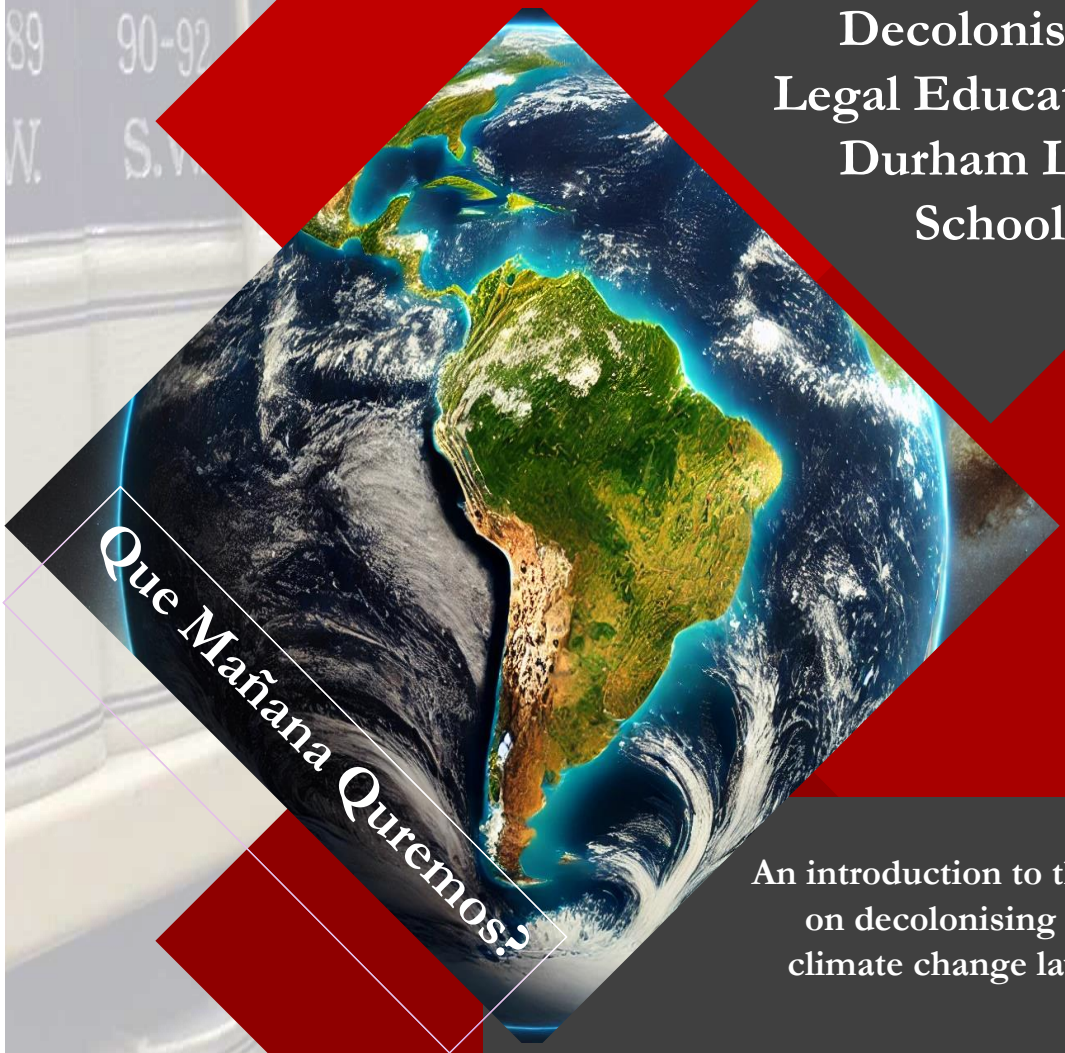
Decolonising Legal Education at Durham Law School



An introduction to the field and a starting guide on decolonising the teaching of land law, climate change law and policy, and EU law

Irene Wieczorek (Editor), Summer Ahmed, Chris Bevan, Nart Karacay, Morgan Lim, Petra Minnerop, Sandra Mogeni, Mohamed-Moshen-Aly, Astha Sanghavi, Kristiyan Stoyanov, Miranda (Qianyu) Wang, Malek Tamer-Mohamed-Moshen-Aly

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I. Introduction

Irene Wieczorek

> "*During my foundation year, we were asked to write an essay, and I found a very good idea I wanted to incorporate in a blog post by two authors from Hong Kong. However, I thought that if I quoted non-British authors this would have meant the source was less credible, so I took the idea and I attributed it to a paper written by British scholars. I got a very good grade on that essay*". Durham Law School UG student.[1]

> "*I enormously enjoyed preparing for my courses. After having finished compulsory and optional readings, I did some extra reading myself out of interest. I read something really interesting which provided an alternative perspective to what was being said in class. However, I did not feel comfortable bringing this up during my tutorial discussion, as I felt it would challenge too much what we were being taught*". Durham Law School UG student.[2]

> "*The module is not lacking in inclusivity. Please don't bring "decolonisation" or feminism anywhere near this module. In my 3 years at the law school, EU law is one of the few modules which didn't feature an obvious political or ideological bias in its teaching focus. If I had wanted to study sociology or politics, I would have done so*". Durham Law School UG Student.[3]

These three anonymous quotes are from Durham Law School Undergraduate students who had not been exposed to any debates on decolonisation, at least not within Durham Law School. They nonetheless are illustrative of a number of pre-conceptions on some of the aspects that the decolonisation literature addresses at length. These are the fact that that nationality of the authors influences the legitimacy of their ideas, that students should not overly challenge what is being taught to them, and that the law is a neutral concept immune from political forces. It appears that, although until recently there has not been a widespread institutional engagement with decolonisation debates within Durham Law School,[4] the underlying themes that these movements and literature address are already in the mind of our students and therefore deserve discussion and addressing.

This working paper on 'Decolonising Legal Education at Durham Law School' has a general **dissemination purpose**, with two specific objectives. The first is to **provide an introduction to the specialised literature on decolonisation of the higher education curricula, especially legal curricula,** to interested colleagues, and students, who are new to this. This is naturally without the ambition of portraying the authors of this working paper as experts of the ever-expanding decolonising literature - none of the authors' primary research field is colonial or post-colonial studies, Black studies, or Critical Race Theory - but simply by offering the understanding of the field we have at the moment based on the research we have carried out so far. The

[1] This information was shared confidentially with the authors of the paper.
[2] This information was shared confidentially with the authors of the paper.
[3] This was a reply given in an anonymous questionnaire circulated to students analysed in the Chapter "EU Law, Decolonisation and Brexit".
[4] This does not exclude individual efforts by members of staff in preparing their own modules.

document thus attempts to summarise the key and fundamental concepts in this field of study, and of students and staff activism, as understood by the authors of the paper. The second objective is to discuss some concrete steps on how a decolonised approach would play out in law modules. Three case studies were assessed within the scope of the project: Land Law, Climate Change Law and Policy, EU Constitutional Law and Introduction to EU Law.

The original input for this working paper came from three students' internships aimed at researching decolonisation themes which took place in 2021/2022, supported by Durham University with a contribution from Durham Law School. These internships fit within a broader Durham University decolonisation effort. In November 2020 **Durham University launched its Decolonising the Curriculum initiative** in conjunction with the **Student Union**. Each Faculty was asked to hold three events to progress the agenda, to appoint a student Faculty Intern lead, and to administer the distribution of three internships per Department from Term 3 of 20/21 to Term 2 of 21/22. The administration of said decolonisation internships has been confirmed for the academic year 22/23. **Decolonisation efforts** within the **Faculty of Social Sciences and Health** included a **survey of departments**, which showed that a considerable engagement already existed with decolonisation work. Examples included a significant number of modules that had been (re)configured with decolonising principles in mind (e.g. Anthropology), Departmental Working Groups (e.g. Sociology), mission statements (e.g. Archaeology), revised induction materials (e.g. SES), decolonising guidelines (e.g. Geography) and external funding for decolonising research (e.g. SGIA). A SWOT analysis was produced from the survey data to provide a useful means of capturing an overview of Departmental experiences to date. Secondly, a series of events (Workshop, Discussion Forum, Faculty Conference, University Conference) were held during 2021. **These events led to the co-production of a Faculty Framework for Decolonising the Curriculum**. Thirdly, the first internships started in the various departments in term 3 of 20/21. In June 2021 the **University Principles for Decolonisation document** was co-authored, including contributions from the Faculty of Social Sciences and Health and **agreed by Senate**. Finally, other ongoing University wide initiatives include a working group chaired by Geetanjali Gangoli (Sociology) that is currently developing a shared understanding of decolonisation within Durham. This will involve a series of focus groups with students and staff and will result in a report to be submitted to senate. A second working group is led by Sarah Elton (Archaeology) on the creation of an interdisciplinary module aimed at first years, entitled 'Decolonising Knowledge and Power'. Finally, decolonising work intersects with other University work, including the Respect Commission, the Race Equality Charter, and the Pro:NE project.

Durham Law School has hosted so far four **decolonisation internships**, which took place **from July 2021 until September 2022**. Three projects have been completed and the findings are included in this report, while one project is still ongoing.

Six students were hired for these internships, four with funding of the University two with funding of the Law School. This is the first time Durham Law School coordinated an institutional effort on decolonising the curriculum. However, as mentioned, academic staff members of Durham Law School have previously made significant

efforts in decolonising single modules and engaging with decolonisation in their own research.[5] The students involved include, in chronological order of completion of the internships, Summer Ahmed, Sandra Mogeni, hired as interns on the project "Decolonising and Diversifying Land Law – A Critical Analysis of Current Issues in the Modern Land Law Curriculum"; Astha Sanghavi, hired on the project “Decolonising Climate Law: towards a decolonised pedagogical approach to ‘Climate Law and Policy’ at Durham Law School”; Miranda Wang, and Malak Tamer-Mohamed-Moshen-Aly, employed on the project "EU Law, Decolonisation and Brexit", and Samara Sharaf on the project "Decolonisation and the use of textbooks in the teaching of International Law"; and Nart Karacay and Morgan Lim who were members of a student-led Durham Law School decolonisation network and contributed to the EU law project. Staff involved were, in alphabetical order, Chris Bevan, who supervised the internship on Land law, Petra Minnerop, who supervised the internship on Climate Change Law and Policy, and Irene Wieczorek, who supervised the internship on EU law, as well as Kristiyan Stoyanov who provided research assistance for the drafting of this working paper. Henry Jones is currently supervising the internship on Public International Law. All of these colleagues identify as white, two with British nationality and three with European backgrounds who have been educated in Europe. For context, it should be noted that two thirds of Durham Law School staff identify as white. All student interns, but two, hold a passport from a country in the Global South[6] and have been educated in the Global South for primary and secondary education. All but one, identify as having a racialised ethnicity. This working paper is the result of a collective effort of students and staff. Different chapters of the collective working paper were drafted by different authors, as indicated in the table of content above and in the relevant footnotes. The editing was curated by Irene Wieczorek. The authors of the working paper would also like to thank Aileen Editha for their very helpful comments on the piece. It should be stressed this working paper is only the result of the ideas and the research of its authors and does not represent the official position of Durham Law School.

The structure of this working paper includes an introductory section on the concept of decolonisation in higher education, and decolonisation of the legal curriculum, and three sections with recommendations on the decolonisation of the modules on Land Law, Climate Change Law and Policy, EU Constitutional Law and Introduction to EU Law. A final chapter includes a bibliography with the literature referred to in the working paper, and general key texts we thought it was important to highlight in the field of decolonisation scholarship, with some key references to Third World Approach to International Law (TWAIL), Fourth World Approach to International Law (FWAIL), and Critical Race Theory.

Before delving into the substance of the discussion, a conceptual premise is necessary. It should be stressed at the outset that the concept of decolonisation of higher education and the initiatives taken in this direction are contested, and a heterogeneity of viewpoints, approaches, political projects and normative concerns

[5] See for instance, H Jones and A O’Donoghue, 'History and self-reflection in the teaching of international law' (2022) 10(1) *London Review of International Law* 71.
[6] Intended here as excluding Europe, North America and Australia and New Zealand.

exist.[7] This has practical, epistemological, and narrative-related reasons. Firstly, the literature on decolonisation of higher education is extremely rich and constantly evolving. Institutional initiatives on decolonialisation are multiplying across higher education institutions globally.[8] This working paper does not claim to cover this wide field comprehensively. Rather, it focusses on providing selected material that was used for the research in the specific thematic areas of each project. Given the different fora, and the speed at which this field is developing, there are bound to be different visions which are in dialogue, but also in contrast, with one another. Secondly, decolonisation as an intellectual school of thought insists on taking differences seriously, and on positionality, namely acknowledging and taking responsibility for how one's standpoint, both from an academic (i.e. place of education, academic culture of provenance) and personal point of view (i.e. in terms of race, class, gender and privilege where present), can influence one's vision.[9] Given that seeking a plurality of perspectives is an inherent aim of the decolonising intellectual agenda and movement, striving for one universal definition of these terms and contours of the discipline and movement would not only be impractical but also conceptually problematic.[10] Lastly, such a rapid spread and popularisation of decolonisation movements have also brought some challenges as to understanding its core meaning. There is on the one hand a criticism that decolonisation has become a sort of a buzzword employed by academics to show a general commitment to social justice. This nonetheless risks of watering down the concept of decolonisation and to legitimise initiatives that are purely tokenistic under this label.[11] On the other hand, with their rising popularity, decolonisation movements have also fallen victim of the 'narrative control' problem. That is the narrative about the movement which has often been highjacked by media and opponents to the campaign whose voices were described as 'louder and wealthier' and which proceeded to significantly discard the campaigns, misconstruing a whole school of thought as a blank unjustified attack to free speech.[12] This means that there are a considerable number of misconceptions,

[7] G K Bhambra, D Gebrial, and K Nişancıoğlu, 'Introduction', in G K Bhambra, D Gebrial, and K Nişancıoğlu (Eds.) *Decolonising the University* (Pluto Press 2018) 1, 2 et ff.

[8] See the next section for a discussion of decolonisation movements in both former colonial metropolises, including European countries, and former colonies, example being mainly taken from African countries, though see for a discussion on decolonisation research on Mauritius, N S Boodia-Canoo, 'Researching colonialism and colonial legacies from a legal perspective' (2020) 54(4) *The Law Teacher* 517. When referring to European countries most of the literature in this paper will focus on Higher Education in the UK. However, see for further perspectives in other European Countries, such as the Netherlands and Germany see R Icaza and R Vazquez, Diversity or Decolonisation? Researching Diversity at the University of Amsterdam, in Bhambra, Gebrial, and Nişancıoğlu, *supra* n 7, 108, and K Aparna and O Kramsch, Asylum University: Re-situating Knowledge-exchange along Cross-border Positionalities, in Bhambra, Gebrial and Nişancıoğlu, *supra* n 7, 93.

[9] See the discussion on the actors of decolonisation in section II.

[10] See however post-colonial approaches that reject Eurocentrisim and seek some new universality F Fanon, *The Wretched of the Earth* (Grove Press 1963), A Cesaire, *Discourse on Colonialism* (NYU Press 2000), R D.G. Kelley, 'Black Study, Black Struggle, (2016) *Boston Review* 24 October, Available at: https://bostonreview.net/forum/robin-kelley-black-struggle-campus-protest/, cited in Bhambra, Gebrial and Nişancıoğlu, *supra* n 7.

[11] See the words of Joel Modiri's keynote speech as reported within F Adebisi, 'Decolonising the law school: presences, absences silences...and hope' (2020) 54(4) *The Law Teacher* 471, 471. See also the illustration of broader or stricter meanings of decolonisation in the discussion in the next section.

[12] On the problem of narrative control on decolonial movements see D Gebrial, Rhodes must fall: Oxford and Movement for Change, in Bhambra, Gebrial, and Nişancıoğlu, *supra* n 7, 19, 20. This aspect should

among the general public as well as among students and academics, on the need for, actual meaning, and implication of decolonisation initiatives. Moreover, the political dimension of the movement - in that it has at its core striving for a different worldview and social order - has also provided an easy excuse, for those on the opposite side of the political spectrum, to question the intellectual rigour and soundness of the relevant literature and intellectual dimension.

In light of all this, the paper strives to provide a comprehensive and intellectually rigorous account of the main different views existing in literature, demystifying a number of myths that surround it. However, for the reasons illustrated above it cannot obviously be exhaustive, and it is understood as a starting not an ending point.

One last terminological clarification is in order. In this working paper the terms 'BAME' (Black, Asian, and Minority Ethnic), 'BME' (Black and Minority Ethnic), 'BIPOC' (Black and Indigenous People of Color), 'non-white', 'People of Color', or 'racialised people' have been used interchangeably to indicate people belonging to various communities who do not identify as white and have been subject to domination or marginalisation by the hand of white communities (e.g. Black, or Asian communities); or if identifying as white, suffer nonetheless from marginalisation (e.g. White Gypsies, or Irish Travellers). Each of these terms can be found in the literature, but has also been criticized for not accurately portraying the communities they refer to.[13] The choice has nonetheless been made to adopt a non-coercive approach, even if this might affect stylistic consistency, and to leave freedom to the various co-authors of this working paper, some of whom do not identify as white, to use the term of preference.

not be confused with the health, and necessary contrast of academic views on the subject of decolonisation, to which this paper attempts to make at least partial justice, and which represent as in any other fields of research a critically enriching factor.

[13] For instance, BAME (Black, Asian and Ethnic Minorities) and BME (Black and Ethnic Minorities) can be criticized for considering different heritages together as if they were one; the reference to ethnic *minorities* fails to recognize that white ethnicity is in fact not the global majority; or the expression non-White has a white-centric undertone to the extent that it defines all the ethnicities with reference to the white one which thus maintains centrality. See Z Bunglawala, Please do not call me BAME or BME, available at: https://civilservice.blog.gov.uk/2019/07/08/please-dont-call-me-bame-or-bme/ . Accessed on 8th November 2022.

II. What do we mean by decolonisation of legal education in higher education?

Irene Wieczorek, Summer Ahmed, Sandra Mogeni, Astha Sanghavi, Kristiyan Stoyanov, Malak Tamer-Mohamed-Moshen-Aly[14]

This first chapter of this collective working paper discusses how its authors have understood and interpreted the literature on decolonisation of legal education in higher education institutions. It firstly focuses on the context in which initiatives of decolonisation of higher education are taking place situating them in broader decolonisation processes (A); it then discusses the specificities of decolonising higher education within a former colonising country, namely the United Kingdom ('UK') (B); and thirdly addresses what the implications are for decolonising *legal* education (C)

A. Situating decolonisation of higher education within broader decolonisation processes

Decolonisation understood in its thinner sense is the process through which formerly colonised states gained their independence from an international law point of view. [15] In this sense it is a process whose object are states/peoples, or as they are referred to 'political collectives'.[16] **Decolonisation in a thicker sense** is a process that relies on the understanding that the structural harm of colonialism did not amount solely to land grabbing, that is colonial powers' depriving indigenous population of sovereignty over the territories they inhabited, but had a broader political, normative and cultural implications. It relies on the assumption that also political structures, legal orders, culture, language and knowledge more generally have been colonised - meaning the coloniser law/culture/language has taken prominence over the indigenous one - and are therefore in need of decolonisation. And it would also target new forms of colonialism such as, what is defined as, economic neo-colonialism, which while not formally depriving countries in the Global South of their political sovereignty still keeps them in a position of economic dependence. [17] In this sense

[14] The final draft of this section has been written by Irene Wieczorek, based on earlier drafts by Summer Ahmed, Sandra Mogeni, Astha Sanghavi, Kristiyan Stoyanov, Qianyu Wang and Malak Tamer-Mohamed-Moshen-Aly. Background research has been carried out by all these authors.

[15] This formal understanding of decolonisation as equating to formal independence has among its most authoritative supporters T O Elias, *Africa and the Development of International Law*, V (Oceana Publications Inc. 1972). More recently, and with reference also to decolonisation in educational contexts, see E Tuck and K Wayne Yang, 'Decolonisation is not a metaphor' (2012) 1(1) *Decolonisation, Indigeneity, Education & Society* 1, who insists that decolonisation processes and initiatives, should only focus on the core issue of land grabbing and the consequent need for repatriation of indigenous land and life, as opposed to other broader social justice and racial issue, which appear reminding of the narrow understanding of decolonisation listed above.

[16] See however Achiume who argues that a regain of sovereignty and independence also passes through processes that interests individuals, and not just political collectives, such as migration, E Tenday Achiume, 'Migration as Decolonisation' (2019) 71 *Stanford Law Review* 1509.

[17] The works of Umozurike presents a more critical view of colonisation, and consequentially of decolonisation and is often contrasted to that of Elias, in that it looks at how colonialism but also, racism, and political economy (or neo-colonialism) continue to shape the contours of the international legal order, even post-independence. U O Umozurike, 'International Law and Colonialism in Africa: A Critique' (1970) 3 *East African Law Review* 46. Gathii offers a seminal discussion and contrast of both thin and thick understandings of decolonisation, in what he refers to as weak and strong streams of African international legal scholarship in J T Gathii, 'International Law and Eurocentricity' (1998) 9 *European Journal of International Law* 184. See also bringing nuance to this scholarship debate C Gevers, 'Literal "Decolonization". Re-Reading African International Legal Scholarship through the African novel, in J von Bernstorff and P Dann (Eds.) *The Battle for International Law: South-North Perspectives on the*

decolonisation is better understood as both an objective - formal independence - but also an ongoing process.[18] t should be noted that, some authors, supporting a thinner understanding of decolonisation as explained above, argue that in certain cases the term decolonization is misused within currents debates. They argue that decolonisation should be only used when referring to the practice of land reappropriation by indigenous population. If used outside this context, for instance when referring to decolonization of academia, the term is only used as 'metaphor'.[19]

Decolonisation processes in this thicker sense, occur in different formats, and might have different priorities depending on the site for decolonisation. For instance, it happens differently in former colonies, and in former colonial metropolis, e.g. European States.[20] One could distinguish between **decolonisation of structural elements** such as legal, domestic and international, norms concerning the regulation of citizens' life but also official languages for government administration, or education; and **decolonisation of knowledge and culture**, e.g. what is a widely-shared mentality, what epistemological theories, if western or indigenous, underpin the production and the hierarchisation of knowledge, or art, in higher education and general cultural and artistic life.[21] Shako distinguishes in this respect between decolonisation as political and cultural change.[22] The first - decolonisation of structural elements (or as a political change) - might naturally be more of a priority in former colonies where, for instance, former colonial norms need repealing.[23] It is worth noting thatthe school of thought referred to as Third World Approach to International Law, closely linked to decolonisation, which aims to unmask the colonial origins of international law and specifically advocates for a change in the law, was developed, at least originally, by African scholars.[24] To this, one can also add another emerging

Decolonisation Era (OUP 2019) 383, 385-390. Bhambra, Gebrial, and Nişancıoğlu's, *supra* n 7, 4, response to Tuck and Yang's (*supra*, n 15) argument in favour of a narrow understanding of decolonisation processes. They argue that the meaning of decolonisation should be complicated to extend these authors' political warning that decolonisation is not a metaphor but should expand to *all* the evils and legacies of colonialism, which go far beyond one specific articulation of the colonial project, namely dispossession of land.

[18] On decolonisation as process See K Boudreau Morris, 'Decolonizing Solidarity: Cultivating Relationships of Discomfort' (2017) 7 *Settler Colonial Studies* 456, 458.

[19] Tuck and Yang, *supra* n 15.

[20] The term is taken from Bhambra, Gebrial, and Nişancıoğlu, n 7, 5.

[21] For a key reference to decolonisation of knowledge see L Tuhiwai-Smith, *Decolonizing methodologies: research and indigenous peoples* (Zed Books 2021).

[22] F Shako, 'Decolonizing the Classroom: Towards Dismantling the Legacies of Colonialism & Incorporating TWAILinto the Teaching of International Law in Kenya', (2019) 3(1) *Journal of Conflict Management and Sustainable Development* 16, 23 et ff.

[23] Several examples of colonial legal legacies, whose repeal is in course, or debated at the moment, exist. One could mention the repeal of the Privy Council with the Caribbean Court of Justice, which is now faced with negotiating different indigenous and colonial legacies on key fundamental rights issues such as capital punishment. On this see, *M Burnham,* 'Caribbean Constitutions and the Death Penalty', in R Albert, D O'Brien, S Weathle, *The Oxford Handbook of Carribean Constitutions* (OUP 2020); or LGBT criminalising laws in India, see on a recent decriminalising judgement: A Setia, A Constitutionalism of Decolonisation: Thoughts on Navtej Johar v. Union of India, available at: https://blog-iacl-aidc.org/section-377-expanding-lgbt-rights-in-india/2018/9/12/a-constitutionalism-of-decolonization-thoughts-on-navtej-johar-v-union-of-india?rq=colonial . Accessed 8th of November 2022.

[24] The scholarship on TWAIL is extremely vast. Important names among many others are Buphinder Chimni, Anthony Anghie, Obiora Okafor, Vakusi Nesiah, Celestine Nyamu, Sylvia Tamale. A key resource summarising the existing scholarship is J T Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3 *Trade Law & Development* 26. See also

school of thought with similar characteristics, the Fourth World Approaches to International law, which has gained important traction especially in Asia.[25]

Decolonisation of higher education institutions, the object of this section, falls within the decolonisation agenda as understood in this thicker sense. The analysis starts from the understanding that colonialism has an historical association with academia, with which it established a mutually dependent relationship. Universities were among the most important sites where bodies of knowledge were developed to describe and regulate the indigenous 'other'.[26] In a formalised colonial setting universities in colonial metropolis would provide would-be colonial administrators with knowledge and legitimacy of colonialism, such as pseudo-scientific justifications of racial superiority and the need for civilising missions. Whereas in universities in colonised states, European forms of knowledge were spread as superior and local indigenous knowledge was suppressed.[27] In a post-colonial setting, most of these dynamics arguably remains both in former colonies and former colonial metropolis and need dismantling. Movements towards decolonisation of higher education have developed worldwide, admittedly with common, yet not overlapping aims. For instance, the priorities might vary, as understandably decolonisation of structural elements within universities (e.g. language of teaching, and structure of legal education) is more pressing in former colonies than it is in colonial metropolis where the campaign focussed primarily on decolonisation of culture/knowledge (what is taught and researched).[28] Among the various campaigns, one could mention the 'Rhodes Must Fall' campaign in South Africa, the campaigns against caste prejudice in Indian Universities, although more focussed on social hierarchies than race, or Georgetown University's 'Atonement for Slavery'.[29] These movements had strong resonance in the UK, where one could mention the 'Rhodes Must Fall' Oxford campaign, the UK National Union of Students' 'Why is curriculum so white?' campaign or the 'Liberate my degree' and other social justice campaigns including the Black & Asian Studies Association Campaigns and the Campaign for the Public University and Remaking the University.[30] The next section is devoted specifically to decolonisation

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for a general discussion and literature review on these topic B Fagbayibo, African Approach to International law, *Oxford Bibliographies Online*, available at: https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0225.xml . Accessed 8th of November 2022.

[25] H Fukurai, 'Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law' (2018) *5*(1) *Asian Journal of Law and Society* 221.

[26] Shako, *supra* n 22, 23 et ff.

[27] See S Biermann, 'Knowledge, Power and Decolonization: Implications for Non-Indigenous Scholars, Researchers and Educators,' (2011) 379 Counterpoints, - Indigenous Philosophies and Critical Education, 390, Shako, *supra* n 22, 23 et ff, and Bhambra, Gebrial, and Nişancıoğlu, *supra* n 7, 5.

[28] It was equally argued that unmasking the evil of colonialism and implementing decolonisation initiatives in universities within former colonies, which are still significantly racially segregated, could prove quite sensitive and traumatic and should therefore be carried out in a particularly sensitive manner. Boodia-Canoo, n 8, 527.

[29] See for a brief overview of these campaign and for more examples, Gebrial, n 12, 3, and specifically on students' movements in South Africa and its influence in UK universities, A Elliot Cooper, ' "Free Decolonised Education" - A Lesson from the South African Student Struggle', in J Arday, H Safia Mizra (Eds.), *Dismantling Race in Higher Education - Racism, Whiteness and Decolonising the Academy* (Palgrave 2018), 289.

[30] Gebrial, n 12, 3.

of higher education institutions within former colonial metropolis, that is European States, with a focus on the U K.

Understanding decolonisation of higher education in the UK

Decolonisation of higher education institutions should be understood as both **an intellectual and an activist movement aiming at re-conceptualising, but also radically changing different dimensions of higher education institutions**.

1. The **objective of decolonisation processes** can be defined as that of **tackling and eliminating legacies of colonialism which exist within our higher education institutions**. Colonialism here is broadly intended as also encompassing Eurocentrism (or Western centrism),[31] racism, and marginalisation in general of racialised communities and knowledge. This is why often decolonisation efforts are undertaken under the umbrella of Equity, Diversity and Inclusion policies and initiatives within universities.[32] Decolonisation scholars however insist firstly that, while maintaining an intersectional sensibility, decolonial efforts should focus on combating *racialised* marginalisation, and not just any social justice cause, so not to lose sight of the core of the struggle and to dilute it. And importantly, they stress that there is a difference between differentiating and decolonising. The aim of a 'differentiating' policy, be it on background and origins of staff and students, or on reading lists and knowledge production is to ensure diversity among the latter. A decolonisation policy goes deeper than that. It requires institutions to not only to embark on policies promoting diversity as a goal in itself, but also to engage in debates on why promotion of diversity and equality is important and necessary; why marginalisation of certain groups occurred in the first place; and to situate and link the university policies within the broader fight of tackling the root causes of racial marginalisation and the power dynamics that caused them.[33] Gebrial interestingly highlights that focussing only upon ensuring diversity, without tackling the root causes of marginalisation is reflective of an understanding of race as a characteristic pertaining to culture and identity, which deserves celebration. This approach, Gebrial however warns, focuses only on individual betterment for instance through means of admissions' widening participation tools, and increased representation. [34] She argues, this is grounded on the idea that the solution to social marginalisation is self-reliance and hard work, drawing on Gilroy's argument on the presence of a certain similarity between this type of Black nationalism and Thatcherite conservativism.[35] This vision is contrasted with the decolonisation one, which sees race as a politically relevant category, and thus sees individual betterment achieved by supporting individual students or staff members and thus increasing diversity as insufficient. What is necessary is a deeper reflection on the structural factors that erased diversity in the

[31] Eurocentrism has been defined as 'the conscious or unconscious process by which Europe and European cultural assumptions are constructed or assumed to be, the normal, the natural, or the universal', B Ashcroft, G Griffiths and Helen Tiffin, Post-Colonial Studies: The Key Concepts (Routledge 2000) 90.

[32] EDI is a term commonly used in the UK, hence its inclusion here. It should be noted that globally, the term EDII, which stands for Equity, Diversity, Inclusivity and *Indigeneity*, is also widespread. This is to indicate, and give more visibility to, decolonisation approaches, and initiative to recognize, preserve, and valorise indigeneity.

[33] On the difference between diversification and decolonisation see N Begum and R Saini, 'Decolonising the Curriculum', (2019) 17(2) *Political Studies Review* 196, 198 et ff and Icaza and Vázquez, *supra* n 8.

[34] Gebrial, *supra* n 12, 29.

[35] P Gilroy, 'The End of Anti-racism', (1990) 17(1) *Journal of Ethnic and Migration Studies* 71, 71.

first place, and to advocate for structural changes in society. And indeed, the 'Rhodes Must Fall' Campaign Oxford was so powerful, and thus incidentally received so much opposition, exactly because it pointed to institutional racism, a structural factor, which could not be dealt by 'bureaucratic, human resources channels which are normally reserved for grievances about race'.[36] Modiri similarly warns against considering decolonisation as a mere conceptual and rhetorical exercise of revising curricula, diversifying the professoriate and redesigning spaces, to make room for minority perspective, as opposed to a university which belongs to everybody.[37] Understooding that decolonisation is conceived as a more powerful movement than simply diversity-enhancement, the literature acknowledges the challenges that individual efforts face in operating within a socio-economic and political system which is in itself embedded within the forces that causes marginalisation. Universities in the UK are said to operate following a neoliberal agenda with capitalistic gains, where profit gain is a crucial objective, students are led to act, and actually treated as, consumers,[38] and quantitative metrics guide and shape research, teaching and citizenship and community' objectives.[39] These forces themselves cause marginalisation and makes it particularly challenging to implement a decolonial agenda within universities. The objective of decolonisation is thus portrayed as that of an incremental effort, both within universities and within society at large, for instance with initiatives aimed at decolonising not only universities but also the legal profession, which must go in tandem, but cannot obviously be achieved overnight. The underlying idea is that, empowering our students within universities while then leaving them to deal with an unfair society would naturally mean failing them.[40]

2. The **rationales for decolonisation processes** in higher education in the Global North[41] identified by the literature are multiple and do not always overlap with those for decolonising processes in formerly colonised countries. They all relate to the broader objective of building higher education institutions as a place for public good. There is naturally a **moral imperative to eradicate forms of discrimination and racism** in higher education institutions, as well as a duty of reparation for the evils of colonialism perpetrated by the countries, including the UK, these institutions are sited in. Secondly, there is an **intellectual imperative to provide the students with a critical understanding and multiplicity of views on the knowledge we impart to**

[36] Gebrial, *supra* n 12, 29.
[37] Joel Modiri's keynote speech as reported within F Adebisi, *supra* n 11, 473.
[38] See Joel Modiri's keynote speech as reported within F Adebisi, *supra* n 11, 472, N Cartwright & T.O. Cartwright '"Why is it my problem if they don't take part?" The (non)role of white academics in decolonising the law school ', (2020) 54(4) *The Law Teacher* 532, 535, and J Holmwood, 'Race and the Neoliberal University: Lessons from the Public University', in Bhambra, Gebrial, and Nişancıoğlu, *supra* n 7, 37, K Andrews, 'The Challenge for Black Studies in the Neoliberal University' in Bhambra, Gebrial, and Nişancıoğlu, *supra* n 7, 129.
[39] On the detrimental impact of an over-reliance on metrics in universities see A Memon & S Jivraj, 'Trust, courage and silence: carving out decolonial spaces in higher education through student–staff partnerships' (2020) 54(4) *The Law Teacher* 475, 478.
[40] On non-white graduate access to qualified professions see Y Li, Unequal Returns, Higher Education and Access to the Salariat by Ethnic Group in the UK, in Arday and Mizra, *supra* n 29, 103.
[41] The term is used to refer to countries who have a colonial past as coloniser as opposed to colonised countries. A synonym could be 'western world'. Both can be used for lack of a better term but it should be stressed that this is not necessarily accurate, as also in the Global North, including in Europe, there are countries that have, or still are enduring colonisation, where land was grabbed and indigenous culture erased and, such as for example Ireland, and Greenland as well as, although with a different history and 'outcome', the United States and Canada.

them. This point is elaborated further below when discussing the decolonisation of knowledge. Thirdly, decolonisation is arguably inherently tied to, and rendered even more necessary by, the internationalisation policies that universities are increasingly undertaking. Such policies are embraced both to offer our students and staff a more global perspective, but also, undeniably, for financial and ranking related reasons. This too, however, comes with some moral implications. It is submitted that the process of recruiting both staff and students globally comes with an **ethical imperative to offer to this global audience an academic culture and an education which is not only Euro-centric, but effectively global**. This includes an education that does not negate historical experiences which colleagues and students from outside Europe might have experienced differently than how the Eurocentric view would portray them.[42] An expression of this concept in very simple terms could be the following. It would be immoral, next to intellectually dishonest, to admit a significant numbers of international students from former British colonies who are charged a significantly higher fee that domestic students because this brings financial advantages to our universities, and then provide them with an education that portrays the British empire and its legal impositions as a progressive and positive undertaking.[43]

3. The **object of the decolonisation processes** (namely the different dimensions of higher education that need decolonisation) traditionally include:

i. Staff and student populations and university culture.

Decolonisation in this area refers to ensuring that staff and students make-up is ethnically diverse. Policies in this regard are normally pursued as part of widening participation efforts and efforts to increase representation in students' admissions,[44] as well as ensuring that EDI values are given due weight in staff hiring processes. The outcome of this process would indeed be a more diverse student and staff body[45] - with the virtuous effect that this can have in terms of representation and student mentoring[46]. However, as mentioned, decolonisation literature insists that diversity in

[42] For a discussion on internationalisation and decolonisation see A Last, Internationalisation and Interdisciplinarity: Sharing across Boundaries? in Bhambra, Gebrial, and Nişancıoğlu, *supra* n 7, 208.
[43] The example is not a randomly chosen one, as data from a 2014 A YouGov poll in 2014 found that the majority of respondents (59%) thought the British Empire should be something to be proud of, with approximately half believing that the colonised countries were left better off for being colonised by Britain. This data is presented and discussed in Begum and Saini, *supra* n 33, 199.
[44] For clarity, it should be specified that widening participations are normally understood as increasing students' admissions from low participation neighbourhoods, as a factor addressing discrimination on the basis of class, and socio-economic status in general. These policies are however often characterized by a high degree of intersectionality, in that addressing class discrimination often indirectly contributes to addressing racial discrimination, hence the relevance in mentioning them here.
[45] For a discussion on the significant under-representation of BAME staff and students, and of BAME mentors in UK academia see J Arday, 'Fighting the tide: Understanding the difficulties facing Black, Asian and Minority Ethnic (BAME) Doctoral Students' pursuing a career in Academia' (2021) 53(1) *Educational Philosophy and Theory* 972.
[46] Begum and Saini explain how lack of representation means that not only do students from marginalised communities lack inspiring models, but also that they would not receive the mentorship they need from persons that have the lived experience of the specific struggles and challenges they are experiencing. Begum and Saini, *supra* n 33, 197. On the need for mentoring to be an experience which encompasses not only the academic 'self', but also the personal 'self' in an intersectional manner (including, among others, one's gender, race, ethnicity, class and so forth), Memon and Jivraj, *supra* n 39, 482.

staff and students' population should not be pursued for its own sake. Increased diversity among staff and students should be legitimated on the basis of, and pursued following, a broader reflection and reconceptualization of the idea of meritocracy and, consequentially, of hiring and admission criteria. A traditional view of meritocracy would imply a colour-blind approach, which sees race as irrelevant, and inequality as the result of individual merit or collective cultural reasons that account for lower performance.[47] Decolonisation literature rejects this approach and postulates the need to contextualise meritocracy amidst privilege.[48] Practical examples include, for instance, giving weight during hiring processes to qualities candidates belonging to marginalised communities are more likely to have, such as resilience which they have accrued to acquire a place within academia, as opposed to the cultural and social capital that candidates from mainstream background carry with them;[49] or the widespread practice of contextual offers to students where grounded on the assumption that what is praised is the resilience and the result these students have achieved, *despite* their circumstances, rather than an exception to the holy criterion of blind meritocracy justified in light of a social justice/humanitarian cause. However, to prevent such diversity polices remaining tokenistic, and staff and students of colour remaining isolated and simply instrumentalised for marketing policies, there is also an insistence on working on the culture within the institution promoting anti-racist policies, creating a supportive environment where diversity is not only secured but also celebrated and valued, and colleagues receiveadequate support. [50]

ii. The knowledge which is produced and taught

A significant part of decolonisation literature focuses on how to decolonise the knowledge which is produced in universities, and imparted to students. The key tenet of this approach is to dismantle the idea that certain answers to epistemological questions - notably those produced by western white scholars - are privileged in education and research and elevated to objective truths. Colonisation of knowledge, or in other words a (Western/) Eurocentric approach to knowledge extends to both the *concepts* and *information* that constitute this knowledge, but also the *methodology* through which such knowledge is produced, and the theoretical categories through which it is evaluated. All these aspects are therefore in need of decolonisation.

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[47] For a contextual understanding of under-attainment of Ethnic Minority Students in UK Higher education: the Known Knowns and the Known Unknowns, in Arday and Mizra, *supra* n 39, 87.

[48] On the need to reconceptualise meritocracy see extensively Cartwright and Cartwright, *supra* n 38, 29.

[49] Begum and Saini, *supra* n 33, 198. On recruitment and promotion of non-white staff members more in generally see K Bhopal, H Brown, J Jackson, 'Should I stay or Should I go? BME Academics and the decision to leave UK Higher Education', in Arday and Mizra, *supra* n 29, 125.

[50] Memon and Jivrai, *supra* n 29, 478. On students of colour's experience within university and academia more specifically see J Arday, 'Understanding mental health: what are the issues for black and ethnic minority students at university?' (2018) *Social Sciences 7*(10) 196. A classic example of potential marginalisation and isolation within institutions where support is not provided and diversity is not celebrated, is the evidence that minority and Black (female) academics often receive harsher student evaluations than their white (male) counterparts, Inside Higher Ed (2018) Is Gender Bias an Intended Feature of Teaching Evaluations?
Available at: https://www.insidehighered.com/advice/2018/02/09/teaching-evaluations-are-often-used-confirm-worst-stereotypes-about-women-faculty. Accessed 8th of November 2022.

Linda Tuhiwai Smith explains well how the process of colonising and colonised knowledge has its roots in the enlightenment period and the rise of the modern state, where a system of ideas centred on the individual and its rationality developed: '[o]*nce it was accepted that humans had the capacity to reason and to attain this potential through education, through a systematic form of organizing knowledge, then it became possible to debate these ideas in rational and 'scientific' ways* [...]. *The production of knowledge* [and] *ideas about the nature of knowledge and the validity of specific forms of knowledge, become* [...] *commodities of colonial exploitation. Indigenous people were classified alongside the flora and the fauna;* [...] *Imperialism and colonialism are the specific formations through which the West came to 'see', to 'name' and to 'know' indigenous communities*. [However] *the objects of research do not have a voice and do not contribute to research or science. Thus, indigenous Asian, American, Pacific and African forms of knowledge, systems of classification, technologies and codes of social life, which began to be recorded in some detail by the seventeenth century; were regarded as 'new discoveries' by Western science. These discoveries were commodified as property belonging to the cultural archive and body of knowledge of the West'.* [51]

Cartwright & Cartwright summarises the outcome of this process of knowledge colonisation as follows: '*Rationality was privileged over the emotional. The written record was privileged over the oral tradition. Jurists took Eurocentric ideas of right and just and reframed them as universal human rights. Autonomy was elevated above relational concerns. Kantian deontology became the dominant ideology. History was written, and rewritten, by the victors, and according to critical race pedagogy state-run education became the way in which these perspectives became formalised and taught as "truth"*'.[52]

A decolonisation approach would reject this and advocate for a more relativistic approach, which contests the binary false vs truth dichotomy, leaves space for personal truths as legitimate truths, and welcomes experiential and emotional knowledge as legitimate knowledge. In this sense, it can be said decolonisation approaches would belong to critical theory,[53] which opposes the idea of objective truths and adopts ontological relativism and epistemological constructivism[54,] and is closely connected to disciplines such as Critical Race Theory or theories such as intersectionality.[55]

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[51] L Tuiwhai Smith, Decolonising Methodologies. Research and Indigenous People (University of Otago Press 1999) 59.

[52] Cartwright and Cartwright, *supra* n 38, 533.

[53] The term is used here as an umbrella term which refers to any theory in social science that is critical of the *status quo*. One can think of critical legal studies, but also critical sociology, critical psychology, critical pedagogy and many others.

[54] A closely connected discipline in which this approach has been further developed is Critical Race Theory which can be defined as a cross-disciplinary field where it is investigated how the law, social and political movements, or the media shape and are shaped by social conceptions of race and ethnicity.

[55] The term Critical Race Theory was coined by D Bell, Race, Racism and American Law (Aspen Publisher 1980). Among other authors see also *R Delgado, Critical race theory an introduction (NYU 2012, 2nd ed), M J Matsuda, C R Lawrence, III, Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment (Westview Press 1993). Working on critical race theory and its*

This principled position is implemented and declined in different ways depending on the discipline. History is probably the discipline where colonisation of knowledge, and consequent need for decolonisation is easier to grasp. For instance, an understanding of history as a positivistic subject, which only consists of revealing facts, has been labelled as a tool of coloniality to the extent that it effaces the power relations that underpin history production.[56] Classic examples of erasures or partial account of historical facts, which needs correcting by introducing a decolonial approach are the teaching of the industrial revolution without acknowledging its link with colonial trade; or the study of the Enlightenment as an exquisitely European phenomenon, without acknowledging the intellectual contributions of the Islamic translations (and therefore preservation) of Greek and Persian philosophical and scientific writings, or numerical systems originating in South Asia.[57] Interestingly, it was argued that the heated debate on the amendments of the national history curriculum reveals how much the shaping of the national CV is intertwined with national identity, and there is therefore significant subjectivity attached to it.[58] Moreover, a purely positivistic approach to history-telling would also imply that indigenous experience of the phenomenon of colonialism would risk being discarded if it is, for instance, reported through oral tradition and relying on personal accounts, or *rectius* personal truths, which escape traditional data collections methodologies.

Looking beyond history, in disciplines such as philosophy or political sciences which heavily rely on theoretical frameworks, a decolonised approach has been summarised as going beyond the so called 'dead white man' approach, referring to the need to differentiate the type of sources and frameworks from traditional male white authors.[59] Interesting examples of a decolonial approach also exist in the field of criminology. These centre around unpacking the concept of 'crime' and understanding it as a state-sponsored one, and therefore a relative one, susceptible of colonial influence, or in any case a concept whose definition is the product of specific power dynamics.[60] Decolonisation in the field of law comes with its own opportunities and challenges which will be discussed in the next section.

To conclude this part on the decolonisation of knowledge, it is important to debunk a recurrent misconception about the rationales and the concrete methodologies through

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relations with intersectionality see K Crenshaw, N Gotanda, G Peller, K Thomas, C West, (Eds.), Critical Race Theory: The Key Writings that formed the movement (The New Press 1981); P Williams, The Alchemy of Race and Rights (Harvard University Press 1991).

[56] Gebrial, *supra* n 12, 24.

[57] On the neglect in western universities of Islamic contributions to the development of the humanities in Europe see S Brentjes and R.G. Morrison, *The Sciences in Islamic Societies (750–1800) - The New Cambridge History of Islam* (Cambridge University Press 2010) 564–639, as quoted in Gebrial, *supra* n 12, 27, and I Panjwani 'The ignored heritage of Western law: the historical and contemporary role of Islamic law in shaping law schools' (2020) 54(4) The Law Teacher 562.

[58] Ibidem.

[59] For this expression see Begum and Saini, *supra* n 33, 198. On decolonisation in the field of philosophy see N Maldonado-Torres, R Vizcaíno, J Wallace and J E A We, 'Decolonising Philosophy', in Bhambra, Gebrial, and Nişancıoğlu, *supra* n 7, 6, 64, and on decolonisation in the field of sociology W J Richardson, 'Understanding Eurocentrism as a Structural Problem of Undone Science', in Bhambra, Gebrial, and Nişancıoğlu, *supra* n 7, 231.

[60] J.M. Moore, ' "Law", "order", "justice", "crime": disrupting key concepts in criminology through the study of colonial history' (2020) 54(4) *The Law Teacher* 489.

which decolonisation of knowledge should be implemented in our teaching. A key 'hot topic' is often that of **reading lists**. A first misconception is that a decolonisation approach implies erasing all white authors from reading lists in favour of non-white ones, following a judgement purely based on ethnic origin, in observance of a decolonisation agenda which is eminently political; and that this will, by default, lower the quality of research and teaching. This is a mischaracterisation of decolonisation approaches. Firstly, decolonisation approaches are very clear on advocating that white authors are not erased but *contextualised*, and that it is accepted and transmitted to students that their ubiquity is not necessarily the product of their superior work but rather of societal privilege.[61] Secondly, the inclusion of non-white authors *can* have as a first rationale that of diversifying reading lists to give space to authors that are marginalised because of their ethnic origin due to institutional racism within the discipline. After all, calls are often made to give more visibility to scholars that risk being marginalised, such as Early Career Researchers, as opposed to the traditional names in the field. This is to prevent the vicious circle whereby they never get on the 'citation ladder', and therefore can never establish themselves as 'traditional names'. A call to a more diverse reading list including authors of different ethnicity is not dissimilar from this; although naturally marginalisation in this case is not the result of career stage but institutional forces, as well as often a personal prejudice element.

Still, a decolonised approach goes deeper than that, as it is both a political but also an *intellectual* agenda or school of thought, and advocates inclusivity within reading lists also based on academic judgement. Such academic judgement, however, needs to be a critical one revaluating the categories through which what is *good* scholarship is assessed, in light of the intellectual and academic tenets of the decolonisation agenda. In very simple terms it asks to discard the assumption that knowledge which does not respect the traditional western patterns is inferior knowledge, and that its inclusion would necessarily be the result of an unfortunate compromise between academic rigour and inclusivity concerns. The inclusion of racialised and indigenous authors would thus afford the students the means and context by which to challenge such assumptions.

Naturally, doing the background research to introduce a decolonised approach in our teaching requires time and effort, as any updating of our reading lists and research-informed teaching - which lecturers should undertake to deliver high quality teaching - does. Because of this, a decolonised approach cannot be the result of an individual effort only but requires institutional support as better elaborated later on.

A second, mirroring, misconception is that it is sufficient to incorporate racialised authors in reading lists to decolonise the curriculum. As it is hopefully clear by now, diversifying the reading list might be a first step in the right direction. However, firstly one should note that diversification of authorship does not necessarily mean diversification of epistemological methods and frameworks. Racialised, and

[61] Begum and Saini, *supra* n 33, 200. See also Tracy-Lynn Humby, for a discussion on how decolonisation does not equate to Africanisation and erasure of any other source of knowledge. T-L Humby, 'Evaluating the value of TWAIL, environmental justice, and decolonization discourses as framing lenses for international environmental law' (2016) 26 *Transnational Law and Contemporary Problems* 317, 333.

indigenous, authors, whose inclusion can be justified both on ethical and intellectual reasons, can obviously embrace both western and non-western perspectives, and might have received a western education themselves. Secondly, mere diversification without engaging in meaningful discussion on divergences of epistemological perspectives risks remaining tokenistic.[62] For example, Subedi sees the simple inclusion of diversified materials into the reading list as an 'accommodation' approach.[63] This offers little to no space for self-reflection, nor any nuanced and critical interaction with marginalized perspectives, which would allow students to dismantle their assumptions and reconstruct them. As such, a 'diversification only' approach, even if guided by uncritical notions of empathy fails to achieve any more than surface change since it does not question the broader social context in which knowledge is produced and legitimised. Indeed, the best outcome for such an approach would be the inclusion of a certain category of authors within the very systems which have traditionally precluded them. This might even see this approach burdened by, and unconsciously playing into, the same misconceptions and stereotypes which would be advocated for in an explicitly colonial approach. This is because a lack of critical engagement would leave the marginalized perspectives still 'otherised' as merely supplementary to the learning process, rejecting their potential as instruments of contextualisation, or otherwise 'homogenised' wherein they would be seen as accounting for the full non-white experience. It is only when students continually practice engaging with, and recognizing the value in, marginalised perspectives that they are able to break down colonial binaries and embrace new and transformative understandings of the world.

iii. Educational '*spaces*' and staff-student relations.

The objective of decolonisation of *spaces* can be interpreted in both a literal and metaphorical sense.[64] One of the most vibrant students protest in the UK, Rhodes Must Fall Oxford, centred around the presence of a coloniser statue in an educational space. While the demands of the campaign naturally went beyond the simple removal of the statute,[65] the removal itself can be interpreted as referring to decolonisation of spaces in a literal sense.[66] Yet, decolonisation literature also calls for a reconceptualisation of educational spaces intended as relational spaces where staff and students interact.[67] In practical terms a key feature of decolonisation of spaces are staff-students partnership in the co-production of knowledge. The need for such cooperation is grounded on a critical reading of the hierarchical relation between lecturers and students. The two categories naturally have different roles in educational

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[62] See the discussion above on the differences between decolonisation and differentiation in subsection II.B(1).
[63] B Subedi, 'Decolonizing the Curriculum for Global Perspectives' (2013) 63(6) *Educational Theory* 621, 629.
[64] This debate should not be confused with that on the understanding of decolonisation as a factual process of land re-appropriation or a metaphor addressed above.
[65] On this see Gebrial, *supra* n 12, extensively.
[66] On decolonising physical spaces named after historical figures who were complicit with colonial violence and slavery see A Misra, "Decolonising the Canon of Keynes" (2020) in D S.P. Thomas and S Jivraj (eds), *Towards Decolonising the University: A Kaleidosope for Empowerd Action* (Oxford: Counterpress 2020).
[67] Memon and Jivraj, *supra* n 39.

space, namely that of teacher and learner. This necessarily introduces a hierarchical element in the relation. Such hierarchical structure should however not be overemphasised, namely it should not become a vehicle for students' marginalisation. Echoing Rousseau's rejection of the *tabula rasa* model, Paulo Freire, leading figure of critical pedagogy voiced strong criticism against the 'banking' model for education, in which students are viewed as empty accounts to be filled by teachers. This model "transforms students into receiving objects [and] attempts to control thinking and action, lead[ing] men and women to adjust to the world, inhibit[ing] their creative power."[68] Further, it creates an echo-chamber for pre-existing, prevailing ideology, the rigid parameters of which students have no choice but to mould their perspectives to fit into.

Building on this key tenet of critical pedagogy, one can stress the detrimental impact a highly hierarchised classroom can have on students in marginalising them. Such a pedagogical space, where students' participation and students' interaction with lecturers is not encouraged can have a *particularly* detrimental impact on groups of students who are already marginalised in light of their race or ethnic origin and consequentially already feel discouraged from engaging. Such marginalisation is then further amplified when the knowledge taught in these classes, which students are not encouraged to read critically, is a western centric one. This can contribute to the documented 'BAME attainment Gap'.

In his seminal book ‘Decolonising the Mind’, Ngugi Wa Thiongo focuses on how colonialism impacted the identity of Africans by leading to a preference for colonial languages, and literature, over native ones, creating an innate sense of inferiority. This is because ‘the location [of literature] was necessarily Europe and its history and culture and the rest of the universe was seen from that centre’.[69] In a similar manner, centring a reading list around one predominant group can create an othering effect to the groups that are not automatically included. The danger of this othering appears in the performance of BAME students. The link between the white majority curriculum and the sense of discontentment from BAME students which manifests in the proven, so-called, BAME attainment gap. The ‘Kaleidoscope’ study, carried out at Kent University, which focused on the views of BAME students on decolonisation, noted the majority white male curriculum acted as a barrier which made it more difficult to relate to the material.[70] Consistent with this, making active efforts to decolonise the curriculum at Kingston University led to ‘large decrease in the BAME attainment gap’[71]which was then be attributed to a sense of alienation from particular topics of study or dynamics in the classroom.

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[68] P Freire, *Pedagogy of the Oppressed* (English edition trans. by R M Bergman tr, Herder and Herder 1971), 64.

[69] O Ngugi Wa Thiong’ O, ‘Decolonising the Mind: The Politics of Language in African Literature (London, James Currey, Nairobi, Heinemann Kenya, Portsmouth, N H Heinemann, Harare, Zimbawe Publishing House 1986) 18.

[70] Decolonising the Curriculum Project: Through the Kaleidoscope, Kent Decolonising the Curriculum Collective, 2018-2019.

[71] K Haxton, N Williams, C Garaway, A Kiminguyi (an interview with), ‘Decolonisation of the curriculum – a conversation’ (26 May 2020) https://sdf.ac.uk/6985/decolonisation-of-the-curriculum-a-conversation accessed 29/10/22. Accessed 8th of November 2022.

It is on these bases that calls are made to 'democratize the classroom' and to use staff-students partnership in the creation of knowledge.[72] That is, when this is compatible with pedagogical needs and objectives, a classroom should be a space where students should be empowered and encouraged to act not only as knowledge *receivers* in a passive learning environment, but also knowledge creators in an active learning environment. Such spaces should be built on mutual respect and trust between staff and students, create an individualised relationship where possible, and overall give students a sense of dignity, which an educational experience governed by metrics risks of taking away.[73] This approach should ideally ultimately lead to an empowering of students especially marginalised ones.

Examples of students' involvement are that of leaving a space for students to complement the reading lists with literature they find interesting and relevant to the topic.[74] Other initiatives include training students in knowledge acquisition through focus, and discussion, groups.[75] The internships sponsored by Durham Faculty of Health and Social Science can be considered another example of effective staff-students partnership. They allowed meaningful students involvement and partnership while maintaining an element of staff supervision to guarantee alignment with educational objectives and guide the selection of literature review. This enabled students to produce material that could actually be used in class ideally providing them with a sense of accomplishment and empowerment.

4. The actors of decolonisation

Once it is understood that decolonisation should be a sector-wide process which informs all dimensions of higher education institutions' structure and functioning, it is necessary to reflect on the 'ethics' of the process.[76]

Firstly, decolonisation literature insists that the first object of decolonisation should be ourselves.[77] This means that the first step is for staff and students to acknowledge that we all hold colonial pre-conceptions, that is pre-conceptions that are premised upon, among others, the idea that the legitimacy and academic quality of sources depends on authors' racial and ethnic background, as well as nationality. For lecturers this means in particular acknowledging that when carrying out research and drafting reading lists, we make choices that are not neutral, or solely academically based,[78] but are the result of the educational system and the society we have lived in.[79] It was argued that even critical thinkers *par excellence* such as Michel Foucault and Gillez Deleuze are guilty of embedding a Western perspective in their thinking.[80] Effective

[72] Memon and Jivraj, *supra* n 39, 481.
[73] *Ibidem.*
[74] S Rigney, 'Creating the law school as a meeting place for epistemologies: decolonising the teaching of jurisprudence and human rights', (2020) 54(4) *The Law Teacher* 503, 514.
[75] Memon and Jivraj, *supra* n 39, 476.
[76] The expression is from Memon and Jivraj, *supra* n 39, 488.
[77] Cartwright and Cartwright, *supra* n 38, 541, Rigney, *supra* n 74, 506, see also Gevers, *supra* n 17, 390 discussing the use of language as a personal decolonial choice.
[78] 'Academic' is here intended in a neutral, decolonised way. See the discussion on how 'academic' should be understood under B(3)ii 'the knowledge which is produced and taught'.
[79] Cartwright and Cartwright, *supra* n 38, 538.
[80] G C Spivak, 'Can the Subaltern Speak?' in P Williams and L Chrisman (eds.) *Colonial Discourse and Post-Colonial Theory: A Reader* (Columbia University Press 1994).

decolonisation initiatives can only start on the basis of such honest acknowledgement, followed by a willingness for self-reflection and growth. It is also discussed whether researchers' or authors' positionality should be provided, namely if authors should disclose their academic, cultural, social, and political background in their writing.[81]

Secondly, a debate exists on who should be the actors of decolonisation, white staff and students, or racialised staff and students. Such a debate is naturally relevant to those countries which are multi-racial. This can be the case for former colonies (e.g. South Africa), and former colonial metropolis (e.g. the UK). One part of the literature illustrates, and criticises, how the burden of decolonisation initiatives often falls on racialised staff and students due to their personal involvement in the matter. This comes with workload increases, as well as the emotional labour of having to deal with sensible, personal and possibly traumatising topics, in some cases reviving the trauma in having to discuss the micro-aggression one has been subject to; and having to fight the backlash that these type of initiatives receive due to a negative narrative that exists around them.[82] This can have detrimental effects on their mental health and wellbeing.[83] It is highlighted that racialised citizens of western countries, in particular Black British staff and students, find themselves in a particularly vulnerable, limbo-like, position. They are likely to face marginalisation within their home and pressured to adopt an African identity which they do not feel close to,[84] in order to develop a sense of belonging, or are inappropriately type casted in such African identity which they themself do not feel as theirs. In light of this, white colleagues should take a wider role in these processes. At the same time, it is held white colleagues should not 'occupy the field' and speak on behalf of people of colour, which carries the risk of acting as 'white saviours'.[85] A compromise position has been summarised as that of white staff and students working within institutions being responsible to create a space where people can choose whether to engage or not with decolonisation,[86] and importantly creating the conditions for racialised people to lead the change if and when they want to.[87] A way not to 'occupy the field' for white persons is that of working primarily within their, white, communities as spaces to discuss how to best act as allies. Such 'groundwork' can include, for instance, creating supporting documents or reading lists but also fighting the backlash decolonisation

[81] For a discussion, and a critical reading of the relation between authorship and cultural and educational background see Boodia-Canoo, *supra* n 8, 522, and the works of Linda Alcoff, there quoted, and different examples of how acknowledging ones' perspective with reference to the works of Spivak, Chakrabarty, and Zachariah.

[82] On the experience of academics of colour teaching about race in a racist and racialised context, see A Johnson and R Joseph Salisbury, 'Are you supposed to be in here? Racial microaggressions and Knowledge Production in Higher Education, in Arday and Mizra, *supra* n 29, 143.

[83] J Arday, No one can see me cry: understanding mental health issues for Black and minority ethnic staff in higher education, (2022) 83 *Higher Education* 79.

[84] Cartwright and Cartwright, *supra* n 38, 536.

[85] On white staff teaching about race, M Hobson, S Whigman, White Privilege, Empathy and Alterity in Higher Education—Teaching About Race and Racism in the Sociology of PE and Sport, in Arday and Mizra, *supra* n 29, 195, on the challenges and problematic dimension of settlers engaging with decolonisation and teaching indigenous law see all the literature quoted in Rigney, *supra* n 74, at fn. 3.

[86] Menon and Jivai, *supra* n 39, 484.

[87] Cartwright and Cartwright, *supra* n 38, 545.

initiatives face with the annexed emotional burden, that incidentally is less onerous on white people than on racialised people.

Having said all this, it was disclosed at the beginning of the paper that the internships which provided the ground research for this working paper stem from a collaboration between white staff and predominantly racialised students. Staff took all the measures to ensure a non-hierarchical, collaborative relationship. For instance, the staff member in the Land Law project adopted a supportive rather than a supervisory role. Yet, it is undeniable that the internships resulted in an unbalance in that white staff was supervising – and thus in a position of power over - racialised students. This outcome was nonetheless deemed preferrable to alternative ones which could have corrected this imbalance. Participation of staff supervisors was on a voluntary basis, based on personal interest. All the staff members who volunteered, who happened to be white, were given the opportunity to hire students' interns. The choice in favour of voluntary participation seemed in line with the objective of creating a safe space where racialised staff members *can* engage with decolonisation work but only *if they want to*, without the burden falling by default on them, and white staff commit to creating and supporting such an environment. The students were selected among multiple applicants. The criteria for the selection were primary the degree of interest and enthusiasm for decolonisation work, and secondarily previous research experience and academic performance. Very careful consideration was given in the selection process to ensure that the internships could represent an opportunity to give voice to students belonging to ethnic groups which are traditionally marginalised. These three aspects were considered cumulatively.

C. What do we mean by "decolonisation of a legal curriculum"?

Initiatives of decolonising legal norms have arguably specific characteristics. On the one hand, far from being only an instrument or vehicle for the progress of justice and welfare in the world,[88] the law has also played a central role in creating and perpetuating colonialism. Colonial powers have imposed western norms and legal systems ignoring pre-existing indigenous ones, and shaped international law with a Eurocentric view, so that it would be more beneficial to colonial powers.[89] Colonialism has been justified on the idea that Western civilisation is superior to non-Western ones. The role for the law in this context has been described as that of a cherished instrument of civilisation which served as among the most effective instruments of the empire in imposing Europe's vision of truth.[90] In light of this, decolonisation of the law is particularly urgent and important, and one that arguably starts with decolonising legal education. Moreover, movements in former colonies do not only have the intellectual aim of retrieving and giving intellectual value and legitimacy to indigenous laws and unmasking the partiality of the post-World War II multilateral order. They have also a bigger normative aim of repealing colonial law which applies domestically

[88] N S. Boodia-Canoo, *supra* n 8, 517.
[89] Drawing on the works of Anghie and Gathhi, Shako on how the concept of sovereignty, trusteeship and mandate have colonial origins, Shako, *supra* n 22, 18-19.
[90] Joel Modiri referring to Robert A. Williams conception, quoted in F Adebisi, *supra* n 11, 472.

priming over pre-existing indigenous norms, and of amending international law to create a fairer legal order.[91]

On the other hand, the law is not a theoretical subject, but an applied discipline. Law degrees are degrees which have as one of their key objectives, although it is argued not the sole one, that of teaching students the applicable law at that specific point in time. In this sense, a positivistic approach to the teaching of law is unavoidable, as recourse to primary sources different than the ones embodying the law currently in force is not possible. This is the case both in former colonies, where rules of colonial metropolis currently still influence the applicable law - a classic example being the influence of Roman-Dutch law in South Africa - and naturally in former colonial metropolis where western law applies. This situation is different to that of teaching of other social sciences such as sociology or philosophy where there is wider freedom in the choice of courses' content, and there are thus less constraints in terms positivistic approach. If one sticks to such a positivistic approach, a historical, critical or socio-legal approach to the law is not relevant, unless it may have an impact on the law's current state or future development.[92]

A decolonised approach to the teaching of law must therefore come to terms with the paradox of focussing on a subject, the law, which is among the most evident tools of (colonial) oppression,[93] while having specific restraints on the choice to depart from the teaching of Eurocentric, and western-imposed norms. This paradox is particularly felt in law schools within former colonies. Interview with colleagues in both Kenyan and South African universities, where there are strong decolonial movements, have stressed the intellectual and moral challenges that come with teaching law which has colonial legacy, in such a context.[94] They reported having to maintain a 'schizophrenic' approach having to teach certain laws while also being aware that these are a legacy of colonialism and should be repealed. And they have underlined the backlash that resort to comparative law, bringing western law examples in their classes, faces.[95]

This tension acquires a different dimension in law schools within former colonial metropolis, but it is not any less problematic. As stated, we are entrusted with the task of teaching the law of the land. However, the question raises as to whether we can afford, both morally and intellectually, to adopt a purely positivistic approach, teaching the law, be it domestic or international, as a neutral tool, without any mention to the power dynamics that shaped it in the first place and the societal impact it has, in particular on marginalised communities. In other terms, if we want to teach a piece of law which is the result of colonial legacies, or which is the result of power imbalances and effectively marginalized specific ethnic communities, with a decolonised

[91] On the aims of TWAIL scholarships, and in particular its reformist dimension see the seminal piece by Gatthi, J T Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)', in J Dunoff and M Pollack (eds) *International Legal Theory: Foundations and Frontiers* (CUP 2019).
[92] Boodia-Canoo, *supra* n 8, 571.
[93] On the controversy of international law as having in a post-colonial world both imperial and counter-imperial tendencies see extensively S Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (CUP 2011).
[94] The interviews were conducted in the framework of the project "EU Law, Decolonisation and Brexit", methodological details are included in part "EU Law Decolonisation and Brexit" Section B.
[95] Ibidem.

approach, our effort should be in how we qualify such law. That means we should teach the law as it stands in a positivist way, while at th same time highlighting where it comes from, and the impact that it has on different communities. Rigney rightly connects this debate to that on the role of the law schools, which she identifies as sites where different perspectives on the law should be brought in conversation.[96] The underlining idea is naturally that law schools are different from bar courses, or legal practice courses, and that they are meant to be a springboard for the formation of lawyers, but also policy makers, civil servants, civil society activists, and researchers among others. The need for a more critical teaching of the law relates to this broader intellectual mission for law schools.

Furthermore, decolonisation efforts in former colonial metropolis, such as the United Kingdom can come with their own specific challenges, that are different from those existing in former colonies. Among these there is a general cultural,[97] but also institutional,[98] resistance to acknowledging the full responsibility of the United Kingdom for the evils of its colonial past.[99]

Rigney summarises two steps that law lecturers should embrace in adopting a decolonial approach. The first is acknowledging and 'being responsible' for the law one is trained in. That is to know such law and be able to be critical about it. This specific recommendation for legal scholars should be read in the context of the general call for scholars to acknowledge one's educational and cultural biases.[100] The second step is acknowledging that other laws, or better alternative legal solutions to a problem exist,[101] and that in fact the law is not immanent and universal but only reflects explicitly accepted parameters of behaviour, reflecting dominant thought and policy of the time.[102] It is important to clarify that such a relativistic/comparative approach must also be a decolonised one. This means that jurisdictions both from the Global South and from the Global North must be taken into account as possible comparators. Moreover, where available also indigenous perspectives should be considered.[103] With the aim of operationalising this commitment, a set of questions one could ask oneself when starting to decolonise the teaching of a module could include:

1. How do I give the student the perception that the law is not neutral?

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[96] Rigney, *supra* n 74, 506.
[97] See the YouGov data on the generalised positive perception of the British Empire, *supra* n 43.
[98] Institutional resistance to acknowledgingthe UK's responsibility in colonialism is well illustrated by the heated debates and resistance to the amendments to the national history curriculum which is said to reinforce a sense of national identity. See Gebrial, *supra* n , 25, and G Baldwin, G. (1996) 'In the Heart or on the Margins: A Personal View of National Curriculum History and Issues of Identity', in R. Andrews (ed.) *Interpreting the New National Curriculum* (Middlesex University Press 1996) 136, there quoted.
[99] See extensively, Rigney, *supra* n 74, 509 et ff. An interesting point raised by Rigney, which shows the complexity of countries colonial past, is the peculiar position of Scotland which has been both subject of colonisation and invasion by the hands of the British, but also had a role in colonial administration and slavery. Rigney, n xx, 509.
[100] See, *supra*, section II on actors of decolonisation.
[101] Rigney, *supra* n 74, 508.
[102] Boodia-Canoo, *supra* n 8, 519.
[103] A classic example of a comparative, yet western-centric approach, is that of English Courts referring primarily to judgments from other commonwealth countries from the Global North, i.e. Canada, United States or Australia.

2. Is there space for a comparative approach within my module which would inherently convey a relativistic idea of the law? When implementing such comparative approach are relevant legal solutions from jurisdictions in the Global North and in the Global South, including indigenous perspectives, included?

3. Has colonialism played any role in shaping the field of law that I am teaching and how can I convey this to students?

4. What other power dynamics which imply marginalisation of racialised communities have shaped the law that I am teaching and how can I convey this to students?

5. What societal categories, and ethnic groups in particular, does the various provision of law I teach benefit? and which do they jeopardise?

6. What normative proposals to amend the law and make it fairer exist? Have I given sufficient weight to these in my courses?

6. Is the theoretical framework I am using only developed by western authors? Are there any alternative theoretical frameworks rooted in non-western legal culture and philosophy that can enrich my course from a global perspective, and contextualise the western theoretical framework so as to not erase different knowledge sources?

7. Have racialised authors and in general more authors coming from, and educated in, countries other than the Global North, especially indigenous authors, written on the topic of my course? if so, has careful consideration been given to their inclusion in my reading list?

8. How can I create spaces for meaningful students/staff interaction which enrich the course, empower students, especially students coming from marginalised background?

Embarking on this type of work is naturally particularly demanding and not everyone is equipped, trained, or possibly even interested, in critical and comparative approaches to the law. Considering however that moral and intellectual rationales listed above strongly plead in favour of a widespread decolonised approach to all subject matters,[104] it is important that such an effort is not left to individuals alone. There needs to be strong institutional commitment and support, for instance in the form of workload incentives, or research assistantship available to further this aim. Such support should fit into the broader institutional efforts to decolonise the different aspects of Higher Education Institutions, listed above, such as staff, students and university culture, knowledge produced and taught, and educational spaces. The creation of the decolonisation internships by Durham Faculty of Health and Social Science can be seen as a positive example of providing such institutional support.

[104] As opposed to only confining it to courses where it would *appear* more pertinent, such as human rights courses as often happens. Rigney, *supra* n 74, 516.

III. Decolonising and diversifying land law: A critical analysis of current issues in the modern land law curriculum

Summer Ahmed, Sandra Mogeni, Chris Bevan

This second chapter introduces the first case study on how a specific course, namely land law, can be decolonised. Land law is a compulsory second year course which on average caters for about 350 students, or more. Reflecting on how a decolonised approach be implemented in this module is thus particularly important, considering its position in the curriculum and the number of students involved. A first section provides a general discussion on how the field of land law is colonised, and the specific rationales for decolonisation. A second section provides concrete recommendations.

A. How is land law colonised?

In the land law context, we would argue decolonisation is the critical presentation of colonial perspectives during teaching, incorporating more diverse ones and facilitating free, uncensored dialogue among academics and students about how and why the law has developed as it has, and whether it should continue on its current trajectory, or whether, considering modern, multicultural British society, its direction ought to be altered. While this is not a paper about *law* reform, educational and legal reform are arguably indirectly related within this arena. Within the land law context, the linear, mono-perspectival presentation of the history of property law, without acknowledgment of the colonial and imperial influences on their development, would result in a rather hollow comprehension of their policy rationale and in turn, a stunted, tunnel-visioned ability to critique the law and suggest proposals for reform or improvement, impeding the most productive and innovative suggestions for how we could improve the law. The next two sub-sections will first provide a discussion on the impact of colonialism on the history and development of land law (1), and secondly illustrate what are the challenges to decolonising this field of law (2).

1. Land, private property and colonialism

At first glance, it is difficult to precisely ascertain the relationship between colonialism and the English (and Welsh) law's perspective of rights in land. Yet, from land registration and the conceptualisation real property as the means for asserting legal and equitable titles, through to trusts of land, it is evident that the view of *property* taught within UK law schools is generally narrowly drawn and tightly defined. It must be conceded that land law as taught in most UK Law Schools has historically always been domestically focused in its account of property law; largely as land law has long been a core component of legal education as part of the so-called 'Qualifying Law Degree' which traditionally allowed graduates to enter a career as a practising lawyer after university. This has undoubtedly prevented a more widespread and effective engagement by module leaders and teachers of land law modules across the country with important questions of decolonisation. Examining the historical and contextual development of the legal framework governing the land conveyancing system is central nonetheless to developing a more critical approach to the teaching of land law.

The doctrine of *terra nullius* is cited by many as the moral justification for colonialism and the appropriation of native land into private property; literally translated, this means 'land belonging to nobody' and describes land free from state ownership or

sovereignty.[105]

Historically dominant legal theorists Locke and Grotius viewed *terra nullius* as 'a principle of the law of nature' – claiming 'rights' in unoccupied land was a way of exercising their 'moral obligation to prosper.'/[106] As native or indigenous settlements were not traditionally categorised as "political societies" for the purposes of *terra nullius,* they did not assert adequate sovereignty over the land to be considered in ownership of it; land on which they settled was considered "unoccupied," belonging to nobody, carving a divide between "civilised" and "barbarous" societies.[107] Moreover, the abstraction and commodification of land into private property "racialis[ed] the land holding of the indigenous people abstracted into savages"[108] by categorising their nomadic or subsistent usages as "wasting the land's potential."[109] Thus Locke and Grotius legitimised the seizure and colonisation of native land, that is the rearrangement of indigenous economies and reallocation of their wealth and trade towards an imperial hub,[110] by asserting they were fulfilling their God-given "duty…to make [unoccupied] ground productive."[111] Moreover, the Christianised, monotheistic perspective of divine law moralised the "compul[sion] of 'barbarians' to justice for the sake of their salvation;" [112] European colonisers saw indigenous peoples as 'uncivilised', 'barbaric' non-believers, justifying their colonisation through a divine obligation to Christianise them.[113] However, Christianisation was not the only justification for abstraction; Jones[114] and Carty[115] highlight the historic categorisation of the Irish as 'uncivilised' barbarians, despite being Christian, due to their descent from the 'warlike' Scythians.[116] Thus it appears that settlers' perceptions of the 'savageness' of native character and land use was a key factor in morally justifying the brutal seizure of indigenous land, as this was the only way to 'civilise' the natives, as it was the settlers' 'God-given duty' to do.[117]

Boucher notes that 'unoccupied' simply meant under-cultivated land, irrespective of habitants; from the Lockean perspective, natives had the same moral duty, but had failed, thus their land could 'morally' be taken and 'properly used'.118 Locke himself summarises this view in this way: "The labour that was mine, removing them out of

[105] C Boisen 'The Changing Moral Justification of Empire: From the Right to Colonise to the Obligation to Civilise' (2013) 39(3) *History of European Ideas* 335.
[106] Ibid., 338.
[107] Ibid., 339.
[108] H Jones, Property, territory, and colonialism: an international legal history of enclosure" (2019) 39(1) *Legal Studies* 187, 191.
[109] Ibid.
[110] Ibid., 189.
[111] Boisen, *supra* n 105, 338.
[112] J Gines de Sepulveda, *Apology for the Book on the Just Causes of War: Dedicated to the Most Learned and Distinguished President, Antonio Ramirez, Bishop of Segovia*, translated by Lewis D. Epstein (Unpublished: Bowdoin College, 1973) 18.
[113] Boisen, *supra* n 105, 344.
[114] Jones, *supra* n 108, 197.
[115] A Carty, *Was Ireland Conquered? International Law and the Irish Question* (1st edn Pluto Press, 1996) 32.
[116] Ibid.
[117] Jones, *supra* n 108, 191.
[118] D Boucher, "Law of Nations and the doctrine of Terra Nullius" in O Asbach and P Schroder (Eds.) *War, the State and International Law* 69, 77, 71 (Routledge 2016).

that common state they were in, hath fixed my property in them"119 [36] arguing that through individual self-ownership, we can own things we mix with our own labour and efforts, id est, they become our property. So the view emerged that only a specific type of labour could generate 'property' and 'ownership' in land – colonisers engineered this theory in a way that meant indigenous labours would never be enough, and their 'civilised' labour would be.

The concept of *terra nullius* is exemplified through our conceptualisation of landownership. Examples include 'title-by-registration' and Ruoff's mirror principle of registration, whereby the register should strive to accurately reflect all the benefits and burdens of a plot of land,[120] or jurisprudential justifications for the adverse possession of land. Jones argues that 'title by registration' is the 'culmination' of the abstraction of land into property; the historically complex relationships of "use" hampered the marketisation of land as a single unit of property,[121] provoking the shift from 'use' to marketisation and free alienability of land. This is arguably also reflected in legal policy for the doctrine of overreaching.[122]

Moreover, the moralisation of colonialism in this way has been central in shaping our modern view of property.[123] Ince[124] argues the English formulation of private property developed "in and through colonial networks"[125] during the colonisation of Ireland and North America through practices of territory and abstraction.[126] Ince highlights the commercialised lens through which we view land whereby maximal economic utility is categorised as most productive, citing the historic 'culture of improvement' and common law 'waste' as the key policy factors behind the seizure of native land. If land could be 'used better' according to the settler nation, they were both legally and morally entitled to exercise proprietary rights over it and achieve its most bountiful use.[127] Thus the relationship between land and its users moved "from one of subsistence to one of enterprise."[128] Boisen further argues that the conception of this divine duty to make the 'most productive' use of land catalysed the development of 'trusteeship' to assert coloniser proprietary rights over indigenous land.[129] While ostensibly allowing natives beneficial use of land, it was derived from the post-Enlightenment idea that Europeans and the British, the more 'civilised' society, were conferred a moral responsibility by God to hold land in trust for indigenous peoples, until they achieved an adequate level of 'civilisation,' which was itself determined arbitrarily by the colonising nations.[130] While the modern conceptualisation of trusts and co-ownership of land has progressed significantly, it is important for students to understand their development from a variety of perspectives, such as the

[119] J Locke, Two Treatises of Government, edited by Peter Laslett (Cambridge, 1988), sections 29-30, 289.
[120] T Ruoff, *An Englishman Looks at the Torrens System* (Sydney; Law Book Co of Australasia, 1957).
[121] Jones, *supra* n 108, 191.
[122] Law of Property Act 1925, s2.
[123] Jones, *supra* n 108, 189.
[124] O Ince 'Primitive accumulation, new enclosures, and global land grabs: a theoretical intervention' (2014) 79(1) *Rural Sociology* 108.
[125] Ibid.
[126] Jones*, supra* n 108, 188.
[127] Ibid 191.
[128] Ibid 201.
[129] Boisen*, supra* n 105, 351.
[130] Ibid 336.

expropriation of indigenous land, rather than a solely domestic-ownership perspective. While the legal framework governing conveyances in land on the surface appears procedural and relatively unaffected by colonialism, it is quite significantly shaped by historical conceptualisations of property and land ownership, many rooted in old colonial practices. The full extent of such influences on modern Land Law are beyond the scope of this paper. However, the previous paragraphs have hopefully attempted to illustrate a few of the key affected areas. We would therefore argue that to fully understand and critique current land law policy objectives, it is necessary to acknowledge the contextual development of the law, in order to shape both land law curricula and pedagogy in a decolonised manner. As Jones notes "contemporary struggles for indigenous land rights [and material property concerns] cannot be understood separately from the history of settler colonialism."[131]

There are nonetheless a number of obstacles to adopting a decolonised approach to Land Law teaching. These are discussed in the next section.

Further Sources:

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2. Challenges to decolonising Land Law and the Pedagogy&Staff-Student Power Dynamics

As detailed above, when we learn about private property and rights in land, it is important we view them through a critical lens, rather than seeing the colonial perspective as "objective" fact. It is only then that students will be empowered to reach their own, informed, opinion on legal developments and consequently critique and challenge the law in a meaningful and innovative manner. There are nonetheless a number of challenges to decolonising Land Law.

A first, huge obstacle is the, above mentioned, "qualifying" requirements of the course. That is to say, discarding vital historical and colonial context of property is made easier by claiming this information is not part of the Bar Standards Board's requirements for the LLB, and therefore is unnecessary. Of course, it must be acknowledged that, as long as land law remains a qualifying module for entry to the Bar with prescribed, key topic areas that *must* be covered by teachers if the module is to remain 'qualifying', this necessarily limits the time and space available to explore important questions of decolonisation on land law courses. A key challenge is therefore ascertaining how the decolonisation agenda can be accommodated within land law modules. A second obstacle is the deeply entrenched and technical character of the field. This means the

[131] Jones, *supra* n 108, 203.

land law curriculum can appear inaccessible to all except academics who really specialise in it, the majority of whom are white, privately educated, males. The general lack of diversity among property lawyers and academics makes it more difficult to challenge traditional perspectives and incorporate less 'traditional' (largely non-white) viewpoints. Still, if one were to find authors working on land law which do not have this traditional 'pedigree', just adding their works to the reading lists would not reach the objective of decolonisation. Bhambra et al rightly note that adding tokenistic voices of colour does very little to dismantle the 'unshakably colonial'[132] foundations of university. Incremental modification of pedagogical practices may not be effective in fully dismantling colonial bias in the higher education curricula and more drastic steps need to be taken.[133] Thirdly, Cartwright and Cartwright rightly note that 'gifting' decolonisation to students "is as patronising as colonisation itself."[134] It prevents the empowerment of students of colour to express their experiences in the manner which is most powerful to them, and it confines them instead to traditionally acceptable forms, stagnating diversity of perspectives. Thus, they argue that decolonisation is about dismantling colonial power dynamics not just through the empowerment of staff of colour, but also through empowering students to challenge staff on their biases, if necessary. Shay condemns misuses of power between students and staff within HE, arguing that additional safeguarding policies should be implemented to ensure academics use their power carefully and responsibly, and are held accountable, whether by students or institutional policy, for consciously or unconsciously perpetuating a culture of colonised education.[135] Moreover, the transactional, 'banking' model of education, whereby students withdraw knowledge 'deposited' by teachers[136] reduces students to passive consumers of education creating an environment where students "accept the passive role imposed on them…adapt[ing] to [a]…fragmented view of reality."[137] One could argue that the aforementioned power dynamics are even more prominent in LInd law. With it being such a technical subject students rely heavily on teachers to provide them with relevant context for their studies and identify for them areas which are susceptible to biased influences. Thus higher education institutions must dedicate time into "building 'trust' and student-staff relationality," working on "democratis[ing] the classroom" to cultivate "a [teaching] environment where 'speaking' is not encumbered with preconditioned judgement on 'intellect.'"[138]

Traditionalist mindsets and uncritical teaching methods enable biases to remain unchecked. Decolonised education is vital, both within legal education and practice, to develop the ability of both students and practitioners to employ pragmatic and innovative solutions to legal issues. Thus, while power dynamics between students and teachers within the classroom can, for obvious reasons, be highly beneficial when seeking clarification on objective legal fact, it is crucial for teachers to be clearer in noting that their views and judgements on certain issues are, in important ways, *opinions*, largely informed by their socio-political environment, racial background

[132] Bhambra, Gebrial, Nişancıoğlu, Introduction, *supra* n 7, 6.
[133] L Le Grange, 'Decolonising the university curriculum' (2016) 30(2) *SAJHE* 1.
[134] Cartwright and Cartwright, *supra* n 38, 536.
[135] S Shay, 'Decolonising the curriculum: it's time for a strategy' (*The Conversation* June 13, 2016), Available at: https://theconversation.com/decolonising-the-curriculum-its-time-for-a-strategy-60598 accessed 13 September 2021.
[136] Freire, *supra* n 68.
[137] Freire, *supra* n 68.
[138] Memon, and Jivraj, *supra* n 39, 481.

upbringing, and real-life experience.

B. Recommendations

As is repeatedly stressed in this chapter, our concept of property is deeply influenced and shaped by colonialism. It therefore becomes important to teach land law in a more interdisciplinary fashion, unpacking historical, socioeconomic and political notions of property, so students grasp a more enriched understanding of the policy rationale of the legal frameworks governing rights in land. The means of integrating diverse perspectives is arguably as important as the substantive materials added. This section lists a number of both short term and long-term recommendations. Our proposals for improvement can be broadly categorised into pedagogical and curricular modifications and student initiatives. They centre around diversifying academic perspectives and critical, quasi-Socratic teaching methods.

1. Short term recommendations

i. Diversifying Perspectives and Enriching Reading Lists

We must seek to include more black, minority ethnic and women authors in underrepresented areas. This can introduce students to the particular writing areas of these authors i.e. critical race theory of land or feminist theory of land. While naturally not the end goal of the process itself, diversifying academic perspectives through adding additional reading materials to the compulsory curriculum is a vital and progressive step towards enabling students to obtain a fuller picture of the socio-political context of their studies. Exposure to a variety of perspectives allows students to formulate more informed opinions on legal and policy issues, thus reaching more progressive and pragmatic solutions.

ii. Staff-Student Partnership

As was extensively discussed in the introductory chapter, the power imbalance between teachers and students poses a significant barrier to the decolonising agenda. Thus, we would recommend the implementation of student-staff partnerships to facilitate decolonial discourse between minority ethnic staff and students, and their white counterparts. In particular, we would suggest pairing students with a staff “partner” with a different ethnic background to empower both staff and students of colour to share their experiences in an informal, colloquial manner, as may be preferable to many. Partners could meet termly, or even more frequently if so desired, to discuss how they feel about what is being done to decolonise the curriculum and contribute ideas and proposals which staff may have authority to escalate to a higher level. This would help to dismantle the institutional notion that “students have no intrinsic potential…unless these are 'produced' through the transaction of a 'university education as a service',” [139] which has a harmful silencing effect on students' perspectives. While free dialogue, open to critique from all plays an important role in decolonising education, students and staff of colour must feel empowered to speak about and fight past trauma, moving forward rather than dwelling on the potentially

[139] Memon and Jiraj, *supra* n 39, 487.

less critical aspects of how they present their experiences, and fear backlash from peers.

iii. Discursive Seminar Sections and Pedagogy

- **Creating a student decolonial forum**

Many students and academics of colour "sense a form of being heard and not…listened to."[140] To combat this, we propose a termly seminar session, where students are empowered to bring their own resources and experiences to class and present them. The aim of this, like the aforementioned student-staff partnerships, would be to create a **student decolonial forum** where primarily students could share and critique each other's perspectives. This would enable the peer-to-peer discourse lacking from staff-student partnerships, allowing students to understand each other's particular backgrounds and how these inform their views on the law. This could take the form of a debate or a more relaxed presentation-style session, depending on the audience and students wanting to participate. Students would have the autonomy to share, or just listen to their peers. It could also be helpful for students to discuss legal developments in the context of current affairs, what they think of them and how they relate to the decolonising agenda. What we would want to highlight with this proposal is the need for a regular class/session where students simply share what they feel during the class and can obtain staff support and guidance if they so require it in a welcoming and non-judgmental environment.

- **Increased Contact hours through termly workshop-type session**

We would also argue the limited contact hours for law students at Durham plays a role in impeding decolonisation. Because staff are so pushed to include qualifying content within the narrow confines of 20 lectures and 5-6 seminars, this leaves little space or time for vital discussions about historical and socio-political context, which would really help to decolonise students' mindsets. Moreover, many law schools across the UK deliver many more contact hours than Durham. Implementing a few more would not take Durham beyond the average number when compared with similar institutions. And it would allow to fit in a more decolonised curriculum; cover current topics; deal with student specific concerns, and overall, allow for more flexibility in teaching and increase the level of support given to students as they studied for their degree. One option to include more contact hours could be to introduce an additional termly workshop-type session would provide the necessary time for students to raise concerns about the substantive content of the curriculum and the way it is delivered, without staff feeling pressured to cut out necessary content for the Bar Standards Board's qualifying requirements.

- **Training for facilitators**

As explained above, while critical analysis is encouraged in traditional educational settings, it can only take place within the frame of the ideas presented in the teaching and it is implausible to challenge the actual nature of the teaching on a fundamental level. Wilson highlights the importance of facilitators in recognizing their own power and trying to mitigate it. This is necessary for students to "feel welcomed in [the]

[140] Ibid.

classroom, and free to express themselves".[141] It is common for students to feel uneasy in classroom participation due to social anxiety; years of “being stifled” in schools and worry what other students will think of them or saying the wrong thing. Therefore, it is important to create a level of comfort amongst students to properly allow for critical engagement with the curriculum. Diversity cannot be fostered naturally if students are afraid of sharing their own opinions on teachings and challenging narratives. In light of this, we suggest including training for students and facilitators creating a more comfortable learning environment. In particular, to foster a more positive environment, students could be actively trained on how to more confidently engage in tutorials.

- **Considering different evaluation strategies**

Another barrier potentially hindering decolonisation is the student preoccupation with marks/grades. Grades are by their nature top-down as they are determined by authorities and students are generally more focused on academic attainment over critically understanding their subject. Moreover, this single-minded focus on grades might hinder the impact of decolonisation work as students may be less focused on developing the curriculum actively as there is no direct benefit apparent for their overall grade performance.

To counteract this, one could think of alternatives in the design and delivery of formative and summative assessment. For instance, one could think of allowing students to carry out greater **self-assessment** or **peer review**, which may bolster their confidence in their own work as well as reduce the focus on attainment. This provides room for academic integrity, dialogue around their learning process, and rejects the notion that the instructor holds complete authority over the documentation of their learning, that is, their grade. Furthermore, one could explore allowing students to participate in shaping **formative questions**. This would allow students to focus on areas of interest, as well as increasing their critical engagement as students with the course content whilst allowing for broader oversight by module convenors to ensure assessment standards are met.

- **Guidelines for Online Learning**

Singh has a highlighted how the turn to **online teaching** has raised a significant number of EDI issues having a particular detrimental impact on marginalised communities.[142]One of the key ones relating to addressing racial inequity in higher education is the issue of bias, conscious and unconscious. Though the research on this is quite thin, there is an interesting recent study at Stanford University looking at the issue of Bias in Online Classes: *The researchers created fictional student accounts, with names that most would identify as being either white, black, Indian or Chinese, with male and female names for each racial/ethnic group. They then analysed the interactions. Despite the comparative anonymity granted by*

[141] C Wilson, ‘Revolutionizing my Syllabus: The Process’ (*Inside Bryn Mawr*, April 21) <https://www.brynmawr.edu/tli/syllabusdesign/theprocess <accessed 20/08/21> (accessed 05 September 2021). Accessed 8th November 2022.

[142] G Singh, 'Decolonising Pedagogy and e learning: challenges and possibilities' paper given at the ‘The NERUPI CONVENTION - Online Learning: Quick Fixes or New Beginnings?’ University of Bath 17 September 2020, available at:https://blogs.shu.ac.uk/teaching/files/2020/10/Singh-G-2020-Decolonisation-and-E-Learning-NERUPI-17.9.2020.pdf Accessed 8th November 2022.

asynchronous, digitally mediated interactions in online discussion forums, the sort of bias that concerns many educators in face-to-face instruction is also present in online education; instructors were 94 percent more likely to respond to discussion forum posts by white male students than by other students. As well as this, the researchers also found that the bias in favour of white male students was most significant when the instructor was also a white male.[143] As a result, we cannot assume that all students are receiving equal treatment just because the teaching is carried out online. This is why we suggest that to mitigate the possible impact of unconscious bias for any teaching that is still delivered online in Durham, the university could implement guidelines to control how facilitators respond to students. Moreover, surveys should be routinely carried out to check that students feel supported by their facilitators rather than only using year-end module surveys.

iv. Presenting Perspective as Perspectives

As has been explored in this chapter, a key obstacle to decolonising the land law curriculum is how difficult it is to separate deeply entrenched colonial perspectives from objective fact. We believe a key way of feeding more diverse perspectives into land law pedagogy is to present personal experiences, opinion and anecdotal knowledge in a sensitive and considerate manner, making it clear to students that one person's experience may not be the same as others. For example, when talking about homeownership, mortgages and rented or low-income housing, it is vital that tutors are considerate of those in their classes who may or may not have had exposure to these issues. Another example could be analysing the policy rationale behind the laws of adverse possession. Staff must take care to inform students that such legal traditions, whether wholly or partially, stem from a colonial conceptualisation of property and ownership, thus allowing students to critique such policy from a fully informed knowledge-base. It is only then that students are enabled to develop a more holistic understanding of the different ways law affects individuals of different racial and socioeconomic backgrounds.

There is an argument that rather than introducing more to the land curriculum, it would suffice to present the idea of land through a more 'global' or critical perspective that does not omit reference to colonialism and the pursuit of "native lands" around the world. This acknowledgement ensures that students are not unaware of how property law operates on a global scale. One way of doing this is to begin with the perspective of indigenous people rather than the colonists' perspective.

Another way of encouraging a well-rounded understanding of legal policy rationale would be to incorporate a more interdisciplinary approach to teaching some aspects of a land law course, noting socio-political, economic and historical factors which may have influenced such aspects of the course and its pedagogy. For example, when discussing what "counts" as land and property, it might be valuable to include why this is, including some historical and colonial context as discussed earlier in this paper. This would open up space for students to contribute their own experiences with the

[143] Baker et al, (2018). Bias in Online Classes: Evidence from a Field Experiment (CEPA Working Paper No.18-03). Retrieved from Stanford Center for Education Policy Analysis: <http://cepa.stanford.edu/wp18-03> accessed 8th November 2022.

law and discuss concerns with the current framework with a more practical and pragmatic understanding of how law affects their peers, whether those with similar backgrounds, or different.

This critical, interdisciplinary approach is arguably more easily integrated into our current model of teaching than other suggestions made in this paper. While drastic reform undoubtedly has its place whether in the near or distant future, decolonisation is not a finite process, and should be continuously reviewed and sustainably implemented within our law schools. This approach will arguably maintain the momentum of the decolonisation movement in conjunction with more fundamental modifications.

v. Students Research Initiatives

While staff participation in decolonising efforts is incredibly important, encouraging students to undertake an active role in facilitating this agenda is arguably the most effective way to implement decolonisation practices sustainably into our higher education institutions and future workplaces. Thus, we would recommend the introduction of student research initiatives into the land law curriculum. These would go beyond the classic formative-summative module, allowing students autonomy to research any part of land law, or current affairs relevant to land law, and how they have been influenced by colonialism. This could be as simple as a thinking point on a lecture handout, which students could then research and bring contributions to the next lecture or seminar, or take a more formalised format, such as an optional assignment, or presentation to bring to the next decolonisation conference or seminar. Examples could include case-studies, such as the Grenfell Tower tragedy, which has an undeniable racialised dimension,[144] or notifying students to the colonial context of a specific part of law and asking them to engage critically with it. Imperative to decolonisation is ensuring that students go away and research topics themselves, as well as engaging with class materials, to reach an informed opinion. Again, this proposal is about recognising that knowledge and valuable contributions don't take simply one form, which forms part of the colonial way of thinking. By confining knowledge and research to a prescribed form, we stagnate innovation, and the organic development of novel perspectives. Encouraging students to bring their own research material to tutorials outside of the recommended reading might also bring more diversity, as students can explore and find academics or authors who are more representative. Of course, this proposal is flexible. It is possible to implement student research initiatives into the course at different levels and in different ways, depending on what suits the overall method of teaching. The key takeaway from this suggestion is to keep an open mind about the different ways that knowledge and experience can be presented; trying to restrain the scope of what students can contribute stunts the range of valuable perspectives the diverse student community undoubtedly has to offer.

2. Long term recommendations

[144] Danewid, I. (2020). The fire this time: Grenfell, racial capitalism and the urbanisation of empire. European Journal of International Relations, 26(1), 289-313.

The following is a brief summary of what we consider to be 'longer-term' recommendations that emerge from our Land Law Decolonisation project:

i. Challenging assumptions made in the curriculum in a more critical and open manner

Kingston University proposed a method of questioning and re-shaping their curriculum.[145] It uses prompts on several areas to encourage lecturers to carry out a self-assessment based on whether their teaching creates an accessible curriculum; enables students to see themselves reflected and equips students to work in a global and diverse world. Thus, it encourages the development of courses that put the student at the centre - moving away from pedagogic practices that disadvantage some of our student groups. It is about thinking of the curriculum in a way that challenges basic assumptions.

ii. Including greater student choice in subject topics on modules

Another long-term recommendation would be to explore allowing students more autonomy in shaping module content and assessment design in a more fundamental way building on that discussed earlier in this chapter. This could encourage more critical approaches and would certainly, if handled sensitively, increase diversity of thought and student engagement.

iii. Ensuring diversity in staff recruitment and promotion processes

Increasing the prominence and presence of black and minority ethnic staff to work on diversity of thought and perspective in recruitment teaching should be a further long-term goal. This would encourage Black and minority ethnic students as there will be a greater representation of their success in academia.

iv. Reflecting on the possibility of introducing a separate module on decolonising law / law and race, either as a compulsory or optional module

Including decolonisation as part of English law and legal method courses to teach students the fundamentals of colonial thinking/diverse perspectives is another area for further thought and reflection. That said, it is suggested that issues of decolonisation should still be addressed separately by module leaders in core modules.

v. Devising a workshop programme or developing another space for students to share ideas and raise concerns about learning environments

A comfortable space could usefully be provided for students to engage with peers or postgraduate students on wider issues of decolonisation and teaching environments.

[145] The outcome of the project developed at Kingston University are available here: https://www.kingston.ac.uk/aboutkingstonuniversity/equality-diversity-and-inclusion/our-inclusive-curriculum/inclusive-curriculum-framework/#middle-col Accessed 8th of November 2022.

This would also provide another layer of support alongside office hours for students and would, additionally, be helpful for students' wider pastoral needs.

vi. Creating a collective of students and staff to continue the work of decolonisation:

This collective could operate in a similar manner to the existing collectives at the London School of Economics and Kent universities[146] that regularly update students on issues; release articles and link to more resources on the subject of decolonising higher education.

We conclude this chapter and draw together the recommendation that we have made by referencing the work of Appleton and the acronyms Appleton cites as a way forward for thinking about the decolonisation agenda. We feel Appleton's work aptly captures our sense of a productive way forward for decolonisation in core modules such as land law:

- Diversifying syllabuses and curricula
- Digressing from the canon
- Decentralising knowledge and knowledge production
- Devaluing hierarchies
- Disinvesting from citational power structures
- Diminishing some voices and opinions in meetings, while magnifying others.[147]

[146] J Olejniczak J, 'Decolonialising and Diversifying the Curriculum in LSE Law Department', LSE Change Makers 2020-21, available at: https://info.lse.ac.uk/current-students/part-of-lse/assets/documents/Change-makers/research-archive/2020-21/26b-Diversifying-Decolonising-Full-Report.pdf; Decolonising the Curriculum Project: Through the Kaleidoscope, Kent Decolonising the Curriculum Collective, 2018-2019. Outcome of this project available at: https://decoloniseukc.org/ . Accessed 8th November 2022.

[147] N Appleton, 'Do Not 'Decolonize' . . . If You Are Not Decolonizing: Progressive Language and Planning Beyond a Hollow Academic Rebranding.' *Critical Ethnic Studies* 2019 (February): www.criticalethnicstudiesjournal.org/blog/2019/1/21/do-not-decolonize-if-you-are-not-decolonizing-alternate-language-to-navigate-desires-for-progressive-academia-6y5sg. Accessed 8th November 2022.

IV. Decolonising climate law: Towards a decolonised pedagogical approach to climate law and policy

Astha Sanghavi and Petra Minnerop

A. The Durham "Climate Change Law and Policy" Module

In response to the scientific knowledge about our changing climate since the late 1970s, a new legal field has emerged since the late 20th century. Climate change law can now be identified as a new and rapidly developing area of law. The national and international law on climate change continues to expand rapidly, in response to the ever-growing threat of climate change and the firming of the scientific evidence. Consequently, there has also been an exponential increase in the value placed on an understanding of the international legal order, as well as the attempts made, and challenges faced, by states at the international level in responding to climate change. Both within and outside the environmental sector, climate law and policy knowledge is in increasingly high demand.

The Durham Law School "Climate Change Law and Policy" elective module aims to provide a profound understanding of the legal and policy issues involved in tackling climate change, and it covers aspects of the scientific evidence base that drives legal developments. This includes the main characteristics of, and stakeholders in, international climate change law, the science behind this law, and the mechanisms used to ensure compliance with states' obligations under international law. Particular regard is given to the 1992 United Nations Framework Convention on Climate Change ("UNFCCC") (and the role of the Conference of Parties under the UNFCCC and the related instruments), the 1997 Kyoto Protocol and the 2015 Paris Agreement. However, other international conventions, such as the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal, are considered so as to provide students with a wide and deep understanding of climate change law. The module covers the intersection of international and national law and considers how both legal orders must be complementary to overcome the "emissions gap" and the "implementation gap". A good understanding of national litigation strategies, such as those aiming to increase governments' ambition for climate protection or to hold "carbon majors" to account, is also offered. Beyond this knowledge, the module aims to empower students to critically discuss the effectiveness and progression of the law on climate protection. It is taught in a student-led way, where short lecture style thematic introductions are followed by group work and student presentations and discussions.

B. 'Decolonising' Climate Change Law

The teaching and learning of Climate Change Law and Policy can suffer from an over-reliance on certain perspectives for the teaching; indeed, Western or non-indigenous narratives have historically served to inferiorise indigenous knowledge on climate change governance and mitigation.[148] As McGregor details, indigenous knowledge systems are often based on transgenerational creation stories, used to determine how

[148] V Plumwood, *Feminism and the Mastery of Nature* (Routledge 1993) 16.

communities conduct themselves in relation to the planet.[149] However, such knowledge sources have often been discredited as "primitive or mystical" by modern rationality,[150] all under a colonial agenda to present narratives which normalise and privilege white perspectives as "universal, neutral and as a singular and objective truth".[151] McGregor posits decolonisation as the recovery of traditional knowledge systems and their value.[152] Doing so may, for example, encourage students to recognise the capacity of indigenous peoples to be complex, active and resilient agents in the dominant climate change law and policy discourse as opposed to simply "victims", as they are so often narrowly represented.[153]

As Muchhala writes, "consciously engaging in a pluralism of knowledge methods and praxis is perhaps one of the most foundational practices of a decolonial objective".[154] It is only with the active intention of "drawing out, extending, giving emphasis and voice to what is silent or marginally present or ideologically represented" that students are able to "unlearn the internalized, imposed, assumed and externalized of coloniality".[155] Here, they may come to see that the concept of the "Global South" in the dominant climate law and policy discourse not only refers to a territorial delimitation, but an "epistemic demarcation in the production of knowledge".[156] Further, such engagement will see students benefit from a critical mindset with which to evaluate knowledge sources and legal instruments, as well as from a much more comprehensive course.

This chapter of the paper, which is the outcome of one of the Decolonisation Internships sponsored by Durham University, discusses how to implement a decolonised approach when teaching the module "Climate Change Law and Policy". The next section details the methodology of this research. The following two sections include a set of recommendations, distinguished between primary and secondary recommendations, on how to achieve the objective of decolonising the module.

A. Methodology

Most data regarding approaches to global pedagogy and wider perspectives into decolonisation was acquired via independent research. In compliance with decolonial principles, a variety of literary sources were consulted in this research, with a particular focus on authors writing from global perspectives, which include indigenous authors in both the Global North and the Global South. Further collaborative research was also

[149] D McGregor, 'Decolonizing the Dialogue on Climate Change: Indigenous Knowledge, Law and Ethics' *(*20 February 2021) < https://www.youtube.com/watch?v=_kv6hT9S2fc> Accessed 8th November 2022.
[150] L Zimmermann, 'Lectura y pensamiento decolonial: aportes del análisis del discurso para la lectura de textos' (2014) Actas Congreso Nacional Subsede Cátedra Unesco UNR 1, 2.
[151] W Mignolo, 'Epistemic Disobedience, Independent Thought and Decolonial Freedom' (2009) 26(7) *Theory, Culture and Society* 159, 177.
[152] McGregor, *supra* n 148.
[153] K Whyte, 'Indigenous Climate Change Studies: Indigenizing Futures, Decolonizing the Anthropocene' (2017) 55(1-2) *English Language Notes* 153, 156.
[154] B Muchhala, 'Towards a Decolonial and Feminist Green New Deal: Some systemic and conceptual ingredients' (*Rosalux,* 24 August 2020) <https://www.rosalux.de/en/news/id/43146/towards-a-decolonial-and-feminist-global-green-new-deal> Accessed 8th November 2022.
[155]MNM Passada, 'Discourses Analysis by a Decolonial Perspective' in L Suciu (eds) *Advances in Discourse Analysis* (IntechOpen 2019) 1, 10.
[156] Ibid, 1.

undertaken in the form of sharing and discussing work with fellow Durham Law School interns and interested members of staff.

A student survey was also designed and disseminated with the aim of determining which ways of becoming more centred in their learning, and gaining greater opportunity to critically engage in their learning, students would generally be receptive to. While this project did not, and does not, concern itself with convincing students that decolonisation is a worthy cause, insights gained from the survey were necessary to ensure that this initiative could be effective and grow from strength to strength. The *Google Forms* survey used consisted of 9 questions and was circulated to all Law students once gaining ethics approval. Most questions were in the ranking style, but there were also opportunities for students to anonymously offer detailed open answers or suggestions. 33 responses were received. Given that the module was not designed around the survey, and rather the answers were used only to confirm or adapt existing proposals, the small sample size was not a definitive barrier to using the results of the survey.

It was also useful to consult real-life applications of decolonial pedagogical approaches proposed and used in other universities. Much of this research proved useful only in a general sense; few climate law courses explicitly noted any "decolonial" approach, nor was it possible to imply such on the basis of the course outlines offered. For example, while both the Dundee "International Climate Change Law" 2020-2021 LLM and UCL "International Global and Environmental Law" courses specify consideration of 'regional network bodies' and "regional approaches" of climate governance, it is not clear whether such approaches are included purely substantively, that is with the inclusion of diverse materials on the reading list for example, or whether students are encouraged to critically engage with these materials and use them to contextualise other, perhaps Western-centric, approaches to governance.

However, the "Environmental Law and Sustainable Development" module offered at School of Oriental and African Studies, University of London did include a compulsory introductory course on "Law, Environment and Social Justice", and explicitly notes a learning objective of "understanding of regimes structured on the North-South dichotomy". The recommendations below will demonstrate an effort to transplant these aspects into the module. Lastly, some of the authors who have been referred to in this section are academics trailblazing their approaches in universities outside of the UK, such as Burgh, Graham and Thornton from Australia, and McGregor in Canada.

B. Primary Recommendations:

This first set of recommendations concern the application of the decolonial approach to pedagogy in the context of Durham's "Climate Change Law and Policy" module. A colour-coding system, using purple, green, red, and blue, is used to highlight which suggested modifications to the course handout reflects which general recommendation.

1. 'Deconstructing'[157] the "Western objective norm"

This report recommends that in order to deconstruct the "Western objective norm" it is necessary to:

i. **Make students explicitly aware of the need to, and importance of, 'decolonise' the teaching and learning of 'Climate Change Law'.** For this reason, the module includes a mandatory seminar specifically based on decolonial approaches to environmental law early on in the course. To avoid this seminar being a tokenistic exercise, the materials considered in the seminar re-appear throughout the course, and it will be made clear that students are to engage with materials concerning decolonisation throughout the year, including in assessment.

Incorporate 'contrapuntal readings' into the module, that is readings that invite a plurality of perspectives into the discussion of every topic.

- **These readings must be placed on an equal level of academic importance as orthodox materials used in this course, that is included in both the core and further reading lists** rather than being subordinated to only "optional" readings or those which are not otherwise essential for assessment. As will be explored below in the "Reconnecting with the critical" section, students must treat these materials as just as "necessary" for their learning as any other, as treating these perspectives as "other" or "extra" in any way would compromise this goal.
  The specifying of certain articles in seminar reading lists from which to garner perspectives has been done for the sakes of practicality; as mentioned earlier, a somewhat positivistic approach to teaching the law is necessary, for example due to the necessity for all students to be able to access established literature for each perspective they consider. However, the "banking" approach to education outlined earlier can be destabilised by inviting students to bring in their own choice of literature into the syllabus and co-produce knowledge with their peers.[158] In the examples below, the "co-producing" approach is being promoted by offering students the opportunity to discuss and debate with their peers having each focused on a different perspective in their own time.

- **These readings should be evaluated, and if necessary revised, by students and teachers (at the end of each topic)** as to their ease of access and how helpful the source was in demonstrating the diverse range of experiences with climate change, contextualising other materials, etc.

Example: The Proposed Climate Law and Policy Module Guide

Seminar 15: Climate Change and Human Rights

[157] For the 'deconstruct-reconnect-reconstruct' approach to decolonial pedagogy See G Bhambra, *Connected Sociologies* (Bloomsbury 2014).
[158] Freire, *supra* n 68, 79.

Core Reading:

- Philippe Sands, 'Climate Change and the Rule of Law: Adjudicating the Future in International Law' (2016) 28 JEL 19-35.

- Brian J Preston, 'The Contribution of the Courts in Tackling Climate Change' (2016) 28 JEL 11-17.

- Narelle Bedford, Tony McAvoy and Lindsey Stevenson, '**First Nations Peoples**, Climate Change, Human Rights and Legal Rights' (2021) 40 The University of Queensland Law Journal

Secondary Reading:

- Jacqueline Peel and Jolene Lin,' Transnational Climate Litigation: The Contribution of the **Global South'** (2019) 113 AJIL 679-726.
  ***OR** Joana Setzer and Lisa Benjamin, 'Climate Litigation in the **Global South**: Constraints and Innovations' (2019) Transnational Environmental Law 1-25

…

While it is important to encourage every student to gain as varied an understanding of each topic as possible, they must not become overburdened with reading. Further, simply changing reading materials will not necessarily achieve the goal of active engagement with the variety of perspectives offered in the reading. Therefore, it is also recommended that:

ii. **Students should be encouraged to prepare to address certain seminar questions from a certain perspective, so that they are then able to critically engage with it** when answering questions and debating with differing standpoints in class.

   - Responding to this proposed change in the student survey, the majority of students agreed that greater discretion as to secondary seminar reading (e.g., picking two out of the five articles listed and comparing/contrasting those perspectives with others in class) would be useful for a deeper understanding of the module, with some also noting that it would help with critical analysis.

   - Responding to this proposed change, teachers expressed the fear that the 'split reading' approach may become, even if inadvertently, monopolised given the reality that some voices in the classroom are louder than others. For this reason, it is preferable **to assign the specific role of 'Presenter' and 'Respondent' to each student**, wherein each student makes their own distinct contribution to a certain seminar question, pointed out to them beforehand, in relation to the perspective they accessed. This would not only meet the goal of requiring students to consult diverse literature, but also meet the goal of critical engagement, given that such practice is necessary to create a strong argument and/or stance on the question and apply the perspective to the legal issue in hand. The rotating Presenter/Respondent categorisation of students would be effective in ensuring that all participants study, understand, discuss and

experience the topics of “whiteness” or coloniality, and consider how they may be contextualised. This is crucial given the continued predominance of whiteness in the classroom; learning should not be dependent on the presence of people of colour.

Students may also critically engage with their perspectives through **larger group activities**. These may be debates, or spaces allowing students to work together - for example to better a treaty provision or draft a judgment, where the context calls for such. This activity could be used as an opportunity for students to challenge existing legal climate instruments, considering whether the instruments accommodated marginalized perspectives to the extent they believe necessary.

2. Re-constructing the ‘critical’

When students are shielded from differing perspectives, they never come to realise the academic value of those perspectives.[159] This arguably stems from an embedded institutional attitude that critical engagement with varied perspectives is irrelevant to learning, since they are only ever “supplementary” to the content of the module, and therefore to its assessment.

This can be evidenced in Figure 1. The question reflects the survey's finding as to whether students suffered from this disconnect, asking whether they found learning which was useful for gaining more ‘varied perspectives’ was also useful for exam-based learning. Although 46.7% feel they are given little to no opportunities for peer-learning in seminars e.g., presentations, speeches, debates and other small-group work, 43.3% believed that peer learning was useful for getting more varied perspectives, but not useful for exam-focused learning. Further, although 40% found peer learning to be useful for both, it is not necessarily clear whether this was because they recognised the perspectives themselves as useful for exams, or whether they simply did not have any issue with peer learning as a technique for gaining sufficient ‘exam-worthy’ knowledge.

[159] S Vaughn, ‘Some Reflections on Diversity and Diversifying the Law Curriculum’, text of an intervention presented at the Oxford Law Faculty ‘Diversifying the Curriculum’ Event, 16 May 2019, available at: https://ssrn.com/abstract=3392248 or http://dx.doi.org/10.2139/ssrn.3392248 . Accessed 8th November 2022.

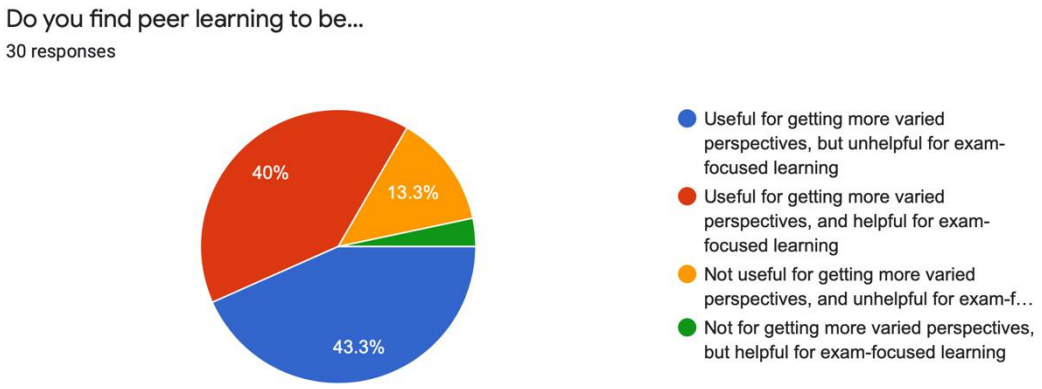

Figure 1: Student Responses to the question *'Do you find peer learning to be'* useful for getting more varied perspectives and/or helpful for exam-focused learning

Similarly, while many agreed that greater discretion as to seminar reading (as recommended above) would help understanding issues from a variety of perspectives, many responders were concerned that relying on peers here would disadvantage them in terms of gaining the knowledge they required for exams; *"I do not want to have to rely on my peers"* for understanding was explicitly mentioned. This attitude was again reinforced in the following quote, which came in response to an "Please list any other suggestions/ideas" option: *"I really do not enjoy presentation style learning in seminars as the work of other students is too inconsistent. It also covers the basics instead of being able to thoroughly apply the topic by discussing exam questions with the leader. I would prefer to make the most of the seminar leader's knowledge than my peers"*.

The issue of inconsistency of peer-delivered content is beyond the scope of this project. However, it is notable that many students appear to believe that discussion of exam questions from the perspective of the "seminar leader" is the only material of use in their learning.

Therefore, in order to sustainably break down colonial binaries and encourage students to embrace learning from a plurality of perspectives, it appears that it is necessary to remind students that doing so would benefit both their learning and exam experience. It is therefore recommended that:

i. **Students are explicitly reminded, at the beginning of the course and throughout, that those who engage with the module content, rather than simply learning for assessment, are more likely to be successful in the assessment** as their overall understanding will be greater. Where a student engages in a 'deep' approach to learning,[160] as opposed to rote learning, their assessment success is positively affected.[161] The mandatory seminar is

[160] K Scouller, 'The influence of assessment method on students' learning approaches: Multiple choice question examination versus assignment essay' (1998) 35(4) *Higher Education* 453, 466.
[161] JB Biggs, 'Individual differences in study processes and the quality of learning outcomes' (1979) 8 *Higher Education* 381; A Diseth and Ø Martinsen, 'Approaches to learning, cognitive style, and motives as predictors of academic achievement' (2003) 23(2) *Educational Psychology* 195; S Roma, PJ Cuestas and P Fenollar, 'An examination of the interrelationships between self-esteem, others' expectations, family support, learning approaches and academic achievement' (2008) 33(2) *Studies in Higher Education* 127.

conveniently placed for introducing this concept, as well as emphasising that the process of critical engagement which students undertake when learning from a decolonial approach is an end in itself, equipping them with skills for the future.

ii. **Students are taught to understand that the profile of the knowledge source and its substance cannot be detached.** In this manner they appreciate that "critical" analysis, a term students will be familiar with as necessary for creating successful exam outcomes, demands consideration of the positionality of a particular author and the context of the knowledge source, whether an academic material or a legal instrument. They may be equipped to consider this by being made comfortable to form their own opinion in a supportive workplace, and by being encouraged to question the below factors, used in feminist critiques of epistemology:[162]

- The type of knowledge the author is claiming to have access to e.g., universally relevant as opposed to Western-centric, objective as opposed to partial etc.
- The method they used to attain this knowledge e.g., reasoning, logical deduction, aggressive argumentation.
- The nature of the author in this process e.g., value-free, neutral, detached, rational, imaginative, creative.

iii. **Students are encouraged to undergo the questioning above when engaging with the questions and activities in their seminars.** Many students draw on the questions considered in seminars to inform their exam preparations. Therefore, if seminars include such questions as those above, which require critical engagement with different perspectives, and activities which encourage considerations of "critical" in its widest sense, students are more likely to take contextualised understandings of the topic as of value, and consult them in examinations. This will serve the purpose of "deconstructing" the understanding of marginalized perspectives or other global forms of knowledge as inferior or mystical; not only will students be critically engaging with such perspectives, but they will do so with the recognition that there is innate value in these forms of knowledge for their learning experience just as with any other.

Example: The Proposed Climate Law and Policy Module Guide

Seminar 15: Climate Change and Human Rights

Questions to consider:

- How is the approach of the European Convention on Human Rights different from the protection of the environment in the African Charter on Human and Peoples' Rights? How could each be criticised, based on their extent, and also based on any assumptions they make/the understandings that the instruments are based on?
- Why is it important to consider the available climate science before bringing a claim to court?

[162] T Field, 'Feminist Epistemology and Philosophy for Children' (1997) 13(1) *The Journal of Philosophy for Children* 17, 19.

- In what ways do Bedford et al demonstrate that human rights instruments have the potential to protect First Nations' interests in a climate change context? Do you find their 'holistic approach' to be a 'decolonial' one?

Activity:
Split the seminar group into two, depending on who read Peel's article and who read the Setzer. In your group, discuss the perspective of the author when discussing the author when discussing climate litigation and its relationship to the Global South, in the content of human rights. Open up discussion to the wider group, comparing and contrasting the perspectives of the authors.

- Do they differ in their conceptualisations of the Global South? In what ways could these conceptualisations be criticised?
- How does this affect their categorisation of rights-based claims in climate litigation?
- Which article do you find most convincing?

OR

Assign students the role of Presenter and Respondent, and one of the questions below, according to the article they have read. Each Presenter should prepare a 5-minute speech, to which the Respondent has 2 minutes to respond.

- Peel's conceptualisation of the Global South is stronger than Setzer's
- Setzer's categorisation of rights-based claims in climate litigation is more in alignment with current reality than Peel's

…

3. Reconnecting with the 'critical'

Lastly, in order for decolonisation efforts to be effective, any change in substance must be tied in with a change in delivery. It is only by breaking down the hierarchy between the student and teacher that students will be afforded the time and space to critically engage with the varied perspectives included in the module and generate their own knowledge. Simply put, the "curriculum can only go as far as the classroom allows it to go".[163] A central goal of transformative pedagogy is to transform the classroom into a democratic site of conversation where everyone feels an ability to contribute.[164] The need for self-reflection as to individual biases has already been noted above. However, specifically for this module, it is recommended that:

i. Teachers serve as facilitators of discussion in seminars, while students "decide on the primary discussion"[165] by responding to the seminar questions based on perspectives they have engaged with. Teachers must be "open to what they have not heard before and resist the urge to translate what they hear into what

[163] S Jivraj, 'Towards Anti-Racist Legal Pedagogy: A Resource' (September 2020) Kent University Research Document https://research.kent.ac.uk/decolonising-law-schools/wp-content/uploads/sites/866/2020/09/Towards-Anti-racist-Legal-Pedagogy-A-Resource.pdf> Accessed 8th November 2022.
[164] B hooks, *Teaching to Transgress - Education as the Practice of Freedom* (Routledge 1994) 39.
[165] PS Parker, SH Smith and J Dennison, 'Decolonising the classroom: Creating and sustaining revolutionary spaces inside the academy' (2017) 20(3) *Tudschrift Voor GenderStudies* 233, 2ji.

is familiar".[166] Again, the above student and staff responses do point to a fear that classrooms would become unhelpful with too much reliance on peer learning. However, this will hopefully be rectified by making logistical compromises (see Presenter/Respondent discussion above) and by re-formulating the concept of "critical" to remind students that engagement with varied perspectives is helpful to their learning and assessment.

ii. Teachers should continue in their role as 'experts' in the seminar to appease any concern that students would miss out on any "crucial" substantive knowledge, for example by providing a short introduction as to the content, summary thoughts on the perspectives in discussion, or any clarifications where necessary.

iii. Every seminar should take on this layout, even if there is a decolonisation-specific seminar included in the course. This ensures that students are afforded the ability to adopt a critical perspective with which to analyse all topics, not just those which openly lend themselves towards decolonial thought.

Overall, despite the fears considered above, students demonstrated a clear keenness for seminar-based learning, especially where they allowed for broader discussion of the topic (See Figure 2).

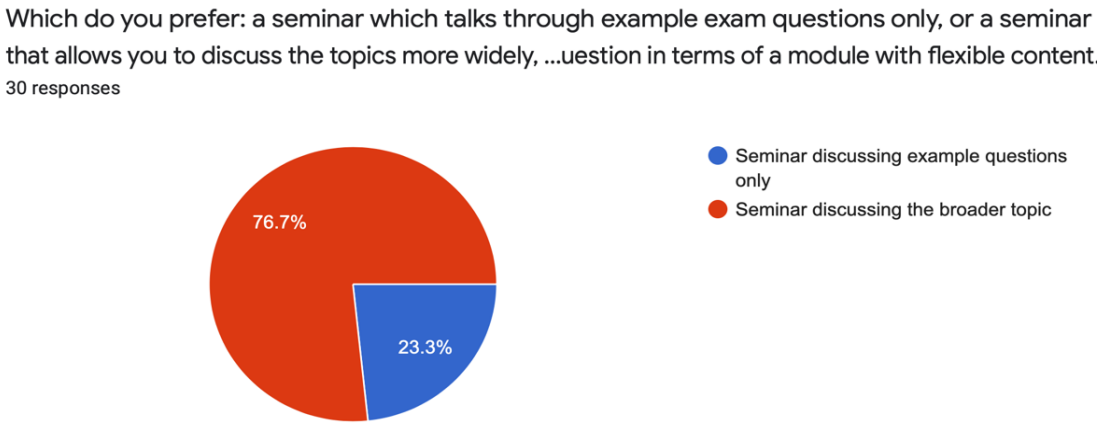

Figure 2: The majority of students found seminars discussing the broader topic to be more useful than only discussing example exam questions

Further:

- 43% find seminars an extremely valuable method of teaching and learning.
- When asked of their expectations from a climate law module, many students responded with ideas of seminar-dominated teaching.

[166] K Murris, 'Philosophy with Children, the Stingray and the Educative Value of Disequilibrium' (2008) 42(3-4) *Journal of Philosophy of Education* 667, 671.

- A majority described their ideal seminar as a discussion, in which they are able to pinpoint important topics, deepen their understanding of them and compare perspectives, with subsequent consideration of exam techniques.
- Therefore, there appears that students would be satisfied with the layout of this module recommended from 1. 'De-constructing…' to 3. 'Re-connecting…'.

C. Secondary Recommendations

The second set of recommendations concerns the methodology through which to implement the changes suggested for the decolonisation of the module.

1) Incremental Approach

As alluded to above, the **changes recommended above should be incrementally adapted following student and teacher feedback.** For example, students should share their evaluation of the reading lists, and the perspectives they included, with their teachers, feeding back on whether the materials they accessed were sufficient for working towards a global understanding of climate law. They should be asked to inform teachers as to the styles of student engagement utilised in seminars - such as debates, or treaty drafting - again helping to determine which were most effective, and which could be improved. In addition, they may be consulted when determining which guest speaker should be chosen for the final seminar of the year.

Allowing students to act as co-producers of knowledge in this way would work to reinforce the dismantling of the teacher-student hierarchy as explored above. Further, through these incremental changes, the initiative would hopefully be routinised into "all aspects of the academic cycle from the development and revitalisation of curricula, through the practice of teaching and learning, to the process of assessment and finally full circle to programme review, modification and revalidation".[167] Such an integrated commitment would work towards ensuring that this decolonisation project is practiced in solidarity, and allows the teaching and learning project to become a "resistance to colonialism" in itself.[168] It is in this way that one hopes to succeed at "decolonising the curriculum".

2) Assessment

The need to "re-construct the critical" in assessment has been mentioned above but must also extend to questioning the notion of infallibility of academic judgement which remains in marking criteria.[169] Just as students are encouraged to think of being "critical" as an evaluation of academic arguments based on their substance, providence and underlying contextual and ideological perspectives, teachers must also.

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[167] H Barefoot et al, 'Using a value added metric and an inclusive curriculum framework to address the black and minority ethnic attainment gap' (*Closing the attainment gap* 2016) < https://closingtheattainmentgap.co.uk//wp-content/uploads/sites/29/2019/08/OfS-Project-launch-poster_Oct-2017.pdf> Accessed 8th of November 2022..
[168] V Hart, 'Teaching black and teaching back' (2003) 22(3) *Social Alternatives* 12, 15.
[169] C R Rogers and H J Freiberg, *Freedom to Learn (Studies of the Person)* (Pearson 1969).

i. Teachers should encourage students to **cite a range of writers and instruments** in their assessments.
ii. **Exam questions should be framed** so as to encourage students to call on a wide range of perspectives and critically engage with them.
iii. The **choice of essay questions should be widened** so there is at least one option to examine canons in relation to subjects such as colonialism.
iv. Students may be encouraged to **determine their own formative assessment questions**, to allow them an opportunity to generate their own knowledge.
v. Teachers should openly consider analysis of the positionality of an author, and the context of their knowledge source, as part of "critical analyses", and as relevant to successful exam performance.

D. Summary in seven key recommendations

1. The incorporation of a mandatory seminar early in the course introducing students to the need to, and the importance of, decolonising the teaching and learning of the module.

2. The incorporation of contrapuntal readings into the core and further reading lists, which serve to demonstrate the diverse experiences with climate change, and climate change law and policy.

3. The encouragement of critical engagement with the readings through discussion and debate with these differing perspectives in class, whether between Presenters/Responders or through larger group activities.

4. The reformulation of "critical" to include the contextual background of a knowledge source or legal instrument, and the positionality of the author, and a reminder to students that such contextualised understanding is academically valuable.

5. Student-led seminars, where teachers act as facilitators of discussion and offer their 'expertise' to introduce and summarise the key content and perspectives in question.

6. Incremental and continuous adjustments to the module via student feedback.

7. Changes to assessment practice, serving to re-affirm the value of 'critical' in the widest sense and the self-generation of knowledge.

V. EU law, decolonisation, and Brexit

Nart Karacay, Morgan Lim, Kristiyan Stoyanov, Miranda (Qianyu) Wang, Tamar-Mohammed-Aly Malak, Irene Wieczorek

A. Introduction

Discussing a decolonised, non-Western approach to the teaching and research in European Union ("EU") law might appear at first sight not the most self-evident task. The EU is not a nation state with a clear well known colonial past. Moreover, on a superficial level, it might seem a field of law confined to a specific region of the western world, indeed Europe. When we first approached EU scholars that are based in the Global South for our interviews as part of this research (see later Section B), one of the questions we faced was indeed how can there be a non-western approach to EU law?

In fact, our research has shown some darker sides of EU history, and ties with colonialism. Moreover, the field of EU external relations law, as well as EU normative influence on third countries, is significantly evolving. All this makes considering EU law a field of law only relevant to one region, with no ties or impact on other regions of the world, in particular the Global South, an all too narrow understanding. Moreover, the EU is increasingly becoming a more ethnically diverse continent, due to historical ties between EU countries and former colonies, and the ongoing migratory fluxes from former colonies to former colonial metropolis. EU, external and internal, policies are therefore inevitably bound to having to confront themselves with existing power dynamics within a racially and ethnically diverse community whose origin and make-up is tightly linked to colonialism. It is therefore worth, and necessary, to investigate the role for the EU as an actor that creates unbalances of powers through the law, and the potential racialised impact of its internal and external policies.[170]

Next to these "matter-of-fact" reasons for exploring what a decolonised approach to EU law teaching means, one should also add some more normative rationales. There are of course the moral and intellectual reasons, discussed in the first chapter of this working paper, which justify and actually demand a decolonised approach to legal education itself. But one should also stress that the traditional EU narrative is that of a project aimed at building peace and communality between peoples. And the EU has made a deliberate constitutional choice to present itself as a legal order based on values, which puts individual dignity at the centre. One could thus argue that enquiring into whether the EU lives up to such values, detaching itself from former colonial practices, and refusing any form of neo-colonialism, is an intellectual and moral imperative which is even more pressing than in other fields of law.

In terms of scope of the research, since the paper is focussed on the teaching of EU law, the aim is not to develop an original argument on EU law and colonialism. It is

[170] This understanding of decolonisation is therefore closer to the "thick" one discussed in the first chapter. This one goes beyond the strict sense of decolonisation as rectifying wrongs of colonialism in their more evident form such as land grabbing and expands to tackle also more indirect legacies of colonialism. See Section II of the first chapter for a more specific discussion on how decolonisation is intended in this paper.

rather to identify where *existing research* on this topic could fit in our teaching, and possibly to identify blind spots which would need further research. It looks at how to decolonise introductory courses to EU law, not to introducing a specialised “EU law and race” course. This has both space - one internship did not seem enough to develop one module from scratch - and normative reasons. From a normative perspective, the standpoint is that the overarching aim of this work should be to spread a decolonised approach in mainstream compulsory teaching so that all our students can benefit from it, rather than creating an *ad hoc* module that only students who are already interested might take. In Durham Law School, there are three courses on EU law, "EU Constitutional Law" undergraduate course; "Contemporary issues in the law of the internal market" undergraduate course; and "Introduction to EU Law" LLM course. The paper focuses on how to decolonise the two introductory courses.

Before delving into the substance, it should be highlighted that, contrary to other fields such as international law, the scholarship on EU law and colonialism is an emerging one where critical mass is still being built. Because of this, this research has relied on both the existing, limited, literature on EU and colonialism, but also developed an articulated methodology on how to design this research. Moreover, the existing literature is quite specialistic, and not always suited for an undergraduate course, therefore detailed indications are given below as to the relevance of the proposed reading lists and how these can contribute to decolonising law. And more in general, in light of the emerging nature of decolonisation debates in the field of EU law, the following should really be understood as opening, and contributing to the conversation, rather than already achieving the degree of overhaul that a full decolonised approach would require.

The structure of this chapter will include explanation of the methodology through which the area for improvement have been identified (Section B); a section with substantive recommendations on EU law content (Section C); and a section with recommendations on how to adjust teaching methodology (Section D).

B. Methodology[171]

The authors of this paper have strived to base their research and findings on a methodology consistent with the main tenets of the decolonisation literature in terms of actors of decolonisation and students' empowerment. The approach has been empirical and bottom-up paying due care not to rely on a western-centric approach. That is the scope of the research and the recommendations have been designed based on students' preferences, and on indications coming from academics based in non-European countries, mostly belonging to the Global-South.

Students were invited to give their opinion on whether decolonisation, especially of the EU Constitutional Law curriculum was important to them and should be pursued, the areas of EU law where adopting this approach was more pressing, and the improvement to teaching methodology. Next to the two students hired to be intern on the project "EU Law, Decolonisation and Brexit", six students volunteered to be part of a focus group on decolonisation, these were involved in providing suggestions on

[171] This section was drafted by Morgan Lim, Qianyu Wang, and Irene Wieczorek.

how to amend teaching methodology (see Section D) and to design a survey to be distributed to students. The survey was distributed to the whole students' body (undergraduate and postgraduate) in 2021/2022. Incidentally the students involved and replying to the questionnaire happened to include a significant portion of international students; a cohort which normally includes a higher proportion of students of colour.[172]

Furthermore, academics based in non-European universities, and who for the most part did not receive their education in the west, were interviewed through semi-structured interviews to gauge what areas are of interest of foreign scholars in light of the potential racialised impact of EU policies. The next two sections further detail the methodology and findings of both the questionnaire and the interviews, and how they have informed the recommendations included in Section C and Section D.

1. Students' perceptions on decolonisation of the EU Law curriculum: the survey results

i. Survey methodology

The survey was composed of ten questions, some with multiple choices, some with open answer. The survey was designed through *Google Forms*, allowing for participant anonymity. After approval by Durham Ethics Committee, it was circulated via email to Durham Law School whole undergraduate and postgraduate (taught) student body. The choice to include only LLM students and not MJur students is due to the fact that sought input was that of students who took or were taking EU law courses in Durham.

51 responses were received. This is not a sufficiently wide sample to draw statistically significant conclusion on the opinion of the whole student body. We consider it nonetheless relevant and of interest to our research.

ii. Survey Findings

- **First set of questions: Respondents' demographic information**

The first set of questions concerned information about the participants, namely the year they were in, their nationality and ethnicity. The majority of the responses came from *Second Year Undergraduate* students (Fig. 1). This survey received roughly half answers from international students and half from domestic ones. This is fairly representative of the split between domestic and international students in Durham Law School. Lastly, the largest number of responses came from White British Students, and Students of Chinese descent, who were the most responsive black and minority ethnic students to this survey. (Fig. 3)

[172] This was however an unintended result considering that the survey was circulated to the whole student body. See under i) on the methodology for the survey.

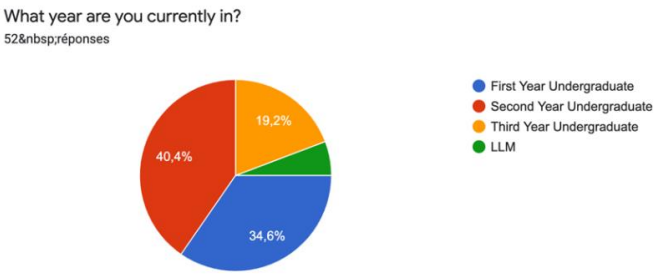

Fig. 1 Students Year

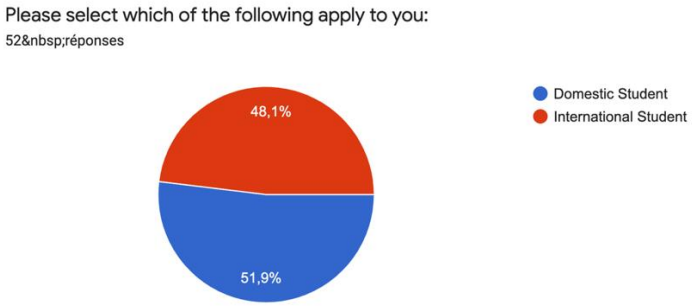

Fig. 2. Students' fee status

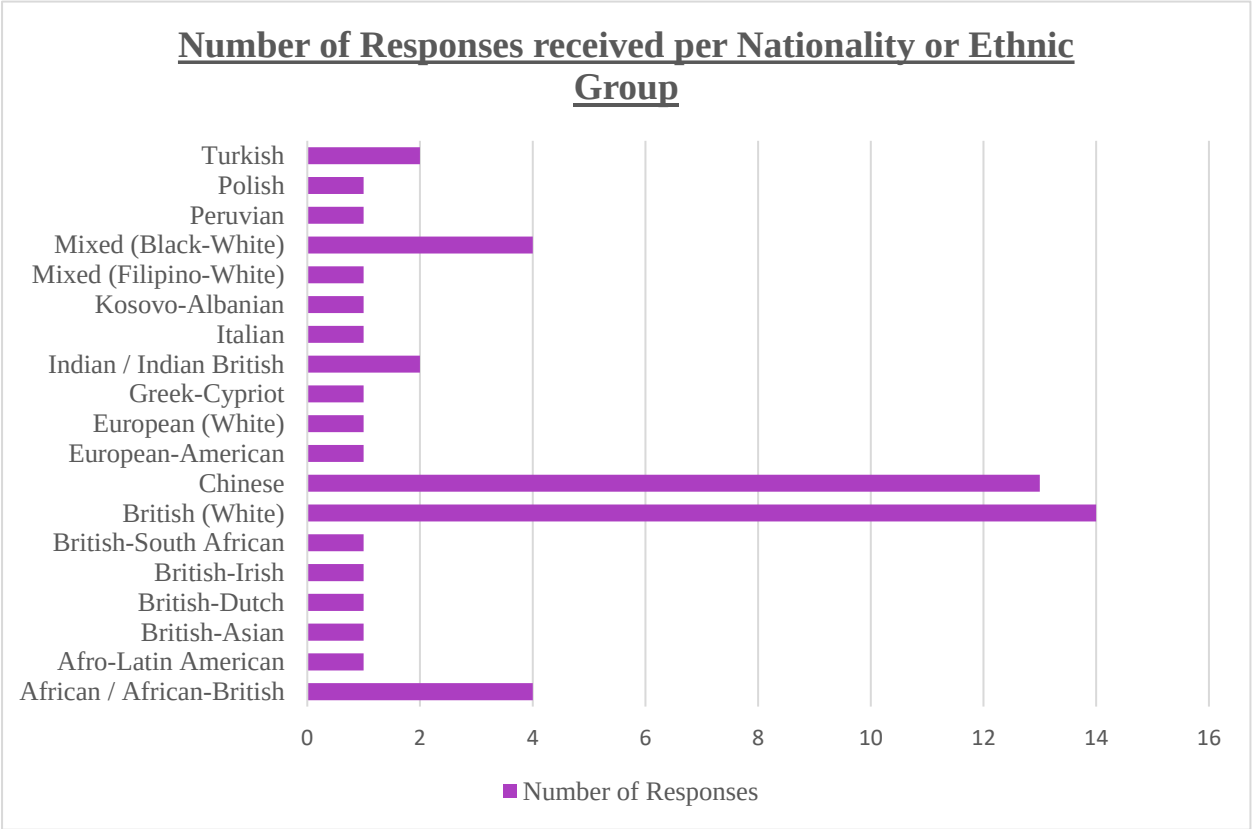

Fig. 3 Students nationality/ethnic group

- **Second set of questions: The global nature (or lack thereof) of EU law teaching**

The second set of questions concerned students' opinions about whether the “EU Constitutional Law” course incorporated perspectives which were not necessarily only Eurocentric. A deliberate choice was made not to ask directly about decolonisation, given that the term can have a negative connotation due to the narrative control problem mentioned in the general introduction to this paper. So as not to influence students' response the choice was made in favour of using the term “Global” to broadly mean “non-Eurocentric”. This choice was made with the awareness that the concept of decolonisation is a much more specific one than just “non-Eurocentric”; and that there is that conflation of different issues which might dilute the force of the decolonisation agenda’s demands. Nevertheless, considering that this survey was mainly aimed at gauging students' general interests in some of the themes which underpin, while naturally do not exhaust nor always fully overlap with, the decolonisation debates, and that students might not have been exposed to the term decolonisation at all, and therefore would not be able to answer the questions, this terminological choice seemed the best compromise. The questions were 1) "Do you feel that the teaching of EU law include a sufficiently global understanding of EU Law?" “2) If yes or no why?” “3) How would you improve it to make it more global?”

76,9 % of the respondent found that the course was sufficiently Global (Fig 4). However, what emerges from the responses to the open questions is that among those who replied in the affirmative several thought that, since the nature of the course is focused on the EU, sufficiency of a global understanding in the course may be met more easily as students expect the course to be more Europe focused. Nonetheless, students who replied in the affirmative, which included a predominance of those of White-British descent, found there to be ample discussion on the impacts of EU law on a diverse group of people which was helpful in order to gain perspective on others. Compared to the five other courses in first year, the first year “EU Constitutional Law” course was thought to incorporate extensive international resources and legal systems. This resulted in a comfortable environment for students to bring up other legal jurisdictions in discussion. These answers seemed to refer to an international, yet *European* only dimension. For example, one student believed that there was sufficient global understanding of EU law as the cases not only involved the UK but other member states as well. Another felt that the course was taught in a 'colour-blind' manner as the content itself was not racist. 40 students replied that the course did indeed engage a sufficient global understanding in its inclusiveness of international actors and countries outside of the EU. It should be noted also that the diversity of teachers in the course was applauded.

The 23,1% of students who replied in the negative, however, observed that the EU by nature is Euro-centric, and therefore global teaching of the subject was limited. They also noted that the extensive emphasis on Brexit may have detracted from any other internationalism. As most of the content only applied to Member States, students could not say they were knowledgeable on the impacts of EU law on a global scale. The lack

of coverage on the EU's interaction with non-EU countries and other international organisations did not give an adequate account of how EU law functions in a global context.

Suggestions on how to improve the course and make it more global came both from students who believed that the course had been taught in a sufficiently global way, and those who did not (six students thought that consideration of a more global or inclusive curriculum was unnecessary in this module). Students generally suggested that there needs to be an increase of discussion and content on the wider impact of EU law and non-Member States. In more detail, 23 suggested comparative analyses as a method of outlining the similarities and differences between the EU and other areas of the world such as Asia and Africa. Moreover, the structure of the EU could be compared to other supranational or intergovernmental organisations that would highlight the uniqueness of the EU while providing a deeper understanding of other international legal systems (e.g. the African Union or the United Nations). Also, understanding the dynamic of political tensions in the EU legal order and analysing how the EU tackles political issues such as public policy, human rights, or migration may give insight into the EU's position on the global stage. Finally, further encouraging students to bring in sources from their own jurisdictions, where appropriate, was listed as a possible way which may widen the scope of the course and increase student motivation.

- **Second Set of Questions: EU law teaching and Brexit**

A specific question on EU law teaching and Brexit was included: "After Brexit, do you think we should focus more on the role of EU law in the world, or the role of EU law in the UK?" This question was included due to the specific position of UK universities at the moment. It was meant as a potentially complementary, potentially correcting, question to the ones above on the global approach to EU law teaching. The aim was to determine if students understood focussing on a less Euro-centric approach to EU law teaching implied looking at EU relations with the world, including the Global South, or with the UK only. 28 Students thought that the course should focus on the relationship between the EU and the world, or at least a mix of EU-UK and EU-World focus. (Fig. 4). One interpretation is that a large portion of modules in Durham Law School are naturally UK law based, "EU constitutional law" has a greater opportunity to be more international. A second explanation could be that there is a large proportion of international students in Durham, coming from non-European countries, who have an interest in looking at EU law interactions with different regions of the world.

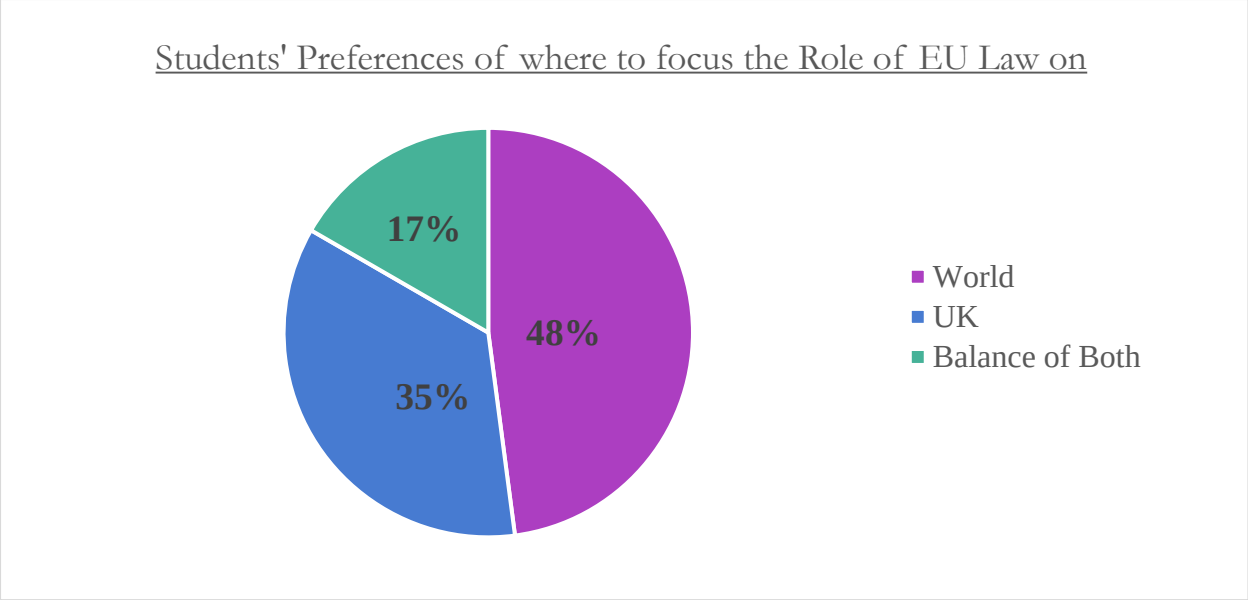

Fig. 4. Students' preferences as to EU law relation with the world.

- **Third Set of Questions: Inclusivity and EU Law Teaching**

A third set of questions was included which referred to the degree of inclusivity of the EU Constitutional Law course teaching. The questions where: “1) Do you feel the design of the EU Constitutional Law course and the teaching has been sufficiently inclusive of different perspectives (cultural, cultural political, related to race and gender)?” “2) If yes or no why?” “3) How would you improve it to make it more inclusive?” These questions are not strictly related to the question of decolonisation, even more broadly interpreted, and are generally referring to the embedment of values of equality, diversity and inclusion in the teaching of EU law. They were included to assess if students felt there was a specific issue with lack of inclusion of non-Eurocentric perspectives in the course or a broader issue with teaching which was not necessarily inclusive.

57% of the respondents found that the course was sufficiently inclusive. The main reason listed was the discussion of examples, particularly the case law discussed in the course which included reference to treatment of people belonging to marginalised cultural, ethnic, sexual, or political backgrounds (11 replies). Next to this, the listed reasons for this mainly focussed on the quality of the teaching and the approach of Dr. Wieczorek (4 replies). Also, the diversity in lecturers' backgrounds was praised as a factor contributing to different perspectives being included in the course.

The negative responses as to the degree of inclusivity focussed specifically on the dominance of a Western perspective which also lacked a recognition of human rights issues rooted in the EU’s colonial and post-colonial background (13 replies). Students who grew up in foreign legal systems, and therefore lacked familiarity with the EU system and found the course less relatable, especially had issues with this aspect.

Interestingly, students showed awareness of the specificity of EU law teaching and tailored their criticism to that. Two quotes illustrate that:

> *"The teaching of EU Constitutional Law mainly focussed on UK and EU perspectives. It provided an adequate amount for the purposes of practicing law in England and Wales or in the EU itself, but it didn't really give an account of how EU law functions in a global context."*

> *"Yes, mostly because we received comparatively more diverse perspective in the course. But there was also the barrier that since the course was solely EU law based, there was a prevalent Western perspective on some of the topics where this wasn't perhaps necessary. For example, for directives or direct effect, obviously the course will extensively focus on EU legislation. On the other hand, in terms of human rights, the course could have focused more on, for example, the sources of these human rights issues which are more often than not rooted in post-colonialism -- such as the wider picture of rising authoritarianism and anti-immigration sentiments in Europe."*

At least two students however replied in the negative as to the need to make the EU Constitutional Law course more inclusive. One is the quote reported in the general introduction to this paper, and the second stated: "*There is no need to make the module 'more inclusive' of race or gender. When considering the history of the EU, some discussion of the cultural differences between EU member states and the effect this had on shaping/interpretation/implementation of EU law could take place*".

As to suggestions on how to render the course more inclusive, while most of the students stated that they did not know any way to increase inclusivity in the curriculum, those who included some suggestions focussed on:

1) Including a more diverse range of sources of required readings. In "Public International Law" for example, students were obliged to read an article about the conquistador, Vitoria. These readings may include more commentary and discourse from scholars, politicians, or even public opinion from both Member States and non-Member States.

2) Greater student involvement. One example would be to host debates and essay competitions that may encourage students to dive deeper into researching international content. A second option might be to allocate lecture time or even additional sessions for a Question & Answer session with lecturers for students to ask about the lecturers' international experiences with EU law so to increase awareness of diversity in the legal field.

- Discussion

The **demographics** of the respondents are, to an extent, not surprising. The overrepresentation of 2nd year students is likely due to the fact that this cohort had already completed a full *"EU Constitutional Law"* course, unlike first year or LLM students who when the questionnaire was being circulated (October) had just started an EU law course. The predominance of 2nd years responses (as opposed to 3rd

years) can also be explained by the fact that these students had taken the “EU Constitutional Law” course when Dr. Wieczorek, the supervisor of the decolonisation internship, who led on the "EU Law, Decolonisation and Brexit" project, was module leader. They might have therefore been more responsive. This however means that the responses can be interpreted as referring mainly, although not exclusively, to the course as designed by Dr. Wieczorek in 2020/2021. The course was largely modelled on the courses taught in the previous years. There were a few additions such as the inclusion of a discussion of piece of news on the EU coming from non-EU countries during the first tutorial to allow international students to relate more to the course and open the conversation as to an outsider perspective on the EU; a mention, although not an extensive discussion, of EU double standards on fundamental rights protection when it comes to third country nationals; and a part of the first lecture focussing on Brexit’s impact upon EU external relations beyond EU-UK relations. **When reading the responses as to the lack of discussion in terms of global approach, and the role of the EU in the world, one should therefore consider that these aspects were not judged as sufficient**. A point of relevance might be the fact that the majority of the respondents who were international students were ethnically Chinese. This may be due to the fact that ethnically Chinese students represent a majority of black and minority ethnic students at Durham University. But it has also been suggested by **a number of Asian students that the fact that the current curriculum very much lacks any sort of Asian perspective which has become a pressing issue for Chinese students**.

> *=> This finding has been taken into account in the recommendations below in Section D by ensuring that the suggestions for the amendment of the course go beyond what was done in the year 2020/2022 and that EU relations with different regions of the world, including Asia.*

The replies on students' preferences as to the content of the course are interpreted as follows. There is an obvious understanding that an EU law course would focus mainly on Europe. However, UK universities find themselves at the moment at a critical juncture, namely having to teach EU law in a non-EU member state. There is therefore a need to carry out a deeper reflection, on the direction for EU law teaching. While naturally a part of the course needs to be devoted to EU-UK relations the replies to the survey showed that there is a **general appetite and, actually a demand, for further discussion on the role of the EU in the world**. Such a discussion is not expected to be a neutral one, but actually a **critical one incorporating critical readings of EU policies**, such as migration and human rights policies, as well as purposely **incorporating a non-Western perspective** on the role for the EU in the world. This is not seen as just **a pedagogical need** (including to make the course more relatable to international students) but also a **real equality, diversity and inclusion concern**.

> *=> This finding has been taken into account in the recommendations below in Section D by ensuring that a critical reading of the topic EU relations with the world is duly incorporated in the course.*

In light of the fact, that a minority of the students nonetheless considered discussing other European legal systems “global” enough, and that at least one student replied that they saw no need to introduce a more inclusive approach to EU law, it is suggested that **when amendments are made to the course**, **the significance, and benefits of introducing diversity *and* a decolonised approach to EU law are made explicit and explained**.

> *=> This finding has been taken into account when addressing the question of pedagogical recommendations in Section E.*

Finally, the list of **practical recommendations** issued from the survey responses can be summarised as follows:

Curricular Content

a. Increase of discussion and content on the wider impact of EU law of non-Member States
b. Analyse how the EU tackles political issues such as public policy, human rights, or migration
c. Compare the structure of the EU to other supranational or intergovernmental organisations that would highlight the uniqueness of the EU while providing a deeper understanding of international legal systems (e.g., the African Union or the United Nations) and the fact that the EU is one of many examples of regional integration projects.

Student Participation

d. Encourage students to bring in sources from foreign jurisdictions that may widen the scope of the course.
e. Host debates or essay competitions to encourage deeper research into the place of the EU in the world, and its impact on non-EU Member States (especially in the Global South).
f. Allocate time or additional Q&A sessions for students to ask lecturers about their international experiences with EU law.

Pedagogical suggestions

g. Explain the importance and benefits of a more diverse and inclusive curriculum as some students may deem this initiative unnecessary.
h. Increase diversity in the range of sources of required readings to include more commentary and discourse from non-Member States.

> *=> All these suggestions were given due consideration when drafting section D and E. Most of them have been incorporated, explaining the rationale for them and where to include them in the course.*

b. EU law teaching outside the EU: What insight from foreign academics?

As mentioned, the second source for deriving insights as to areas of EU law where a decolonised approach could be introduced, were interviews with non-European scholars. This part of the research resulted in a separate publication:

> I Wieczorek and Q Wang, 'Teaching EU Law outside the EU: An explorative analysis of 8 case studies in Asia' in M Stoiocheva, SG Sreejith, and I Gupta (eds), *The Future of EU Studies in Asia* (Springer 2023).

We refer to this publication, and to a forthcoming one which focuses on teaching of EU law also in Asia Pacific, Africa and Latin America, for full details of the methodology and extensive discussion of the findings. We nonetheless report here a summary of those findings that have informed the design of the recommendations below.

- Interviewees included EU law scholars (or occasionally EU studies scholars) based in Asia (mainland China, Hong Kong, Macau, Singapore, Japan, South Korea, India and Pakistan). Further interviews, whose findings will be included in a following publication included EU, and international law scholars in the Asia-pacific (New Zealand) in Latin America (Chile); and in Africa (South Africa, Kenya and Nigeria). In some cases, colleagues who were informed about the state of EU law teaching in their own institution because of their position, e.g. a head of school, was also interviewed.
- In the **Asian universities** part of our case studies there seem to be **a good degree of scholarly appetite for EU law teaching and research and several EU law self-standing courses are set up**. Given the student audience's general unfamiliarity with the EU and with EU law, it is not surprising that the EU's social and historical background and EU constitutional law, which are the foundation of learning EU law, are taught the most. Other common areas of teaching include EU environmental law, EU internal market law, EU competition law, and EU external relations. EU law also features as an important comparator in a number of other non-EU law specific courses on domestic law such as environmental law, data protection law, or competition law. These are all areas where the EU is recognized as a global normative trendsetter. Legal education in the selected universities extensively resorts to comparative law as a pedagogical tool. This leaves room for exposing students to various legal systems, including EU law, and thus relativizing the perceived universality of certain specific norms.
- Scholars interviewed in mainland **China, Japan, South Korea, Singapore and Macau** have **not reported that a consistent decolonisation of legal curriculum exists in their institutions**, including in countries which were subject to European colonisation (e.g., Hong Kong and Macau). If anything, a colonial past has meant increased relations with European former colonial metropolis (Portugal and the UK) if compared with other European States. **Efforts towards decolonisation of the curriculum are more present in India and Pakistan**.
- The majority of scholars in these universities have however reported that they see an **added value in developing a non-Eurocentric approach to the study of EU law** as it can provide a different, more critical perspective, on EU law, and EU policies and their impact on third countries. Among others, the example is made of how EU anti-dumping legislation, which had a detrimental impact on

the Japanese economy, was discussed differently in European and Japanese scholarship. An effort is made to also include in the reading lists EU law literature written by non-European scholars, which however is mainly written in the local language and not in English. This is done for pedagogical reasons, in some cases the students do not have a sufficient command of English, but also to incorporate such non-Western perspectives. A number of authors based in these universities produce EU law literature in English. However, these are normally scholars who have been educated in Europe, and who are European themselves, it is therefore doubtful whether this type of literature would incorporate a non-western perspective.

- **Students** tend to have a **neutral to critical view of the EU**. Aspects which are most criticized, and where the students are eager to learn more, are firstly the **linkage between human rights diffusion objectives and trade deals**. This is perceived as imperialistic on the side of the EU and lacking an understanding of the local context. Other aspects which raised criticism were **EU restrictive migration policies and their racialised impact**.
- In the **African Universities** part of our case studies, there is less of an appetite for setting up stand-alone EU law courses, with the exception of the University of Cape Town in South Africa. EU law plays an important role as a comparator in several courses given the strong comparative law tradition in these universities. Whereas in both **Chile** and **New Zealand** EU law courses have been set up.

In African Universities and in New Zealand **decolonial movements in higher education are much more enhanced and developed**. It seems however that the main target of such movements is European states' national legislation (e.g. French legislation, Dutch legislation, etc). EU law is perceived as supranational and thus not attached to a strong national identity with colonial history. This is possibly the result of a perception of the EU as an entity completely separate from its constituent Member States, which results from limited offering, and therefore understanding, of EU law. Criticism is however voiced against EU unfair trade practice.

=> *These findings have been taken into account in highlighting the added value of a non-Western centric approach to EU law and selecting the areas where this should be explored. This includes the aspects of EU policies which are perceived having an unfair, and racialised, impact on third countries. This research has not been particularly fruitful in identifying non-western scholars writing on EU law in English. The recommendations below therefore rely mainly on literature produced by European-based scholars, with due care to ensuring ethnic diversity.*

C. Recommendations on substantive aspects of the EU Law courses which could be decolonised[173]

This section discusses in more detail how to incorporate a decolonisation approach in the ”EU Constitutional Law” and the “Introduction to EU Law” modules at Durham Law

[173] The various subsections below were drafted by Morgan Lim (subsection 1), Tamer-Mohammed-Aly Malak (subsection 2) and Nart Karacay (subsection 3). Research supervision and editing was curated by Irene Wieczorek. We thank Adrienne Yong, Michelle Erpelding, Tawhida Ahmed, and Diamond Ashiagbor for their helpful suggestions.

School. Decolonisation in this context has been understood in a relatively, but not overtly, strict sense, namely as addressing those aspects of EU history and law that have direct or indirect ties with colonialism.[174] The areas where such ties have been identified, following the methodology illustrated in section B, include the EU colonial past, the presence of neo-colonialism in EU external relations, especially trade relations, and the EU policies on migration. While the first two areas are respectively connected with land-grabbing (the core tenet of colonialism and thus at the centre of the decolonisation agenda), and with unbalanced economic relations between Global North and Global South countries (a key tenet of neo-colonialism), ties with colonialism in the third areas are more indirect. The issue at stake is more that of a racialised impact of EU policies. However, it has been decided to include it in the discussion considering it has a strong external dimension. Moreover, it has also been argued that migration is a form of decolonial resistance.[175] This naturally implies that an unduly restrictive, and racialised, approach to it is still a legacy of colonialism. To all this, one should nonetheless highlight that an extremely large body of EU scholarship exists on EU anti-discrimination law and race, and EU initiatives against racism. This is naturally a closely connected topic to the ones discussed above, although not strictly related to land-grabbing or colonialism in general. Nonetheless some relevant literature is indicated in footnotes. This can be a starting point if one wanted to complement the discussion in each of the sections below.[176]

As was mentioned, the scholarship on EU law and colonialism is an emerging one where critical mass is still being built. In light of this, the reading listed below might in some cases be particularly specialist, or significantly interdisciplinary. This might not make each contribution listed suited for autonomous study on the side of undergraduate students. The contributions are also meant to be supporting literature for lecturers who can incorporate the key concepts in the lectures, and then unpack the reading with students in tutorials. Moreover, considering the rapidly evolving nature of decolonisation literature, we have included one last section with forthcoming publications, or authors to watch.

1. EU Colonial Past

[174] See the discussion in the introduction on the meaning of decolonisation and the various narrower and broader understanding of decolonisation.
[175] Achiume, (*supra*) n 16.
[176] A Lawson and D Schiek (eds), Intersectionality and EU Non-Discrimination Law - investigating the triangle of racial, gender and disability discrimination (Routledge 2011), I Solanke, *Making Anti-Racial Discrimination Law* (Routledge 2009); S Atrey, 'Race Discrimination in EU Law After Jyske Finans' (2018) 55(2) *Common Market Law Review* 625; E Howard, The EU Race Directive. Developing the Protection against Racial Discrimination within the EU (Routledge 2009); M Bell, *Racism and Equality in the European Union* (OUP 2008); T A Choudhury, 'Muslims and Discrimination in the EU', in A Samir, A Boubekeur, and M Emerson (eds) *European Islam: the challenges for public policy and society* (Centre for European Policy Studies 2007) 84.

Short Summary: While EU historical remembrance has focused almost exclusively on the Holocaust and National Socialism, the EU remains unsettlingly quiet on imperialism and colonialism.[177] The Schuman Declaration is considered to be the birth of the EU, however, many fail to acknowledge one of its key objectives, "the development of the African continent."[178] The current "EU Constitutional Law" curriculum dedicates an entire section to Brexit and mentions the withdrawal of the United Kingdom throughout the lectures. Yet, it never reflects on the imperialistic origins of the EU and the remaining colonial possessions of the UK (or France for what it's worth) at the time of their entry;[179] nor does it discuss the fact that some EU Member States still hold possessions overseas in Africa or South America among others as a result of their colonial past, where EU law applies.[180] This - it is argued - significantly challenges the concept of the EU as a geographic unit which was conversely used as a criterion to reject EU Membership candidatures by third states judged as 'non-European' such as Morocco.[181]

Further reflection on the Schuman Declaration would also clarify the political shape of the EU by timelining periods in its development. Moreover, the course could incorporate a discussion on how the idea of the Eurafrica project - A German political project to merge European Colonies - played a role in shaping the early stages of the EU.[182] The core idea at the heart of the political project was that Europe and Africa are "interdependent and complementary" and "can therefore only reach their full potential through cooperation".[183] The project itself has been abandoned but literature discussing forms of neo-colonialism highlights how these are similarly underpinned by an idea that African countries' development depends on European nations, and that these are therefore not to be treated as partners on an equal footing. Teaching the colonial history of domination of Europe over Africa would help students conceptualise the shift from traditional colonialism to neo-colonialism. Finally, literature exists on how judicial experiences, and legal experimentation in former colonies helped shape key concepts of the EU legal order such as the concept of supranational law.[184] Inclusion of this discussion would provide important historical context to one of the key concepts addressed on the "EU Constitutional Law" course.

Location in, and relevance to the "EU Constitutional Law" and "Introduction to EU Law" courses curricula: A discussion on the EU colonial past could be inserted in the first lecture of both the "EU Constitutional Law", and the "Introduction to EU Law" course, on the "History and the Origin of the EU". Such a discussion would not only

[177] A Sierp, 'EU Memory Politics and Europe's Forgotten Colonial Past' (2020) 22 *IJPS* 686.
[178] The Schuman Declaration [1950].
[179] R I Stanciu, 'From the Schuman Declaration to Brexit. Deadlock Periods in the Development of the European Construction' (2016) 2 *Studia Securitatis* 45.
[180] Panjwani, (*supra*) n 57, 573 et ff.
[181] Ibidem., 575.
[182] G *Martin, 'Africa and the Ideology of Eurafrica: Neo-Colonialism or Pan-Africanism?' (1982) 20 The Journal of Modern African Studies 221.*
[183] P Hansen and S Jonsson, 'Eurafrica: the Untold History of European Integration and Colonialism' (2016) 11 *JGH* 151.
[184] M Erpelding, 'Juristes internationalistes, juristes mixtes, Euro-Lawyers: l'apport de l'expérience semi-coloniale à l'émergence d'un droit supranational' (2022) 22 *Clio @ Themis*, (Online), available at: file:///Users/irenewieczorek%201/Downloads/cliothemis-2023.pdf . Accessed 11th November 2022.

provide students with a better understanding of why racialised consequences have lasted until today, but also encourage the exploration of how the law can be amended to achieve a more non-discriminatory EU.

Recommended Reading List:

Given the historical nature of this part, the suggested readings also include literature drawn from sociology and history:

- I Panjwani, 'The ignored heritage of Western law: the historical and contemporary role of Islamic law in shaping law schools', (2020) 54(4) *The Law Teacher* 562.
- Peo Hansen and Stefan Jonsson, 'Eurafrica: the Untold History of European Integration and Colonialism' [2016] 11 *JGH* 151.
- Robert Ionut Stanciu, 'From the Schuman Declaration to Brexit. Deadlock Periods in the Development of the European Construction' [2016] 2 *Studia Securitatis* 45.
- Aline Sierp, 'EU Memory Politics and Europe's Forgotten Colonial Past' [2020] 22 *IJPS* 686.
- Gurminder K Bhambra, 'A Decolonial Project for Europe' [2022] 60 *Journal of Common Market Studies* 229.
- Signe Larsen, 'European public law after empires' [2022] 1 *European Law Open* 6.
- Michel Erpelding, 'Juristes internationalistes, juristes mixtes, Euro-Lawyers: l'apport de l'expérience semi-coloniale à l'émergence d'un droit supranational' [2022] 22 Clio @ *Themis*. This source is in French, but part of the argument is also developed in M Erpelding, 'International Law and the European Court of Justice: The Politics of Avoiding History' [2020] 22 *Journal of the History of International Law* 446. This author is also included in the section "Authors to watch" as further publications on this topic are in the pipeline.

2. Neo-colonialism in EU external relations

Short Summary: The field of EU external relations which has developed most rapidly and extensively is that of trade. The EU has concluded several trade agreements with partners in the Global North (for instance Canada and Japan), and in the Global South. Among the latter, the legal framework governing EU relations with African States is of particular interest, given the accusations that the EU has received of acting as a neo-colonial actor. EU economic relations with the Global South have been governed by a series of Conventions (the Yaoundé Convention,[185] and subsequently the Lomé Convention[186]) and more recently by the Cotonou Agreement, which is a framework Agreement signed by the EU Member States and 78 of the 79 States party to the

[185] Convention of Association between European Economic Community and the African and Malagasy States associated with that Community (signed 20 July 1963, entered into force 1 June 1964) OJ 1964 P 93/1430 (Yaoundé I).
[186] ACP-EEC Convention of Lomé (signed 28 February 1975, entered into force 1 April 1976) OJ 1975 L 104/35.

African, Caribbean, and Pacific Group of States Organisation (APC States).[187] The agreement sets the framework for cooperation including norms on trade, but also on political cooperation, development aid, as well as on respect for human rights and good governance, failure to respect which might threaten the overall cooperation. This latter mechanism of tying cooperation to the respect of certain values/norms is referred to as "conditionality". Based on this framework, 32 Economic Partnership Agreements have been signed with APC states.[188] Such a proliferation of cooperation has however been often criticized for being an expression of a neo-colonial approach on the side of the EU. Neo-colonialism is used to refer to a situation in which African countries, whilst having won their independence and appearing to have total control over their affairs, are still controlled indirectly from the outside.[189] The EU's approach to relations with former colonies harbours 'paternalistic' attitudes rather than dealing with former colonies as true equals.[190]

In practical terms this means that African countries that have signed agreements with the EU, and trade or cooperate in general with the EU, are nonetheless forced by the terms of the agreements and by unbalanced economic conditions, to trade, and cooperate, in a situation of dependency.[191] This is arguably both the result of EU deliberate choices and of the cooperation of African elites.[192] EU action might also be accompanied by a post-colonial narrative, and the EU perceived as a neo-colonial power, even when it does not act as such, when anti-colonial sentiment against one European country is transferred to the EU as a whole.[193] Concrete examples of the EU neo-colonial approach listed in literature include, African economies being incentivized to orientate themselves towards European, rather than domestic, needs;[194] sectorial agreements being concluded with separate regions within the ACP group rather than with the whole group itself which weakens the possibility of collective

[187] 2000/483/EC: Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 - Protocols - Final Act - Declarations, [2000] OJ L 317/3.
[188] See for a list of the agreements: https://trade.ec.europa.eu/access-to markets/en/content/economic-partnership-agreements-epas Accessed on the 24 October 2022.
[189] K Nkrumah, *Neo-Colonialism. The Last Stage of Imperialism* (Thomas Nelson & Sons, Ltd. 1965), C Gegout, *Why Europe Intervenes in Africa: Security, Prestige and the Legacy of Colonialism* (Hurst & Co. 2017), M Langan, *Neo-colonialism and the Poverty of 'Development' in Africa* (Palgrave 2018).
[190] S Islam, 'Decolonising EU-Africa Relations Is A Pre-Condition For A True Partnership Of Equals, Centre For Global Development' Blog Post, available at: https://www.cgdev.org/blog/decolonising-eu-africa-relations-pre-condition-true-partnership-equals. Accessed on the 24th of October 2022.
[191] A Sepos, A., "Imperial Power Europe? The EU's Relations with the ACP countries", (2013) 6(2) *Journal of Political Power* 261, P. W. O. Oguejiofor, 'The Interrelationships between Western Imperialism and Underdevelopment in Africa' (2015) 6(3) *Arts and Social Sciences Journal* 1, G Olivier, 'From Colonialism to Partnership in Africa–Europe Relations?', (2011) 46(1) *The International Spectator* 53, 60.
[192] M E Odijie, 'Unintentional neo-colonialism? Three generations of trade and development relationship between EU and West Africa' (2021) 44 *Journal of European Integration* 347.
[193] C Nessel, 'Colonialism in its Modern Dress: Post-colonial Narratives in EUrope-Indonesia relations' (2021) 19 *Asia Europe Journal* 59.
[194] E Oğurlu, European Neo-colonialism in Africa, (2018) 4(2) *Uluslararası Politik Araştırmalar Dergisi* 1.

action by the ACP vis-à-vis the EU;[195] a unidirectional and paternalistic development cooperation;[196] aid provided in the form of loans with high interest rates as opposed to grants that result in an increasing amount of foreign debt for the African states, which Europeans are reluctant to write off;[197] slow elimination of tariffs which eliminates the competitive advantage that some African countries could have;[198] the use of conditionality in both trade agreements and development cooperation as a political tool to push EU normative ambitions in third party countries;[199] Next to this developed bulk of literature on neo-colonialism in economic agreements, it is argued that other policies, e.g. EU aid to third countries to fight crime, creates a situation of dependency for African countries and can thus be characterized as neo-colonial;[200] and that also the literature discussing EU international relations has an Eurocentric approach and should be "decentred".[201]4

Location in, and relevance to the "EU Constitutional Law" and "Introduction of EU Law" courses curricula: Especially after Brexit, EU law courses are increasingly incorporating the external relations of the EU. In this situation, the discussion on EU-UK relations should be put into context, comparing it both with EU relations with countries in the global north, and with countries in the global south highlighting the power imbalances and the criticism of the EU as a neo-colonial power. This can be done in one of the introductory lessons on Brexit in the "EU Constitutional Law" course, and in the seminar on external relations in the "Introduction to EU Law" course. One should note that the latter course is not targeted at students who want to qualify as lawyers in the UK, and often includes a large proportion of international students from non-European countries which have economic ties with the EU. In this context, there is less of a constraint to focus on EU-UK relations, and therefore more space can be given to the EU as a global actor, and the neo-colonial tendencies.

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[195] Briefly, African countries are often put in a position where they can either adhere to their regional commitments, or to EU trade policy. Consequently, "the fragmentation of EU trade policy towards Africa, in effect, constitutes a negative incentive for achieving trade policy coherence on the African side". An example of this is the African Continental Free Trade Agreement (AfCFTA), which governs trade relations with the EU and Africa based on African nations' geographical locations, their level of development and whether there are existing Economic Partnership Agreements in place, but does not consider African countries regional preferences. See D Luke, M Desta, S Mevel, The European Union is undermining prospects for a free trade agreement with Africa, LSE African Trade Policy Blog Post Serie, available at: https://blogs.lse.ac.uk/africaatlse/2021/12/14/european-union-is-undermining-prospects-for-free-trade-agreement-with-africa-epa-afcfta/, and Ogurlu, (*supra*) n 193, 13.

[196] V Bachman, 'The EU as a Geopolitical and Development Actor: Views From East Africa', (2013) 1/19 *L'Espace Politique*, Online available at: https://journals.openedition.org/espacepolitique/2561#text Accessed on the 11th of November.

[197] Ogurlu, (*supra*) n 193, 15.

[198] A Flint, *Trade, Poverty and the Environment - the EU, Cotonou and the African-Caribbean-Pacific Bloc* (Palgrave Macmillan, 2008).

[199] S R Hurt, 'Cooperation and Coercion? The Cotonou Agreement between the European Union and ACP States and the End of the Lomé Convention', (2003) 24(1) *Third World Quarterly* 161.

[200] E M Stambøl, 'Neo - colonial Penality, Travelling Penal Power and contingent sovereignty', (2021) 23(4) *Punishment & Society* 536.

[201] N Fisher Onar and K Nicolaïds, 'The decentring agenda: Europe as a post-colonial power' (2013) 48 *Cooperation and Conflict* 283.

Reading List:

- Angelos Sepos, A., 'Imperial Power Europe? The EU's Relations with the ACP countries', (2013) 6(2) *Journal of Political Power* 261.
- Nora Fisher Onar and Kalypso Nicolaïds, 'The decentring agenda: Europe as a post-colonial power' (2013) 48 *Cooperation and Conflict* 283.
- Ebru Oğurlu, 'European Neo-colonialism in Africa' (2018) 4 *Uluslararası Politik Araştırmalar Dergisi* 1.
- Michael E Odijie, 'Unintentional neo-colonialism? Three generations of trade and development relationship between EU and West Africa' (2021) 44 *Journal of European Integration* 347.
- Camille Nessel, 'Colonialism in its Modern Dress: Post-colonial Narratives in EUrope-Indonesia relations' (2021) 19 *Asia Europe Journal* 59.
- Shada Islam, 'Decolonising EU-Africa Relations Is A Pre-Condition For A True Partnership Of Equals', (2022) *Centre For Global Development Blog Post*, Available at: https://www.cgdev.org/blog/decolonising-eu-africa-relations-pre-condition-true-partnership-equals. Accessed on the 11th of October 2022.
- David Luke, Melaku Desta, Simon Mevel, 'The European Union is undermining prospects for a free trade agreement with Africa', (2021) *LSE African Trade Policy Blog Post Serie*, available at: https://blogs.lse.ac.uk/africaatlse/2021/12/14/european-union-is-undermining-prospects-for-free-trade-agreement-with-africa-epa-afcfta/ Accessed on the 11th of October 2022.

3. Racism and racialised impact of EU migration policies

Short Summary: EU migration management and policies are a key area where racism and racialised impact of EU policies can be appreciated. EU law envisages a different regime for intra-EU and extra EU migration. **Intra-EU migration** is regulated by free movement law, and citizenship law. A wealth of literature exists on free movement, citizenship, and nationality discrimination, topics that are in one of the lectures of the "EU Constitutional Law" course and forms a substantial part of the module "Contemporary issues in the law of the internal market". It is suggested that these discussions be complemented also with a discussion on whether free movement norms can be designed or implemented to have a racialised impact.[202] Moreover, intra-EU migration has been a key topic of the Brexit debate, and in this context it was argued the EU legal system arguably fell short of adequately mitigating the underlying racist and discriminatory politics of the 2016 Brexit Referendum against migration due to being unequipped to tackle the larger socio-political causes of the problem.[203] As Brexit has become a major topic of law teaching across all UK law schools, discussions surrounding the racist sentiments that fuelled the law in the case of the UK's exit from the EU can also be easily implemented into sections such as the Durham University

[202] I Schwarz, 'Racializing freedom of movement in Europe. Experiences of racial profiling at European borders and beyond' (2016) *Movements Journal for Critical Migration and Border Regime Studies* 2.1 <https://movements-journal.org/issues/03.rassismus/16.schwarz--racializing.freedom.of.movements.in.europe.html> accessed 21 Oct 2022; I Solanke 'Using the Citizen to Bring the Refugee In: Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM)' (2012) 75(1) *The Modern Law Review* 101.

[203] T Ahmed, 'Brexit, Discrimination and EU (Legal) Tools' (2019) (44)4 *European Law Review* 515.

”EU Constitutional Law” course’s Brexit coverage. **Extra-EU migration** has a different regime, which is to a large extent left to the regulation of Member States. However, Frontex as an EU agency exists for the coordination of the external EU borders' management, the EU has a common EU Asylum system, and has undertaken several joint initiatives to manage extra-European migratory fluxes. The implementation of these policies, in particular the EU external agreements in the area of migration such as in the case of the problematic refugee retainment deal with Libya,[204] or the infamous EU-Turkey deal,[205] has often been criticized for failure to live up to EU fundamental rights standards and for having a racialised impact. The term "Fortress Europe" has been coined with reference to an EU which is unwelcoming to third country nationals, and especially asylum seekers. This is argued to be the result of racist migration concerns, as opposed to humanitarian concerns, underpinning EU migration and asylum policies.[206]

These criticisms have been longstanding and apply broadly to all EU migration policies, with the EU’s increasing focus on the return and readmission of migrants alone exposing its evident discrimination towards non-citizens.[207] Among these though, a specific case study of the racialised undertone of the EU asylum and migration policies can be the comparison between the reception of the recent influx of Ukrainian refugees escaping from the Russia-Ukraine war and the reception of refugees coming from Middle Eastern and African countries from 2015 onward, in the context of the on-going Mediterranean refugee crisis. Academic literature highlights the discriminatory application of EU immigration law in the case of welcoming Ukrainian refugees while outsourcing the Mediterranean refugee crisis to third-party countries neighbouring the EU is gaining traction.[208] Among other factors, whereas non-European – predominantly Middle Eastern – refugees were refused the invocation of temporary protection under the EU legal system at the height of the refugee crisis in 2015/16,[209] Ukrainian refugees were swiftly covered under the activation of the Temporary Protection Directive 2022 on 24 February 2022.[210] With care not to undermine the comparatively well organised reception of Ukrainian refugees, EU Law teaching can derive substantial decolonisation in its methodology by acknowledging

[204] L Bialasiewicz, Off-shoring and Out-sourcing the Borders of EUrope: Libya and EU Border Work in the Mediterranean’ (2012) 17(4) *Geopolitics* 843.
[205] M Gatti and A Ott, ‘The EU-Turkey Statement: Legal Nature and Compatibility with EU Institutional Law’ in S Carrerra, JS Vara, and T Strik, *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis* (Edward Elgar Publishing 2019), see Ch 10.
[206] B Hepple, ‘Race and Law in Fortress Europe’ (2004) 67(1) *Modern Law Review* 1; E Papastavridis, 'Fortress Europe' and FRONTEX: Within or Without International Law?’ (2010) 79(1) *Nordic Journal of International Law* 75.
[207] O Olakpe, ‘Symposium on Reconceptualizing IEL for Migration: The Elephant in the Room’ (2022) Afronomics Law Blog Post, available at: https://www.afronomicslaw.org/category/analysis/symposium-reconceptualizing-iel-migration-elephant-room Accessed 11th November 2022.
[208] C Paré, ‘Selective Solidarity? Racialized Othering in European Migration Politics’ (2022) 1(1) *Amsterdam Review of International Affairs* 42.
[209] C Urbano de Sousa, ‘The Protection of Displaced Persons from Ukraine in Portugal’ (2022) *24*(3) *European Journal of Migration and Law* 313.
[210] F Trauner and G Valodskaite, ‘The EU’s Temporary Protection Directive Regime for Ukrainians: Understanding the Legal and Political Background and Its Implications’ (2022) 23(4) CESifo Forum, 17. Online Available at: https://www.cesifo.org/DocDL/CESifo-Forum-2022-4-trauner-valodskaite-ukrainian-refugee-crisis-july.pdf.

the racist impact of EU immigration laws and policies. These discussions can be inserted in the ”EU Constitutional Law” module when discussing EU protection of fundamental rights, as well as when discussing EU external relations. This subject also makes an excellent topic for an extra curricular event organized by Durham European Law Institute. .

Location in, and relevance to the ”EU Constitutional Law” curriculum: There are several locations in the ”EU Constitutional Law” course, or “Introduction to EU Law” where the racism and racialised impact of EU migration policies can be discussed. These include lectures where EU substantive policies are discussed (e.g. the internal market), lectures on fundamental rights, and lectures where EU external relations are discussed. Importantly, the ”EU Constitutional Law” course includes in Easter term one lecture on substantive policies of the EU. A part of this lecture is devoted to the law of the internal market, which provides students with a taste of what they can expect in the second-year course on "Contemporary issues in the law of the internal market". Another portion of this lecture could be devoted to other EU policies, for instance EU migration policies, to expose students to this area, even if there is no follow up course on this topic. This strategy has already been used in the past. A discussion on the Area of Freedom Security and Justice has been included in this lecture on EU substantive policies. This seemed to have triggered interest from the students with at least ten deciding to write their dissertation in this area of law. Exposing the students to EU migration law, including to their racialised undertone and impact, would equally bring added value to the course and students' experience. This amendment would be, *a fortiori,* beneficial for the LLM course where the scope of the lecture on EU substantive policies is to expose students to other areas of EU law, rather than give a taste of other courses offered at Durham.

Recommended Reading List:

<u>Free Movements, Racism and Brexit</u>

- Iyiola Solanke ‘Using the Citizen to Bring the Refugee In: Gerardo Ruiz Zambrano v Office national de l’emploi (ONEM)’ (2012) 75(1) *The Modern Law Review* 101.
- Inga Schwarz, ‘Racializing freedom of movement in Europe. Experiences of racial profiling at European borders and beyond’ (2016) 2(1) *Movements Journal for Critical Migration and Border Regime Studies* Online available at: <https://movements-journal.org/issues/03.rassismus/16.schwarz--racializing.freedom.of.movements.in.europe.html> Accessed 11th November 2022.

- Nadine El-Enany, ‘European citizens and third country nationals: Europe's colonial embrace’ in *(B)ordering Britain, Law, Race and Empire*, (Manchester University Press 2020), see Ch 5.
- Tawhida Ahmed, ‘Brexit, Discrimination and EU (Legal) Tools’ (2019) 44(4) *European Law Review* 515.
- Michaela Benson and Chantelle Lewis, ‘Brexit, British People of Colour in the EU-27 and everyday racism in Britain and Europe’ (2019) 42(13) *Ethnic and Racial Studies* 2211.

- Iyiola Solanke, 'The Impact of Brexit on Black Women, Children and Citizenship' (2020) 58 (S1) *Journal of Common Market Studies* 147.
- Catherine Barnard, Sarah Fraser Butlin, and Fiona Costello, 'The changing status of European Union nationals in the United Kingdom following Brexit: The lived experience of the European Union Settlement Scheme' (2022) 31(3) *Social & Legal Studies* 365.

Racism in EU's External Relations and Immigration Deals

- Luiza Bialasiewicz, 'Off-shoring and Out-sourcing the Borders of EUrope: Libya and EU Border Work in the Mediterranean' (2012) 17(4) *Geopolitics* 843.
- Mauro Gatti and Andrea Ott, 'The EU-Turkey Statement: Legal Nature and Compatibility with EU Institutional Law' in Carrerra S, Vara JS, and Strik T (Eds.), *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis* (Edward Elgar Publishing 2019), see Ch 10.

Frontex and Fortress Europe

- Bob Hepple, 'Race and Law in Fortress Europe' (2004) 67(1) Modern Law Review 1.
- Efthymios Papastavridis, ' "Fortress Europe" and FRONTEX: Within or Without International Law?' (2010) 79(1) Nordic Journal of International Law 75.
- Sarah Fine, 'Whose Freedom of Movement Is Worth Defending?' in Bauböck, R. (eds) *Debating European Citizenship* (IMISCOE Research Series, Springer Open 2019).

Ukrainian and Mediterranean Refugees

- Constança Urbano de Sousa, 'The Protection of Displaced Persons from Ukraine in Portugal' (2022) *24*(3) *European Journal of Migration and Law* 313.
- Florian Trauner and Gabriele Valodskaite, 'The EU's Temporary Protection Directive Regime for Ukrainians: Understanding the Legal and Political Background and Its Implications' (2022) 23(4) CESifo Forum. Online:, Available at: https://www.cesifo.org/DocDL/CESifo-Forum-2022-4-trauner-valodskaite-ukrainian-refugee-crisis-july.pdf Accessed 11th November 2022.
- Céline Paré, 'Selective Solidarity? Racialized Othering in European Migration Politics' (2022) 1(1) *Amsterdam Review of International Affairs* 42.

4. Forthcoming literature/Authors to watch

Authors who are currently preparing works on the theme of EU law and colonialism, colonial legacies in the EU, EU law and post-colonialism, or EU law and racism and marginalisation of black and minority ethnic communities, or specifically decolonisation of EU law research and teaching include:

- Professor **Diamdon Ashiagbor** (University of Kent) in particular on racialised impact and ties with colonialism of EU economic integration. (https://www.kent.ac.uk/law/people/1247/ashiagbor-diamond)

- Professor **Iyola Solanke** (University of Oxford) in particular on decolonisation of EU law and teaching (https://www.law.ox.ac.uk/people/professor-iyiola-solanke)
- Dr. **Hannah Eklund** (University of Copenaghen) in particular on early EU affiliation with colonialism (https://jura.ku.dk/english/staff/find-a-researcher/?pure=en/persons/692922)
- Dr. **Tawhida Ahmed** (City University of London) in particular on racism within the EU. (https://www.city.ac.uk/about/people/academics/tawhida-ahmed)
- Dr. **M Erpelding** (University of Luxemburg) especially on EU law colonial origins
  https://wwwen.uni.lu/research/fdef/dl/people/michel_erpelding

- Finally, one should look out for the proceedings of the conference which took place at the University of Copenhagen titled "Colonialism and the EU Legal Order" organised by Dr. Hannah Eklund.

(https://jura.ku.dk/cecs/calendar/2022/international-conference-colonialism-and-the-eu-legal-order/).

E. Recommendations for teaching methodology[211]

There are substantial steps that can be taken, in terms of teaching methodology, within the context of the ”EU Constitutional Law”and “Introduction to EU Law” courses, to decolonise the teaching of EU law. These are informed by the need to secure that a decolonised approach is introduced and that students are empowered, and non-hierarchical spaces are created where students and staff can form effective partnerships. It should nonetheless be noted that ”EU Constitutional Law” is a compulsory first year module which students find on average quite challenging. Pedagogical reasons also require the module to be structured in lectures and tutorials, and not in students-led seminars, which arguably are a better setting to foster critical thinking. This is because first year students tend to require more guidance. It is therefore paramount that these changes do not result in increased workload for the students, and rather amount to *amending* the pre-existing curriculum. The following suggestions are inspired by this aim. The “Introduction to EU Law” course is an LLM course which leaves more leeway for amendment. It should be noted however that it is not an advanced course, but an introductory one, for students who had no exposure to EU law before. We deem therefore that the same balance should be struck between providing students with an understanding of the positive law, while ensuring that this is taught in a critical and decolonised way.

Decolonisation of the curriculum should first pass-through amending **passive learning**, which students acquire through lectures, by changing reading lists for ”EU Constitutional Law” lectures. This is a first step towards decolonisation which has already been incorporated in other modules and has been widely appreciated by students. For example, in our student feedback reports, students evaluated very positively the approach taken by the “Public International Law” course. Students were

[211] This section was drafted by Nart Karacay. Research supervision and editing was curated by Irene Wieczorek.

pleased that their professors were mindful of highlighting the colonial roots of the sources of international law in lectures on introductory materials to international law and the use of force doctrine, as well as incorporating TWAIL critiques on the reading list when teaching the use of force doctrine. The EU Law modules at Durham could possibly accommodate inserting readings on the colonial history of the EU, the neo-colonial features of some of the EU external action policies, and the racist impact of some of the EU migratory policies. Relevant literature is indicated in the previous section. These readings must then be given adequate space also in the context of **active learning** in the context of student-led discussions in tutorials. Students have an active role to play during tutorials, which is an opportunity that is lost under passive learning during lectures. Students should naturally prepare for adequate discussions during tutorials regarding the reading material, but an important role should be given to tutors to *highlight the reasoning behind why students are being introduced to decolonisation material* during their tutorial discussions in order to explain the pedagogical background for why the ”EU Constitutional Law” course is making an active effort to decolonise its curriculum. A similar role should be played by the lecturer in the “Introduction to EU Law” course during the seminars.

Considering the specificities of the ”EU Constitutional Law” course mentioned above, in order not to overburden students, a careful balance should be struck between providing reading lists that offer an explanation of the positive law as it stands, so as to create the basis for further critical reading, and the literature that offers such critical reading. This might require an incremental approach where students are at least made *aware* during lecture preparations and tutorial discussions of a critical view of EU law which highlights its direct and indirect ties with colonialism, and the racialised impact. The possibility to develop further research on a decolonised approach to EU law in a **dissertation context** should be adequately signposted and promoted. Furthermore, **this resource on potential avenues for future research on a decolonised approach to EU law** should be made available to students from the start of the course, so that interested students can find further inspiration and additional resources to the ones incorporated in the course.

Finally, the **Durham European Law Institute** can be a great venue to undertake decolonisation initiatives fostering students' **active participation and learning**. Participation in DELI activities is not compulsory for students, and therefore confining decolonisation activities only to DELI might risk not achieving the objective of mainstreaming decolonisation discussions by making them accessible to all students, and thus only reaching out to the already interested ones. However, one should note that students' participation in DELI activities is always quite high, and that students participate for many different reasons (interest in EU law, improving CV and enhancement of career prospects, etc), and they are requested to at least attend *all* the DELI seminars. Therefore, incorporating some decolonisation activities among DELI ones would help mainstream a decolonisation approach in the study of EU law more broadly.

One DELI activity, the **Annual Debate** organised in 2020/21 in collaboration with the Human Rights Centre (HRC) and the student-led Justice society, already provided an interesting venue for students to discuss some of the themes that feature on the

decolonising EU Law agenda. The topic was EU refugee law and European migration policies in the Mediterranean Sea. The structure of the Annual Debate provides an excellent setting for these types of discussions for two reasons. It allows for interdisciplinary discussions, more than legal moot courts would for instance, and thus for a discussion of the law in context which is proper to decolonisation debates. Further, it provides an adversarial structure in which critical thinking can be fostered. In light of this, it is recommended that students are encouraged to, and supported in, introducing decolonisation themes into future editions of the Annual Debate. An *ad hoc* **decolonisation annual debate** could be introduced where the readings on decolonisation offered during the lectures could be used as a basis for the discussion.

A second activity could be introduced in the form of a **simulated roundtable** or **negotiation exercise** where students would play the role of different teams negotiating the conclusion of an external agreement between the EU and countries, or association of countries in the Global South. Teams could include the EU external action service, representation of countries from the Global South or the regional integration, industrial lobby groups, human rights lawyers' activist groups and so forth. The pedagogical objective of the negotiation exercise would be to highlight how legal provisions can have different impact on different countries and interests' groups.

Thirdly, at least one of the **academic seminars organised by DELI** should be devoted to subject matters where EU decolonisation themes are more evident. Ideally, the seminars would match and touch upon the reading students have already been given in class and in tutorials, so that students are given an opportunity to deepen their knowledge of these subjects.

Fourthly, a **focus group** on "**international experiences with the EU**" could be created and jointly led by DELI co-directors and interested DELI reps. Students and EU law lecturers would be given a space to discuss personal experiences with EU law norms, as well as perceptions of the EU in non-EU countries. The discussion could be based on reviews of non-Western news on the EU. As well as making the course more relatable for international students, this initiative could also help gather examples and interesting outlooks that could be incorporated in teaching materials.

VI. Bibliography[212]

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