Decolonisation and Africanisation of Legal Education

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Introduction

The analysis below seeks to determine whether or not it is prudent to decolonise legal education. The motion to decolonise education emerges from the fact that colonialism revolved around diminishing the indigenous ways and replacing them with the collective consciousness of the European diaspora and Eurocentric views (Peacock, 2017).

The focus is on the infusion of African values into the law curriculum, particularly in relation to how the use of African values and languages can contribute to decolonising the curriculum. In this regard, the discussion deals with values from the understanding that they are those principles by which people live and for which they can even die (Idang, 2015).

Values are intrinsically linked to culture in that culture entails the manner in which people live, especifically with regards to their social organisations, institutions, beliefs, norms and standards (Idang, 2015). The nexus between culture and values is attributable to the fact that people do not live in a vacuum but within a particular community setting.

I acknowledge that the law curriculum needs to be aligned with the Constitution and what is needed by the legal employment market. However, there needs to be insurance that law schools produce lawyers who are well versed in the African values by which members of society live by.

Use of African/indigenous Languages

Section 6 (2) of the Constitution requires the State to promote indigenous languages so as to move past historical injustices which did not accord equal status to indigenous languages compared with English and Afrikaans (Idang, 2015). Section 30 of the

Constitution provides that everyone has the right to use any language of their choice and participate in the cultural life of their choice (Department of Education, 2002).

Section 29 (2) of the Constitution states that everyone has the right to receive education in the official language or languages of their choice in public education institutions where that education is reasonably practicable (Constitution, 1996); so as to ensure the effective access to and implementation of this right, the State must consider reasonable educational alternatives, including single medium institutions, taking into account equality, practicability and the need to redress the outcomes of past racially discriminatory practices (Constitution, 1996).

The number of provisions in the Constitution relating to the need to incorporate indigenous languages into education, not only to accord them equal status but also develop them to a level where they are of scientific value, emphasises the importance of equal status for all languages. The above contention is premised on the fact that in the past only English and Afrikaans were given a chance to develop and thus be of important scientific value and this was done at the peril of indigenous languages.

In line with Section 29 of the Constitution, the Higher Education Act 101 of 1997 came into operation, *inter alia,* to give a basis to the new language needs at institutions of higher learning. The Act requires the Minster of Higher Education to determine policy in respect of these institutions and, in this regard, the Ministerial Language Policy for Higher Education suffices (Department of Education, 2002). The framework notes that language poses a real risk of providing a platform to discriminate and oppress others (Department of Higher Education and Training, 2015).

Furthermore, the Ministerial Report on the use of African languages in higher learning institutions pointed out that languages can also create platforms for greater social cohesion as well as effective teaching and learning (Department of Higher Education and Training, 2015). In this regard, a multilingual approach to the issue of languages is favoured by the State.

In the Afriforum case, the Constitutional Court (CC) favoured a multilingual approach to teaching and learning (Afriforum v The Univeristy of the Free State, 2018). The

court found that continuing to use a singular medium of instruction is not contrary to the law. However, it is contrary to the law to use such language to further racial or cultural discrimination (Afriforum v The Univeristy of the Free State, 2018).

In the Afriforum matter the CC in essence affirmed that all our languages working together play a pivotal role in the pursuance of common nationhood and that such approach is aligned with the values of democracy, social justice and basic human rights (Afriforum v The Univeristy of the Free State, 2018).

Infusing African Values into the Law Curriculum

At a start, it suffices to mention that not all which is viewed as 'African values' deserve a place in the society where we live today (Idang, 2015). This is attributable to the fact that some may infringe on fundamental human rights entrenched in the Constitution (Constitution, 1996). In this regard, the discussion advocates for the infusion into the legal curriculum of those African values which are consistent with the Constitution (Bekker, Rautenbach, & Goolam, 2015).

Ubuntu- "*umntu ngumntu ngabantu*" (the difference between respect and ubuntu).

It has been said that the values of Ubuntu largely correspond to the underlying values of the Constitution, in terms of which individuals are encouraged to be more humane. This could also mean personhood and morality (S v Makwanyane, 1995). It can be fully expressed by the phrase "*umntu ngumntu ngabantu",* meaning that the mere existence of a person is attributable to the existence of other people (S v Makwanyane, 1995). This is central to group solidarity, survival and shared wealth. It can be said to encompass human dignity, compassion, conformity to basic norms, humanity and morality. It encourages conciliation as opposed to confrontation. (S v Makwanyane, 1995).

I respectfully submit that not directly incorporating Ubuntu into the Constitution was an error and a disservice to the people of South Africa. This is premised on the contention that, although many values such as human dignity and equality cover most

of what Ubuntu offers, such values can never give full expression to the value of Ubuntu. This is true because Ubuntu is not just a value which seeks to achieve the above attributes associated with it, but it is the basis for African life itself.

The principle of Ubuntu moves away from the European perspective of individualism and private ownership of resources. It requires people to share not only living and working spaces, but also the fundamental resources of this earth. With regard to education, this would entail making education and academic resources accessible from a financial and cultural perspective.

Conclusion

University spaces being so diverse today need to have a common medium of instruction whereby no one is excluded on the basis of language use or assessments which are biased towards (a) particular group(s) or propagate racial or cultural discrimination. For instance, requiring students to write tests in the evening or assessing students using two languages would necessarily favour a single racial and class group of students – which is white people in our case.

It is submitted that it is through use of indigenous languages that African values can be properly and effectively infused. Infusion of such values will require a proper understanding and, by implication, identification of them. In addition, this will be a positive step towards making all aware of the importance of the relevant values.

It is on the basis of the right to education that there is a need to introduce indigenous languages which would be compulsory to all, particularly in legal education and similar fraternities (Constitution, 1996). The introduction of such languages will not only give value to the dignity of African people but also enable them to achieve their full potential. This will create greater social cohesion as all South Africans will be familiar with English and other African languages as a social norm.

Reference List

Afriforum v The University of the Free State. 2018. 4 BCLR 387 (CC).

Bekker, J.C., Rautenbach, C., & Goolam, N.M. 2015. *Introduction to Legal Pluralism in South Africa*. Durban: LexisNexis.

Idang, G.E. African Culture and Values. *Phronimon,* 16 (2).

Peacock, M. 2017. Decolonisation of legal education in South Africa in the aftermath of fees must fall. *Michael Peackock08's Blog*. March 10, 2017.

Republic of South Africa. Constitution Act 108 of 1996.

Republic of South Africa. Department of Education. 2002. *Language Policy for Higher Education*.

Republic of South Africa. Department of Higher Education and Training. 2015. *Report on the Use of African Languages as Mediums of Instruction in Higher Education.*

S v Makwanyane.1995. (6) BCLR 665 (CC) (CONSTITUTIONAL COURT OF SOUTH AFRICA 1995).