‘Please Think Critically’: A Theoretical and Conceptual Analysis of Curriculum Delivery of Law Degrees

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Abstract: This paper aims to perform an analysis of pedagogy and theory of the law degree. Pedagogy is the method and practice of teaching. The paper proposes that law education may accommodate a pedagogy of the development of ‘alternative critical scholarship’ in relation to law students. It employs the phrase ‘Please think critically’ because it is common in the history of legal education that the most successful scholars, and litigators all lived by the mantra: ‘please think critically’. It does not argue that a critical law student must be trained to be disruptive without cause, but that our methodology in curriculum delivery must encourage the law student to de/construct legal doctrine or concepts. This exercise may be accommodated as an alternative model for legal research. Thus, this paper contributes knowledge to critical legal research methodology. The research problem in this paper hinges on the fact that law students learn the skills of litigation (or problem-solving in the legal context) from learning by rote legal principles that are trite. They often do not learn the skills to perform a historical, theoretical and philosophical or doctrinal analysis of a/the law. This paper argues that to address this problem, they may be encouraged to learn about the epistemology, ontology, morality, philosophy of history and African philosophy. This will arm them with the tools to approach the established legal principles with an ability to re/think, re/imagine, and/or re/de/construct the law. This type of study may, wholly or in part, be dependent on research from other disciplines. The development of this critical law student is dependent on the manner they are taught, assessed and developed in and out of the classroom. To encourage critical thinking, the student may be assessed on their ability to critique established legal instruments: the legal doctrine, nature of the law, new and proposed legislation, new case law and judges’ legal interpretations. The critical analyses and thoughts on alternative theories like decolonial schools of thought and African jurisprudence may be reflected in their dissertation.

Keywords: Conceptual critique, Critical thinking, Law dissertation, African philosophy

1. Introduction

The phase of university education (whether on the basis of a degree, diploma or higher certificate) is an important area of development for most legal scholars and practitioners. It is imperative that the development of such a scholar or practitioner be equipped with the skills enabling continuous engagement with their studies and practice. The preparation of the law dissertation often hinges on learning skills of litigation (or problem-solving in the legal context) from learning by rote legal principles that are trite. The law students will often identify a gap in the primary and binding sources of law and employ persuasive sources to articulate a legal argument. They often do not learn the skills to perform a historical, theoretical and philosophical or doctrinal analysis of a/the law. The shortcoming of this approach is that the legal doctrine/concepts or principles remain uncritiqued by law students. Even so the law student will not question whether these concepts are apt for a theory of justice. The legal problem statement is often responded to by applying similar legal doctrine that retain the same conceptual root. This may lead to conceptual and epistemic injustice. Thus, most law dissertations do not perform a conceptual critique.

This paper defines a conceptual critique as an analysis of the concepts and theories of legal doctrine/principles with the aim of achieving epistemic and conceptual justice. Some schools of thought show the benefits of expanding our research methodology to include a conceptual justice as a research methodology and not limit it to black-letter analysis. This paper proposes that to address this problem, the law degree may encourage law students to learn about epistemology, ontology, morality, philosophy of history and African (legal) philosophy. This will arm them with the tools to approach the established legal principles with an ability to re/think, re/imagine, and/or re/de/construct the law. This type of study may, wholly or in part, be dependent on research from other disciplines like Politics, Philosophy and Economics; and information, communications and technology in areas like patent law, electronics and technology law.

This paper aims to perform an analysis of pedagogy and theory of the law degree. Pedagogy is the method and practice of teaching. The paper proposes that law education may accommodate a pedagogy of the development of ‘alternative critical scholarship’ in relation to law students. It employs the phrase ‘Please think critically’ because it is common in the history of legal education that the most successful scholars, and litigators all lived by the mantra: ‘please think critically’. This paper does not argue that a critical law student must be disruptive without cause, but that our methodology in curriculum delivery must encourage the law student to de/construct

legal doctrine or concepts. This exercise may result into a new model for legal research. Thus, this paper contributes knowledge to critical legal research methodology.

The conception of law and justice is intertwined according to African philosophy as extrapolated by Prof (Ramose, 2015; Ramose, 2003). According to Ramose, it is important that the legal scholarship and degree is not far placed from the conceptualization of justice, this places conceptual critique at the heart of legal study and jurisprudence as the basis of questioning and engaging with legal sources of law as though they were fallible and may lead to injustice. The conceptualization of a critical legal study requires the student to critically engage with the concepts, doctrines and sources to achieve a conception of justice.

The conceptualization research question is: what interpretation of this legal regime would be just? What are the tools needed to achieve a just interpretation of this legal regime? The research is an exercise rooted in questions of justice. Western ideology introduces us to principles of natural justice and the certainty of legal positivism. SA constitutionalism hinges its praxis of justice on social justice and transformative constitutionalism. The question becomes what then of those students and scholars who are critical and sceptical of these western paradigms that are adopted in SA? Are their thoughts silenced and suppressed or moulded to fit these paradigms that are already cast in stone? 'African'/Azanian ideology teaches that justice can be achieved through the praxis of ubuntu philosophy, to develop law by Africans for Africans in order to achieve conceptual and epistemic justice (Dladla, 2021).

2. A Conceptual Critique and Methodology

2.1 Foundations of Critical Skills

At the foundation of critical thought is the idea of questioning, identifying the problem, and engaging with material at an analytical and synthetical level (Billig, 2003). (Billig, 2003, p. 37) defines 'critical analysis' as not 'referring to a criticism of books and systems, but to an analysis of reason which would be conducted by rational a priori principles *without the aid of experience*.'. Thinking further, the 'formulation of an academic theory inevitably occurs in the context of argumentation, so that the propounding of a theory involves the explicit, and sometimes, implicit criticism of alternative theories' (Billig, 2003, p. 37). It can be deduced that a critical analysis includes a discussion of the conceptual roots of all the binding and persuasive sources of law to advance or unsettle the current position of law.

- Logic and reason

A conceptual critique can only be achieved through a foundational understanding of logic and reason. Plato propounded that the principles of logic require an epistemic agreement that knowledge is justified true belief. (Appiah, 2003, p. 41). It is justified (proven) true (based on sources, evidence) belief (legal position, philosophy of law) and that when we identify a collection of premise/s that are justified true belief then we can conclude that some other manifestation of a phenomenon (legal position, philosophy of law) is correct. A (a) justified (b) true (c) belief in the context of legal research can be expounded by (a) inferred/deduced/reasoned, (b) proven, properly argued by lawful binding authority, and (c) ideological/legal/jurisprudential position.

The question that remains is what did the philosophy of epistemology require to prove truth – the absence of deception/malice? In law we deal with truths that are logical or deduced from the consequence of everything we already know. Hence the formulation 'If you know both A and B, then it is true of each sentence that (a) you believe it, (b) it is true, and (c) you must have good-but not necessarily indefeasible-evidence for the belief. Suppose you believe C, which follows logically from A and B. Since you do know A and B, it follows that your belief is true.' (Appiah, 2003, p. 53). (Ramose, 2003; Ramose, 1999).

The implicit premise contained therein is that a thorough study must be performed where all stones are turned (or at least the stones within reach). At the first instance the law student is expected to find the correct legal position through sources of law. Secondly, the law student performs a constitutional analysis to argue for law or conduct to be brought in consonance with the Constitution; and expanded through constitutional paradigm – that is the 'spirit, purports and objects of the constitution'. This is the area for creativity. It is at this stage that the law student is expected to bring afore all the skills they would have learned from the 'black letter' substantive engagement with legal doctrine. This would include (a) knowledge on the area of law, (b) skill in statutory interpretation and (c) litigation skills. Third, the law student will determine whether there are aspects of that law that violate the constitutional rights and other provisions associated with the constitutional provisions on governance. The critical student would identify an area of law that has not been dealt with properly (what we often refer to as the research gap).

- Research gap

The research gap manifests in different ways: (a) it often manifests through an incorrect understanding of the phenomenon, i.e. a wrong interpretation or application of the law; (b) an area that has gone unconsidered yet constitutes a violation of current provisions of law; (c) clashing judgments or legislations or interpretations of law; (d) minority judgments that are more persuasive than the majority judgment; (e) an unregulated legal phenomenon; (f) new areas that are undergoing regulation in the legislature that are tabled in the form of a Bill of Parliament, or Regulation, or by-law or mentioned in an arbiter by a court of law.

- Research gap: operations of law and justice

The further area of research manifests itself through: (g) the operations of laws that bring about unjust outcomes. It is this piece of research that is often ignored yet plays a significant role in legal reform and research. This area borrows itself from a historical, ontological and epistemological foundation of the legal ideology. At the heart of this legal ideology is often where the in/justice is hidden.

We identify further that the ideology in the Constitution is the ideal of transforming South Africa from the dynamics of colonial-apartheid to a democratic society. These positions inform legal research in the constitutional era. It follows that law enacted in SA may have remnants of Apartheid ideology, or if made recently, transformative constitutionalism, especially if we are interpreting a right or legislation mandated by the Constitution which often enables a right or expands on other constitutional provisions. This also applies to the context of common law.

A constitutional exercise either takes the form of a direct (frontal) attack on the common law, conduct, policy, legislation, interpretation of a judgment, development of the common law, or it could be merely an interpretative exercise in understanding a legislation or judgment properly. If we take the Hate Speech Act 2024 for instance, the interpretation commences in 16(2)(c) of the Constitution and its interpretative paradigm is transformative constitutionalism, that is so because the legislation aims to remedy the injustice of hateful speech towards certain persons who were previously marginalized, harmed, abused and killed due to that hate.

(Qwelane v South African Human Rights Commission, 2021) is evidence of this point. In *Qwelane,* the question was whether section 10 of the PEPUDA Act extended beyond section 16(2)(c) of the Constitution and infringed section 16(1) of the Constitution. Research on the area focused on four aspects, (a) the harmful speech towards gays and lesbians; (b) transformative constitutionalism, (c) the value of dignity and equality and substantive equality jurisprudence, (d) constitutionality of the definition in the legislation. Through conceptual critique, the legislation was declared unconstitutional for the injustice embedded in its writing (Jeewa & Bhima, 2021).

2.2 History, Critique of law and Constitutionalism

The exercise of legal research has proven to be of *historical* moment (and signifies a critical shift in history) since it is not an anomaly for the law student to pull out research from an academic journal or case law that played a significant role in the development of law, justice and society. Secondly, the law is based on knowledge systems, it forms part of constitutive memory, (Balkin, 2022), and it explains shifts in societal normative and governance structures (De Vos, 2001; Mureinik, 1994).

During colonial-apartheid, the dominant critical culture stemmed from liberal thought as a political and rights tradition. We encounter authors like Prof Dugard who critiqued apartheid's reliance on the legal positivist Austin command theory as opposed to Prof Venter who argued strongly for the God ordained separation of the races, God-forbidding of homosexuality and so forth (Bilchitz, et al., 2017). The further critique was its abuse of authority through the supremacy of parliament and the undermining of the authority of the courts. The critiques of colonial-apartheid were levelled at four aspects: tricameral parliament which had three races: white, Indian and coloured whereby the white assembly had a veto power over all the other houses, land dispossession under the Native Land Resettlement 1954 and the Native Land Act 1913, racial legislation in socioeconomic outputs like education, healthcare, employment opportunities, and legal ideology.

The new positions on law seek to provide, as (Klare, 1998) states, 'a culture of justification' where the exercise of power shall be open to scrutiny. The schools of thought levelling critique at the Constitution/the law mostly develop their foundation from critical legal studies and legal realism, and they often formulate their theory on the injustice that emerge from the application of the law. The idea is that the new Constitution will provide a culture of rights that will create an opposite ideology to that of apartheid.

- Critiques in the post-apartheid era

Some critiques in the post-apartheid era were aimed at shaping constitutional interpretation through the praxis of social justice. To bring into frame certain principles not expressly written in the Constitution like 'substantive equality' (which got judicial recognition), transformative constitutionalism (which was inferred from the preamble of the Constitution), separation of powers and checks and balances (inferred from the corporative governance provisions of the Constitution) and public interest litigation (inferred from section 28 of the Constitution) that made alive to the court patterns of discrimination and disadvantages that required the court's attention. These culminated into jurisprudence from (Minister of Health v Treatment Action Campaign, 2002), similar elements of critical methodology are reflected in *Walker, Grootboom, Soobramoney, Baleni, Bhe, Nkandla*, *Blue Moonlight, Dladla, Beja, Joseph, Eskom, Phaahla, Mahlangu*.

The substantive interpretation of the praxis of 'social justice' has been a contested one. In 1998, (Albertyn & Goldblatt, 1998) advanced an interpretation of substantive equality that requires the Constitution to dismantle 'patterns of disadvantage' and 'eradicate systems of domination'. Later in 2018, (Albertyn, 2018) argued for an interpretation of the Constitution that advances a shift from systemic inclusion to 'systemic justice'. This interpretation has not been accepted by the courts yet. Former Chief Justice (Langa, 2006) provided an arguably ambiguous interpretation of transformative constitutionalism that left some critiques like (Sibanda, 2011) arguing that the Constitution was 'not purpose made', and (Bilchitz, 2002) arguing for a 'minimum core' in socioeconomic rights. The courts have rejected this position as strenuous on the state (Grootboom v Government of RSA, 2000) (Bilchitz, 2003). Later (Sibanda, 2020) critiques the compromise embedded in the Constitution, and its political economy (Sibanda & Raboshakga, 2023). Ramose challenged its epistemic foundation arguing for the sovereignty and epistemic justice of SA by critiquing the Truth and Reconciliation Commission and redelivering the conception of ubuntu back into African legal philosophical frame (Ramose, 1999; Ramose, 2020) and Modiri introduced critical race theory which argues that the liberal epistemological frame of race does not address the racial problem in South Africa (Modiri, 2012). Constitutionalism has been deeply contested and many do think it is hanging in the balance, and it remains 'elusive' for the deeply marginalized in SA as argued by Prof (Madlingozi, 2007; Madlingozi, 2017).

2.3 Types of Conceptual Critiques

The types of critique levelled at the law stem from (a) critical legal theory (Kennedy & Klare, 1984), and post-modernism (McVeigh, 2013), (b) critical race theory, (Modiri, 2012), (c) critical feminism, (Bonthuys & Albertyn, 2007), (d) legal realism, (Albertyn & Davis, 2010), (e) Marxist-legal critique, (Hunt, 2010), (f) decolonial critique to public law (Modiri, 2018), and private law (Zitzke, 2018), and stemming from African philosophy, (g) Azanian philosophical critique (Dladla, 2021; Modiri, 2021), (h) Biko jurisprudence in the afterlife of Apartheid, (i) critical race feminism (Wing, 1996), (j) historiography/historical justice (Dladla, 2018) and, what we may refer to as, (k) critical constitutionalism, (Pieterse, 2005) which comprises critics correcting the interpretation of the constitution. These critiques all have a similar trait in them, in that they critique the epistemic foundations of the law, its implementation, historiography and ethical foundations. At the roots, they all pursue justice.

3. Towards a Legal Conceptual Critique: Schools of Thought and the Conceptualization of Justice

Critical methods that have led to repeals of the law employ the history of law as a research device and formulation of school/s of thought to inform the conceptualization of justice. For the sake of brevity, I can only briefly consider two areas of critique: (a) feminist and gender critique to law and (b) a decolonial critique to private law. The substance and methodology adopted by the authors in these areas of critical thought inspire proper development of the law degree dissertation. In (Sithole v Sithole, 2021), para 30, the Constitutional Court (CC) cited Kimberley Crenshaw who 'coined the concept of the 'intersectional' nature of discrimination, writing as a Black feminist on women studies' and in para 31 the CC acknowledged 'social dynamics such as patriarchy, gender stereotyping, inflexible application of oppressive cultural practices. These dire circumstances have rendered women vulnerable, and this vulnerability is an aspect of social reality'. The court held further that 'the ideology of patriarchy' seems to have developed as a result of the elevation of the 'the idea of the leadership of the fathers' to a position of importance in society' and 'women were regarded as inferior to men. This developed an uneven power-relationship where the male sex obtained superiority over women, resulting in their subordination. (Matlala, 2022)

3.1 Schools of Thought and the Historical Device in Termination of Pregnancy and sex Work

Termination of pregnancy during Apartheid was prohibited and criminalised by the Abortion and Sterilization 1975. Read on its plain text, the legislation does not provide a clear picture. The term 'abortion' had a stigma and stemmed from the religious prohibition of ending a life. It was expressed as a sin in some religions and the sanction was that one would be an abomination and thereafter burn in hell for committing such an evil. As a result of medical research, there was later room for exception. This exception had several jurisdictional facts that had to be met in order for abortion to be lawful under the Act.

The advent of the Constitution brought into frame section 12. The Choice on Termination of Pregnancy Act 92 of 1996 (TEPA) enabled section 12 rights and repealed the Abortion Act. We observe the traces of feminist legal philosophy in words like 'right to choice' and 'bodily autonomy'. Feminist legal philosophy influenced the drafting of the legislation and constitution places it in the heart of constitutional jurisprudence. It stands to reason that the interpretation of TEPA is a feminist legal and philosophical exercise. A law dissertation with a conceptual critique would consider or critique feminism when interpreting the rights to reproduction and bodily autonomy entrenched in termination of pregnancy.

On the constitutionality of sex work, (S v Jordan, 2002) had to answer the question whether the Sexual Offences Act 23 of 1957 read with Section 11 of the Sexual Offences Amendment Act 32 of 2007 was a violation of the right to choice of occupation and free trade, labour, privacy, dignity and equality. The court held that the legislation was a justified limitation of those rights in terms of section 36. The feminist critique attacks the reasoning of the court under the leg of purpose of limitation. The critique argues that the reasoning of the court has undertones of stereotyping women in the context of bodily autonomy.

The SA Law Reform Commission 107 (26 May 2017) has considered the decriminalisation of sex work. Sex Workers Education and Advocacy Task Force made substantive submissions that the criminalisation of sex work is a denial of women's rights to choice in profession. The Report did not accept decriminalisation as the correct approach. Consequent to years of further research, the legislature tabled a Sexual Offences Amendment Bill, 2022. The Bill protects women's rights in terms of section 12 and gives effect to section 22 of the Constitution. I have sought to argue throughout this section that the interpretation of law in legal research cannot be effectively performed in exclusion of schools of thought. Any further research on this area requires an in-depth analysis of feminist philosophy (Bonthuys & Albertyn, 2007, pp. 15-49).

3.2 Critiques to Private law

- History of law as research device

In this subsection, we observe the research methodology from Emile (Zitzke, 2018). The paper delivers a critique on SA law, it opens with a historical analysis of the epistemic roots of private law. The author discovers that 'the private law stalwart paging through the *Corpus Juris Civilis* of the Roman Emperor Justinian, the writings of the Roman Dutch author Hugo de Groot, or the Law Reports of the South African appellate division will find no substantive encounters with the terms: 'transformation', 'Africanization' or 'decolonization' (Zitzke, 2018, p. 492). This opening is significant as it lends itself to a conceptual critique of the application of the law in South Africa.

In the paper, a historical device is utilised to critique dominant private law's ethical grounding – that common law has a 'synergetic relationship with conquest, and why this possesses dominant private law in South Africa today with a racist spirit'. The main claim is that 'colonization caused dominant private-law rules to flourish by annihilating, or in less severe cases, deforming African versions of law'. This phenomenon is referred to as an 'epistemicidal' dimension of private law 'in colonisation because the 'epistemology' (in other words, the knowledge systems, shown by 'epistemi-') of African people was 'killed' (shown by '-cide') (Zitzke, 2018, p. 492).

- Conceptualization of justice as research device

For the ethical dimension, the concept of 'epistemicide' is conceptualised as 'a veritable intellectual and spiritual holocaust from which the indigenous conquered peoples are yet to recover'. The analysis of epistemicide in the context of law entailed that the injustice of the '-cide' occurred throughout the concepts and knowledges of African people. Further that 'the Dutch afforded no respect to African law and completely ignored its existence while Roman-Dutch law was imposed on African people during the period of Dutch colonisation in the mid to late-1600s.' The ethical question was whether: 'at no point was it accepted that, being in Africa, African law should pre-dominate the legal system.' (Zitzke, 2018, p. 497)

Further, not only 'African rules and principles of private law that were destroyed and replaced by European versions in the process of colonisation' because with the 'imposition of a legal system comes new ways of reasoning and different conceptions of justice' (Zitzke, 2018, pp. 497-498). English law brought legal positivism which argued that law and justice should be kept separate in legal reasoning. Dutch law came with 'patriarchal' justice like concepts such as 'reasonable man', 'objectivity', 'rationality', 'certainty' amongst others (Zitzke, 2018, p. 489). He further makes the argument that 'dominant private law has been allowed to thrive in the way that it has because of belief in European intellectual and cultural superiority. This phenomenon is identified as racist. Borrowing from critical legal theory to understand manifestations of racism, Zitzke concludes that 'Joel Modiri teaches us that racism, as understood in critical race theory, does not simply relate to patent expressions of hatred based on race. We can also identify systems as being racist in that they uphold white power.' (Zitzke, 2018, p. 500). Finally, 'dominant private law in a material sense is guilty of the latter type of racism in that it upholds a white system of epistemic power and serves to deny alternative conceptualizations of the world as legitimate' (Zitzke, 2018, p. 500).

- School/s of thought as research device

In the paper, Zitzke introduces the schools of thought of African philosophy and their common themes by comparing them with western philosophy: 'there are interesting gaps between central themes in African legal theory and the English legal method of positivism, and the Dutch notions of natural justice.' (Zitzke, 2018, p. 498). In African legal theory, justice and law is inseparable concepts unlike in some strands of English positivism (Zitzke, 2018, p. 498). The argument made is that a human rights paradigm is not a decolonial option to private law because it has epistemic roots in 'European law'. He argues that albeit that transformative constitutionalism seeks to reform in a form of slow legislative changes to law, it 'nevertheless falls short of being a revolutionary, and decolonial, understanding of law.' (Zitzke, 2018, p. 501). This is so because human rights could have 'neo-colonial effects' that do not radically disturb or disrupt dominant private law. The concept of neocolonialism occurs when state independence is achieved on paper while 'certain superpowers still exercise control over the 'independent' state, and so the colonial order is maintained' (Zitzke, 2018, p. 504). On the colonial outcomes, 'when we merge colonial law (common law) with neo-colonial law (human rights) we are left with creole-colonial law and not a decolonial option' (Zitzke, 2018, p. 504).

On the roots, 'dominant private law is rooted in natural-law tradition, and it revolves around talks of subjective rights' (Zitzke, 2018, p. 504). The second reason that the human rights paradigm has neocolonial effects is that the prime instrument that advances human rights still 'subordinates African customary law to common law and the supreme Constitution itself' (Zitzke, 2018, p. 505). He recommends that the 'spirit of justice present in African law and legal theory could and should play an important role in how SA law is continuously reconceptualized. For this to be done successfully, we might have to rely on African philosophy' (Zitzke, 2018, p. 506).

The third reason why human rights have neocolonial effects is that they have a similar legal reasoning to dominant private law. They have found their central reasoning on law and liberal justice. This can be seen in the interpretation of the contractual principles of *caveat subscriptor* and *animus contrahendi*. Accordingly, we do not find any interpretation of African principles of ubuntu in contractual undertakings and what constitutes a meeting of minds and legal validity in relation to binding contracts.

Zitzke, borrowing from Prof Mogobe Ramose, extrapolates the African legal philosophy of ubuntu and how it differs from how it was adopted by our courts as a value of constitutionalism. The concept of ubuntu is missing in our Constitution and has been utilized in the context of public law to 'infuse illusions of hope in socioeconomic rights jurisprudence.' (Zitzke, 2018, p. 508). But it has been used less in private law, and that was in the context of a minority judgment which forms part of soft law, and it is not binding but persuasive authority. Recent authors like Metz and Bennet encourage that ubuntu must be interpreted through egalitarian outcomes (Zitzke, 2018, p. 504). This position has not proven to be persuasive.

Ramose correctly teaches that (a) 'legal ubuntu through the Constitution is not the same as the African [legal] philosophical concept of ubuntu. Ramose has repeatedly argued that there can be no ubuntu while African sovereignty still hangs in the balance; (b) Africans are not the supreme democratic authority but an animate document is. True restitution of land has not taken place, making reconciliation impossible. Furthermore, (c) the onto-triadic conception of be-ing (the notion that there are three interrelated dimensions of be-ing, namely the unborn, the living and the living-dead) is not properly respected in SA law.' (Zitzke, 2018, p. 508); (Ramose, 2014); (Oyowe, 2013). In sum: this means that any judicial interpretation of ubuntu that does not take cognisance of these dimensions of ubuntu legal philosophy give 'an inaccurate portrayal of what ubuntu has

meant and does mean, and so mocks and distorts African epistemology' in that it creates a dynamic where 'African notions are acceptable only insofar as they can be reconciled with the Western conception of law' (Zitzke, 2018, p. 508).

4. Conclusion

This paper has argued that a conceptual critique is necessary in the development of the law dissertation. It argued that legal education may have to accommodate a legal methodology of a conceptual critique of legal doctrine. This, as argued herein, will produce critical legal thinkers taking into account the interests of justice and devices necessary for considering a legal problem. This paper has not had the privilege of canvassing all areas of law including the typically commercial areas like competition law, insolvency, insurance, tax that some argue are not typically within constitutional debate or conceptual critique. It has also not dealt with traditional courts jurisprudence. These areas of law are not beyond conceptual critique. The methodology argued herein may, to the extent necessary, apply in those contexts. Due consideration may be placed on two arguments made in this paper: a conceptual critique made on historical research methodology and critical schools of thought such as (a) (Matlala, 2022) teaches that feminist philosophy plays a significant role in constitutional jurisprudence in relation to gender rights and (b) private law with resort to African philosophy and (Zitzke, 2018) teaches us that South African private law is neocolonial, and its application perpetuates colonial outputs. This article encourages further research in relation to research methodology encouraging conceptualisation of justice.

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