

CRITICAL LEGAL EDUCATION: A REMEDY FOR THE LEGACY OF COLONIAL LEGAL EDUCATION?

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Abstract

The call for decolonisation of legal education stems from the acknowledgement of the presence of retrogressive colonial approach to legal education. This approach includes a neutral and formal teaching that is blinded to ethical and social considerations. Law is a mirror of a country's moral, cultural and social values and yet South African legal education distances itself with all other considerations and insists on a Western, autonomous and functionalist approach to legal education. This results in the moulding of uncritical and thoughtless "modern lawyers" with no concern to ethics and justice. Decolonisation demands a critical legal education and the replacement of the colonial "Black letter" teaching for a therapeutic jurisprudence. Both of which demand an interdisciplinary approach to legal education that acknowledges the impact of legal education on politics, society and culture. Thus, this article uses Critical Legal Studies (CLS) to deconstruct the colonial legal education epistemology.

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1 Introduction

South African students have been desperate for the transformation of higher education. This was illustrated by the case of *Holtz v University of Cape Town* which saw the bold protests of students under the banner '#RhodesmustFall' and also revealed the need to address the colonial heritage in higher education.¹ This crisis reflects the presence of the legacy of colonial education, which also impacts on legal education. According to Iya, the system of legal education must 'ensure that the legacy of apartheid does not linger on into the twenty-first century.'²

In order to remove this legacy, there is a need to understand what it entails. The movement implicitly calls for the consideration of broader legal issues like the decolonisation of law, the concept of law and the status of indigenous systems of law in the post-independence legal system.³

This article argues that the current crisis in legal education stems from the essence of law itself and the culture of legal education prior to the constitutional dispensation. Decolonisation of legal education demands that law should be stripped of its rigid formalistic antics and welcome other disciplines and ideals. This can be achieved through critical legal education. Critical legal education comes in as a force that welcomes the inclusion of other disciplines in law. These are the disciplines which were not considered in law despite their relevance such as politics, sociology and others which are normally regarded as 'meta-legal'.⁴

The definition of decolonisation is unsettled. There are various definitions given to this dynamic concept.⁵ However, Max Price and Russell Ally noted that decolonisation is a concept that 'should certainly not be reduced to some naïve desire to return to a pristine, unblemished Africa before the arrival of the settlers.'⁶ This article acknowledges a more dynamic meaning of decolonisation in the legal context. As noted by Himonga and Diallo:

- 1 *Holtz v University of Cape Town* 2017 2 SA 485 (SCA) paras 1-12.
- 2 PF Iya 'The legal system and legal education in Southern Africa: Past influences and current challenges' (2001) 51 *Journal of Legal Education* 362.
- 3 C Himonga and F Diallo 'Decolonisation and teaching law in Africa with special reference to living customary law' (2017) 20 *Potchefstroom Electronic Law Journal* 2.
- 4 S Ratnapala *Jurisprudence* (2009) 217.
- 5 S Heleta 'Decolonisation of higher education: Dismantling epistemic violence and Eurocentrism in South Africa' (2016) 1 *Transformation in Higher Education* 5 <https://files.eric.ed.gov/fulltext/EJ1187109.pdf> (accessed 10 June 2019); M Sedutla 'The state of the profession discussed at LSSA AGM' (2017) 574 *De Rebus* 6.
- 6 M Price & R Alley 'Reflections on decolonising UCT' University of Cape Town Yearbook (2015) *A Year in Review* 23.

[U]nconditional indigenisation of law in which an anti-colonial discourse ... is advanced uncritically. Instead, we suggest that a more meaningful point of departure in the decolonisation of law is the defining of law from a “non-colonial” position and from alternative legal epistemologies. In this respect, decolonisation draws from different sources of law and normative agencies to promote the transformative potential of law in achieving more social and economic justice.⁷

Therefore, decolonisation of law is the shift from an uncritical teaching method to an unconditional indigenisation of law that welcomes social and cultural considerations. These considerations include ubuntu, morality and communalism. This article thus seeks to reflect that decolonisation includes a substantive look into the content and essence of law itself. It seeks to ensure that the law is more than just a paper-based institution. Decolonisation would ensure that the law takes into consideration the impact it has, on amongst others, society, politics, culture and community. On analysing the impact of law, it seeks to reshape legal education so that it can be a force to help transform the mind-set of scholars; the community and the legal field. Decolonisation in this case includes a process of stripping away the legacy of colonial legal education, as will be discussed below.

This article will reflect how Critical Legal Studies (CLS) may assist in deconstructing the epistemology of colonial legal education. CLS will reflect on the necessity of the fusion of African values, social and political consideration in legal education.

The contribution that this article makes is thus to bring together the principles of decolonisation, as articulated by Himonga and Diallo,⁸ with CLS. Firstly, the article starts off by discussing the legacy of colonial legal education. Secondly, the basic principles of CLS are critically evaluated and lastly, recommendations are put forward for deconstructing colonial legal education.

2 The legacy of colonial education

Post-apartheid South Africa is still firmly entrapped in the colonial heritage of the ‘black-letter-law’ approach to legal education. This approach disregards the wider range of other factors, for example, the historical and social context in which the law functions.⁹ Colonial legal education believes in the neutrality of law and subjects are not taught in a historical context, thus apartheid and colonialism are rarely mentioned. The lecturers educate students as if the subjects

7 Himonga & Diallo (n 3 above) 5.

8 As above.

9 J Modiri ‘The crisis in legal education’ (2014) 3 *Acta Academica* 6; see also CE Ares ‘Legal Education and the problem of the poor’ (1964) 17 *Journal on Legal Education* 307.

they teach are irrelevant to the demands of social justice. This stems from the positivist notion of law, which teaches that anything that is not within the confines of the text should not be considered in law.¹⁰ Legal positivism is the separation of law and morality. It is a jurisprudential tradition with its roots in England. Okator contends that legal positivism is not African as it is based on a foreign Anglo-Saxon jurisprudence. He states that:

[T]he legal systems and institutions we inherited from our colonial masters are not altogether alien to the African legal tradition. But some of the principles and concepts on which some specific legal practices are based are entirely alien to the traditional African legal experience. One such principle or concept which is widely held in Anglo-Saxon jurisprudence is legal positivism.¹¹

It is argued that there is a need to shift from this colonial principle to legal naturalism. Legal naturalism is the shared sense of sympathy and sameness with some of the ideals that are characteristic of African social life and philosophy of society. The justification for the shift consists in the fact that legal naturalism is 'in accord with the traditional African legal phenomena'.¹²

Legal positivists contend that there is a separation between morality (or other social values) and law.¹³ This perspective of law has found its way into legal education institutions. Legal educators separate legal education from all other relevant and influential considerations. It is considerations like morality, ubuntu and communalism that make up the bedrock of the African community. It is the social and cultural depravity in legal education that makes the law itself a foreigner to its own people. The rigidity of legal education thus creates closed-minded students who are uncritical and overly formalist. Hence, continuing the colonial trend of education which is not in synch with the current patterns of decolonisation.

As a result, contemporary legal education is still trapped in the legacies of a restrictive jurisprudence. This is the kind of jurisprudence that results in law being treated as an 'entomology of rules, a guidebook to technocratic legalism, [and] a science of what-legally-exists'.¹⁴ Modiri relying on Douzinas and Gearey explains that the isolation of law from morality is a result of the reduction of law to technical set of rules.¹⁵ These include the technicalisation of social conflict by private law rules; the belief in neutral, non-ideological problem-solving in the public law; the denial of law's imbrication with

10 A Marmor *Positive law and objective values* (2001) 49-70.

11 FU Okafor 'Legal positivism and the African legal tradition' (1984) 24 *International Philosophical Quarterly* 157.

12 Okafor (n 11 above) 157.

13 Ratnapala (n 4 above) 26.

14 Modiri (n 9 above) 4.

15 As above.

racism and sexism and its disconnection from the social reality.¹⁶ Hence, contributing to the current legal crisis.

The current profitability and marketability of law graduates and the call for graduates to adapt to private legal profession is symptomatic of the crisis in legal education.¹⁷ The legal profession and education is organised around a profit system that does little to manifest nor contribute to social and communal surroundings.¹⁸ A glance at the typical LLB curriculum illustrates this.¹⁹ At first year, there are modules like Introduction to South African Law, Computer Literacy, Legal Communications and Criminal Law. In second and third year there are Property Law, Business law and the Law of Contracts among others.²⁰ In the final year there are several elective modules, but the available offerings reflect the lawyer's predominant concern with problems of the management, regulation and disposition of material wealth.²¹ This creates a mental makeup in law students which is 'money-hungry', 'short-minded', unanalytical and critically starved.

Though there are a few legal educators that welcome a socio-legal approach, it is inserted as a complimentary approach to the dominant 'black-letter' traditional approach which position students as uncritical and passive consumers of legal information operating in a routine, fixed and mechanical fashion.²² The students are too occupied memorising for closed book tests to such an extent that they are deprived of the opportunity to think; analyse and appreciate the broad framework within which the law exists.²³ Unfortunately, it is these lawyers that become part of legal culture, which is formalistic and textbook conscious.²⁴ This is opposed to the advocated policy-oriented consequentialist approach.²⁵ This robs the community of its deserved transformative legal culture since the failure of law students to think critically has serious effects for active citizenship, for the proper enjoyment of rights and freedoms, for legal development and for indigenous knowledge production.²⁶

16 Modiri (n 9 above) 7.

17 Modiri (n 9 above) 2.

18 Ares (n 9 above) 307; see also GC Hazard 'Law school law and sociolegal research' (1974) 50 *Denver Law Journal* 404.

19 As above.

20 These examples are taken from the University of Limpopo LLB Curriculum.

21 Ares (n 9 above) 307.

22 Z Motala 'Legal education in South Africa: Moving beyond the couch-potato model towards a lawyering skills approach' (1996) 113 *South African Law Journal* 695.

23 J Modiri 'Transformation, tension and transgression: reflections on the culture and ideology of South African legal education' (2013) 24 *Stellenbosch Law Review* 462.

24 Modiri (n 23 above) 456.

25 See KE Klare 'Legal culture and transformative constitutionalism' (1998) 14 *South African Journal on Human Rights* 146-157.

26 Modiri (n 23 above) 462.

The functionalist approach to legal education distracts students from the wider, more involved potential of legal education. This is the approach which merely equips students to be competent lawyers. Law schools' study and teaching of law as a professional discipline strips law of its decolonised affluent potential to cross social and cultural borders.²⁷ Modiri notes that the cognitive objective of legal institutions is to enable students to develop a mindset of 'thinking like a lawyer'.²⁸ Thus, creating the figure known as the 'modern lawyer' as noted by Van der Walt.²⁹ Unfortunately, this modern lawyer maintains his paralysing faith in the rationality and coherence of legal knowledge in the face of contradictory political and moral changes. These modern lawyers are a humanised legacy of colonial education.

The functionalist approach assumes that the problems of the law are to be confronted from the situation of the active practitioner and within the severe time limits under which he must work.³⁰ Students are taught to approach legal problem from the eyes of a practising lawyer whose main role is 'making a reasonable and practical recommendation for taking immediate action to dispose of a problem'.³¹ This is reinforced by a statement made by deans in 1997 in which they stated that South African law should endeavour to 'ensure that students acquire skills appropriate to the practice of law and should strive to inculcate ethical values.'³² From the statement, it is deduced that the 'ethical values' refer to ethics of legal practice as per legislation. As opposed to the cultural and societal expectation of the respective community, such a detached mindset does nothing in the greater responsibility of law to achieve transformation. Hence, according to Iya, legal education should be 'directed towards the road leading to the satisfactory achievement of the underlying social values and needs that should be the driving force behind the reform'.³³

One of the most tragic consequences of the functionalist approach is that the predominant legal academics,³⁴ since the colonial era, have and continue to feed future lawyers with the same uncritical formalistic legal education. This creates a spiral, that is, a continuous

27 Hazard (n 18 above) 404.

28 Modiri (n 23 above) 460.

29 AJ Van der Walt 'Modernity, normality and meaning: The struggle between progress and stability and the politics of interpretation (Part 2)' (2000) 11 *Stellenbosch Law Review* 226-273; see also D Thies 'Rethinking legal education in hard times: The recession, practical legal education, and the new job market' (2010) 59 *Journal of Legal Education* 598-622.

30 Hazard (n 18 above) 407.

31 Hazard (n 18 above) 408.

32 Iya (n 2 above) 359.

33 PF Iya 'Reform of legal education in South Africa: Analysis of the new challenge of change' (1997) 31 *Law Teacher-International Journal of Legal Education* 311.

34 Iya (n 2 above) 361.

loop of legal education that only creates competent lawyers who are neither analytical nor societally aware of their potential.

Hence, the legacy of colonial education has been to cement the neutralist, apolitical and neutral application and education of law whereas legal education can never and should never be devoid of politics, culture or ideology. This is reflected by Modiri when he notes that:

[T]he work of traditional legal education ... to affirm and entrench these formalist, legalist and liberal understandings of law, thereby reducing law and rights discourse to the economical, instrumental and functional application of rules and enclosing reality into a set of fixed, self-evident axioms that prevent any possibility of questioning, resistance and transgression.³⁵

It is this legal mentality that hinders decolonisation and shuns the acknowledgement of African values and other societal norms. These are the values and norms which should be engraved in our law and legal education.

3 Critical legal studies

The critical legal studies movement has its roots in the anti-capitalistic and anti-liberal intellectual revolt that swept the Western world in the late 1960s and 1970s.³⁶ The movement flourished in the late 1970s to mid-1980s mainly in the United States but was a spent force in jurisprudence by the end of the 20th century.³⁷ CLS is discussed and often debated because of its role. CLS challenged the prevailing comfortable assumptions about law and compelled liberal legal theorists to examine, revise and redefine their view.³⁸ The movement undermines the central ideas of modern legal thought and thus put forward another conception of law.³⁹ The conception is one that implies a specific view of society and informs a practice of politics.⁴⁰

The main contention raised by CLS is that law as developed in liberal societies is oppressive.⁴¹ Thus according to CLS, law formalises oppression, makes it respectable and indoctrinates people to accept it. Thus, CLS defies liberalism. Liberalism is defined as the dominant ideology in the modern western world, an ideology that pervades our views of human nature and social life.⁴² Thus it is worth noting that

35 Modiri (n 23 above) 456.

36 Ratnapala *Jurisprudence* (2009) 217.

37 Ratnapala *Jurisprudence* (2009) 218.

38 As above.

39 U Roberto 'The critical legal studies movement' (1982) 96 *Harvard Law Review* 563.

40 As above.

41 Ratnapala (n 4 above) 217.

the Movement is one which contains a group of scholars that have political views ranging from disaffected liberalism to committed Marxism.⁴³ The CLS movement is placed within the leftist tendencies in modern legal thought and practice. CLS criticise formalism and objectivism of the law. The critique of objectivism of the law can be pressed through the interpretation of contemporary law and doctrine.⁴⁴ The basis of such is that the current content of public and private law fails to present a single, unequivocal version of democracy and the market.⁴⁵ It is thus submitted that a single, unequivocal version of democracy and the market is favourable.

3.1 Critical legal studies and the denial of the neutral value of law

It is very important to note that the CLS denies that law in liberal legal system is of neutral value.⁴⁶ For example, criminal laws concerning murder or rape cannot be described as value neutral as they enforce moral standards. Therefore, CLS disagree with the contention that law is value neutral. There are two kinds of laws which are recognised within our societies of which one contains rules and the other standards.⁴⁷ However, CLS scholar Kennedy, provides that apart from the two there are certain rules that can be mechanically applied, referring to them as 'formally realisable rules'.⁴⁸ The legal rule that one can be eligible to vote upon the attainment of the age of 18 is a form of formally realisable rules. Therefore, CLS are very right to question the value neutrality of law, as the neutrality value affords privileges to individuals autonomy over collectivism.⁴⁹ Thus law is used to facilitate class oppression.⁵⁰ The people in liberal societies are meant to believe that they are on equal footing with others as law is meant to apply to everyone. However, CLS provides that the laws are made to mask the relationship of equality.⁵¹

3.2 Critical legal studies and politics

The story of CLS is one of how the legal academy simultaneously tolerates and contains a radical political location.⁵² CLS is a political

42 AC Hutchinson *Critical legal studies* (1989) 516.

43 AC Hutchinson *Critical legal studies* (1989) 516.

44 Roberto (n 39 above) 570.

45 As above.

46 Ratnapala *Jurisprudence* (2009) 221.

47 As above.

48 As above.

49 Ratnapala (n 4 above) 222.

50 D Blichtz *et al Jurisprudence in African context* (2017) 110.

51 Blichtz *et al* (n 50 above) 111.

52 M Tushnet 'Critical legal studies: A political history' (1990) 100 *Yale Law Journal* 1517.

location for a group of people on the left who share the project of supporting and extending the domain of the left in the legal academy.⁵³ Thus it is worth noting that the most common proposition by CLS authors is that law is politics.⁵⁴ Treating CLS as a political location may illuminate the meaning of the claim about laws and politics in the sense that one might believe that legal intellectual positions are political too.⁵⁵ CLS does not only provide for a political location but also envisage social construction. The common theme among CLS scholars is the insight or rather belief that concepts and categories of law are socially constructed.⁵⁶

According to the CLS, judicial decisions are rarely fixed by what the legal text says thus providing for a great interpretive leeway.⁵⁷ Instead of the legal statute or rule being determinate in the sense that it clearly entails a single outcome, it is open to judges to interpret the law in a number of ways.⁵⁸ Thus, CLS as a movement firmly believes that judicial decisions are commonly constrained and influenced by extra-legal factors.⁵⁹ For example the judge's status as a comparatively wealthy member of society may lead the judge to avoid social conflict and favour status quo in his/her readings of law. Hence, there is the inevitable relationship between law and other disciplines of law like social and cultural factors.

Consequently, CLS could rightly serve as an instrument of relief to the crisis in legal education. Critical legal education provides that law schools need to acknowledge that various components of social, ecological, political prisms are essentially human constructs which provide the institutional and intellectual form of recess upon which change occurs.⁶⁰ Iya, relying on Kaburise, argued that 'notions of government, curriculum content, teaching and delivery mode require deconstruction to explicate the link between the broad social and political forces are contributing to construction of the new South Africa.'⁶¹ Law schools must accept their role as an authority's social force in the re-definition of problems associated with law and legal education. Therefore, CLS provide a solution. CLS central theme has been that legal decisions are essentially controversial.⁶² CLS encourage the consideration of alternatives to the legal structures,

53 As above

54 AC Hutchinson & P Monahan 'Law, politics and critical legal scholars: the unfolding drama of American legal thought' (1984) *Stanford Law Review* 206.

55 Tushnet (n 52 above) 111.

56 Ratnapala (n 4 above) 239.

57 Blichitz *et al* (n 50 above) 111.

58 D Kennedy 'Form and substance in private law adjudication' (1976) 89 *Harvard Law Review* 1685; see also S Motshweni 'The feminist agenda, a fall of hierarchal redress or an attempt to establishing an 'equal' society gone wrong: an internal critique to feminist theories' (2019) 13 *Pretoria Student Law Review* 219.

59 Blichitz *et al* (n 50 above) 111.

60 Iya (n 33 above) 314.

61 As above.

62 As above

thus, suggesting that legal studies must amalgamate politics, cultural and African values to ensure the transformative implementation of law.

Critical legal education has a strong commitment to social transformation especially in ways that would reverse the historically entrenched hierarchies of power and bring about new formations of community, democracy, politics and ethics.⁶³ Thus, transformation brings about a change in society from the imposition of colonisation to one which guarantees equality for all. It is this transformative nature that would be a catalyst for Africanisation of legal education.

Critical theories of law often self-consciously engage in multidisciplinary inquires as a form of resistance against the disciplinarity of law.⁶⁴ Therefore, one of the reasons why critical legal theorising about law is difficult to categorise with exactitude is the wide array of disciplines with which they emerge or interact. These disciplines include social sciences and psychology. It is the multi-disciplinary engagement that will serve to compliment the negative aspects of law.

It is worth noting that what is important for critical legal education is not so much the content and development of such theoretical traditions and perspectives but the method they employ.⁶⁵ This suggests that South African institutions can have the content, books and all other necessary equipment to learn and study but a wrong method of teaching. In other words, reliance on the black letter law may not achieve the much-needed change that would guarantee restorative justice.

It is these features of CLS that makes it the ideal instrument for the decolonisation of the colonial legal education for a more Africanised and inclusive legal education. Its interdisciplinary approach allows for the inclusion of African values and its commitment to transformation opens avenue for a more transformative legal education that transforms the community. The kind of communal transformation that is reflective of our African communal values.

CLS further contains that the law in the books is not the only law by which people live and not the only law that determines the structure of society. This is in sharp contrast to the positivist notion of law that has long been cemented in legal education. CLS firmly believes that the social rules of the societies that people live in should be included as part of their education.⁶⁶ This signifies that the rules

63 Modiri (n 23 above) 455.

64 Modiri (n 23 above) 455.

65 As above.

66 Ratnapala (n 4 above) 210.

contained in law books have proven to be ineffectual for the fact that social rules form a part of the identity of people and how they live. Accordingly, CLS firmly believes that institutions should not only focus on what the law provides in the books but should also consider the social rules of society. Thus, the legal order in institutions must adapt to social changes - which include African values.

CLS tries to make people conscious of the alienation and oppression claimed to be imposed by categories and modes of reasoning of liberal law and institutions,⁶⁷ a pointer to the need for attention to the language in use within institutions. The basis of such is that language can be a barrier towards understanding content or rather what is thought in institutions. Hence language must be meaningfully studied, and such can take place by giving the linguistic structure pride of place within the institutions.⁶⁸ It is worth noting that language in this context comprises speechwriting and signs. Thus, there is a serious call to deconstruct some parts of the textbooks in which the language used is one of barrier of understanding for the students. A typical example is evident in the incessant inclination to refer to Latin words in law. Such a language barrier fosters a culture of colonial legal education. Hence, CLS have become one of the most accepted elements in the pluralistic universe of legal scholarship. It is not a surprise that law faculties believe that it is a good thing to have at least one CLS advocate in the building.⁶⁹

4 Practical proposals for deconstructing colonial legal education

CLS have been used in many disciplines including the field of law. As Varnava and Webb suggest, legal education must move 'beyond a narrow construction of the curriculum to a wider consideration of the place and status of law in society'.⁷⁰ Yet, one of the challenges of teachers is to articulate through a syllabus which takes students beyond the boundaries of their own assumptions of law. These challenges may be dealt with through, for example, research-based learning and innovative assessments as opposed to the normal class in which students are mere spectators rather than participants. Research tutor or research-based learning, focusing on the need for teachers and students to be critical and reflective. It is such

67 Ratnapala (n 4 above) 227.

68 As above.

69 Tushnet (n 52 above) 1519.

70 T Varvana & J Webb 'Enhancing learning in legal education' in H Fry, S Ketteridge & S Marshall (eds) *A handbook for teaching and learning in higher education: Enhancing academic practice* 3rd ed (2009) 363.

development that gives students direct experience in research and increased motivation in learning and critical analysis.⁷¹

It is, however, noteworthy that the above methods are rarely used because of possible plagiarism and misunderstanding that professional bodies require patterns of assessment. Nonetheless, the challenge of teachers having to articulate the syllabus beyond the boundaries of their own assumptions may easily be addressed in that CLS ensure that the student understands the law through a personal and Africanised lens.

Modiri suggests the need to revisit the traditional methods such as street law.⁷² Street law, simply put, is law-related education. That is, legal education for non-law students. Street law is a program that provides a powerful reality check in terms of connecting law students with a community far from the confines of the law school classroom.⁷³ Street law exposes one to conditions of subordination in an environment that may foster the consciousness and qualities lost or undeveloped in law school. The primary objective of street law is to advance critical thinking and analysis of complex topics through the study of law and justice.⁷⁴ It also provides ‘the legal community with numerous opportunities for community involvement’.⁷⁵ Street law in legal education integrates law with social science. Such an integration results in critical legal studies that push law students beyond the carefully laid boundaries of law and stretch their intellectuality in a more productive social setting.

The value of legal education should not be indexed by how well it serves the needs and expectations of the legal profession and judiciary.⁷⁶ Legal education should be suited to legal, social and political transformation. Thus, what Modiri suggests is that legal education should keep up with current times as the society is one that changes.⁷⁷ Legal education should resultantly include African values such as ubuntu. The basis of such is that ubuntu begins with, and is rooted in, the actual experience of the people in the society.⁷⁸ Ubuntu is thus flexible and adaptable to changing circumstances of the society.⁷⁹ The inclusion of such values will inevitably influence the law.

71 Varvana & Webb (n 70 above) 371.

72 Modiri (n 23 above) 455.

73 EL MacDowell ‘Law on the street; legal narrative and the street law classroom’ (2008) 472 *Scholarly Works* 287.

74 KA Pinder ‘Street law – twenty-five years and counting’ (1998) 27 *Journal of Law and Education* 212.

75 Pinder (n 74 above) 212.

76 Hazard (n 18 above) 404-407.

77 Modiri (n 23 above) 472.

78 Blichitz *et al* (n 50 above) 33.

79 As above.

Another practical proposal for deconstructing colonial education is making a research report in law compulsory in all institutions of higher learning. The South African Law Deans Association (SALDA) had earlier noted a pattern of incompetency in numeracy, literacy and computer skills among graduates.⁸⁰ Research in law will foster a one-on-one interaction thus minimising laziness and a situation of just having to memorise the content of the book simply for test and examination purposes. It was noted above as one of the problems that students are too occupied memorising to the extent that they are deprived of the opportunity to think and analyse the broad framework of law. Research will foster critical thinking and analysis of law. Making research to be compulsory will also promote and encourage students to focus on scholarship beyond graduations thus filling the gap in legal academia.

As noted earlier, CLS deny the neutral value of law. Therefore, legal education should not be neutral. Every provision of law that empowers the woman who was once oppressed, for instance, should not be taught in a neutral impersonal way. Teaching law should stir opinions and be coloured with societal realities. Teachers should ensure that instead of a neutral view, students have an opinionated and cosmopolitan view of and about law.

Decolonisation, as noted earlier in this article, is the shift from an uncritical teaching method to an unconditional indigenisation of law that welcomes social and cultural considerations. CLS are the appropriate weapon for decolonisation since it opens the door for legal education to welcome social, moral and communal values within legal education. As noted earlier, CLS's denial of objectivism and neutrality launches a broad-minded and liberal teaching that acknowledges African values. The establishment of the National Consultative Forum sought to consider the transformation and democratisation of institutions to meet social values of the citizens.⁸¹ Therefore, critical legal education would serve as an instrument to achieve those social values since one of its features is commitment to transformation.

5 Conclusion

The legacy of colonial education is the spiral creation of a formalist and uncritical textbook approach that enslaves law students. Their loyalty to legalism and technicality makes them short-sighted and suppresses their transformative ability to view law in a wider framework. Such a narrow-minded view of law deprives the society of its needed restorative outcomes. CLS ensure that the tragedy of legal

80 Modiri (n 9 above) 2.

81 Iya (n 2 above) 310.

colonial education is nullified. Its restorative, cosmopolitan outlook and interdisciplinary approach promises to be a remedy for legal formalism that was inculcated by colonial legal education. If CLS is infused into legal education, it will enhance the incorporation of African values like ubuntu, communalism (through for example street law) and morality into the field of law. In that way, law may be able to attain transformative outcomes.