# Decolonising and Diversifying Land Law – A Critical Analysis of Current Issues in the Modern Land Law Curriculum

## Abstract

This paper will explore the "decolonising the curriculum" agenda and its specific relevance in the Land Law context. The idea of decolonisation has been of great importance to third world scholars and an exercise that has been taking place in the socio-political sphere of former colonial states since the fall of colonial empires in the 20th century. When discussing decolonisation in education, the concept is broad and could be interpreted in different ways depending on the intensity of the exercise. It is critical to ensure that changes made in the name of decolonisation are not 'superficial' or metaphorical in order to address the underlying issues that the current academic curriculum presents. I will analyse what a "decolonised" Land Law curriculum might look like and the onus for, and obstacles to, achieving this. I submit that to "decolonise" the Land Law curriculum, it is first necessary to acknowledge the role colonialism has played in the development of modern land law, and identify which aspects of the subject and its pedagogy are vulnerable to colonial bias. Secondly, I argue decolonising our way of thinking, that is, awareness and recognition by both teachers and students of their conscious and unconscious roles in maintaining a colonised mode of teaching, is vital in enabling collective progress within higher education (HE) curricula; mere diversification of academic perspectives is insufficient for a subject as traditionalist as Land Law. I recommend the implementation of several short and long-term pedagogical and curricular decolonisation practices; by incorporating diverse, critical perspectives and student research initiatives into the curriculum and facilitating an open dialogue among students and teachers, I argue it is possible to make steady progress towards an enriched and ultimately decolonised Land Law course.

## 1.1 COLONISATION IN HE

Colonisation within education, simply put, is formalising and elevating mono-perspectival, generally Eurocentric epistemological ideas and concepts to the status of objective truth.[1] To unpack this further, alleged historical "truths" may feel wrong to those who have experienced said "truths" differently; in this context, coloniser vs colonised viewpoints. White, colonial perspectives conceal themselves by being continually present within our educational systems. McIntosh refers to this phenomenon as "invisible knapsacks of privilege and oppression,"[2] carrying "weightless…special provisions" for the former and virtually unshakeable burdens for the latter.[3] The continued colonisation of education perpetuates historic racial and socioeconomic inequalities and the marginalisation of minority perspectives, creating tunnel-like curricula for all but those who

proactively seek to see beyond this. Thus the impetus for decolonisation goes beyond empowering academics of colour to make their voices heard; it is arguably the duty of HE institutions to ensure holistic and ultimately unbiased delivery of courses to their students. Historically, HE institutions played an active role in colonisation, therefore, their systems of knowledge will be steeped in a value system that does not represent minority students well. Quetzala Carson argued that the 'axiology' of colonialism remains 'embedded' in the institutions and legal systems of the colonised state, thus the value of certain types of knowledge or knowledge providers will be based on the view of the coloniser. This is reflected in the perceived lack of knowledge that Africa is perceived to contribute due to its reliance on oral history in comparison to the written traditions of other continents.

However, this issue is also pervasive in terms of which courts are considered to have 'instructive' judgements for English courts to rely on. Hence, despite a myriad of countries sharing the commonwealth legal tradition, English courts tend to consider judgements from Canada, the United States and Australia. This tacitly reinforces the notion that there is nothing 'of value' to learn from more racially distinct colonies. While Melanie Phillips proposes that the intellectual merit of certain fields should be prioritised over a tokenistic "decolonised" curriculum,[4] this fails to acknowledge that the "objective" classification of knowledge as meritorious is, in itself, colonised; experiential or emotional knowledge is disregarded unless expressed in a specific, acceptable form. Freire condemns this conceptualisation as repressive and disempowering, creating an echo chamber of pre-existing prevailing ideology and forcing students to manipulate academic contributions to fit into rigid parameters.[5] He argues this notion of knowledge prevents the development of what he defines as "real knowledge," that is, more subjective, experiential and practically applicable knowledge, often determined by the contextual background of the individual student.[6] While Freire's broadly drawn conceptualisation of knowledge may not lend itself perfectly to a *qualifying* curriculum such as that of the LLB, the value he places on individual experience and perspective is undoubtedly transferable to legal pedagogy. As Apple notes, "what counts as knowledge [and]…who is empowered to teach it…are part and parcel of how dominance and subordination are reproduced and altered in society."[7] Moreover, Cartwright and Cartwright criticise the "homogenous clique" of white academics who define what counts as knowledge for creating a "false dichotomy" through "binary conceptions of truth and falsehood;"[8] they rightly argue that knowledge exists on a spectrum and strictly prescribed conceptualisations of meritorious knowledge leaves little scope for diverse perspectives.

Furthermore, Cartwright and Cartwright also identify "colour-blind" academic meritocracy, whereby advancement and general success is based purely on excellence, over race, as an oppressive "fallacy" in HE institutions; they assert contextual information such as race and class is inextricably

linked with opportunity, from which such achievement manifests.[9] Bluntly put, those who "do not see race"[10] perpetuate a repressive "form of blindness"[11] towards racial and socioeconomic privilege and colonial bias; thus "the true structural, institutional and societal causes of inequity go unnoticed, and efforts to address [them] are viewed as illegitimate and unnecessary."[12] As McIntosh cogently argues, to meaningfully decolonise and reconstruct our curricula, we "must give up the myth of meritocracy" and recognise "the silences and denials surrounding privilege…[and]…arbitrarily awarded power."[13] By way of example, our justice system is based on Westernised notions of right and wrong, redefined as unbiased, universally applicable concepts we ought to accept without challenge. Though few would dispute that legal frameworks are essential for civilised and efficient societal regulation, the uncritical presentation of the perspectives that primarily account for the historical development of our laws is problematic. Understanding and acknowledging that UK education policy is colonised is a key step towards making sustainable progress.

### 1.1.1  Further Sources

- Webinar; Decolonising the law in Aotearoa; Can we start with law schools?  Available at: https://www.youtube.com/watch?v=8L8vCyKPwI4
- Webinar; "Learning to unlearn to relearn;" using decolonial scholarship to challenge the economics curriculum. While not directly related to legal pedagogy, the ideas from this webinar are transferable to law. Available at: https://www.youtube.com/watch?v=qB1YlY7onf4

## 1.2 HOW IS LAND LAW COLONISED?

### 1.2.1 Pedagogy and Staff-Student Power Dynamics

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

In my view, a huge obstacle to achieving decolonisation within Land Law is the "qualifying" requirements of the course. That is to say, discarding vital historical and colonial context of property is made easier by claiming this information is not part of the Law Society's requirements for the LLB,

therefore is unnecessary. Moreover, the deeply-entrenched and technical Land Law curriculum is often inaccessible to all except academics who really specialise in it, the majority of whom are white, privately-educated males. The general lack of diversity among property lawyers makes it more difficult to challenge traditional perspectives and incorporate less "traditional" (largely non-white) viewpoints. Bhambra et al rightly note that adding tokenistic voices of colour does very little to dismantle the "unshakably colonial"[14] foundations of university; incremental modification of pedagogical practices may not be effective in fully dismantling colonial bias in HE curricula and more drastic steps need to be taken. [15]

Moreover, Cartwright and Cartwright rightly note that "gifting" decolonisation to students "is as patronising as colonisation itself,"[16] as it prevents the empowerment of students of colour to express their experiences in the manner which is most powerful to them, confined instead to traditionally acceptable forms, stagnating diversity of perspectives. Thus, they argue that decolonisation is about dismantling colonial power dynamics not just through the empowerment of staff of colour, but also through empowering students to challenge staff on their biases, if necessary. Shay condemns misuses of power between students and staff within HE, arguing that additional safeguarding policies should be implemented to ensure academics use their power carefully and responsibly, and are held accountable, whether by students or institutional policy, for consciously or unconsciously perpetuating a culture of colonised education. [17] Moreover, the transactional, "banking" model of education, whereby students withdraw knowledge "deposited" by teachers[18] reduces students to passive consumers of education,[19] creating an environment where students "accept the passive role imposed on them…adapt[ing] to [a]…fragmented view of reality."[20] I would argue that the aforementioned power dynamics are even more prominent in Land Law; with it being such a technical subject students rely heavily on teachers to provide them with relevant context for their studies and identify for them areas which are susceptible to biased influences. Thus HE institutions must dedicate time into "building 'trust' and student-staff relationality," working on "democratis[ing] the classroom" to cultivate "a [teaching] environment where 'speaking' is not encumbered with preconditioned judgement on 'intellect.'"[21]

Traditionalist mindsets and uncritical teaching methods enable biases to remain unchecked; I would argue that decolonised education is vital both within legal education and practice, to develop the ability of both students and practitioners to employ pragmatic and innovative solutions to legal issues. Thus, while power dynamics between students and teachers within the classroom can, for obvious reasons, be highly beneficial when seeking clarification on objective legal fact, it is vital for teachers to present their views and judgements on certain issues as what they are; *opinions*, largely

informed by their socio-political environment, racial background and upbringing, and real life experience.

## 1.2.2 Land, Private Property and Colonialism

At first glance, it is difficult to precisely ascertain the relationship between colonialism and the English law perspective of rights in land. Yet, from land registration and conceptualising real property, to the means for asserting legal and equitable titles through trusts of land, it is evident that the view of *property* within UK law schools is generally narrowly drawn and tightly defined; why? Examining the historical and contextual development of the legal framework governing the land conveyancing system is central to answering these questions.

### 1.2.2.1 Historic Justifications for Land Appropriation

The doctrine of *terra nullius* is cited by many as the moral justification for colonialism and the appropriation of native land into private property; literally translated, this means "land belonging to nobody" and describes land free from state ownership or sovereignty.[22]

Historically dominant legal theorists Locke and Grotius viewed *terra nullius* as "a principle of the law of nature" – claiming "rights" in unoccupied land was a way of exercising their "moral obligation to prosper."[23] As native or indigenous settlements were not traditionally categorised as "political societies" for the purposes of *terra nullius,* they didn't assert adequate sovereignty over the land to be considered in ownership of it; land on which they settled was considered "unoccupied," belonging to nobody, carving a divide between "civilised" and "barbarous" societies.[24] Moreover, the abstraction and commodification of land into private property "racialis[ed] the land holding of the indigenous people abstracted into savages"[25] by categorising their nomadic or subsistent usages as "wasting the land's potential."[26] Thus Locke and Grotius legitimised the seizure and colonisation of native land, that is the rearrangement of indigenous economies and reallocation of their wealth and trade towards an imperial hub,[27] by asserting they were fulfilling their God-given "duty…to make [unoccupied]  ground productive."[28] Moreover, the Christianised, monotheistic perspective of divine law moralised the "compul[sion] of 'barbarians' to justice for the sake of their salvation;"[29] European colonisers saw indigenous peoples as 'uncivilised,' 'barbaric' non-believers, justifying their colonisation through a divine obligation to Christianise them.[30] However, Christianisation was not the only justification for abstraction; Jones[31] and Carty[32] highlight the historic categorisation of the Irish as "uncivilised" barbarians, despite being Christian, due to their descent from the "warlike" Scythians.[33] Thus it appears that settlers' perceptions of the "savageness" of native character and land use was a key factor in morally justifying the brutal seizure of indigenous land, as this was the only way to "civilise" the natives, as was the settlers' 'God-given duty' to do.[34]

Boucher notes that "unoccupied" simply meant under-cultivated land, irrespective of habitants; from the Lockean perspective, natives had the same moral duty, but had failed, thus their land could 'morally' be taken and 'properly used.'[35] Locke himself summarises this view; "The *labour* that was mine, removing them out of that common state they were in, hath fixed my *property* in them," [36] arguing that through individual self-ownership, we can own things we mix with our own labour and efforts, *id est*, they become our property.

So emerged the view that only a specific type of "labour" could generate 'property' and 'ownership' in land – colonisers engineered this theory in a way that meant indigenous labours would never be enough, and their "civilised" labour would be.

I would assert that *terra nullius* is exemplified through our conceptualisation of land-ownership; from our emphasis on "title-by-registration" and Ruoff's mirror principle of registration, whereby the register accurately reflects all the benefits and burdens of a plot of land,[37] to jurisprudential justifications for the adverse possession of land. Jones argues that "title by registration" is the "culmination" of the abstraction of land into property; the historically complex relationships of "use" hampered the marketisation of land as a single unit of property,[38] provoking the shift from "use" to marketisation and free alienability of land. This is arguably also reflected in legal policy for the doctrine of overreaching.[39]

Moreover, the moralisation of colonialism in this way has been central in shaping our modern view of property.[40] Ince[41] and Jones argue the English formulation of private property developed "in and through colonial networks"[42] during the colonisation of Ireland and North America through practices of territory and abstraction.[43] They highlight the commercialised lens through which we view land whereby maximal economic utility is categorised as "most productive,"[44] citing the historic "culture of improvement" and common law "waste" as the key policy factors behind the seizure of native land – if land could be 'used better' according to the settler nation, they were both legally and morally entitled to exercise proprietary rights over it and achieve its 'most bountiful' use.[45] Thus the relationship between land and its users moved "from one of subsistence to one of enterprise."[46]

Boisen further argues that the conception of this divine duty to make the 'most productive' use of land catalysed the development of "trusteeship" to assert coloniser proprietary rights over indigenous land.[47] While ostensibly allowing natives beneficial use of land, it was derived from the post-Enlightenment idea that Europeans and the British, the more "civilised" society, were conferred a moral responsibility by God to hold land in trust for indigenous peoples, until they achieved an adequate level of "civilisation," which was itself determined arbitrarily by the colonising nations.[48] While the modern conceptualisation of trusts and co-ownership of land has progressed significantly, I would argue it is important for students to understand their development from a variety of

perspectives, such as the expropriation of indigenous land, rather than a solely domestic-ownership perspective.

While the legal framework governing conveyances in land on the surface appears procedural and relatively unaffected by colonialism, it is quite significantly shaped by historical conceptualisations of property and land ownership, many rooted in old colonial practices. The full extent of such influences on modern Land Law are beyond the scope of this paper, however I have attempted to illustrate a few of the key affected areas. I would therefore argue to fully understand and critique current Land Law policy objectives, it is necessary to acknowledge the contextual development of the law, in order to modify both Land Law curricula and pedagogy in a decolonised manner. As Jones notes "contemporary struggles for indigenous land rights [and material property concerns] cannot be understood separately from the history of settlor colonialism."[49]

## 1.2.2.2 Further Sources

- L Crabtree [2013] "Decolonising property: exploring ethics, land, and time, through housing interventions in contemporary Australia" Environment and Planning D: Society and Space 31(1), 99
- B Bhandar [2015] 'Title by registration: instituting modern property law and creating racial value in the settler colony' 42(1) Journal of Law and Society 257
- On law, property and race; B Bhandar [2014] 'Property, law, and race: modes of abstraction' 4 UC Irvine Law Review 203.
- N Blomley [2015] 'The territory of property law' Progress in Human Geography 3
- W Nelson *The Common Law in Colonial America* (2nd edn Oxford: Oxford University Press, 2013)

## 1.2.3 Problems; Why Decolonisation Matters

Colonised HE means students are taught a distorted perspective of the "truth" and right and wrong; those favoured by this viewpoint struggle to see there is a problem with this model. However, those belittled or chastised by such perspectives may feel they are not adequately represented at institutions they are selected to attend, or that their contributions are less valuable or credible than others. As above discussed, historic "truths" and "knowledge" exist on a spectrum; what is true from one individual's perspective may not be from another's. Teaching broadly and critically, as above argued, is the duty of HE institutions and their staff; conscious and unconscious biases must be identified and highlighted for students, enabling them to reach their own conclusions based on both *fact* and the academic *opinion* presented to them. The distinction between fact and deeply-entrenched socio-political opinion must be made clear.

As education can arguably be interpreted as an expression of British identity politics, the lens that we are educated through within the UK is not free from political influences. This in itself is not an issue until it is presented uncritically. Moreover, while the dominant, Eurocentric perspective of Land Law is valuable when considered within the context of many perspectives, however it becomes harmful when it is the only lens through which students should view property and Land Law and in many respects, offensive and disrespectful to the history and culture of both the originally colonised individuals, and their ancestors, some of which may be our peers and colleagues. So while decolonisation is about telling the truth to students and allowing them to uncover their own independent and autonomous point of view, it is also about empowering those who have historically been silenced to present their own perspectives.

## 1.2.3.1 Further Sources

- Edna Bonhomme, (6 September 2021) "Decolonisation in Action" <https://www.decolonizationinaction.com/episodes> accessed 15 September 2021
- Carmen Ramos, (24 February 2021) "Decolonial Futures" <https://decolonialfutures.net/podcasts/> accessed 15 September 2021
- Adam Habib, Jonathan Jansen, The Internationalist (29 October 2020) "Does decolonising higher education matter?" <https://www.acu.ac.uk/the-internationalist/> accessed 25 August 2021
- Gurvinder Aujla-Sidhu, De Montfort University, (4 November 2020) "Decolonising DMU" <https://decolonisingdmu.our.dmu.ac.uk/decolonising-dmu-podcast/> accessed 25 August 2021

## 1.3 "DECOLONISING THE CURRICULUM"

### 1.3.1 What is decolonisation?

Decolonising HE is "an arduous and contested process of unlearning and unpacking centuries of colonial ideas and infrastructures."[50] This necessarily implies different approaches must be adopted for different disciplines, as all subjects will be influenced by colonialism at different levels and in different ways. Cartwright and Cartwright argue that it is impossible to achieve curricular decolonisation without decolonising our communities; this means recognising the colonial prejudices in HE curricula and implementing self-critical practices to dismantle both conscious and unconscious biases.[51] They assert the role of white academics in decolonisation ought to be a passive one, by means of empowering their black and minority ethnic counterparts to take on more dominant

roles.[52] I would argue minority empowerment and the addition of diverse perspectives is a key element of decolonisation, however it assumes our current HE structures adequately allow for this, which I would argue, they do not. Firstly, our problematic conceptualisation of knowledge, as above discussed[53] and the dominance of white scholars within the property arena means that consciously or unconsciously, we view minority experiential or contextual knowledge as subordinate to that which we have historically been taught. Secondly Durham University, at least, lacks a safe space *within* formalised classes where students and academics of colour can present their contributions and concerns about the Land Law curriculum and the delivery of content. As I discuss below, taking decolonisation outside classes is only effective where it *supplements* practices integrated into more formalised content.

The decolonisation of HE is a "process of defying and dismantling the colonial systems that [have and continue to] sway education."[54] The aim of decolonisation is to identify the "sway" towards colonialism and present it as one of many perspectives to uncover more informed "truths." Thus we must aim to provide students with "diverse academic learning environments, curricula and approaches to research, within which Indigenous cultures, histories and knowledge are embedded."[55] So, decolonisation is arguably as much about the acknowledgment and implementation of different perspectives as it is empowering minority groups to share such perspectives. Kehinde Andrews criticises the traditionally Eurocentric curricula employed in many British HE institutions, arguing that this fails to protect global connections critical to a holistic understanding of the historical context of subjects, which informs the way they are now.[56] This inequitably "frames the West as sole producers of universal knowledge."[57]

In the Land Law context, I would argue decolonisation is the critical presentation of colonial perspectives during teaching, incorporating more diverse ones and facilitating free, uncensored dialogue among academics and students about how and why the law has developed as it has, and whether it should continue on its current trajectory, or whether, considering modern, multicultural British society, its direction ought to be altered. While this is not a paper about *law* reform, educational and legal reform are arguably indirectly related within this arena; within the Land Law context, the linear, mono-perspectival presentation of the history of property laws, without acknowledgment of the colonial and imperial influences on their development, would result in a rather hollow comprehension of their policy rationale and in turn, a stunted, tunnel-visioned ability to critique the law and suggest proposals for reform or improvement, impeding the most productive and innovative suggestions for how we could improve the law.

### 1.3.2 Further Sources

- G Bhambra, D Gebrial, K Nişancıoğlu, *Decolonising the University* (1st edn Pluto Press 2018)
- A Abdi, *Decolonising philosophies of education* (1st edn Rotterdam: Sense Publishers 2012)
- T Joseph, *Decolonising the curriculum; transforming the university: A discourse perspective* (1st edn London: Sage 2009)
- Z Waghid, L Hibbert [2018] "Decolonising preservice teachers' colonialist thoughts in higher education through defamiliarisation as a pedagogy." *Educational Research for Social Change* 7(1) 60
- N Wa Thiong'o [1998] "Decolonising the mind." *Diogenes* 46(4) 101

## 1.4 EXEMPLARY DECOLONISATION PRACTICES

### 1.4.1 LSE Change Makers Project

Jagna Olejiniczak from LSE presented a project on Decolonising and Diversifying the Curriculum in the LSE Law Department as part of LSE Change Makers 2020-2021 Available at; https://youtu.be/0CXaZ7_UPqY

Key takeaways from this project;

- Research

  - There are three main problems within the LSE Law department – using solely Eurocentric perspectives, the attainment gap between white and minority ethnic students and student concerns about racialisation.
  - Reviewing reading lists may help, however only really relates to diversifying, with limited links to decolonisation. Moreover, it is difficult to include all relevant and necessary information while adding more perspectives and taking none away.
  - However, Olejiniczak notes not having a diverse reading list can "create outsiders and insiders, make some things visible and…invisible, create a tradition and signal what has (and does not) have value; whose ideas are allowed."[58]
  - Includes student surveys on whether students think certain modules "cultivate an excessively homogenous worldview" and whether "teachers and lecturers were able to encourage critical thinking, explain the historical and social context of the operation

of law (or formulation of theories) and conduct classes and lectures in an inclusive way."

- o Olejiniczak highlights that jurisprudence is one of the most colonised modules at LSE, probably due to it being a traditional and less practical module, thus there is less need for it to evolve with social sentiment towards colonised education.
- o Concerns were also reported about tokenism and implementing practices to "show" decolonisation efforts.
- o Academics interviewed agreed that more needs to be done to diversify perspectives and illustrate law's societal context. Lack of diversity within law schools results in students of colour facing low confidence levels and imposter syndrome.

- Key Recommendations

- o Implementing a compulsory or optional module on decolonising law; compulsory will likely incorporate the right level of student momentum, but the logistics of adding an extra compulsory module may undermine quality or detail of teaching in other core qualifying areas.
- o Critical discourse on what diverse and decolonised reading lists might look like and formalised guidelines on how to select sources, including moving beyond "top" traditionally prestigious sources where voices of colour are quite noticeably lacking.
- o Including diverse societal and historical contexts of where law has been used and who it affects in different ways. For example, highlighting that the criminal justice system is biased against certain racial and socioeconomic groups, or the sometimes exploitative use of zero-hours contracts and the socioeconomic groups this most affects.
- o Diversifying recruitment staff.
- o Acknowledging systemic privilege and using this to inform more unbiased decisions.

## 1.4.2 Kingston University Inclusive Curriculum Framework

Available at; https://www.kingston.ac.uk/aboutkingstonuniversity/equality-diversity-and-inclusion/our-inclusive-curriculum/inclusive-curriculum-framework/#middle-col

Key takeaways;

- Based on 1) creating an accessible curriculum, 2) which students can relate to and 3) take into the globalised working world.
- Includes recommendations on concepts, content, learning and teaching, assessments, feedback and review.
- These recommendations centre around including students within the creation of the curriculum and attitudes towards it and aim to develop students' awareness of our diverse world.
- They also highlight the importance of using appropriate, inclusive and sensitive language and using case studies and societal context of studies to highlight the different individuals affected by various concepts
- Kingston also suggests reflection on methods of delivering courses, ensuring a wide range of learning and teaching styles are employed, with alternatives for those who struggle with more mainstream modes. Moreover, they indicate variety of assessment styles greatly improves the accessibility of the curriculum and support assessment styles whereby students can draw on their own unique experiences and skills, putting them in the best position for future employment.
- They illustrate the importance of an interdisciplinary approach, ensuring students are not taught their subject within a vacuum and understand how it interacts with other similar disciplines.
- They suggest unconscious bias and EDI training for all teaching staff and encourage staff to employ feedback mechanisms for students who may feel nervous approaching them face to face.
- Finally, they highlight the importance of regularly reviewing these practices to ensure they are being implemented effectively and achieve the aims of the inclusive framework, and the need for modification if practices become outdated or ineffective.

## 1.4.3 Decolonising SOAS Learning and Teaching Toolkit for Programme and Module Convenors

Available at https://blogs.soas.ac.uk/decolonisingsoas/files/2018/10/Decolonising-SOAS-Learning-and-Teaching-Toolkit-AB.pdf; a very detailed and informative document on possible HE decolonisation practices

Key takeaways;

- SOAS aims to dismantle racial disadvantage and racialised bias within the institution, recognising that many of the behaviours perpetuating institutional racism are not solely employed by white individuals and also that many of these behaviours are unconscious or impersonal. See p22 of the above PDF file.
- They aim to reduce and ultimately close the attainment and promotion gap between white staff/students and staff/students of colour.
- They suggest a model of critical pedagogy by which teachers encourage students to reflect on what they have learned in class and how it might perpetuate colonial ideas and institutional racism. This will aim to facilitate productive discourse among staff and students on how pedagogies can be adapted reconcilably with decolonised education, and how we can collaboratively deconstruct and reconstruct our model of education in a more inclusive manner.
- They also recognise that these practices are subject to review and criticism and highlight that appraisal of their model might be necessary to refine it and make it more efficient.
- They propose a variety of questions relating to decolonisation and diversification for module convenors to analyse and consider when building and modelling their courses and recommendations; these are available on p9-10 of the above PDF file.
- They also make pedagogical recommendations which are available on p17 of the above PDF file.

## 1.4.4 Beloit College Decolonisation Framework

Available at https://www.beloit.edu/offices/student-success-equity-community/decolonizing-pedagogies/; contains additional decolonisation sources under "Pedagogy Series" tab.

- Holds termly discussion groups which cover the implementation of decolonial practices, equity and inclusion within classrooms. This "Pedagogy Series" aims to incorporate ideas into both the curriculum and its delivery and encourages participants to attend a workshop on how to redesign curricula to fit with this agenda.
- The curriculum for the series is adapted based on participants' backgrounds and experience.
- Research is accumulated in an "ideas bank" which is shared with staff and students passionate about the project and used as inspiration for future projects.

## 1.4.5 Warwick Centre for Critical Legal Studies Projects

Available at; https://warwick.ac.uk/fac/soc/law/research/centres/ccls/projects

- Critical Lawyers at Warwick (CLAW) Society – Holds various events regarding issues within the Warwick Law Curriculum. Facebook page available at; https://www.facebook.com/CLAWWarwick/
- Radical Mooting; looks at courtroom bias, privilege and stereotypes through advocacy and aims to conceptualise mooting as an anti-imperial, feminist space where students can present arguments on issues of concern. Webpage available at; https://warwick.ac.uk/fac/soc/law/research/centres/ccls/projects/radical-mooting
- Orders in Decay Podcast on Law & Disorder; a podcast which aims to unpack the way the state responds to rebellion and revolt against laws and regulation. The following episode on Land Reform & the Myth of White Genocide is particularly striking; https://soundcloud.com/user-517227779/south-african-land-reform-the-myth-of-white-genocide?utm_source=clipboard&utm_campaign=wtshare&utm_medium=widget&utm_content=https%253A%252F%252Fsoundcloud.com%252Fuser-517227779%252Fsouth-african-land-reform-the-myth-of-white-genocide
- The Centre for Critical Legal Studies also holds seminars on contemporary and colonial issues within the law and its pedagogy.

## 1.4.6 Further Sources

- University of Essex, Warwick Law School, Kent Law School and various international HE institutions workshop series – more information available at; https://warwick.ac.uk/fac/soc/law/research/centres/globe/ielcollective/teach-it/workshops2020-21/
- GENESEO Decolonisation Practices, available at; https://www.geneseo.edu/cil/decolonizing#main-content
- SOAS Blog - "Decolonising the Curriculum: What's All the Fuss About?" <www.soas.ac.uk/blogs/study/decolonising-curriculum-whats-the-fuss/>
- Antiracism and Decoloniality in Humanities: Virtual Faculty Panel, Jul 22, 2020; Available at https://www.youtube.com/watch?v=p6emWBJ_bAE
- Pedagogy of the Decolonizing, Quetzala Carson, TEDxUAlberta; Available at https://www.youtube.com/watch?v=IN17Os8JAr8
- LSE Blog: Critical Pedagogies Symposium: A space for dialogue to challenge intersecting oppressions in academia, available at; https://blogs.lse.ac.uk/impactofsocialsciences/2013/10/03/critical-pedagogies-symposium/

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- Teaching Resources for University Educators Building the Anti-Racist Classroom https://barcworkshop.org/resources/student-journey-game/
- Keele Decolonising Framework https://www.keele.ac.uk/equalitydiversity/equalityframeworksandactivities/equalityawardsandreports/equalityawards/raceequalitycharter/keeledecolonisingthecurriculumnetwork/#keele-manifesto-for-decolonising-the-curriculum
- University of Brighton, Decolonising the Curriculum: Teaching and Learning about Race Equality https://research.brighton.ac.uk/en/publications/decolonising-the-curriculum-teaching-and-learning-about-race-equa
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## 1.5 DECOLONISING LAND LAW – RECOMMENDATIONS

My proposals for improvement can be broadly categorised into pedagogical and curricular modifications and student initiatives. They centre around diversifying academic perspectives and critical, quasi-Socratic teaching methods.

### 1.5.1 Diversifying Perspectives

Our concept of property is generally skewed in a colonial direction. It is therefore important to teach Land Law in an almost interdisciplinary fashion, unpacking historical, socioeconomic and political notions of property, so students grasp a more enriched understanding of the policy rationale of the legal frameworks governing rights in land.

The means of integrating diverse perspectives is arguably as important as the substantive materials added; Matias, for example, based on her own experience as a woman of colour within HE, has criticised HE institutions for using academics of colour to fulfil quotas – "like trained dogs, [they] are expected to bark a false romance of being a faculty of colour."[59] Memon and Jivraj similarly condemn the "commodification" of HE as a means for constantly "parading" students and staff of

colour to recruit more individuals with such backgrounds, creating justifiable mistrust within students towards their institutions;[60] this is "whiteness" performing.[61] I would respectfully assert that using "decolonisation" to promote the course for prospective students "further embed[s] rather than dismantle[s] whiteness."[62] I would argue that the key objective of decolonising land law is to encourage students to think critically about the perspectives presented to them, analysing and critiquing colonial and other socio-political influences on the development of the modern legal framework; "keeping up an institutional face"[63] will fail to make meaningful progress.

It is also important to note that colonisation and whiteness are not *exclusively* connected, although they often are intertwined. The problem is that colonisation is so deeply rooted within our HE institutions that even staff or students of colour may be complicit in perpetuating it, whether consciously or unconsciously. For example, individuals of colour may have developed "thick skin" towards institutionalised racism, or even "racial battle fatigue,"[64] resigned to accept the systemic injustices perpetuated by colonised education policy.[65] Moreover, it is common for "decolonising" work to be delegated to staff of colour, who then have to bear emotional burden such tasks inevitably bring.[66] Thus the onus cannot fall simply on individual academics and students of colour to bring about change; efforts must be centralised, "new institutional norms" must be created,[67] without disregarding the importance of experiential knowledge and ensuring a safe "decolonial" space for an open dialogue on how to implement meaningful curricular and pedagogical improvements. I propose that positive steps towards this can be made by diversifying reading lists, trusted student-staff partnerships and debate-style seminar sessions to share ideas and experiences.

## 1.5.1.1 Enriching Reading Lists

We must seek to include more BME and women authors in underrepresented areas. This can introduce students to the particular writing areas of these authors i.e. critical race theory of land or feminist theory of land. For example, the introduction to Public International Law included writing areas of TWAIL and Feminist theory of International Law. Diversifying academic perspectives through adding additional reading materials to the compulsory curriculum is a vital and progressive step towards enabling students to obtain a fuller picture of the socio-political context of their studies. Exposure to a variety of perspectives allows students to formulate more informed opinions on legal and policy issues, thus reaching more progressive and pragmatic solutions. It might also be useful to engage student opinions on what should be added to their reading lists, through a survey or less formal method, such as verbally suggesting helpful sources in class.

Jagna Olejniczak found that white male authors represented European or Northern American Universities in key readings: 86.42% and 93.14% in further readings. Women in this research represented just 21.40% and 28.88% in reading lists and further readings respectively.

Dr Vaughn highlights how academic pressure can 'create outsiders and insiders, make some things visible and some things invisible, create a tradition and signal what has (and does not) have value; whose ideas are allowed'  Thus, while it is still feasible for students to find diverse authors or seek knowledge from more global perspectives, the danger of a dominant narrative forming through a lack of diverse reading list can discourage this as non-essential or 'less academic'. Therefore, we see that the axiology of colonisation continues to push for a single dominant narrative rather than a plurality which is necessary for critical engagement. Moreover, it is valid to argue that the dominance of a narrative told from a majority white and male outlook leads to a sense of inferiority for BAME writers and women. This is how diversifying the reading list is considered by some to be 'watering down' or settling for less rigorous writing in order to assuage underrepresented groups.

In Ngugi Wa Thiongo's seminal book 'Decolonising the Mind', he focuses on how colonialism impacted the identity of Africans by leading to a preference for colonial languages over native ones. He notes that the literature of colonial times created an innate sense of inferiority as 'the location [of literature] was necessarily Europe and its history and culture and the rest of the universe was seen from that centre'.  In a similar manner, centering a reading list around one predominant group can create an othering effect to the groups that are not automatically included. The danger of this othering appears in the performance of BAME students.

I would argue that there is a link between the white majority curriculum and the sense of discontentment from BAME students which manifests in the proven BAME attainment gap. The 'Kaleidoscope' study  which focused on the view of BAME students on decolonisation noted the majority white male curriculum acted as a barrier which made it more difficult to relate to the material. Further, Dr Neil Williams (Director of Undergraduate Studies in the Faculty of Science Engineering at Kingston University) pointed out how making active efforts to decolonise the curriculum led to 'large decrease in the BME attainment gap' . Thus, the BAME attainment gap can be attributed to a sense of alienation from particular topics of study or dynamics in the classroom.

Therefore, we can see that there is a tendency of academic reading lists to focus on a localised perspective, majority of the time told through the eyes of white male authors in well-respected, traditional journals. There is a need to diversify this reading list to include more diverse sources of information as well as allowing students to share their own view or focus on areas of interest that

are not determined centrally. This, nevertheless, is a short-term, top-down solution which must be implemented in a specific way. This means researchers and authors of colour must not be incorporated into reading lists in a tokenistic or segregated manner; for reasons aforementioned,[68] this must be a natural step, without being unnecessarily publicised as "diversification."

## 1.5.1.2 Student-Staff Partnerships

I would argue that the power imbalance between teachers and students poses a significant barrier to the decolonising agenda. Thus I would recommend the implementation of student-staff partnerships to facilitate decolonial discourse between minority ethnic staff and students, and their white counterparts.

Memon and Jivraj suggest decolonising the university curriculum is about developing a decolonial educational space built upon "trust, courage and silence,"[69] while ensuring that students' "trauma does not become a spectacle but acts as a call to care on part of those…responsible for their care."[70] They argue to create such a space, staff must "democratise" the classroom through conscious conduct and uncensored decolonial discourse,[71] "disrupting power, hierarchy and authority,"[72] and allowing trust to grow between institutional oppressors and institutionally oppressed individuals. They propose "counter-narrating" against colonial ideas as a form of self-empowerment for students,[73] suggesting student-staff partnerships as a means of facilitating decolonial dialogue and allowing historic mistrust in HE institutions to be dismantled. They argue the "co-produc[tion] [of] knowledge" by students and to inform educational policy alongside students would appropriately shift the power dynamic between staff and students, replacing the historic "silencing"[74] of students with a "campus rebellion,"[75] through "resistance [to colonial bias] as re-existence."[76]

Thus I would suggest pairing students with a staff "partner" with a different ethnic background to empower both staff and students of colour to share their experiences in an informal, colloquial manner, as may be preferable to many. Partners could meet termly, or even more frequently if so desired, to discuss how they feel about what is being done to decolonise the curriculum and contribute ideas and proposals which staff may have authority to escalate to a higher level. This would help to dismantle the institutional notion that "students have no intrinsic potential…unless these are "produced" through the transaction of a "university education as a service,"[77] which has a harmful silencing effect on student perspectives. While free dialogue, open to critique from all plays an important role in decolonising education, students and staff of colour must feel empowered to speak about and fight past trauma, moving forward rather than dwelling on the potentially less critical aspects of how they present their experiences, and fear backlash from peers.

Student-staff sessions could be documented via feedback forms from both the student and the teacher, keeping a record of progress as well as ideas for improvement. Staff involved in this scheme could then get together to discuss what they have shared and learnt over the sessions. Moreover, this scheme, with sufficient staff involvement, could help combat the issue of limited Land Law specific decolonisation research; exploring real life experiences illustrating why decolonisation is important may inspire staff to engage in a more active role within the decolonising education agenda.

## 1.5.1.3 Discursive Seminar Sessions

Many students and academics of colour "sense a form of being heard and not…listened to."[78] To combat this, I propose a termly (or more regular if possible) seminar session, where students are empowered to bring their own resources and experiences to class and present them. The aim of this, like the aforementioned student-staff partnerships, would be to create a decolonial forum where primarily students could share and critique each other's perspectives. This would enable the peer-to-peer discourse lacking from staff-student partnerships, allowing students to understand each other's contextual backgrounds and how these inform their views on the law. This could take the form of a debate or a more relaxed presentation-style session, depending on the audience and students wanting to participate. Students would have the autonomy to share, or just listen to their peers. It could also be helpful for students to discuss legal developments in the context of current affairs, what they think of them and how they relate to the decolonising agenda.

What I wanted to highlight with this proposal was the need for a regular class/session where students do not need to prepare anything in advance, but simply share what they feel during the class, and can obtain staff support and guidance if they so require. I would also argue the limited contact hours for law students at Durham plays a role in impeding decolonisation; because staff are so pushed to include qualifying content within the narrow confines of 20 lectures and 5-6 seminars, it leaves little space or time for vital discussions about historical and socio-political context, which would really help to decolonise student mindsets. Moreover, many law schools across the UK deliver many more contact hours than Durham; implementing a few more would not take Durham beyond the average number when compared with similar institutions. Thus including an additional termly workshop-type session would provide the necessary time for students to raise concerns about the substantive content of the curriculum and the way it is delivered, without staff feeling pressured to cut out necessary content for the Law Society's qualifying requirements.

## 1.5.2 Critical Pedagogy

As stated above, HE had an active role in shaping students who could participate in colonial enterprises and supported colonial ideals. This is still reflected in the top-down, hierarchical manner

in which universities are organised. According to Wilson, this conditions students to be submissive to learning facilitators and to uncritically take down what is presented to them in lectures and tutorials. While critical analysis is encouraged, it can only take place within the frame of the ideas presented in the teaching and it is implausible to challenge the actual nature of the teaching on a fundamental level.

Wilson highlights the importance of facilitators in recognizing their own power and trying to mitigate it. This is necessary for students to 'feel welcomed in [the] classroom, and free to express themselves.' It is common for students to feel uneasy in classroom participation due to social anxiety; 'years of being stifled' in schools and 'worry what other students will think of them, or saying the wrong thing'. Therefore, it is important to create a level of comfort amongst students to properly allow for critical engagement with the curriculum. Diversity cannot be fostered naturally if students are afraid of sharing their own opinions on teachings and challenging narratives.

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

Moreover, Singh points out a myriad of issues presented by the turn to online teaching. One of the key issues relating to addressing racial inequity in higher education is the issue of bias, conscious and unconscious. Though the research on this is quite thin, there is an interesting recent study at Samford University looking at the issue of Bias in Online Classes:

> *The researchers created fictional student accounts, with names that most would identify as being either white, black, Indian or Chinese, with male and female names for each racial/ethnic group. They then analysed the interactions. Despite the comparative anonymity granted by asynchronous, digitally mediated interactions in online discussion forums, the sort of bias that concerns many educators in face-to-face instruction is also present in online education; instructors were 94 percent more likely to respond to discussion forum posts by white male students than by other students.*

> *As well as this, the researchers also found that the bias in favour of white male students was most significant when the instructor was also a white male.*

As a result, we cannot assume that all students are receiving equal treatment just because the teaching is carried out online. For Durham, this can be seen as a warning to ensure that the areas where students can be limited due to unconscious bias are limited.

## 1.5.2.1 Presenting Perspectives as Perspectives

As has been explored in this paper, another key obstacle to decolonising the Land Law curriculum is how difficult it is to separate deeply-entrenched colonial perspectives from objective fact. I believe a key way of feeding more diverse perspectives into Land Law pedagogy is to present personal experiences, opinion and anecdotal knowledge in a sensitive and considerate manner, making it clear to students that one person's experience may not be the same as others. For example, when talking about home-ownership, mortgages and rented or low-income housing, it is vital that tutors are considerate of those in their classes who may or may not have had exposure to these issues. Another example could be analysing the policy rationale behind the laws of adverse possession; staff must take care to inform students that such legal traditions, whether wholly or partially, stem from a colonial conceptualisation of property and ownership, thus allowing students to critique such policy from a fully informed knowledge-base. It is only then that we will enable students to generate "real knowledge"[79] and a more holistic understanding of the different ways law affects individuals of different racial and socioeconomic backgrounds.

There is an argument that rather than introduce more to the land curriculum, it would suffice to present the idea of land through a more 'global' or critical perspective that does not omit reference to colonialism and the pursuit of 'native lands' around the world. This acknowledgement ensures that students are not unaware of how their laws have wider ramifications than just the UK. Critical pedagogy can be used to reframe games. One way of doing this is to begin with the perspective of indigenous people rather than the colonists' perspective.

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

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

## 1.5.2.2 Student Research Initiatives

While staff participation in decolonising efforts is incredibly important, encouraging students to undertake an active role in facilitating this agenda is arguably the most effective way to implement decolonisation practices sustainably into out HE institutions and future workplaces. Thus I would recommend the introduction of student research initiatives into the Land Law curriculum. These would go beyond the classic formative-summative module, allowing students autonomy to research any part of Land Law, or current affairs relevant to Land Law, and how they have been influenced by colonialism. This could be as simple as a thinking point on a lecture handout, which students could then research and bring contributions to the next lecture or seminar, or take a more formalised format, such as an optional assignment, or presentation to bring to the next decolonisation conference or seminar. Examples could include case-studies, such as the Grenfell Tower tragedy, or notifying students to the colonial context of a specific part of law and asking them to engage critically with it. Imperative to decolonisation is ensuring that students go away and research topics themselves, as well as engaging with class materials, to reach an informed opinion. Again, this proposal is about recognising that knowledge and valuable contributions don't take simply one form; this forms part of the colonial way of thinking. By confining knowledge and research to a prescribed form, we stagnate innovation, and the organic development of novel perspectives. Encouraging students to bring their own research material to tutorials outside of the recommended reading might also bring more diversity, as students can explore and find academics or authors who are more representative.

Of course this proposal is flexible; it is possible to implement student research initiatives into the course at different levels and in different ways, depending on what suits the overall method of teaching. The key takeaway from this suggestion is to keep an open mind about the different ways that knowledge and experience can be presented; trying to restrain the scope of what students can contribute stunts the range of valuable perspectives the diverse student community of Durham University undoubtedly has to offer.

## 1. 5. 2. 3 Additional Recommendations

### 1.5.2.3.1 Long Term

Challenge assumptions made in the curriculum in a more critical and open manner:

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

Adding more topics where students are given the chance to focus on their interests:

- Give students more autonomy in teaching to focus on areas of study that are more important to them such as in formatives or tutorials. This could encourage more critical approaches and would definitely increase diversity of thought.

In recruitment and promotion process, making effort to diversify the staff:

- Increase the prominence and presence of BME staff to work on diversity of thought and perspective in teaching. This could also encourage BME students as there will be a greater representation of BME success in academics.

Supporting students from ethnic minorities background – e.g. by considering diversity of the student body on the stage of recruitment.

Considering introducing the separate module on decolonising law / law and race, either compulsory or optional.

- Include the decolonisation part in the English Law and the Legal Method to teach students the fundamentals of colonial thinking/ diverse perspectives. However, these issues should still be addressed in core modules. Optional courses might, however, not have sufficient impact, as there is a worry that students enrolling in it would be already interested in the matter.

Include training for students and facilitators creating a more comfortable learning environment:

- To foster a more positive environment, students could be actively trained on how to more confidently engage in tutorials.

Consider starting a workshop program where students can discuss issues with facilitators:

- A comfortable space for students to engage with peers or postgraduate students on issues. This would also act as another layer of support alongside office hours for students to reach out for care.
- This would also be helpful for students who feel anxious reaching out for help from authority figures such as lecturers.

More contact hours

- To fit in a more decolonised curriculum; cover current topics; deal with student specific concerns.
- Overall, increasing the number of contact hours would allow for more flexibility in teaching and increase the level of support given to students as they studied for their degree.

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

- This collective can act in a similar manner to the LSE and Kent collectives that regularly update students on issues; release articles and link to more resources on the subject.

### 1.5.2.3.2 Short Term

Alternatives to formative and summative assessment styles:

- Allowing students to carry out self-assessment or peer review can bolster their confidence in their own work as well as reduce the focus on attainment. This provides room for academic integrity; dialogue around their learning process; and rejects the notion that the instructor holds complete authority over the documentation of their learning, that is, their grade.

Allow students to determine their own formative questions:

- In order to decrease the academic pressure and allow students to focus on areas of interest, students could be allowed to formulate their own formative questions.
- This would increase critical engagement as students would be in charge of their area of interest (limited by the faculty if needed) and reduce the imposed nature associated with formatives.

Online Learning Guidelines:

To mitigate the possible impact of unconscious bias:
- the university could implement guides to control how facilitators respond to students.
- routinely carry out surveys to check that students feel supported by their facilitators rather than only using year-end module surveys.

The goals of these recommendations can be summarised in the acronyms suggested by N Appleton

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

### 1.5.2.3 Further Reading

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| | Rights Up (Global Perspectives on Human Rights) |
| | How to Decolonise Your Curriculum https://www.leadingequitycenter.com/86 |

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| | Decolonise Podcast- covering the perspectives of indigenous people in Australia and Torres Strait Islander:<br><br><https://decolonise.com.au/> | |
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| | The Wretched of the Earth by Frantz Fanon | |
| | Decolonising the Mind by Ngugi Wa Thiong'o | |
| | The Struggle to Decolonise the Racist Heart of Empire by Rhodes Must Fall Oxford | |
| | Decolonising the University by Gurminder K. Bhambra | |

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| | Towards Decolonising the University: A Kaleidoscope for Empowered Action by Decolonise University of Kent Collective. |
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| Poetry | Suhaiymah Manzoor-Khan:<br><br>https://www.suhaiymah.com/poems |
| Online Blogs/ Resource Banks | https://decoloniseukc.org/ |
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| Instagram Pages | https://www.instagram.com/decoloniselawcambridge/?hl=en-gb Provides short summaries of key issues on decolonising. |

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