.

59 Balsam and others 'Assessing law students as reflective practitioners' (2017) 62 *New York School of Law Review* 51; Leering (n 1) 58.

development.⁶⁰ Reflective journaling seems to be the most common application in ethics and clinical courses while Brooks has used reflective writing assignments in doctrinal courses like family law.⁶¹

5.3 Standards for Australian law schools

The formulation of the threshold learning objectives (TLOs) forming part of the standards underpinning the Australian Bachelor of Laws degree, was consultative and included ABA Standards as a source to inform curriculum development and reform.⁶² The TLOs represent graduate attributes, described as 'a demonstration through the application of a skill set as a result of learning'. Two of the six threshold learning objective prescribe reflective practice as the assessment strategy while a third TLO specifically requires the incorporation of critical thinking and requires students to engage in critical analysis.⁶³

5.4 Innovative application of problem-based learning at the York Law School

Whilst Australian and American universities tend to practice reflection in mostly clinical and ethics courses, the York Law School (YLS) approach to teaching law using PBL may best be described as full-blown.⁶⁴ Grimes describes the YLS approach as comprising of ten steps that are repeated, with students receiving up to 30 problems over a period of a year and at the conclusion of which, students would have covered the entire curriculum

60 ABA Standards And Rules Of Procedure For Approval Of Law Schools (ABA Standards) s 301(b) (2017) requiring schools to articulate institutional learning outcomes; s303(a)(3)(iv) which lists self-evaluation as an assessment strategy for experiential learning modules; s304(b)(ii) which lists self-evaluation as a requirement in the clinical law context; s304(c)(iii), (v) which requires self-evaluation and faculty-guided reflection as necessary elements for field-placement courses. Reflective practice is described as self-evaluation, requiring students to reflect on their experiences through journals, debriefings, and discussions, promoting self-awareness and growth as well as ethical decision making.

61 Balsam and others (n 59) 51. Evidence of application was unavailable at the time of writing this chapter.

62 Australian LLB standards statement (n 4) 12-13.

63 Susler & Babacan (n 43). TLOs 2 and 6 deal with ethical professional development and self-management respectively and prescribe reflection as an assessment strategy.

64 Grimes (n 37) 364. The York Law School (YLS) approach holds much potential for departing from traditional pedagogical approaches.

through a process of problem identification and the categorisation of various themes for investigation. The holistic approach adopted at YLS incorporates teaching the rules, competencies, attributes and attitudes in a way that they are interlinked rather than siloed, evidencing that it is possible to teach doctrine, skills and ethics in a single course rather than as three separate aims of legal education presented as separate streams.

The resolution of the problems is not the focus of this methodology but rather YLS's augmented approach to PBL challenges students to identify the learning outcomes embedded in the problems.⁶⁵

6 Integrating reflective practices to produce deep learning

In an exploration of the ways in which an integrative model produces deep learning, meeting the requirements of the LLB Standards, the objectives of transformative legal education as a form of transformative learning may be intertwined with problem based learning and critical reflective practice, to create a uniquely South African pedagogical approach.

When PBL and reflective practice are integrated, they create an environment that catalyses deep learning. Active engagement is encouraged through authentic assessment that draws the student into resolving complex real-world problems, drawing students into hopefully, a critical interrogation of theoretical knowledge. Through integrated reflective practice students evaluate various approaches to decision making and the assumptions that underpin them, simultaneously reflecting on their own actions in the process of finding a solution.

The combination of PBL and reflective practice creates an 'iterative learning loop'. After reflecting on one problem-solving experience, insights are applied to similar problems or new issues with the necessary changes as knowledge is transferred and reinforced in a continuous loop of interrogation, application and learning.

65 Grimes (n 37) 364-367.

6.1 A convergence of transformative learning, transformative legal education, reflective practice, problem-based learning and critical reflection

In expounding on transformative learning theory, Mezirow used an apt subtitle - 'a guide to transformative and emancipatory learning' to his work on critical reflection in adulthood.⁶⁶ Transformative learning theory focuses on how, through the iterative learning loop of reflection, a learner alters their frames of reference as they make meaning. Walker in her discussion of legal education's contribution towards epistemic justice says,

Society shapes the law and the law we hope, might shape society for the better in turn. [New] [l]egal traditions [such as transformative constitutionalism and transformative legal education]...therefore surely ought to secure for all citizens the prerequisites of a life worthy of human dignity.⁶⁷

As stated above, if TLE encourages the learner and prospective legal practitioners to critically imagine the law and society from a transformative constitutional perspective, then one can only imagine the impact that 'critical constitutional reflection' will achieve if learners begin to develop new ways of understanding themselves as agents of change, custodians of transformation as they critically reflect on the world around them. Quinot asserts that through transformative legal education, learners should be equipped with the ability to reason differently through notions of morality, politics and policy.⁶⁸ Walker describes a 'just curriculum' as one that enculturates 'public-good capabilities', invokes critical assessment of content, the legal system and contexts and empowers epistemic agency to achieve the 'constitutional dream.'⁶⁹ According to transformative learning theory, this process of iterative reflection leads to more 'profound' and long-term changes in learner perspectives.

The convergence of reflective practice, problem-based learning (PBL), and critical reflection in the context of transformative learning holds great possibilities for legal education as they intersect and support

66 Mezirow (n 6) 1.

67 M Walker 'Why lawyers and legal educators should care about (epistemic) justice' (2019) *International Journal of Clinical Legal Education* 5.

68 Quinot (n 10) 413.

69 Walker (n 67) 8.

the transformation of learning experiences, transformed learners and transformed social impact.

Reflecting on reforms in legal education across the jurisdictions referred to above, it is submitted that approach adopted by the York School of Law represents a paradigmatic shift in presenting legal education. Taking reflection beyond clinical and ethics courses to embrace the entire legal curriculum, the YLS model holds great potential for South African legal education as a pedagogical approach that has the potential to embed transformative thinking and social justice as a core objective.⁷⁰

7 Reflecting forward in new contexts for selfless outcomes: social awareness and social transformation

Self-awareness in measuring own knowledge and growth in understanding are outcomes reflected in the rubrics developed by Balsam and others.⁷¹

Gramsci's question '[h]ow can the present be welded to the future, so that while satisfying the urgent necessities we may work effectively to create and "anticipate" the other' is associated with the notion of prefiguration. Prefiguration speaks to organising for the future by manifesting in the present the future desired society.⁷²

Perhaps this is where Leering's suggestion that integrative reflection capacitates the solving of 'wicked problems' comes into play.⁷³ Wicked problems are those that are 'often interdependent or co-exist with other problems and there are multiple causal factors and go beyond the capacity of any one organisation to understand and respond to.'⁷⁴ The legacies of apartheid, intertwined by rapid urbanisation, unemployment, the lack of provision of basic services and the incapacity of local governments to meet basic socio-economic rights, etc are wicked problems for which law graduates must be equipped to provide innovative solutions.⁷⁵ Casey

70 University of York 'Problem based learning: York Law School' <https://www.york.ac.uk/teaching-innovation/case-studies/problem-based/> (accessed 12 June 2025).

71 Balsam and others (n 59) 70-71.

72 <https://dictionary.cambridge.org/dictionary/english/prefiguration>.

73 Leering (n 1) 49.

74 APSC's *Takling Wicked Problems* (n 50) 3.

75 I use the word legacies to emphasise the intersectionality of multiple evils: grand apartheid and its spatial consequences; education and employment discrimination and the mind-models it created; political paternalism, passivity and the consequential learnt helplessness; identity formation, mis- identity through

describes exploring the social context as one of the advanced levels of reflection, requiring the student to reflect on the broader socio-political environment and the historic and current structures that perpetuate their continued existence.⁷⁶ This is what McEwan calls questioning the facts and asking why the facts are the facts.⁷⁷

Thirty years after the advent of democracy, it is beyond contestation that South Africa is plagued by wicked problems. Justice Mahomed once said:

The South African Constitution . . . retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos, expressly articulated in the Constitution. The contrast between the past which it repudiates and the future to which it seeks to commit the nation is stark and dramatic.⁷⁸

Reflecting forward is described in various academic sources as ‘forward-looking reflection’; prospective reflection; future-oriented thinking; anticipatory reflection; and transformative learning.⁷⁹ While the notion of forward reflection usually refers to learning from one’s own experience or even projecting a personal growth plan, I am suggesting that the idea that underpins this notion has national value and application for transformation. Leering refers to a professional paradigmatic shift so as to generate a ‘reform culture’, in a legal sense for social impact that leads to addressing social justice needs.⁸⁰ This shift in consciousness requires students and practitioners to consider what the Carnegie Report describes as ‘the rich complexity of actual situations that involve full-dimensional people’ whilst keeping within purview the social consequences or ethical aspects of the case at hand.⁸¹ Justice Mahomed’s statement is an example of anticipatory reflection, using our history as

apartheid racial classification and its continuation; soul-injury and unmet political expectations.

76 T Casey 2014 ‘Reflective practice in legal education: the stages of reflection’ (2014) 20 *Clinical Law Review* 321.

77 McEwan (n 20) 67.

78 *S v Makwanyane and Another* 1995 (3) SA 391 (CC) para 262.

79 Kolb (n 30); Mezirow (n 6).

80 Leering (n 1) 51.

81 Carnegie Report (n 3) 6.

a type critical literacy through which to imagine and plan for the future envisioned by the preamble to the Constitution, 1996.

For example, Langa described transformative constitutionalism as the use of the constitution to transform society from one rooted in inequality and oppression to one based on human dignity, equality, and freedom.⁸² This explicitly involves reflecting on the injustices of apartheid to guide the application of the South African Bill of Rights amongst other possible measures, in addressing social inequalities. I say ‘among other things’ because wicked problems cannot be solely solved by legislative means and law graduates as potential policy makers need to creatively reflect and advocate for other means of changing social behaviour.⁸³

So instead of self-awareness, ‘forward reflection taking into account other contexts’ may involve critical reflection on the specific experience of a particular community, exploring evidence of the group’s particular marginalisation, systemic failure, structural discrimination and what justice will mean in their context.⁸⁴ Students and practitioners must be prepared to even challenge existing definitions of ‘the problem’ through critical reflection and be encouraged to redefine the issue in seeking innovative resolutions.⁸⁵ Balsam and others refer to this approach as perspective taking,⁸⁶ that is, observing and contextualising the circumstances that inform the client’s need for a remedy in a given situation. For example, in *Mahlangu* the court said that:

There is nothing foreign or alien about the concept of intersectional discrimination in our constitutional jurisprudence. It means nothing more than acknowledging that discrimination may impact on an individual in a multiplicity of ways based on their position in society and the structural dynamics at play.⁸⁷

The South African Constitution (1996) itself is a document of reflection, the preamble specifically speaking about the past and envisioning a future, building into its structure mechanisms designed to redress

82 P Langa ‘Transformative Constitutionalism’ (2006) *Stellenbosch Law Review* 351-352.

83 APSC’s Taking Wicked Problems (n 50) 4.

84 McEwen (n 20) 67.

85 Mezirow (n 6) 4.

86 Balsam and others (n 59) 62.

87 *Mahlangu v Minister of Labour* [2020] ZACC 24; 2021 (2) SA 54 (CC); 2021 (1) BCLR (CC) para 76.

historical injustices while setting the stage for a progressively evolving equitable future.⁸⁸

The idea of critical literacies as lenses through which to interrogate the past to create a better future cannot be limited to the works of the Paulo Freire's of this world.⁸⁹ Perhaps closer to home is our constitution and all that it envisages, as a lens through which students *begin* to forward reflect.⁹⁰ In so doing we expect students to reflect on the actions of others in order to shape their own future actions, shape policy and shape a future society. Going back to Walker's statement about society shaping law and law shaping society for a better, critical reflection has the potential to achieve these transformative goals.

7.1 The four-D model

I have noted above the conventional applications of reflective practice in legal studies. Reflection is also used in Street Law courses, requiring students to self-evaluate in relation to an aspect of the engagement, perspectives, personal engagement and lessons learned.⁹¹ In what follows, I suggest using integrative reflection in doctrinal courses, going beyond the its conventional application.

The 4-D model for integrated reflection or reflective problem-based learning, was developed as a teaching approach for a doctrinal course, offered at an advanced level. Students had past exposure with the content, having passed traditional written unseen examinations as a prerequisite, in order to qualify for the advanced course. The advanced course was designed to put theory into practice, focusing on procedural and drafting elements. However, much classroom time was spent on reteaching the content already covered in the 'basic' course, creating anxiety for lecturers and students about not having sufficient time to practice drafting skills.

88 1996 Constitution.

89 I wish to acknowledge Professor Joel Modiri for commenting on my chapter during the conceptualisation stage.

90 I first heard the phrase 'constitutional worship' in 2012 from Professor Pierre de Vos at an event hosted by the Kathrada Foundation. Prof Modiri reminded me of this phrase and provided a moment to once again pause and reflect on the fact that the Constitution 1996 is not a magic wand and should not be sold to our students as such. A similar word of caution came from Justice Tshiqi at the IIE Faculty of Law Transformative Constitutionalism Launch, 24 October 2024, that the constitution is not self-actualising.

91 Balsam and others (n 59) 71 provide a marking rubric for this type of reflection.

In an effort to deal with the perceived time constraints and content-heaviness of the module, I suggested that lecturers adopt the 4-D model. The Ds comprise of four elements: demonstrate, discuss, do, deliberate. The first two Ds required the lecturer to present the class with a set of facts relating to a hypothetical client. The lecturer will present her draft – whether a settlement agreement, parenting plan, post-adoption agreement, translating her client's requests in a divorce matter into a particulars of claim, etc. The class would be engaged in a discussion and analysis of the hypothetical 'disorientating dilemma', making meaning through reflection, constructing and reinforcing knowledge about the application of the relevant legislation, legal precedents having similar facts as well as the related procedural elements.⁹² As part of the engagement, justification for the approach adopted in drafting and how the law was interpreted as supported by case law are reflected upon. For the third D, students are given a different set of facts relating to the same aspect of law and are required either individually or in groups to draft the relevant agreement or pleading. The final D for 'deliberate' is another way of reflecting, requiring students to present their homework and to reflect on their approach to putting theory into practice. Both feedback from the class and the lecturer helped students 'reflect on action' and learn from their own practices.

The application of this model has several outcomes. Theory is applied and students are able to reflect on their own progress as well as learn from the mistakes and successes of their peers. The model promotes peer learning and lends itself to the constructivist approach as students collectively reflect and make meaning guided by their lecturer.⁹³ Collective reflection potentially creates an environment for developing other competencies.⁹⁴ The model promotes apprenticeship through integrated reflective practice in the following way:

- (a) Through problem analysis, the students' cognitive skills are honed. Students decide whether a legal issue exists, which sub-section of law is impacted, source of law and the proposed remedy.

92 Mezirow (n 6) 5 Where the author describes a disorientating dilemma as a catalyst or trigger event that precipitates perspective transformation.

93 Mezirow (n 6) 1 Meaning making results in learning, that is make sense of what one has experienced, the interpretations of the experience informing future decision making.

94 McEwen (n 20) 66-67.

- (b) Drafting forms part of the apprenticeship of practice and allows students to engage with the associated civil procedure, reflect on the law and apply it, meeting the requirement of authentic assessment.
- (c) Students are required to professionally draft legal documents, with the necessary court headings including fictitious practice names and addresses. Where the assessment includes a simulation, students must argue their client's position, substantiated by law. Authentic assessment promotes identity formation. Feedback on the simulation contributes to the learning loop, building confidence in the ability to draft, present, substantiate drafting choices by referring to precedent and appreciate criticism.
- (d) It is important for the lecturer to link what students have learnt back to the module's learning outcomes, indicating the how the expectations of the outcome have been achieved.

8 Conclusion

The evolution of legal education requires a paradigm shift from conventional teaching methods to a more dynamic, integrative-reflective and interdisciplinary approach that prepares students for the complexities of legal practice. The Four-D model presented in this chapter demonstrates how integrated pedagogical approaches can be practically implemented in doctrinal courses, meeting the challenge of balancing theory and practice. This model, combined with forward reflection using the constitution as a lens, provides a framework for developing graduates who are not only legally technically competent but also equipped to address the 'wicked problems' that characterise contemporary South African society. Legal education must rise to this challenge by equipping graduates with the tools, perspectives, and critical consciousness.