

Legal education and its contemporary challenges in Sub-Saharan Africa

Antoinette Kankindi* & Victor Chimbwanda**

Abstract

There is an increasing criticism against law schools. To some, the system does not sufficiently prepare students for the market or to meet society's needs. Others argue that technology and current trends should inspire new business models in the legal profession. Legal education is also being accused of emphasising theoretical content rather than skills necessary for practice, with the character of African jurisprudence struggling for recognition in the contemporary curriculum. Moreover, a fragmented society under pressure from global shifting values also faces perennial legal challenges relating to issues of justice and other ethical problems trained lawyers may face. Therefore, the role of legal education ought to be re-examined to prioritise the common good without threatening individual interests, which is what the rule of law aims at achieving. This paper investigates the problem from the perspective of unity of knowledge to address the traditional theory-and-practice divide in legal education and argues that the idea of unity of knowledge provides the basis for a correct interdisciplinary approach to solving the problem, relying on systems of legal training as they have developed in some parts of Africa especially Kenya, Nigeria and South Africa. Considering such illustrations, this framework is also likely to enable a rational articulation of theory and practice in legal training that can create more space for African views of law as reflected in the current efforts to decolonise legal education in South Africa.

Keywords

Legal Education, South African Education, Kenyan Education, Nigerian Education, African Education

* Senior lecturer, Strathmore Law School.

** LLM, PhD Candidate (London), Solicitor in the Senior Courts of England & Wales (non-practising), Attorney (Botswana). *Email:* victor.chimbwanda@postgrad.sas.ac.uk

1 Introduction

Discussions concerning the adoption of the rule of law and its acceptance by the societies it organises, at least in Sub-Saharan Africa, have been focused on reforms largely. There is specific focus on the reform of political institutions, particularly judicial systems because of their role in the balance of power. It would be futile to engage in comprehensive reform without focusing on legal education. Indeed, legal education and training do face old and contemporary challenges that require attention in a bid to make critical contribution to restoring public trust in the profession, law, order, justice, and society's development generally. This introduction will cover the background of legal education challenges and attempts to present the current themes of the debate around it in Sub-Saharan Africa. Subsequent sections of the paper are presented as an exploratory attempt, with a few illustrations, as a basis for a forthcoming empirical study by the authors. References to the literature are made for illustrative purposes only, pending further elaboration.

Background

The background of challenges facing legal education in most African countries is undoubtedly related to the influence of colonial and post-independence policies.¹ According to Muna Ndulo, the establishing of local institutions by newly-independent governments resulted in the need for lawyers who would run the courts as well as other government institutions.² Before independence, in the absence of local educational outfits for training lawyers, lawyers had to be trained in London, Paris or Brussels, the main colonial metropolises.³ Generally, colonial powers did not prioritise legal education. Medical training, education, engineering, as well as agriculture received more attention. Muna is of the opinion that, during the colonial era, legal training was sidelined practically as a matter of policy, since the colonial authorities 'considered it politically unwise to train African lawyers, fearing that they would turn into agitators for political independence.'⁴ This state of affairs and the fact that there were no law schools yet explains why in East Africa for instance, the East Africa Legal Practitioners'

¹ John Harrington and Ambreena Manji, 'Africa needs many lawyers trained for the needs of their people': Struggles over legal education in Kwame Nkrumah's Ghana' 59 (2) *American Journal of Legal History*, 2019.

² Muna Ndulo, 'Legal education in Africa in the era of globalisation and structural adjustment' 20 (3) *Penn State International Law Review*, 2002, 488.

³ John Bainbridge, *The study and teaching of law in Africa. With a survey of institutions of legal education in Africa*, F.B. Rothman, London, 1972, 7-25.

⁴ Muna Ndulo, 'Legal education in Africa in the era of globalisation and structural adjustment', 489.

Rules contained provisions allowing legal practitioners from England as well as pleaders from India's courts to handle legal matters in the region.⁵

A dual legal system characterised the colonial period from the point of view of a legal order. This is more obvious in the British colonies where common law courts would be reserved for legal matters concerning Europeans, while customary courts would deal with disputes of a legal nature involving Africans.⁶ Colonial powers endeavoured to transplant their own systems onto the colonies. They did so for the structure of the nation-state, the political system, the idea of rule of law, the model of civil service, the style of national security, law enforcement, as well as the education systems.⁷ The transplanted legacy was bound to have an impact or, even, determine the fate of all these areas after independence. Within this context, the influence of colonial powers on legal education remains noticeable in the 'structure and system of management, the culture at African universities, and more importantly in the content of law curricula.'⁸

The turmoil that came with the struggle for independence and post-independence policy shifts did not immediately result in relevant legal education reforms. Samuel Manteaw explains that 'in the civil unrest and political instability that followed independence, Africa's focus shifted towards, among other issues, personal security, political stability, constitutionalism and economic development.'⁹ He elaborates further that since most African states had not experienced the social harmony, gains in terms of human and civil rights or economic development that citizens had hoped for, it was not clear that legal education would be an instrument for transforming the newly-independent societies. According to Muna, there has not been sufficient recognition by some African governments of the significant role that lawyers can potentially play in the affairs of government.¹⁰ The scarce attention paid to legal education

⁵ Jacob Gakeri, 'Enhancing legal education in East Africa: Contextualising the role of the Legislature, Council of Legal Education and the Judiciary in Kenya' 6 (4) *International Journal of Humanities and Social Science*, 2016, 62.

⁶ *Report of the committee on legal education for students from Africa*, Her Majesty's Stationery Office, London, 1961, 12, available at <<https://dspace.gipe.ac.in/xmlui/handle/10973/33736>> on 14 December 2020.

⁷ Laurence Gower, *Independent Africa: The challenge to the legal profession*, Harvard University Press, Cambridge, Massachusetts, 1967, 4-34.

⁸ Victor Chimwanda, 'Legal education in Ghana: Whither are we bound?' Conference Organised by the Ghana Academy of Legal Scholars at Kwame Nkrumah University of Science & Technology, Kumasi, October 2017, 3 (paper on file with the authors).

⁹ Samuel Manteaw, 'Legal education in Africa: What type of lawyer does Africa need?' 39(4) *McGeorge Law Review*, 2008, 908.

¹⁰ Muna Ndulo, 'Legal education in Africa in the era of globalisation and structural adjustment', 503.

could illustrate, to some extent, the divide between the importance of the legal framework adopted after independence and the lack of concentration on training of lawyers in those early years.

However, others such as Jacob Gakeri recognise the importance of legal education, especially in relation to the quality of justice to be pursued in newly-independent countries. For example, he notes that the earliest effort in the direction of institutionalising legal education in Kenya, from a regulatory point of view, was materialised in the 1961 Advocates' Ordinance.¹¹ This legislation was meant to implement the recommendation of the famous Report of the Committee on Legal Education for Students from Africa,¹² also called the Denning Committee Report. Legal education scholars agree that the report's importance lies in the fact that it sought to ensure that members of local Bars in Africa had the capacity to fit lawyers trained abroad for practice in the special conditions of the territories in which they were to practice.¹³ However, the plans to localise the training of lawyers in African jurisdictions did not immediately translate into the Africanisation of legal education because the curriculum was still influenced by the private practitioner image of legal education, which assumed that the main objective of legal education was to prepare people for private practice.¹⁴ This is a reflection of the problems associated with the colonial era training of African lawyers in Britain who were 'at best qualified to function as barristers within the narrow terms of a highly technical art appropriate primarily to the United Kingdom and without any real relevance to the needs of Africa.'¹⁵ It must also be stressed that such training reflected colonial British mercantile and financial interests.

Therefore, as Manteaw noted, one of the recommendations of the Denning Committee was to ensure that upon returning to Africa, those lawyers trained abroad would not be admitted to local practice merely on the basis of British qualifications.¹⁶ What was needed was a training system that reflected a broader rather than a narrow and professionally-oriented approach to legal education. The legal training regime should produce lawyers prepared to handle a myriad of

¹¹ Jacob Gakeri, 'Enhancing legal education in East Africa: Contextualising the role of the Legislature, Council of Legal Education and the Judiciary in Kenya', 62.

¹² Jacob Gakeri, 'Enhancing legal education in East Africa', 62.

¹³ John Harrington and Ambreena Manji, "Mind with mind and spirit with spirit": Lord Denning and African legal education' 30 *Journal of Law and Society*, 2003, 376, 380.

¹⁴ William Twining, 'Legal Education within East Africa' 12 *International and Comparative Law Quarterly Supplementary Publication*, 1966, 115 and 142.

¹⁵ John Bainbridge, *The study and teaching of law in Africa*, 15.

¹⁶ Samuel Manteaw, 'Legal education in Africa: What type of lawyer does Africa need?', 918.

tasks associated with the lawyer as a ‘social engineer’ rather than a ‘technician.’¹⁷ As John Bainbridge put it, a lawyer who can be a ‘consultant, advisor, innovator, idea man and problem solver.’¹⁸ It is this multi-faceted conception of a lawyer that led to ideological clashes over the objectives of university legal education and how lawyers should be trained in post-independence Africa.¹⁹ One of the issues was that the local systems for the training of lawyers divided legal education into different stages with divergent variations, but largely based on the ‘Gower Model’ adopted in nearly all common law African jurisdictions.²⁰ This model involves academic training under the control of the legal academy at a university, followed by postgraduate professional training at institutions controlled by professional bodies, generally referred to as ‘Law Schools,’²¹ resulting in a two-tier system of legal training.²² As William Twining noted, such a training model reflected different spheres of influence rather than an agreed educational philosophy, the effect of which was to marginalise contributions made by academics who had no say in the later stages of the professional training of lawyers that were under the control of the legal profession.²³ Undoubtedly, according to Twining, the creation of two domains controlled by academics and practitioners would have an impact on the operation of the legal system generally.²⁴

The existing structure of legal education in Anglophone African countries is based on a system of legal education which follows British traditions and institutions. That system has been maintained despite major structural reforms to the system of legal education in England in recent years. For instance, it is possible that non-law degree holders with the requisite experience will soon be able to qualify as solicitors in the United Kingdom if they pass a common

¹⁷ Yash Ghai, ‘Law, development and African scholarship’ 50(6) *Modern Law Review*, 1987, 754.

¹⁸ John Bainbridge, *The study and teaching of law in Africa*, 5.

¹⁹ See John Harrington and Ambreena Manji, ‘Africa needs many lawyers trained for the need of their peoples’. William Harvey, *The development of legal education in Ghana. Mimeographed report to the SAILER project of the Institute of International Education and the Ford Foundation*, 1964 (on file with the authors). Lawrence Tshuma, ‘Twelve years of legal education in Zimbabwe’ 9-10 *Zimbabwe Law Review*, 1991-1992, 179-182. Yash Ghai, ‘Law, development and African scholarship’, 754. Laurence Gower, *Independent Africa: The challenge to the legal profession*, 117-133.

²⁰ William Twining, ‘Developments in legal education: Beyond the primary school model’, 2(1) *Legal Education Review*, 1991, 52.

²¹ Berthan Macaulay, ‘Students for law schools and faculties in Africa’ 6(2) *Journal of African Law*, 1962, 81. William Twining, ‘Developments in legal education: Beyond the primary school model’.

²² For a comprehensive discussion of this English training model see Laurence Gower, ‘English legal training: A critical survey’ 13(2) *Modern Law Review*, 1950, 137 and 152. Laurence Gower, *Independent Africa*, 118-121. See also William Twining, ‘Developments in legal education’, 52.

²³ William Twining, ‘Developments in legal education’, 52-53.

²⁴ William Twining, ‘Developments in legal education’, 52-53.

Solicitors Qualifying Examination.²⁵ This appears to envisage an approach based on apprenticeship training, advocated by the Denning Committee.²⁶ This model was generally preferred in post-independence East Africa, especially in Kenya, where it was felt that apprenticeship, supplemented by courses at the professional school, should be one of the methods of qualifying as a lawyer.²⁷ However, Laurence Gower observes that apprenticeship training in post-independent Kenya did not provide articled clerks with an adequate basis of theory.²⁸ This was aggravated by the fact that such articled clerks were not placed in professional offices to obtain proper training, which led Gower to label the apprenticeship training regime in Kenya ‘a calamity.’²⁹ In Gower’s view, law school training is a better training system than the apprenticeship model. He acknowledges, however, that law school training is not a panacea on its own. For instance, there are still questions about what the ideal curriculum should be as well as the appropriate teaching methodology.³⁰ These questions have continued to dominate debates about legal education in Anglophone African jurisdictions largely as a consequence of recommendations in the Denning Committee Report. Yash Ghai observes that the training of African lawyers at the Inns of Court in Britain did not consider the fact that in Africa, such lawyers would be practicing as both Barristers and Solicitors because the legal profession was fused.³¹

At independence, the need for establishing efficient and fair systems of administration of justice became urgent. This challenge, in a way, posed the question on what role law schools would play in the newly-independent countries. Thomas Geraghty and Emmanuel Quansah wrote that, in the 1960s and 1970s, legal educators in the West were thinking that ‘law schools in Africa could play a key role in developing a cadre of able, ethical and effective leaders.’³² They demonstrate further how much effort and resources were put into experimenting African law schools in the image of those in the West. While indicating that such efforts waned early on, they note that a major legal challenge that emerged from

²⁵ <<https://www.sra.org.uk/students/sqe/>> on 14 December 2020.

²⁶ John Harrington and Ambreena Manji, ‘Mind with mind and spirit with spirit’: Lord Denning and African legal education’, 383.

²⁷ John Harrington and Ambreena Manji, ‘Mind with mind and spirit with spirit’, 385-386. *See also* Laurence Gower, *Independent Africa*, 127.

²⁸ Laurence Gower, *Independent Africa*, 127.

²⁹ Laurence Gower, *Independent Africa*, 129.

³⁰ Laurence Gower, *Independent Africa*, 131.

³¹ Yash Ghai, ‘Law, development and African scholarship’, 750 and 752.

³² Thomas Geraghty and Emmanuel Quansah, ‘African legal education: A missed opportunity and suggestions for change: A call for renewed attention to a neglected means of securing human rights and legal predictability’ 5(1) *Loyola University Chicago International Law Review*, 2007, 88.

this was whether, in the context of law and development, the Western style of law schools responded to the needs of African countries.³³ Bainbridge noted in particular, the critical need for African lawyers with the skills of a solicitor to perform traditional lawyer tasks in much of Africa.³⁴ The Denning Committee Report specifically noted the drafting of wills, mortgages and commercial contracts, as well as conveyancing and general book-keeping.³⁵ Such skills were not emphasised in the training of Barristers at the Inns of Court in Britain.

At this point, it appears that a summary of the challenges of legal education emerge from several angles: the transplantation of foreign legal systems, with their corollary content of legal education, based on foreign traditions and institutions totally different from the African societies; the role of law schools in supporting the development of independent countries, which came with pedagogical challenges, in terms of curricula content and methodologies of teaching law responding to African needs; and finally the challenge of funding legal education.

The question of funding appeared acutely between the 1980s and 1990s when governments, foundations and even banks put money behind initiatives to promote rule of law in Africa without affording a similar support to law schools on the continent.³⁶ However, it is important to note that foreign funding for law schools posed contradictions and complications to the African Union's view on funding in its Plan of Action for a second decade of education for Africa, that is, between 2006 and 2015.³⁷ The Plan of Action encouraged the goal of building autonomous law schools financially in a bid to Africanise higher education institutions more and more. Failure to do so would imply that foreign financial support might still influence curriculum design, methodology as well as the critical factor of faculty recruitment, nurturing and development.

Given the enormous challenges of the colonial times and the early years of independence, some strides have been taken since the reforms of the 1990s. However, more work still needs to be done. Some terms of the debate are still the same, others have taken a new form owing to socio-economic changes on

³³ Thomas Geraghty and Emmanuel Quansah, 'African legal education: A missed opportunity and suggestions for change', 89.

³⁴ John Bainbridge, *The study and teaching of law in Africa*, 21.

³⁵ *Report of the committee on legal education for students from Africa*, at page 11.

³⁶ Thomas Geraghty and Emmanuel Quansah, 'African legal education: A missed opportunity and suggestions for change', 96.

³⁷ African Union, *Second decade of education for Africa (2006-2015): Plan of Action*, 2006, available at <http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Dakar/pdf/AU%20SECOND%20DECADE%20ON%20EDUCTAION%202006-2015.pdf> >on 14 December 2020.

one hand, and global developments on the other.

Current terms of the debate

What sparked the urge to write about the terms of the current debate was an article by Mark Cohen.³⁸ He suggested, right from the title (*Law schools must restructure: It won't be easy*), that law schools must restructure. He argued they must do so because on one hand, according to the market, graduates from them are unfit for practice and, on the other, legal education is too costly. He indicated that the major areas of reform in law schools are: curriculum, collaboration and cost reduction. In terms of curriculum, he seems to suggest emerging units focused on practical expertise such as interviewing clients, contracts and pleading, drafting, conducting negotiations, project management, and courses on current legal markets. On collaboration, he advised that law schools should copy the business schools' model. In relation to cost reduction, he urged law schools to offer more for less. Joe Patrice responded that 'fixing law schools requires more *how to* rather than *what to*.'³⁹ Patrice agreed with Cohen that there is a rift between the practice of law that tends to follow the pattern of litigation and transaction, which law schools do not follow. However, he does not think that a problem-solving based curriculum is the answer. In his view, there seems not to be any sufficient reason for traditionally successful law schools to change their curriculum.

The debate in developed jurisdictions such as England seems to be that of disparity between the skills expected in newly-trained lawyers and the intellectual skills associated with the doctrinal study of law at the academic stage of legal training.⁴⁰ However, the market expects individuals trained beyond doctrine as catered for in traditional law courses. Graduates need more and better training in writing, business and management skills, technology, data analytics, leadership acumen and communication.⁴¹ The insistence is definitely vested upon the divide between theory and practice of law, a divide appearing to be the major challenge

³⁸ Mark Cohen, 'Law schools must restructure. It won't be easy' *Forbes*, 15 May 2017 - <www.forbes.com/sites/markcohen1/2017/05/15/law-schools-must-restructure-it-wont-be-easy/#183feaaa3d3f> on 25 June 2020.

³⁹ Joe Patrice, 'Fixing law schools requires more 'How to' and less 'what to' Above the Law, 15 May 2017 <<https://abovethelaw.com/2017/05/fixing-law-schools-requires-more-how-to-and-less-what-to/>> on 14 December 2020.

⁴⁰ William Twining, 'LETR: The role of academics in legal education and training: 10 theses' 48(1) *The Law Teacher*, 2014, 94.

⁴¹ Luke Bierman, '4 steps for reinventing legal education' *Legal Rebels*, 15 April 2015 - <https://www.abajournal.com/legalrebels/article/four_steps_for_reinventing_legal_education> on 14 December 2020.

to legal education in an environment of changing market demands. It explains why solutions such as those proposed by Luke Bierman are being sought in the redesigning of curricula; entrenching of experiential learning such as the development of law clinics as well as clerkships; involving practicing lawyers, judges and magistrates in teaching; and devising ways of reducing the cost of legal training.⁴²

In Britain, the traditional two-tier legal education consisting of an academic stage first, and then a professional stage – the Legal Practice Course – attempted to solve the problem of training in skills and professional competence. There was an underlying assumption that this would enable young lawyers to acquire a certain level of competence before entering the work experience element of qualification.⁴³ The theory and practice divide challenge suggests that this two-tier model is not working, particularly in Anglophone African jurisdictions that adopted the training system.⁴⁴

From the perspective of the training of African lawyers this paper articulates the view that the two-tier model is partly responsible for the current challenges in legal training since it seems not to have envisaged the huge demand for such training in the 21st Century.⁴⁵ This ties with the first challenge identified earlier, because of the fact that it places an enormous weight on learning legal rules and doctrines almost automatically inclining students to memorise, rather than cultivate the skills needed for resolving socio-economic problems, conflict of law situations or complex policy matters the law should help order. Again, here appears the reason why contemporary debates consider that teaching only theory and not practice is the first major problem: ‘an old dilemma is whether we aim to transfer concrete knowledge or skills.’⁴⁶

The second challenge derived from the two-tier legal education model has everything to do with the African context. This is because the model does not afford students venues through which they can deepen their knowledge of indigenous laws and procedures, or an in-depth exploration of the philosophy underlying customary laws. Customary laws are put in plural because of the great

⁴² Luke Bierman, ‘4 steps for reinventing legal education’ *Legal Rebels*, 15 April 2015 <https://www.abajournal.com/legalrebels/article/four_steps_for_reinventing_legal_education> on 14 December 2020.

⁴³ Dawn Jones, ‘Legal skills and the SQE: Confronting the challenge head on’ 53(1) *The Law Teacher*, 2019, 3.

⁴⁴ Muna Ndulo, ‘Legal education in Africa in the era of globalisation and structural adjustment’, 494.

⁴⁵ Victor Chimbwanda, ‘Legal education in Ghana: Whither are we bound?’, 5.

⁴⁶ András Jakab, ‘Dilemmas of legal education: A comparative overview’ 57(2) *Journal of Legal Education*, 2007, 256.

diversity of peoples and cultures that co-exist on the continent. Once again, this is a challenge to legal education that can be traced to the colonial time. It persists today and it comes to the fore in this debate from a number of perspectives: in the context of international human rights, particularly around women's rights;⁴⁷ in constitutional debates;⁴⁸ in the context of decolonising legal education in Africa;⁴⁹ and finally in raising questions about the possibility, or reality of African jurisprudence and its place in legal education.⁵⁰

There are many other challenges of legal education such as those highlighted by the 2019 Kenya School of Law in conjunction with the Kenya Institute of Public Policy Research and Analysis report titled, 'Factors Influencing Students' Performance in the Kenyan Bar Examination and Proposed Interventions'.⁵¹ The report lists the following challenges: admission criteria; examinations in terms of consistency with the taught curriculum as well as guidance from the Council of Legal Education; regulation of legal education and the structure of the facilitation by the Kenya School of Law. There could also be some difficulties related to the competing forces controlling or attempting to control legal education from outside the academic sphere, including the power of professional bodies, regulatory institutions, vanguard law firms and universities themselves.

This paper is interested in the two first challenges because of their interconnectedness on one hand; and on the other because of the theoretical framework chosen to discuss them, which is the idea of unity of knowledge and the interdisciplinary approach it formulates. The first one concerns the theory and practice divide, while the second refers to a greater space for the knowledge of indigenous laws and the foundation of customary laws for a more solid examination of African jurisprudence in legal education on the continent. The focus on these aspects defines the structure of the paper which

⁴⁷ Muna Ndulo, 'African customary law, customs and women's rights' 18(1) *Indiana Journal of Global Legal Studies*, 2011, 87-120.

⁴⁸ Anthony Diala and Bethsheba Kangwa, 'Rethinking the interface between customary law and constitutionalism in sub-Saharan Africa' 52(1) *De Jure Journal*, 2019, 189-206.

⁴⁹ Chuma Himonga and Fatimata Diallo, 'Decolonisation and teaching law in Africa with special reference to living customary law' 20(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 2017.

⁵⁰ Kingsley Omoyibo, 'African Jurisprudence: The law as a complement to public morality' 6(4) *International Journal of Social Sciences*, 2016, 13-22. William Idowu, 'African philosophy of law: Transcending the boundaries between myth and reality' 4(2) *Enter Text*, 52-93. Paul Haaga, 'An Igwebuikwe reading of HLA Hart's theory of law' 5(5) *An African Journal of Arts and Humanities*, 2019, 39-54.

⁵¹ Kenya School of Law and the Kenya Institute for Public Policy Research and Analysis, *Factors influencing students' performance in the Kenyan bar examination and proposed interventions: Final report*, September 2019, v-x.

will include, first, a section on the unity of knowledge under which three factors will be analysed: understanding the concept; demonstrating its relevance to legal education and training; and the correct interdisciplinary approach it generates. Secondly, the paper will cover a section dedicated to reassessing the theory and practice divide in the light of the interdisciplinary approach to posit the classical understanding on how the command of principles and doctrines informs the most coherent practice. Thirdly, a section will be dedicated to elucidating the use of an interdisciplinary approach to accommodate African jurisprudence in legal education from two angles: a brief review on what is referred to as ‘decolonising’ legal education and an examination of the idea of indigenous and customary laws. As a conclusion, a final section will revisit the relationship between the rule of law and legal education.

2 Unity of knowledge

The question of unity of knowledge should be posed more acutely today because of the ultra-specialisation embraced by modern ways of cultivating knowledge. Specialisation cultivated to extreme levels presents knowledge as fragmented and simply relative. This is what tends to divorce theory from practice. On the other hand, there is sufficient evidence to support the fact that no area of knowledge is self-sufficient, an idea that has called for interdisciplinary approaches to any field. However, from an epistemological point of view, there is no possible interdisciplinary approach, unless there is an idea of unity of knowledge. For the purpose of this paper, this concept will be explored in the light of Giuseppe Tanzella-Nitti’s formulation of it.⁵² Let’s advance already that this idea is relevant to legal education and training because law happens to be a field of knowledge and practice in which effort is put into building simultaneously many doctrinal principles as well as a diversity of competences in one person for a better delivery of legal contributions to society. This means that a coherent integration of all these areas must be achieved if a legal mind endowed, also with skills, is to be the result of a specific education and training in law. At this stage, a brief examination of the concept of unity of knowledge is required.

⁵² Giuseppe Tanzella-Nitti, ‘Unity of knowledge’ *Interdisciplinary Encyclopedia of Religion and Science*, 2002 -<<http://inters.org/unity-of-knowledge>> on 14 December 2020. Giuseppe Tanzella-Nitti, ‘In search for the unity of knowledge: Building unity inside the subject’ *Science and Religion: Global Perspectives International Conference Organised by Metanexus Institute, Philadelphia*, 4 to 8 June 2005.

Understanding the concept

The idea of unity of knowledge should be understood as a desired integration between the considerable bodies of scientific learning acquired and the rationality of their purpose. Such integration must be a priority at any level of education and training. It presupposes a critical and logical comprehension of the reality studied; an epistemological choice, meaning a specific approach to finding the foundation of such knowledge and the basis of its truthfulness; and finally an anthropological grasp of the individual who learns, that is, the self-awareness of the knowing subject. From this first consideration, it can be said that it is the nature of the human being that requires an integration between what we know and what we believe.⁵³ A human being's rationality, while acknowledging the different forms of true knowledge acquired, asks, at the same time, for a coherence between them.

A person's rationality and the rationality of knowledge in any field acknowledge that there is a reality, which is the source of knowledge, of ethical questioning and, we must add, of practical experience.⁵⁴ In searching for integrated knowledge that establishes congruence between theoretical knowledge and practice, it is important to find an approach that does not separate the rationality of acquired knowledge from the personal responsibility that comes from knowing. As Tanzella-Nitti argues, 'it means not to separate what makes a science true from the conditions that make a science good, thus having access to the ultimate reasons that may justify and support our making science.'⁵⁵ The key factor here is, then, the subject who is acquiring the knowledge; a factor that draws the attention to an understanding of humankind and society fittingly capable of stimulating a greater search for the foundation of intellectual unity, in the face of increasingly diversified specialisations in education.

Today, any discourse on the unity of knowledge must be invariably confronted with the reality of fragmentation of that integration, or synthesis, necessary for a more comprehensive progress. A fragmented view of knowledge denies the possibility of unity or synthesis, based upon the idea that modern trends favour mostly a relativist view of the truth. This is how, according to Tanzella-Nitti,

⁵³ Giuseppe Tanzella-Nitti, 'Unity of knowledge' *Interdisciplinary Encyclopedia of Religion and Science*, 2002 -<<http://inters.org/unity-of-knowledge>> on 14 December 2020.

⁵⁴ Giuseppe Tanzella-Nitti, 'Unity of knowledge' *Interdisciplinary Encyclopedia of Religion and Science*, 2002 -<<http://inters.org/unity-of-knowledge>> on 14 December 2020.

⁵⁵ Giuseppe Tanzella-Nitti, 'Unity of knowledge', *Interdisciplinary Encyclopedia of Religion and Science*, 2002 -<<http://inters.org/unity-of-knowledge>> on 14 December 2020.

The ideal of wisdom was slowly replaced by the ideal of expertise, and the contemplation of nature by the will to analyse, manipulate and dominate the world. (...). However, we need to acknowledge the relationship between natural sciences and human sciences (...). Now, many independent results suggest that various fields of knowledge must remain open that is, interrelated to each other, as each individual field seems to have recognised the impossibility of being epistemologically self-reliant.⁵⁶

The awareness of not being epistemologically self-reliant in terms of fields of knowledge is also valid, within each individual field, in reference to the intrinsic relationship between the theoretical or conceptual dimension, and the practical dimension involved in each science. In fact, practice in virtue of unity of knowledge is made possible by the application of principles formulated at the theoretical level. At this juncture, the question now is: how is this idea of unity of knowledge relevant to legal education?

Relevance of the idea of unity of knowledge to legal education

It is easy to admit that unity of knowledge is required by the fact that knowledge, including legal knowledge, is built upon the human person, by the human person, and for the human person. From another angle, it can also be said that the integration of knowledge into a unified synthesis depends upon the value that such knowledge has for oneself, for the community and the progress of the human society. It follows then that there is a convergence between unity of knowledge and the spirit of a legal mind, legal scholar and/or a legal professional. It can also be said that a truly legal mind, a jurist as the civil law tradition would say, is a lawyer who has integrated in their knowledge and *savoir-faire*; an ability for critical reflection, intellectual rigour, willingness to collaborate and openness to a constructive exchange with other disciplines for an integral advancement of humankind.

Unity of knowledge provides the intellectual maturity predisposing a lawyer to find solutions to complex problems, always within the horizon of the common good. This assumes in the lawyer sufficient mastery to translate theory into practice, to apply theoretical principles to solving problems that practical life brings with it. Practical skills are not possible where there are no habits of the mind that guide the right way to effectively cultivate and use practical skills. In simple terms, this means becoming responsible, ultimately taking responsibility derived from one's knowledge.

⁵⁶ Giuseppe Tanzella-Nitti, 'Unity of knowledge' *Interdisciplinary Encyclopedia of Religion and Science*, 2002 -<<http://inters.org/unity-of-knowledge>> on 14 December 2020.

For lawyers, such responsibility should cover questions such as: what makes a community a civil community? What makes a citizen a law-abiding citizen? What qualifies a legal doctrine or even a legal system as true? What qualifies a law as just or unjust? Coherent legal education must therefore cultivate in learners intellectual habits and skills built upon unity of knowledge, so that they can cultivate the ability and responsibility to give practical answers to such questions. Ultimately, it is the overall purpose of legal knowledge that requires an integrated synthesis of the different dimensions law has as a discipline. A relativist view of legal knowledge would not allow a much-needed integrated synthesis, first because it fragments the purpose; and then it would increase the fragmentation of legal disciplines into specialisations that might hold water for a time, but would be swept away by new ones, yet more atomised, hence with little impact for the community. Where fragmentation of knowledge expands, usually a crisis of meaning and relevance follows. In that case, should there be even a search for meaning, it would likely be fruitless.

If law schools are to become environments where unity of knowledge is built, with its corresponding responsibility, Tanzella-Nitti asserts that:

the rationality taught there must concern not only the realm of the means (know-how), but also the realm of the ends (know-why), that is, it must involve not only science, but also wisdom. In other words, (...) they must have at the centre of their teaching and thinking the fundamental question of truth and good, (...) about the personal and social responsibility that is associated with any knowledge.⁵⁷

The idea of unity of knowledge is relevant to legal education in so far as all legal subjects, theoretical and practical alike, entail fundamental human, social, economic and even political matters. These in themselves demand a coherent integration, which law cannot achieve without being open to other disciplines. Philosophy, especially moral philosophy, and jurisprudence are needed to determine the foundation and limits of doctrinal training taken on its own; or where practical training is given more weight to the detriment of the doctrinal one. Here lies also the reason why it is congruent with properly integrated knowledge that academic legal education is necessary and should logically precede the practical training. Unified or integrated knowledge does not mean that students are expected to know it all. It means that they are first taught the concepts and principles of what they have come to study, and not just some specialised sets of disciplines.

⁵⁷ Giuseppe Tanzella-Nitti, 'Unity of knowledge' *Interdisciplinary Encyclopedia of Religion and Science*, 2002 -<<http://inters.org/unity-of-knowledge>> on 14 December 2020.

In these times when factors from outside the university tend to control education for political, financial or ideological reasons, this approach equips students, future legal professionals, with a solid basis allowing them to critically assess any possible conditioning, and find solutions beyond competing individual interests. Of all areas of knowledge, philosophy does appear to be the ultimate framework from where meaningful interdisciplinarity could be established with the aim of providing solid legal education.

Interdisciplinary approach

There have been different attempts of unifying knowledge, an interesting topic to study from the historical point of view, and for which there is no space in this paper. According to Tanzella-Nitti, one of the limitations of unification theories is looking ‘for an exclusive and reductive way of knowing, seeking in itself its own foundation, in which case we deal more with principles close to reductionism, rather than with synthesis of thought.’⁵⁸ Reductionism has negative effects on any area of knowledge, including law. The risks it entails have motivated a greater interest in stimulating the collaboration between disciplines, a collaboration commonly referred to as interdisciplinarity. The study of what each considers its ‘own separate object now requires the contribution of other fields of knowledge,’⁵⁹ trying, however, to avoid the danger of only seeking to stretch one’s methodology to contiguous disciplines. Instead, it is an innovation which leads each discipline to open itself to the challenge of other sources of knowledge. As an interesting illustration, in due course this paper will consider for example African value systems as sources of knowledge that must contribute to legal education in dialogue with other systems, not in subordination to them.

Tanzella-Nitti rightly maintains that, in an era of fragmentation and specialisation, the interdisciplinary approach is needed, but it should not be motivated by a mere pragmatic functionalism, focused on efficiency and production. This is what he calls a weak understanding of interdisciplinarity.⁶⁰ It should be rather motivated by the need to deal with existential questions such as those regarding the foundations of a value system in which a discipline is built. On the other hand, he cautions against considering the interdisciplinary approach as ‘an accumulation of expertise or know-how, creating an illusion that gathering together scientists, economists, lawyers, philosophers and even

⁵⁸ Giuseppe Tanzella-Nitti, ‘In search for the unity of knowledge: Building unity inside the subject’, 20 *Annales theologici*, 2006, 408.

⁵⁹ Giuseppe Tanzella-Nitti, ‘In search for the unity of knowledge’, 409.

⁶⁰ Giuseppe Tanzella-Nitti, ‘In search for the unity of knowledge’, 410.

a few theologians around the same table is enough to solve mankind's greatest problems.⁶¹ This double limitation to understanding interdisciplinarity beyond a simple methodological strategy emphasises the fact that as an approach and to be truly meaningful, it must access a philosophical consideration of nature and of knowledge.

This means, in the context of legal knowledge, taking into account the foundation of cultures of communities under the rule of law. It is such consideration that transforms the interdisciplinary approach into the wide range of venues to accessing the different levels of understanding reality: from the principles underlying foundation and synthesis, to the ends and means of disciplines, in summary, to the 'why' and 'how' of every learning endeavour; without forgetting the person learning. This last element is illustrated, in the context of legal education for example, by the fact that educating lawyers implies the duty to train them not just to know the law and be good lawyers, but also lawyers who are good as persons.⁶² Hence, according to Roger Burridge and Julian Webb:

The mission of the liberal law school is the preparation of 'good citizens' or 'better persons' rather than simply good lawyers...If we develop attributes that make good lawyers, that is an added bonus but it is certainly not a primary objective. In order to enable students to pursue the project of understanding law, legal scholarship must operate as a wide-ranging, probably pluralistic (**in the sense of multi-or-interdisciplinary**) **enquiry into the nature and conditions of legal knowledge and the processes and structures by which law operates**. It is thus primarily a process of intellectual rather than character formation per se. The role of the legal academic in both teaching and research, it follows, is to model this style and process of scholarly enquiry.⁶³ (Emphasis ours)

Interdisciplinary approach derived from unity of knowledge is capable of admitting corroboration and comparability in a constructive manner. It also acknowledges the possibility of methodological incompleteness within a discipline and hence, opens it to other sources of knowledge. As observed by Lydia Nkansah and Victor Chimbwanda, the interdisciplinarity of law is inevitable because of the limitations of the doctrinal approach traditionally associated with the study of law.⁶⁴ The use of social research methods associated with other

⁶¹ Giuseppe Tanzella-Nitti, 'In search for the unity of knowledge', 411.

⁶² According to Twining, the answer to the question what makes an upright lawyer depends on answers to the question: what makes a good person, a philosophical question. See William Twining, 'Rethinking legal education' 52(3) *The Law Teacher*, 2018, 244.

⁶³ Roger Burridge and Julian Webb, 'The values of common law legal education: Rethinking rules, responsibilities, relationships and roles in the law school' 10(1) *Legal Ethics*, 2007, 74-75.

⁶⁴ Lydia Nkansah and Victor Chimbwanda, 'Interdisciplinary approach to legal scholarship: A blend

disciplines, such as the qualitative paradigm, enrich legal scholarship because they enable researchers to generate data from other disciplines in order to address issues that cannot be interrogated using a doctrinal approach that considers law as an isolated discipline.⁶⁵ This makes of the interdisciplinary approach something by which legal education, opened to other sources of knowledge, would create intellectual and human habits of viewing one's work within the context of a greater purpose, a greater good. This means understanding the value that one's study and work has for one's development, but also for society's development. This point shows that unifying knowledge in the person contributes to building personal integrity, necessary for building communities of integrity. It is not so much about the amount of things we cumulatively know, such as legal rules and procedures constituting law as taught in legal education, as about how we establish the correct relationship between what we know and the very purpose of personal and community life. It is this same purpose that gives its *raison d'être* to all disciplines, and most interestingly to law as a field of knowledge. It is against this same purpose that each discipline must verify its own truthfulness beyond ideological or doctrinal options. It also constitutes the backdrop needed to reassess the theory and practice divide in relation to legal education.

3 Reassessing the theory-practice divide

According to Heather Gerken, framing the debate on legal education around the doctrinal and experiential learning divide distracts one from being ambitious about both. It becomes an obstacle preventing everyone from acknowledging the intrinsic relationship between the two dimensions of knowledge acquisition. According to her, 'there are deep continuities between what is taught in the classroom and the finest values of the profession.'⁶⁶ This echoes Katherine Kruse's argument that law schools must strike some balance among doctrinal teaching, skills training and instruction in professional values, instead of perpetuating the myth that 'aligns the teaching of doctrine with theory and the teaching of skills with practice.'⁶⁷ In fact, Susan Bright notes that the teaching of skills can be justified not only in the context of practical legal training, but also

from the qualitative paradigm' *Asian Journal of Legal Education*, 2015, 55-71.

⁶⁵ Lydia Nkansah and Victor Chimbwanda, 'Interdisciplinary approach to legal scholarship: A blend from the qualitative paradigm', 55.

⁶⁶ Gerken Heather, 'Resisting the theory/practice divide: Why the "theory school" is ambitious about practice' 132(7) *Harvard Law Review*, 2019, 134.

⁶⁷ Katherine Kruse, 'Legal education and professional skills: Myths and misconceptions about theory and practice' 45(1) *McGeorge Law Review*, 2013, 9.

as a means to enhance the understanding of law, the development of contextual understanding and critical thought.⁶⁸ In support of this perspective, she refers to Gower's inaugural lecture published in the *Modern Law Review*, where he states as follows: '...the fact that a subject is of practical value is no reason for rejecting it as unsuitable for university instruction. On the contrary, if a subject is otherwise suitable, the fact that it is practical is an advantage not a disadvantage...'⁶⁹

Hugh Brayne, Nigel Duncan and Richard Grimes also illustrate how doing the things that lawyers do can enhance the learning process.⁷⁰ These are all arguments against those who take the position that classroom education without influence of legal practice is something rather close to utopian theorising.⁷¹ The critical point is that the study and teaching of law must be multi-dimensional, based on methods that 'motivate, stimulate and engage students on issues of theory, doctrinal learning, skill development and engagement with concrete problems.'⁷²

However, even the champions of practical training, in the form of law clinics, do admit that prior to involving students in clinics, they should first master the following: understanding a coherent body of knowledge, understanding and acquiring ethical abilities for greater personal responsibility, thinking skills, research skills, the ability to communicate with substance and clarity, as well as the ability to manage oneself.⁷³

The case for continuity between theory and practice is based, first and foremost, on the purpose of legal education, understood broadly. The aim of law schools is not limited to producing members of the bar only. Heather Gerken is right in stating that a law degree is a thinking degree and that law school prepares students 'not just to practice, but to problem-solve; not just to litigate, but also to lead. A legal education should supply graduates with sharp analytics, institutional judgment, and a wide range of literacies.'⁷⁴ In the African context, the clinical programme at the University of Botswana is identified by Philip Iya,

⁶⁸ Susan Bright, 'What, and how, should we be teaching?' 25(1) *The Law Teacher*, 1991, 22.

⁶⁹ Susan Bright, 'What, and how, should we be teaching?', 22.

⁷⁰ Hugh Brayne, Nigel Duncan and Richard Grimes (eds), *Clinical legal education: Active learning in your law school*, Blackstone Press, London, 1998.

⁷¹ Mark Kelman, 'The past and the future of legal scholarship' 33(3) *Journal of Legal Education*, 1983, 436.

⁷² William Twining, *Blackstone's tower: The English law school*, Sweet and Maxwell, London, 1994, 60.

⁷³ Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice, *Australian clinical legal education: Designing and operating a best practice clinical programme in an Australian law school*, Australian National University Press, Canberra, 2017, 163.

⁷⁴ Heather Gerken, 'Resisting the theory/practice divide', 135.

as a progressive model for the BOLESWA (Botswana, Lesotho and Swaziland) countries of Southern Africa, and was also considered as the appropriate model by the Law Faculty Sub-Committee of the Office of the Vice-Chancellor of the University of Namibia.⁷⁵ This is because the clinical programme provides the best vehicle to develop a more comprehensive ‘lawyer’ skill-set.⁷⁶ Yusef Waghid, in particular, demands an African philosophy of education that bridges ‘the pseudo-dichotomy between theory and practice.’⁷⁷ It is submitted that such a skill-based and practical approach to legal education that is open to new ideas and ideals, especially interdisciplinarity alluded to earlier, leads to a diversified potential of professional paths, beyond the bar and the bench.

Theoretical training and experiential learning should be viewed not as opposing realities, instead as two dimensions geared toward this broad view of what legal education aims at. This would be an integrated view of legal education. It would rely on other disciplines touching one way or another on the foundations of law: disciplines from the fields of Philosophy, Humanities, from Economics, Politics, and Technology to name a few. Why? Simply because of the conceptual weight needed to cement legal knowledge and practice and to keep it receptive of enrichment from other spheres, which law also does enrich in turn, hence, the suitability of a truly interdisciplinary character of such training.

Some academics such as Norman Redlich who make the case for theoretical learning as fundamental for practice have criticised experiential learning, particularly clinics, on the ground that clinics fail to develop proper moral values, and sometimes tend to instill in students some of the values legal education should seek to counter. Redlich in particular argues that clinic teachers are exposed to the risk of being trapped in the adversarial character of law practice, which is inclined to corrode rather than build the ethical foundations of future lawyers at a crucial level of their education.⁷⁸ This point can also be made from a pedagogical view, especially because of the role of the teacher in the building up of arguments, possibility of manipulation and overreach in controlling the situation, where students are not yet well-equipped to function as professionals.

⁷⁵ Philip Iya, ‘Educating lawyers for practice—clinical experience as an integral part of legal education in the BOLESWA countries of Southern Africa’ 3(1) *International Journal of the Legal Profession*, 1994, 315 and 329.

⁷⁶ Philip Iya, ‘Educating lawyers for practice’, 332

⁷⁷ Yusef Waghid, ‘African philosophy of education: A powerful arrow in universities’ bow’ *The Conversation*, 29 July 2016 <<https://theconversation.com/african-philosophy-of-education-a-powerful-arrow-in-universities-bow-62802>> on 14 December 2020.

⁷⁸ Norman Redlich, ‘The moral value of clinical legal education: A reply’ 33(4) *Journal of Legal Education*, 1983, 613.

Matters could be worse when teachers are drawn from practice. The possibility for students to apply self-analysis in the face of ethical dilemmas of the practice can become narrower. Hence, Redlich says that it is not surprising that clinical teachers, themselves trained in law schools that emphasise the adversarial system, would convey to students some of the very attitudes which prevent the development of ethical awareness.⁷⁹

Therefore, legal education should be characterised by an ambitious intellectual commitment as the condition for building up ambitious experiential learning in whichever form a law school decides to translate it into. In this regard for example, until the conceptual tenets of African ideals and institutions of a legal nature are recaptured, it will remain a huge challenge to embed them into legal practice.

It is undeniable that experiential learning and clinics, for that matter, could and should enrich legal education, especially by inculcating further the value of justice in students as well as showing them in real situations how the law and legal processes affect real people. A sustained experience in this sense would help students deepen their understanding of approaches that make a difference for people while fostering, at the same time, an ethical and a reflective practice. Obviously, this presupposes a good theoretical grounding, otherwise the exercise would not be different from any policy activist's work, instead of a legal mind's commitment to translating principles of law into actual progress of people. However, some academics have noted that, given the limited resources for law schools, there is a risk of such schools and their clinical programmes being subjected to powerful influences beyond universities.⁸⁰

Law schools might need to resist influences that thwart their effort to produce lawyers with an accurate understanding of all dimensions of the law and its processes. While Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice consider that clinical legal education helps students to develop a better understanding of the ethical component of the law,⁸¹ it must be acknowledged that if students have not received a fundamental theoretical training in ethics, such contribution would fail. However, this is still compatible with the recognition that practical experience is vital in a thorough comprehension and improvement of law, to the point that academics in law should expand their research to capture valuable information based on practical

⁷⁹ Norman Redlich, 'The moral value of clinical legal education', 614.

⁸⁰ Adrian Evans et al, *Australian legal education*, 11.

⁸¹ Adrian Evans et al, *Australian legal education*, 22.

experience.⁸² Once again, this is possible effectively and more fruitfully only within an interdisciplinary approach, where theory and practice converge in the same aim of improving law and bringing about justice.

As an example to support the case of the interdisciplinary approach stressing the complementarity between theory and practice, as well as between law and other disciplines, Richard Posner explains how statistical research in United States ‘has illuminated numerous facets of judicial behaviour, ranging from the role of law clerks in writing their judges’ opinions, to the effect of the behaviour of lower court judges of aspiring promotion to the Supreme Court, to variation across circuits in reversal rates in politically sensitive types of cases, to regional variance in sentencing, and to much else besides.’⁸³

It is safe to advance that the versatility of experiential learning, in the form of clinical programmes or otherwise, hinges on firm theoretical grounding. The thinking is that ideas precede and inform practice, even in the context of law. They give direction as to why problems should be solved and then, in practice, the how comes in. This is the correct articulation and it does stress the fact that rather than a divide between theory and practice, there is interdisciplinarity and complementarity. As an example, according to Gerken, what practice through law clinics brings in is the opportunity for students to forge deeper relationships with local organisations and communities ‘which allows them to undertake the sort of grassroots-oriented, bottom-up legal strategies that some commentators urge all lawyers to pursue.’⁸⁴

The rationale followed in this paper is pointing at the fact that, rather than opposing theory to practice in legal education, it is the convergence of both that must be cultivated, the rationale of any provision of a statute must be understood conceptually. The substance of legal education goes beyond what Michael Madison calls the short-term demands such as budgets, bar passage and placement rates.⁸⁵ The relationship between the two dimensions of legal education is required by the pedagogy of law. Indeed, theory is at the centre of it; and practice is the occasion to apply to actual situations the principles learnt. Being a lawyer requires constantly cultivating the continuity between the two dimensions.

⁸² Richard Posner, ‘Legal research and practical experience’ 84(1) *University of Chicago Law Review*, 2017, 239.

⁸³ Richard Posner, ‘Legal research and practical experience’, 240.

⁸⁴ Heather Gerken, ‘Resisting the theory/practice divide’, 139.

⁸⁵ Michael Madison, ‘An invitation regarding law and legal education, and imagining the future’ University of Pittsburgh School of Law, Legal Studies Research Paper Series, Working Paper Number 2018-03, 2018, 5, <<http://ssrn.com/abstract=3122624>> on 14 December 2020.

If in the exploration of unity of knowledge this paper was looking at what could be called a philosophical foundation to this debate, the re-assessment of the theory and practice divide appear to be of a pedagogical nature. And there is a sociological context that needs to be added here. It was already introduced in the demonstrated link between unity of knowledge and interdisciplinarity. Legal knowledge takes place within specific social contexts, and it must take into account the foundations of cultures of communities it emerges from and intends to serve. From this perspective, legal education in Africa is still facing the challenge of what African Jurisprudence is, and the place it occupies in law school curricula. Some still debate its very existence with questions such as: is it African jurisprudence or jurisprudence in Africa? Is it sufficiently consolidated to be taught as a philosophy of law? If so, does this mean there is a need to decolonise legal education? In the line of building the convergence between theory and practice, with regard to Africa, legal education cannot shy away from making greater room for this matter, if it is to form thinking lawyers with a problem-solving ability forged in the cultural context of their own communities, sufficiently literate in the value systems of African cultures, rules and governance. It is with this in mind that the next section of this paper attempts to discuss African jurisprudence from the unity of knowledge framework, and its contribution to understanding true interdisciplinarity, as presented so far.

4 Possibility of African jurisprudence

The starting point is that for any education field or system to be coherent with itself and contribute to other fields as well as generate true progress, it must take into account the social realities within which it is imparted and for which it is designed. From this point, legal education in Africa is at a crossroads, unless it accepts its incompleteness as long as it is not scrutinising the true African conception of law and justice embedded in the traditions and wisdom of African communities. There must be a deliberate exploration in law in this sense. Learners in general and lawyers in particular thrive with a broad curriculum that accommodates not only their natural abilities but also their interests and their environment. This is why teaching goes beyond a delivery system to be a creative endeavour that stimulates, provokes and engages the learner in a comprehensive manner. A small digression could be allowed here to point out that, when emphasis is put on testing rather than teaching, what is achieved is not eliciting constructive curiosity in the learner, but rather a compliance mentality. Furthermore, because legal reasoning is based on established norms the existence of which cannot be questioned by the lawyer on account of the supremacy of ‘authority,’ a concept

that looms large in the thinking and practice of lawyers everywhere, Otto Kahn-Freund argues that law as an academic discipline risks becoming like theology instead of the social sciences whose subject-matter it shares.⁸⁶

What has this got to do with African jurisprudence? The answer should be practically everything: legal education with insufficient theoretical depth in this area is likely to be a great impediment for a coherent practice in the best sense of the term. In fact, elaborating on which kind of reform law schools need in Africa, Manteaw asks a very direct question as to whether African value systems drive African legal education. He proceeds to suggest that 'law curricula should seek to adapt indigenous philosophical jurisprudence and values to African needs (...). The curricula should realign or even reform and apply African values to problems of modernity, dispute resolution and institution building.'⁸⁷ There is a commonsense justification to this in addition to a philosophical or even a legal one. Legal education, like almost everything on the continent, must come to terms with the indigenous cultural tenets of African communities, those coming from the colonial reality as well as those related to the contemporary world, in this order. This is a search for an identity that is crucial for there to be African legal systems standing on a specific ground in order to face and overcome old and more contemporary challenges.

The moment of discussing the possibility of African jurisprudence cannot be delayed further. Considering that it is an ample theme for entire books, this paper will only state a few points. First, as Kingsley Omoyibo argues, every society is regulated by certain rules called laws, customs, norms and values.⁸⁸ This is true for every human society, including African societies. The interesting thing is that such regulations form a system determined by a specific world view. Such a world view is generally a philosophy, whether it is systematically formulated in writing as it has been in all sophisticated cultures, or it is formulated otherwise in no less sophisticated cultures, whose knowledge is basically transmitted in oral fashion. In this sense, since jurisprudence is philosophy of law, there should be no doubt about the possibility of African jurisprudence.

Adopting Leslie Curzon's definition of law understood as a written and unwritten body of rules derived from custom and formal enactment recognised as binding for those who make up a community,⁸⁹ Omoyibo establishes an intrinsic connection between society's system of laws and key elements such as

⁸⁶ Otto Kahn-Freund, 'Reflections on legal education' 29(2) *Modern Law Review*, 1966, 123.

⁸⁷ Samuel Manteaw, 'Legal education in Africa', 938.

⁸⁸ Kingsley Omoyibo, 'African jurisprudence', 13.

⁸⁹ Leslie Curzon, *Dictionary of law*, 4 ed.

morality, especially public morality, values and law. He posits that law and public morality refer to ‘the public ethos which provide the cement of any society’⁹⁰ in the sense that law is meant to reinforce in a more ample manner a given community’s moral values. His approach is significant particularly because he is placing his reflection against a specific backdrop of the Etsako community in Nigeria. On the other hand, he is not afraid to first recognise that African values in today’s world have been almost entirely taken over and substituted by selfishness and legalism, which make people act in a non-reflective manner. He writes that this has become a characteristic of an African personality.⁹¹ It appears that African values are largely absent in the sphere and process of formulating laws. Anthony Asekhauno concurs with Omoyibo’s view when he explains that today’s pervasive immorality and the corruption deriving from it, as well as the consequent chronic underdevelopment are all a result of infidelity to African values.⁹²

Understanding African jurisprudence requires overcoming or searching beyond the epistemological dichotomy between natural law and positive law introduced by Western thinkers from Hugo Grotius onwards. From what could be called the socio-political foundations of law, such dichotomy can hardly hold in African traditional understanding of law. Omoyibo, agreeing with Herbert Hart on the formal criteria of validity of a given legal system which does not consist in contravening the basic principles of morality, stresses the fact that it is the same criteria that African cultures follow by giving precedence to morality.⁹³ positive law must conform to moral law. Once a society loses its moral compass, it can no longer be able to formulate laws capable of leading it to its own fulfilment.

What is generally referred to as African values, indicating a set of moral tenets that determine the rationale of rules made, is a wide field of further jurisprudence research. This paper alludes to a few dimensions discussed by Paul Haaga.⁹⁴ This choice is motivated by the fact that the values he identifies are common in Africa, and that they are the basis of any rules and regulations in traditional communities. He notes the value of solidarity as a basic principle that orders obligations, rights and boundaries in all social relations from the family to the wider community.⁹⁵ He also identifies the respect of persons, as individuals

⁹⁰ Kingsley Omoyibo, ‘African jurisprudence’, 14.

⁹¹ Kingsley Omoyibo, ‘African jurisprudence’, 14.

⁹² Anthony Asekhauno, ‘Corruption, injustice and under-development in Africa: Poverty of oaths’ 2 (1&2) *Iroro: A Journal of Arts*, 2006, 275.

⁹³ Kingsley Omoyibo, ‘African jurisprudence’, 15.

⁹⁴ Paul Haaga, ‘An Igwebuik reading of HLA Hart’s theory of law’, 39-54.

⁹⁵ Paul Haaga, ‘An Igwebuik reading of HLA Hart’, 40.

and integral members of who one is and what the community is. The third value he singles out is the beneficence as a principle illustrated by sayings such as ‘when there is a feast, everyone is welcome; the hen with chicks does not swallow the worm; sharing is living (...).’⁹⁶ It is interesting to see that in Igwebuike, the principle of beneficence goes also with a precept of non-maleficence, which Haaga explains in this way: ‘the words put together as non-maleficence would mean keeping away from hurting or harming the other.’⁹⁷ This means it is more than refraining from harming the other, to include abstaining from exposing others to harm.

It appears that there is sufficient evidence of African values which constitute a moral foundation for a distinctly African jurisprudence. However, there is still a pervasive idea of Western cultural superiority which permeates education systems on the continent and, in the context of legal education, has minimised and sometimes shunned a greater visibility for African jurisprudence. William Idowu examined this challenge through the different myths about the matter. He finds two types of myths about African realities in general expressed in two statements. The first is that it is a myth to claim an African past before the Europeans’ arrival; the second is that even if we admit that Africa before Europeans’ arrival has a history, that history cannot claim any philosophical or intellectual recognition.⁹⁸ Ideas that question the possibility of African jurisprudence fall under the second claim to affirm that ‘the existence of a distinct sense of theorisation and conceptualisation of jurisprudence that is African and not Western is a myth.’⁹⁹ Hence, Berihun Gebeye advocates an African legal theory that harmonises ‘legal centralism’ and ‘legal pluralism’ to develop a pure ‘African’ theory that recognises the influence of both Western and African legal philosophy in post-colonial African legal thought.¹⁰⁰ Yet, there still remains evidence of African scholars confident of developing an ‘African legal theory’ founded on African experience as reflected in African customary law.¹⁰¹

Idowu has found a number of expressions for this myth such as: Africans do not have a history or a past, and the assumption that Africans have little or no system of laws before Europeans. Interestingly, he finds that such biased

⁹⁶ Paul Haaga, ‘An Igwebuike reading of HLA Hart’, 41.

⁹⁷ Paul Haaga, ‘An Igwebuike reading of HLA Hart’, 42.

⁹⁸ William Idowu, ‘African philosophy of law’, 53.

⁹⁹ William Idowu, ‘African philosophy of law’, 54.

¹⁰⁰ Berihun Gebeye, ‘Legal theory in Africa: Between legal centralism and legal pluralism’ *Queen Mary Law Journal*, 2017, 37.

¹⁰¹ See the introduction of Gordon Woodman and Akintunde Obilade (eds), *African law and legal theory*, New York University Press, New York, 1995.

perceptions are due not only to this denial of African realities, but also to the fact that the concept of law is unsettled in the West.¹⁰² It is prudent to conclude that it is unsettled in the West due to the dichotomy or separation between law and morality Omoyibo alluded to. In fact, the unity between these two spheres in African cultures confirms that African communities did have a philosophy of law, even if its only vehicle was oral tradition. Idowu then agrees with Max Gluckman who had written, in the 1960s that:

Though the setting of African law might be exotic, its problems are those that are common to all systems of jurisprudence (...). Barotse courts are dominated by ideas of justice and equity. These ideas influence their total evaluation of evidence (...). The Barotse have a clear idea of natural justice which they constantly apply (...). And natural justice involves for them, as for us, certain ultimate principles of law.¹⁰³

The fact that African societies are centred on the place and role of the community has attracted another myth asserting that there cannot be a philosophy of law where there is no respect for individual rights. To this Idowu responds that 'Africa's law emphasis on the collective and social cohesion is not at the expense of the rights of individuals in the community.'¹⁰⁴ This is because the community provides the safety and the anchor for the status of each member. The nuance here is that cultures outside Africa tend not to see the distinction between the strong bonds of a community and the corporate structures. African communities are not corporations where individuals are just a number or a statistical figure. That is why communities were educative by nature, and corrective when it came to restoring order by any rule-breakers. This is the argument that holds also against the accusation that there could be no idea of law in societies that had no systems of law enforcement such as the police.¹⁰⁵

Finally, Idowu observes that from the positive sense of the law, that is, the promotion of order in defense of rights and liberties for the common good, and its negative sense, that is, dealing with offenders of such order, there is no substantial difference between the African jurisprudence and the Western one. He says that the difference is in the emphasis and the degree.¹⁰⁶ For instance, it is well-known that punishment for offenders in African communities is not narrowed to just the offender, it affects more people. That is why its aim is reconciling and restoring more than just punishing which is the very essence of

¹⁰² William Idowu, 'African philosophy of law', 64.

¹⁰³ Max Gluckman, *Order and rebellion in tribal Africa*, Cohen & West, London, 1963, 178.

¹⁰⁴ William Idowu, 'African philosophy of law', 66.

¹⁰⁵ Geoffrey Sawer, *Law in society*, Oxford University at the Clarendon Press, 1965, 29.

¹⁰⁶ William Idowu, 'African philosophy of law', 70.

ubuntu, an African moral theory reflected in the South African Bill of Rights.¹⁰⁷ Context, offenses committed, and other circumstances dictate the extent of reconciliation and restoration needed. In some communities there could also be reasons to totally exclude the offender from the community, but with no need of any police, since systems of enforcement are so different from the Western style of law enforcement.¹⁰⁸

It seems that these myths have been around for a long time. They are present in the manner in which state law has superseded customary law; in the structure of curricula; and to some extent in courts' jurisprudence. However long they have lasted, they must be debunked in a decisive manner and the debunking should translate into a greater input of African jurisprudence in legal education. That is why some are engaged in a debate aiming at decolonising legal education. It can only be done through a truly interdisciplinary approach, which will progressively lead to capturing the need of African communities.

Debate on decolonising legal education

The approach to this matter is based upon elements of universality in knowledge, which means that not everything in imported legal knowledge is to be discarded. Instead, as this paper attempts to do consistently in the name of true interdisciplinary work, decolonising would mean providing the right space for local knowledge instead of suppressing it.

Colonisation is a strong word which carries several compounded realities including imbalance of power between the coloniser and the colonised, disregard of the colonised's dignity, exploitation, destruction and lasting trauma in the colonised. This paper uses the terms colonising and decolonising applied to legal education in analogical manner, to mean what Roderick McDonald and Thomas McMorrow call the passivity by which law schools risk being sites of alienation rather than education.¹⁰⁹ If colonisation can be described as a mode of control by external power, leading to the deracination and unequal relationship, then in situations where law schools could be under the dominion of exogenous influence, the analogy is justified. Indeed, the recent 'Fees Must Fall'¹¹⁰ protests

¹⁰⁷ Thaddeus Metz, 'Ubuntu as a moral theory and human rights in South Africa' 11(2) *African Human Rights Law Journal*, 2011, 541.

¹⁰⁸ Jomo Kenyatta, *Facing Mount Kenya*, Vintage Books, New York, 1965, 217-218.

¹⁰⁹ Roderick McDonald and Thomas McMorrow, 'Decolonising law school' 51(4) *Alberta Law Review*, 2014, 719.

¹¹⁰ George Mavunga, '#FeesMustFall Protests in South Africa: A critical realist analysis of selected newspaper articles' 7(1) *Journal of Student Affairs in Africa*, 2019, 81-99.

in South African universities provide the best backdrop for a decolonisation agenda in South Africa. For instance, some universities such as the University of Kwa-Zulu Natal have made provision in the law curriculum for teaching *isiZulu*, perhaps as a way of acknowledging the diversity of the South African population and how it should be reflected in the administration of justice, an issue explored recently in an award-winning academic thesis by a South African student.¹¹¹

There is also evidence of other proposed approaches to decolonise the curriculum in South Africa. The recent Southern African Law Teachers' Conference hosted by the University of Cape Town (11-13 July 2018) titled: 'Transformation of the Legal Profession: Decolonisation of Knowledge' is a good example. For instance, some presenters shared experiences of how specific courses constituting the law curriculum at university should be decolonised by including content that reflects the African reality, giving prominence to customary law, especially living customary law,¹¹² as well as adopting new teaching methods to better reflect African experiences and contexts.¹¹³ Such decolonisation of knowledge was also a theme of the 2017 African Law Deans Forum under the auspices of the International Association of Law Schools titled: 'Decolonising Legal Education in Africa.' In the keynote address, some of the attempts made at decolonising legal education in Africa, including the failed project to develop an indigenous African common law, were highlighted. It was suggested that to achieve meaningful curriculum reform towards decolonising knowledge, there is a need for meaningful and coordinated empirical research as well as national strategic plans to deal with decolonisation of African institutions including legal education.

The difficulty with pervasive foreign influence is that it subjects the colonised to a constant need for external recognition and over-reliance on legal systems that have little or nothing to do with local experience. It might not even be easy for organisations to realise how subjected to colonialist patterns they are. In terms of philosophy of law, intellectual discourse that does not stem from foreign legal theories and their patterns are likely to be marginalised. That is why it is desirable that legal education in Africa endeavours a progressive effort to break from those patterns. McDonald and McMorrow reflect upon this matter in the context of Canadian law schools and state that there is still colonisation

¹¹¹ Zakeera Docrat, 'The role of African languages in the South African Legal System: Towards a transformative agenda' MA Thesis, University of Rhodes, 2017.

¹¹² Book of Abstracts, The Society of Law teachers of Southern Africa Conference, 2018.

¹¹³ Aretha Phiri and Danai Mupotsa, 'On decolonising teaching practices, not just the syllabus' The Conversation, 15 July 2020 - < <https://theconversation.com/on-decolonising-teaching-practices-not-just-the-syllabus-137280> > on 14 December 2020.

when in the educational work and debate:

We are continually confronted with the question of what is our own way of thinking about the world and why. Relying unreflectively on ways of framing such questions, or simply adopting dominant ideas from offshore without assessing their pertinence to local experience means shirking responsibility for seeking a just social order in the particular contexts in which law is meant to be applied.¹¹⁴

This can be overcome only when law schools find ways of drawing knowledge from the diversity found in the traditions of the communities they evolve from and in, while remaining open to a symbiotic interchange with other legal systems.

In Africa, the above observation means an openness to explore in depth the pluralism of local realities and their conceptions of rules meant to achieve social order and social harmony. It also means that when debating the need to produce 'practice ready' lawyers, the focus will not just be on technical skills, but also on a substantial degree of familiarity with ancestral wisdom regarding law. This means a greater effort both in research and conceptual construction of knowledge centred on understanding customary and indigenous law, as well as the philosophy they are based upon. Efforts in improving law school curricula in this direction is what will provide law schools in Africa with transformational purposes, and not just with transactional purposes pushed by colonisation and consumerism according to McDonald and McMorrow.¹¹⁵

The question of customary and indigenous law

According to Chuma Himonga and Fatimata Diallo in their paper on decolonising and teaching law, for there to be decolonisation certain premises are necessary.¹¹⁶ They consider that there cannot be any decolonisation without firstly the building up of indigenous systems of law through legal education. Secondly, considering living customary law as a concept that differs from the distortion of customary law of colonial heritage and finally stating that living customary law has its own characteristics that must be recovered so that it can be taught in a decolonised curriculum.

These authors propose the cleaning up of the concept of customary law, inherited from the colonial framework, devised to advance the interests of the

¹¹⁴ Roderick McDonald and Thomas McMorrow, 'Decolonising law school', 721.

¹¹⁵ Roderick McDonald and Thomas McMorrow, 'Decolonising law school', 728.

¹¹⁶ Chuma Himonga and Fatimata Diallo, 'Decolonisation and teaching law in Africa', 2-3.

state rather than those of the people.¹¹⁷ That is why they suggest the idea of living customary law as more apt in regulating people's lives in their communities. Interestingly, Himonga and Diallo's view are quite similar to those of Idowu, Omoyibo and Haaga discussed earlier. Their views are convergent in that they consider living customary law important because it is based upon the practices, the customs and cultures observed by communities who recognise its authority.¹¹⁸

The fact that Africa has a great variety of communities does not change the fact that all of them do have a living customary law, whether it is captured in state legislation or not. Obviously, it is a particular type of legal system because it relies on oral tradition and escapes any kind of rigid codification. Its unique nature requires that legal education systems include it in curricula to provide trained lawyers with the nature of its conceptualisation, its pluralist methodology and its integration within the new constitutional frameworks adopted by African states. Himonga and Diallo are of the view that 'if future lawyers and judges are not given appropriate legal training about living customary law, they will not have the right lens through which to view customary law in its own right and not from the perspective of other legal systems.'¹¹⁹ The longer it takes to include living customary law in law school curricula, the higher the risk of it being overlooked, while communities still rely on its tenets.

There are evident challenges in finding the correct formulation of living customary law firstly, on the way of establishing the validity of its precepts and their interpretation and application by the courts. Secondly, on the best way to prevent or avoid the manipulation of those precepts especially where power games are likely to distort living customary law for the sake of narrow interests. Thirdly, on the harmonisation of constitutional provisions with living customary law; and finally, the crucial matter of finding the convergence between African world view as the basis of living customary law and the common law world view. This is a noble task African academics in law schools should gladly undertake undeterred by the hard work it must involve.

While legal education inspired from Western cultures is relevant, it does not prepare learners to engage with non-positivist cultures. As Himonga and Diallo correctly point out, it is

arguable that legal education of judges and lawyers in Africa exclusively within the theoretical frameworks of legal positivism and centralism does not adequately prepare them to deal

¹¹⁷ Chuma Himonga and Fatimata Diallo, 'Decolonisation and teaching law in Africa', 6.

¹¹⁸ For a theoretical analysis of the concept of living customary law, see Anthony Diala, 'The concept of living customary law: A critique, 49 (2) *Journal of Legal Pluralism and Unofficial Law*, 2017, 143.

¹¹⁹ Chuma Himonga and Fatimata Diallo, 'Decolonisation and teaching law in Africa', 9.

with the application of non-Western orders (...). The result is that lawyers and judges view living customary law as non-existent or irrelevant to state institutions.¹²⁰

The extensive inclusion of living customary law in legal education, as a path to decolonisation, implies a greater recourse to the interdisciplinary approach, to counter a certain epistemological monism affecting this field of knowledge. This implies a willingness to engage in constructive dialogue with philosophy, especially moral philosophy, sociology, anthropology and history. It is an openness to such that will allow the legal field to engage successfully with the pluralism of Africa's systems. The depth and the quality of legal studies will only increase, and the adequacy of legal practice will be more fitting in relation to communities.

Anthony Diala acknowledges that 'until recently this subject (of customary law) was not taught in an interdisciplinary way that links to subjects such as theology, sociology, political science, economics and anthropology.'¹²¹ Diala is an interesting author who supports the idea of focusing on works by Africans about African problems, sometimes taking the tone of an activist when he lists problems like 'Western hypocrisy in international relations, discriminatory referrals to the international criminal courts, the mockery of equality in human rights treaties (...); law's role in ensuring justice and its shameful role in perpetuating injustice.'¹²² He attributes such contradiction to historical forces that lead to unequal power relations, which a new pedagogy in legal education should contribute to eradicating.

However difficult the task is, legal education has a mission in rediscovering and recovering the basis of African jurisprudence to make a greater case for customary law in theory and practice. It is an ambitious mission which implies a quest for the identity of African cultures and the language they use to express that identity without which no true nationhood and its development are possible. Diala notes that 'given the link between development and nationhood, it does not require acquaintance with rocket science to deduce that a lack of national identity contributes to corruption, conflict and bad governance.'¹²³ This appears to indicate the magnitude and the urgency of expanding the study of African jurisprudence as well as living customary law in legal education. The emphasised link between development and nationhood also justifies the fact that there exists an intrinsic link between the rule of law in a nation and legal education.

¹²⁰ Chuma Himonga and Fatimata Diallo F, 'Decolonisation and teaching law in Africa', 11.

¹²¹ Anthony Diala, 'Curriculum decolonisation and revisionist pedagogy of African customary law' 22(3) *Potchefstroom Electronic Law Journal*, 2019, 7.

¹²² Anthony Diala, 'Curriculum decolonisation', 17.

¹²³ Anthony Diala, 'Curriculum decolonisation', 22.

Independent of interference from other social sub-systems such as politics and economics, the degree of adherence to the rule of law in a community can indicate something about the quality of its trained lawyers, judges and jurists in general. From this angle, the conclusion of this paper will focus on the rule of law and legal education.

5 The rule of law and legal education

The conclusion to this paper will be approached from two angles. The first angle is the fact that legal professions tend to be seen through the prism of litigation, maybe because of the power and influence of professional bodies on curricula designs. However, as Manteaw rightly cautions, ‘a legal profession that sees litigation as its mainstay invariably misconceives the function of the lawyer.’¹²⁴ Many law schools in Africa, for historical reasons highlighted in the background of this paper, and maybe for market purposes, embrace this adversarial approach. This is a narrow view of the law and its function since, as illustrated repeatedly, the field of legal practice is wider than that. This narrow view also tends to leave students not interested in the Bar or the Bench with little choice for a professional future. The focus must include the main aim of the law, which is organising the framework of an ordered and harmoniously structured social life. Legal education must deliberately cultivate in students a better sense of public responsibility with regards to local, national, regional and global needs, in that order. This could be the reason why Gower, as reported by Manteaw, had suggested that African countries convert the legal profession from one that regards litigation as its objective rather than its failure.¹²⁵ It has also been shown how a greater inclusion of customary law widens the scope of legal research and legal studies, precisely for a well-ordered society, which is the aim of the rule of law.

From this angle, it can be said that legal education trains individuals that also lead in terms of ideas and standards of what the rule of law is in theory and in practice. Interdisciplinary learning is bound to better connect law professionals to specific communities’ needs, since as Diala puts it, they will have been trained to embrace the challenge of self-discovery and identity, acknowledge, explain and situate legal and social problems within their context without falling back into hypocritical colonial attitudes.¹²⁶

¹²⁴ Samuel Manteaw, ‘Legal education in Africa’, 938.

¹²⁵ Samuel Manteaw, ‘Legal education in Africa’, 939.

¹²⁶ Anthony Diala, ‘Curriculum decolonisation’, 24.

The second angle might be viewed as controversial by some. It is the impact of considering education as a commodity, which has transformed students into clients. In the context of law schools, McDonald and McMorro call this colonisation by consumerism.¹²⁷ While this is a commonly-accepted reality, the call to a special contribution to the implementation of the rule of law in society demands that law schools teach in a way that provides intellectual resources and builds a habitat that promotes an understanding of law beyond the narrow limits of a consumerist culture. That means going beyond just the expectations of the market here and now. The consumerist mentality must be avoided because it ‘casts all challenges that students face as seeds of customer dissatisfaction, presenting students in an adversarial relationship both with professors and each other.’¹²⁸ The danger of this is greater than it appears at a first glance. Such mentality diminishes or even destroys the sense of responsibility.

Market value is an interesting thing. However, it is essential to consider that for legal education not to lose sight of intangibles of social, political and ethical nature it must interact with them fruitfully to shape the correct environment for the assimilation and actual practice of the rule of law. Once again, the need for interdisciplinarity shows up. If this kind of intangibles are not considered,

consumerism in legal education will almost inevitably lead to what Irwin Cotler once characterised as the student-faculty tacit conspiracy of mediocrity: students will demand less of professors and rank teaching highly in exchange for professors demanding less of students and marking to a higher grading curve.¹²⁹

The balanced position to be in is to build law schools with a specific ethos as communities in a constant quest for a virtuous life in the style of classical universities. They would be entities that champion the correct articulation of curricula, service to community within the larger aim of contributing to the common good with what legal knowledge, including its intangibles, brings to society. It is this orientation to the common good, not just individual interest, which requires the respect for the rule of law and, as moral philosophers would say, the need to live virtuous lives.¹³⁰ There is no possible respect for the rule of law without virtue. That is why McDonald and McMorro say that every law school is a site of opportunity to ‘do’ law before and after one is qualified to

¹²⁷ Roderick McDonald and Thomas McMorro, ‘Decolonising law school’, 728-731.

¹²⁸ Roderick McDonald and Thomas McMorro, ‘Decolonising law school’, 730.

¹²⁹ Roderick McDonald and Thomas McMorro, ‘Decolonising law school’, 729.

¹³⁰ Martha Nussbaum, ‘Cultivating humanity in legal education’ 70(1) *University of Chicago Law Review*, 2003, 265.

practice, making a point on the inseparable unity between theoretical training and practical training:

When ‘doing’ law is understood as contributing to how principles such as peace, justice, equity, legitimacy, responsibility, and so on, are understood and practiced both within and beyond the walls of law school — and not just in patent sites of legal normativity but in any site of social interaction — then each member of a law school community, and each member of society, is potentially teaching, learning, and ‘doing’ law all the time.¹³¹

It is not far-fetched to think that this is what Luis Franceschi explained as the vision behind the law school he helped to start in Nairobi: ‘to train not just good lawyers but lawyers who are good.’¹³²

The ethos delineated so far, from an interdisciplinary perspective, is in convergence with African societies’ approach to knowledge. Abdulkareem Azeez notes that practical instruction and training happened in the complexities of family and social systems to achieve a certain mastery and expertise of a given craft or trade.¹³³ The environment of learning determines how what is learned will transform the learner while learning and for the rest of their lives. This is an essential feature of African tradition of learning that will come with the recovery of African value systems to inform legal education, always keeping within the horizon of its purposive nature.

Once these observations are made, some conclusions can be drawn from the discussion so far. The first conclusion is that, in order to fruitfully maintain the correct relationship between theory and practice in legal education, an effort toward unity of knowledge particularly in its clarification of the true interdisciplinary approach is the correct path. This approach is of special importance because it restores the interchange between law and other fields of knowledge, particularly moral philosophy, history, politics, sociology, and economics, in the pursuit of the rule of law’s contribution to the common good of the society and the promotion of people’s freedoms and rights. This major purpose implies the duty to rediscover the tenets of African jurisprudence and shape law curricula in accordance with them while remaining in constructive dialogue with other legal systems not limited to rigid positivism and centralism.

¹³¹ Roderick McDonald and Thomas McMorrow, ‘Decolonising law school’, 731.

¹³² Luis Franceschi, ‘The SLS dream, not just good lawyers but lawyers who are good’, Lecture delivered at Strathmore Law School, Nairobi, 14 January 2020 - <<https://www.youtube.com/watch?v=2L6BW4N4qfA>> on 14 December 2020.

¹³³ Abdulkareem Azeez, ‘Introducing the teaching of African legal jurisprudence in the 21st Century: The KIU approach’ 1(1) *Kampala International University Law Journal*, 2017.

The second conclusion follows from the first one and is the proposition to decisively take the debate on decolonising legal education seriously from the theoretical and practical perspectives. However general this proposition sounds, there is an urgency according to Khanya Motshabi ‘to situate it in African epistemologies and knowledge production,’¹³⁴ which in the context of African jurisprudence is characterised by a dynamic pluralism. This conclusion seems to open potential new studies and research paths required by the nature and the stage at which African legal systems based on African values are at. One could think first of jurisprudence itself as a wide area of study with all the primary data still unexplored; secondly of the field Diala and Kangwa¹³⁵ are exploring, that is, the interface between constitutionalism and customary law; thirdly the question of legal institutions in traditional Africa; fourthly the distinction between the courts of law of Western legal culture and what could be called courts of justice in African tradition; fifthly a comparative study of the human rights theory and African cultures’ expression of human rights, just to name but a few.

Motshabi provides different propositions on this but in the same direction of emancipating legal training:

Africa can teach such propositions as the following. Absolute separation between law and morals is a mirage. Law-making needs no political sovereign, that singular obsession of Western positivist legal theory. Law-making requires no parliament, executive, court or police though these institutions all make law, despite the official constitutional division of labour. Law-making merely uses societal authority and power to prescribe policy. Therefore, international law and micro-legal systems—whether regulating queues or looking, staring and glaring—do exist despite not resembling formal national legal systems. Legal structure is not necessarily a centralised and specialist hierarchy.¹³⁶

The scope of these conclusions only confirm that the theory and practice divide have no place in legal education. It also confirms what the eminent Mahmood Mamdani has said that it is a wrong notion to consider that to be a student is to be a technician,¹³⁷ meaning learning how to apply a theory produced elsewhere. Legal education must not shy away from nurturing thinkers, especially in the line of ‘Africanising’ it.

¹³⁴ Khanya Motshabi, ‘Decolonising the university: A law perspective’ 40(1) *Strategic Review for Southern Africa*, 2018, 109.

¹³⁵ Anthony Diala and Bethsheba Kangwa, ‘Rethinking the interface between customary law and constitutionalism’, 189-206.

¹³⁶ Khanya Motshabi, ‘Decolonising the university’, 110.

¹³⁷ Mahmood Mamdani, ‘Between the public intellectual and the scholar: Decolonisation and some post-independence initiatives in African higher education’, 17(1) *Inter-Asia Cultural Studies*, 2016, 81.