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I. Executive summary

This report outlines the rationale behind and recommendations on the steps that need to be taken towards decolonising the Law School's pedagogy and curriculum. The reason is that we see decolonisation as not something that can be achieved but as an ongoing process. It concludes a two-year process of research and discussions involving a joint effort between staff and students. A rationale for a change in approach to both pedagogy and curriculum is presented together with recommendations and practical examples of how this might be achieved in modular teaching in the Law School.

II. Who we are and what we have done

Law's Decolonising Working Group (DWG) was formed as a response to the Black Lives Matter (BLM) protests of 2020 when students and staff wrote to the Head of Law School, asking what changes the school was making towards decolonising the curriculum. Subsequently, a number of colleagues met with the Head of School, and offered to contribute to the school's response.

The idea of forming the group was born out of the meetings and discussions that followed.

The rationale behind forming the group was that decolonisation requires a thought-through process instead of a piecemeal or ad hoc response. It was thought that a process was required in order to:

(1) consider the basis of the commitment to decolonise (including why should we decolonise? Is it desirable or necessary? And if necessary, what level of priority should it be given?);

(2) understand what decolonisation in law schools requires, in terms of both pedagogy and curriculum;

(3) consider the barriers and limitations that could influence the pace of change;

(4) conclude by suggesting realistic steps that could be embraced by the Law School and the university to foster a process of decolonising the curriculum.

Accordingly, the aim of forming law's DWG was to engage in this process through research and discussions, to make recommendations, and present them to the school.

The sessions included: study of core texts on decolonisation and discussion of their significance in relation to our teaching experience and practices; group discussions on the structure, goal and purpose of the group; positionality statements (in which each member shared what formed their views around decolonisation and their reasons for joining the group); an art therapy workshop on change, uncertainty and grounding; a guest speaker from the Grenfell Tower campaign; meetings with the university's learning development and career zone departments; the appointment of Student Research Interns and a Student Working Group; and holding mutual staff and students meetings.

Over the summer of 2021, a group of four Student Research Interns and six staff members took on a research project, which included mapping the field of decolonisation, research on the decolonisation of core modules and the decolonisation of forms of assessment. For the 2021/2022 academic year, a separate Student Working Group was formed and conducted a parallel process alongside the Staff Working Group.

After two years of a deeply thought-through, researched and discussed process, a rationale for a change in approach to both pedagogy and curriculum is presented together with recommendations and practical examples of how this might be achieved in modular teaching in the Law School.

III. Why decolonise?

There are a number of rationales requiring the decolonisation of the Law School. This report will focus on four: mitigating the risks embedded in the practice of education; ensuring the consideration of equality, diversity and inclusion (EDI) perspectives; embedding the practice of decolonised critical thinking in the legal system/profession; and fulfilling the duty to act under the Equality Act 2010.

(a) Mitigating the risks embedded in the practice of education

The movement of decolonising education operates upon a constant awareness of the incomparable social power embedded in the practice of education – the power to bring about two opposite but equally crucial outcomes:

(1) The solidification and strengthening of the status quo of existing social norms and regimes – including their layers of injustice;

or

(2) The opening of windows that can lead to social change.

It is the educational approach that will channel the process of education towards the first or second outcome. An approach that relates to students as receptive and unquestioning will lead to the first outcome. A practice that empowers students and approaches them as independent and critical thinkers – a decolonised educational practice – will lead to the second.

To ensure that our practice of education leads to opening the windows of social change, action needs to be taken to decolonise how we teach (pedagogy) and what we teach (curriculum). Decolonisation cannot be achieved if action is taken in only one of these two areas.

Colonisation/oppression can be sustained and reinforced through education. From a pedagogical perspective, this can be done by teaching being directed towards students' receptive nature. From a curriculum perspective, this can be done by maintaining the absence of knowledges and teaching accepted, non-critical knowledge, which is a foundation upon which social power, in its current state, is based. This knowledge–power nexus relies on certain experiences/understandings of groups of people remaining excluded, absent and unknown. The invisibility of realities of whole groups is sustained and reinforced through knowledge.

What is not questioned is strengthened. The decolonial movement questions and creates conditions in which multiple knowledges and multiple epistemologies can be created. The centrality of knowledge to oppression means that teachers and researchers should be central in decolonisation. As long as we teach without questioning, in the sense of both pedagogy and curriculum, we can unintentionally but directly participate in and contribute to perpetuating oppression.

(b) Ensuring the consideration of EDI perspectives

EDI perspectives were considered throughout the two years of the working group. Both research and input from students illustrate that the current model of teaching alienates a wide range of different groups. This is because the content favours the experiences and perspectives of wealthy, able-bodied, heterosexual white men, meaning it is much harder for other groups to engage with the content. Additionally, the modes of teaching mean that it is often students from privileged backgrounds who feel most comfortable engaging, which in turn further alienates different groups of students. This is then further compounded by forms of assessment being utilised that those from privileged backgrounds have greater training and experience of and the outcome of these assessments further alienates groups of students by signalling that they are performing poorly.

In contrast, the proposals in this report are much more EDI friendly. The content will be more tailored to the experiences of a broad range of students and will thus resonate with all students rather than a select few. This is furthered by the project-based learning model which means students have much greater autonomy in their learning so they can choose the topics or perspectives which most interest them.

Involving students in the design and pedagogy of modules means that teaching can be better designed to meet the needs of all students. The project-based learning model also gives students a better work/life balance as they can determine how and when they work on the project which is better able to fit in with different needs (e.g. caring responsibilities, disabilities, religious events and part-time work). Adopting the model put forward in this report would help the school make significant progress on EDI.

(c) Embedding the practice of decolonised critical thinking in the legal system/profession

The centrality of law, the legal system and the legal profession in relation to social justice and processes of social change adds another significant rationale for decolonising legal education with urgency. Decolonisation would lead to students graduating from the school with a strong social awareness and understanding of people's struggles, and a clear sense of why and how a lawyer's role is pivotal in this context, including by protecting people from harm and being part of a process that could lead to significant change.

Moreover, an education system that empowers students and considers them as independent and critical thinkers enhances the students' career development. This is because the critical thinking approach equips students to readily deal with the nuances presented by real-world legal problems and to creatively consider possible solutions.

(d) Fulfilling a duty under s.91 and s.149 of the Equality Act 2010

The University of Exeter has a legal obligation under s.91(2)(a) of the Equality Act 2010 not to discriminate against a student in the way "it provides education for the student". This section refers specifically to the practice of pedagogy. Moreover, under s.149(1) of the Act, The Public Sector Duty, the university must, "in the exercise of its functions, have due regard to the need to eliminate discrimination ... advance equality of opportunity ... [and] foster good relations". This section refers to all the university's functions, including pedagogy and curriculum. A clear understanding emerged over the two-year process of the DWG, according to which it was argued that *not* decolonising the practice of education can lead to forms of oppression being obscured (such as sexism, racism, classism, etc.), which can reinforce and sustain them. This understanding can constitute a ground for the argument that as long as the university does not decolonise its practices it does not fulfil its legal duties according to both s.91(2)(a) and s.149(1) of the Act.

In terms of s.91(2)(a), the basis for this argument is the clear understanding that oppression puts students in a place of disadvantage in relation to students who are not subjected to oppression, and the acknowledgement that being subjected to oppression will have a negative impact on all parameters of the higher education experience. Therefore, to participate in conditions that enable oppression to persist amounts to discrimination, because it sustains the reality in which some students are at a significant disadvantage in relation to others.

In terms of s.149(1)(a), the decolonising scholarship and the work of this group led to the understanding that decolonising practices can reduce discrimination, advance equality of opportunity and foster good relations. Therefore, as long as the university does not decolonise its practices, while the methods and tools to do so are known and available, it is acting in breach of this duty.

IV. Context

(a) The concept of "oppression" and the "banking" style of education

Oppression, in the decolonising sense, includes any condition or act that results in the detachment, or the cutting off, from one's ability to think freely from the dominant perception. Oppression occurs when one internalises into one's own psyche someone else's way of seeing and thinking, consequently losing touch with one's own independent understanding. This is a scale with different levels of intensity and violence, but at the root, the common denominator is the internalisation of a dominant way of thinking, and the perception of that perspective as universal truth.

In educational institutions, oppression occurs when students are rewarded for memorising information they are requested to store rather than for thinking independently and actively participating in the creation of knowledge. In line with this "banking" style of education (a term coined by Paolo Freire), students "bank" information provided by teachers rather than critically engaging and becoming active participants and co-creators in the process of education. Often the taught subject is alien to the students' existential experience, and in other situations, when the students can relate to the taught subject, they are seen as having no prior knowledge or understanding of the subject. Students are rewarded for memorising the information while teachers are rewarded for being able to transfer the information to the students in the clearest and most organised manner.

This "banking" style of education fosters the continuation of oppression by reinforcing docile, receptive, and uncritical thinking. Moreover, it fosters alienation: a disconnect between students; between students and teachers; between teachers; and between students, teachers and communities/society. There is a link between alienating teaching and mental health because students' and teachers' realities are not reflected in the taught material and methods of teaching (bell hooks).

(b) What we see as "political"

A political act takes place not only when the power relations behind the social order are exposed and contested but also when the social order is presented as a-political – as an unquestionable, taken-for-granted reality – while masking its relationship to power. Presenting a reality as a-political by masking its link to social power is a political act in and of itself. The unquestionability by which the reality is presented – its presentation as self-evident – serves to further strengthen it. Masking power is as political as exposing power.

Perceiving the act of challenging power as political and the act of masking power as a-political is engrained in higher education. Academics who contest power are perceived as acting politically, while academics who ignore power are perceived as a-political. Taught content and classroom discussions are presented as a-political even when layers of connection to power exist. As one student in the working group said: "By engaging in this fiction, when the teacher's politics seeps into their words, it is treated as absolute because of 'apoliticism'. This serves to limit the way in which the student seeks to critique the law, as political critique is effectively not considered as there is no politics. As a result, this attempt at a-politicism may indeed be a disservice to the students, while pushing the status

quo as an absolute which may serve to marginalise groups of students who are not served by the status quo".

Decolonial teaching is therefore directed to critical, questioning minds among all students, including students in positions of privilege. It ensures that the practice of education does not participate in, contribute to, legitimise and/or reinforce the perpetuation of forms of oppression, but instead supports the questioning of existing knowledges and epistemologies, thereby creating the space in which new ones can be formed and included.

V. Considerations in decolonising pedagogy and curriculum

To do this, a number of considerations need to be taken into account in relation to decolonising pedagogy and curriculum.

(a) Considerations in decolonising pedagogy

(*i*) *The role of the teacher*

In decolonial pedagogy, the lecturer's role is not only to design the module and deliver content but also to facilitate a space in which knowledge can be produced by the students. A decolonising pedagogy is forged not by the teacher alone but by the students and teacher together. The role of the teacher is to facilitate the conditions in which the students will become partners in creating and shaping the contents of the course. Therefore, the subject matter of the course is seen to be in constant creation and recreation. It can never be fully known at its beginning.

(*ii*) *A decolonised classroom – the practices of critique and dialogue*

In a decolonised classroom, views are not only expressed but are heard and can influence and shape the process of knowledge formation. Staff should receive the support and training needed to equip the students with tools to seek out and interrogate why they reached a certain viewpoint; to make their views more authentic, critical, informed and conscious of society.

The practices of critique and dialogue in the classroom are acknowledged as central pedagogical tools that can foster this type of critical engagement and are therefore incorporated into the recommendation on staff training.

(*iii*) *Difficult conversations in the classroom*

In a decolonised classroom, difficult conversations will take place. It is acknowledged that staff require support, training and guidance on how to hold difficult conversations in the classroom that could potentially make some students feel uncomfortable or could even cause harm.

(*iv*) *Core modules*

Core modules should be our initial focus because they are the heart of the under-graduate degree. If we do not decolonise the core, change will be very limited.

(v) Project-based learning (PBL) and forms of assessments

For changes to be significant and enduring they must be reflected in the modules' forms of assessment. A project-based learning and assessment method has emerged as the most promising approach towards redesigning educational practices according to decolonisation principles.

See Appendix A for an example of how to design PBL core modules and optional modules in the Law School.

See Appendix B for a summary of PBL.

See Appendix C for an example of an existing PBL module in the Law School.

(b) Considerations in decolonising a curriculum

(i) Reading list

A decolonised curriculum will often require a change to reading lists. Deciding which sources should be included in a reading list entails a judgement regarding the knowledge that should inform understanding in the area. Reflecting on the choice of sources includes also the examination of epistemologies and methodologies to ascertain whether they pose barriers or enable relevant knowledges to be produced. The decisions made regarding the reading list should be ones that could be communicated to students, in terms of why the specific sources were chosen and what their limitations are. Three considerations should be taken into account while making this change and are highlighted immediately below.

Including absent knowledges

In a decolonised module the experiences of communities and people who are affected/marked/shaped by the taught subject are seen as central and therefore should be reflected in the sources chosen. Regarding knowledge that is relevant but absent, access to it should be explored. If it cannot be accessed, the absence should be recognised in the teaching.

The choice of included authors

A decolonised reading list also considers the choice of included authors. All opportunities should be taken as a Law School to update readings from non-white authors, non-European authors, authors of immigrant backgrounds, women authors and authors from minority groups e.g. LGBTQIA+ and people with disabilities. This will ensure a diversity of perspectives based on these characteristics, so far as possible within the available material while recognising the absent voices.

Resisting the accepted hierarchy of knowledge

Decolonisation resists the accepted hierarchy of knowledge, which sees knowledge produced in academic settings as knowledge of the highest value while not acknowledging the relevance and legitimacy of knowledge that is produced in non-academic sites. A decolonised practice includes non-academic (such as podcasts, videos and blogs) as well as academic sources while being aware of the limitations of each. Artistic forms of knowledge are also included, given their ability to bridge over the structural barriers posed by language.

(ii) Considering the relationship between law and colonialism in curriculum design

The question of the legacy, impact and effects of the British colonial period on the current laws and the legal system should be incorporated into curriculum design. This would require the incorporation of this question into both existing and new modules. See Appendix D for indicative examples of how this question could be incorporated into core modules in the Law School.

(iii) Teaching lawlessness

Lawlessness refers to spaces within democratic societies in which the law is in a state of suspension. When a state of lawlessness is activated, state authorities act as if the law does not exist, even though it not only exists, but is clear, developed, and known to the authorities' representatives. Observation of "pockets" of lawlessness reveals a clear link between lawlessness and forms of oppression, such as sexism, racism and classism. For example, in the case of Stephen Lawrence, a space of lawlessness meant that a murder could take place within a democratic society, which declares itself as a regime that protects human rights, without any legal ramifications for the murderer. Another example of lawlessness is police disregard towards women who complain about sexual and/or domestic violence.

Lawlessness is a legal reality experienced by an increasing number of people within the UK. Teaching law as a system that applies to all without teaching lawlessness, reinforces its visibility and thereby enables its perpetuation.

(iv) Legal realities

Lay people's/litigants' experiences of the law and/or the legal system are central to a decolonised Law School. The Medical School's model PIME – Patients' Inclusion in Medical Education – can be used as an example to draw upon. Under this model members of the public are invited to join round tables in different modules for students to hear their experiences. Collaboration with Law Clinics to facilitate these sessions could be considered.

VI. Introducing compulsory modules

Foundational knowledge taught in Year 1 is required for students to be equipped with the understanding, knowledge and tools required to fully engage and succeed in a law degree designed according to decolonising principles both in pedagogy and in curriculum.

We have identified the need for two compulsory first year modules with a specific focus on the contemporary legal system and colonialism. Subsequently, these modules will ensure a comprehensive understanding of the matter and consistency in its delivery to all students while providing the necessary tools to critically analyse and review the law and legal interpretations. This would include:

(1) A module on jurisprudence and critical theory, including feminism, queer theory, race, and class, to then explore and draw on these in core modules. This would bring the University of Exeter into line with other universities where jurisprudence and legal theory are a part of core teaching.

(2) A core module to address the relationship between law, colonisation, and key related themes including slavery and racial injustice. We recognise that understanding the ways by which legislation and case law that were created during the period of the British empire affect and influence the contemporary British legal system, is a matter of expertise that should be taught as a separate module and incorporated into the compulsory curriculum. The module would contextualise the teaching of law in key theories and themes that underpin interdisciplinary thinking on decolonial processes.

VII. Recommendations

1. Incorporating a central element of students as co-producers of knowledge in all modules

Redesign modules in a way that incorporates a central component that would lead to students becoming participants in the creation of the module's content.

See Appendix A for an example of how this can be done in the Law School, in both a 30-credit module and a 15-credit module.

See Appendix B for more information on the project-based learning pedagogy – a pedagogy based on students as central producers of knowledge.

See Appendix C for the example of Law, Testimony and Trauma, a module convened by Natalie Ohana in the Law School taught according to the project-based learning pedagogy.

2. Introducing compulsory modules

Introduce two compulsory modules on Jurisprudence and Critical Theory and Law and Colonisation in Year 1.

3. Reviewing content

Review all module content with a specific focus on decolonising content by creating inclusive learning materials, diversifying reading lists, and including the presence of critical voices/perspectives.

See Appendix D for indicative examples of discussions that could be incorporated into core modules as a starting point, which are not intended to be prescriptive.

4. Teaching lawlessness

Include in teaching the examination of spaces of lawlessness in society and the conditions responsible for their occurrence.

5. Learning from lay people's experiences of the law/the legal system

Invite lay people/litigants to panels in all modules to share their experiences as litigants and their experiences of law. Compensate participants for their time.

6. Training

Provide training to teaching staff in:

- delivering a project-based learning pedagogy;
- creating and holding a safe space in the classroom when discussing issues of race, class, gender, etc.;
- developing the practices of critique and dialogue in the classroom; and
- equipping students with tools to conduct in-depth research projects.

7. Appointing a Decolonising the Curriculum Officer(s)

Appoint a Law School Decolonising the Curriculum Officer(s) who will provide information and guidance to convenors in the process of redesigning their modules according to decolonising principles.

8. Sharing best practice

Create opportunities to share best practice between colleagues across Penryn and Streatham, to develop critical approaches to law within module content.

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Appendix A

An example of how to incorporate decolonial pedagogy in a 30-credit module and a 15-credit module.

Teaching design of a 30-credit module:

Term 1: Substantive law teaching

- Term 1 is dedicated to the teaching of the legal field's substantive law: main concepts and debates, legislation, case law.
- Content coverage is scaled to accommodate delivery across one term.
- Delivery of weekly lectures and fortnightly seminars.
- The summative end of term form of assessment assesses a legal skill (for example, problem question/written submissions/oral submissions). A formative assessment during the term assesses the same skill.

Term 2: Individual research projects

Description of projects

- Students to conduct self-selected individual research projects.
- Each project to have three components: social, legal and reflection.
- The student will choose a social aspect to focus on. A social aspect could be, for example: the significance of the legal issue to the person's life/to communities/to society; understanding the issue from a critical perspective, for example, class/gender/race; critically reflecting on the lawyer–client relationship; access to courts, etc.
- The legal component will require the student to situate the issue within the current legal framework and to critique it while including considerations from the social aspect in the critique.
- The reflection component could include, for example, a reflection on the research process, or reflection on the understanding that arises when comparing between the social and the legal perspectives.
- An example of a programme for a project: each student finds a newspaper article covering an issue that is or could be linked to the module's field of law. They then research a social aspect that arises from the issue, analyse the legal area (while considering the findings of the social part within legal analysis) and reflect on the two perspectives, the social and the legal.

Division between lectures and seminars

- Fortnightly lectures and weekly seminars.
- Seminars to be dedicated to working on the individual projects.
- Lectures to equip the students with tools to conduct research projects according to the projects' stages.
- Lectures could include visiting speakers and a litigants/lay people panel.
- Seminars include: individual research time; discussion in pairs (changing every week so the students should know each other's work by the end of term); presentations of work in progress; providing critique to peers and receiving feedback from tutor and peers.

Reading lists

- Students will create their own reading lists, and will be guided to engage with academic as well as non-academic sources.

Formative assessment

- A hierarchised outline of the research project.

Summative assessment

- Different formats for research projects to choose from: essay, blog, podcast or video.

- School's marking criteria should be applied (just as applied on third year dissertations) but conversations to be held in the school on the ways by which the criteria should be interpreted.

Teaching design of a 15-credit module:
- Two-thirds of lecture time dedicated to substantive law.
- One-third of lecture time given to directing and guiding research projects.
- Form of assessment: end of module research project. Formative – research project outline.
- Seminars dedicated to working on projects in the same way as core modules.
- All other elements of research projects detailed under core module apply.

Appendix B

Project-based learning (PBL) – Lee S et al., *Taking a Leap of Faith*, 2014

- Project-based learning is a student-focused pedagogy that is centred around a carefully designed project facilitating an extended inquiry process, engaging students in complex, socially aware and critical thinking.
- The project is grounded in the real world and focused on meaningful student learning outcome.
- Success in assessment practices: the use of rubrics to guide assessment; designing the project in accordance with objective and consistent rubrics in mind; check-in points throughout the process.
- PBL as a continual learning process: engaging in PBL teaching encouraged faculty to continually revise their classroom practice.
- It may be that those who perceived less success in implementation were more likely to see PBL as a set of procedures or methods rather than as a holistic change to their instructional pedagogy.
- For PBL practice in higher education to be successful, institutional support must be put in place. Faculty members require ongoing professional development and mentoring in order to develop as reflective PBL practitioners, as well as peer support from colleagues who are more experienced with PBL.
- Accounts by PBL practitioners in higher education:
- "PBL was an opportunity to infuse real life experiences in my courses, to be able to take some of the content I'm teaching and provide an application for the students so that they could . . . play with it in their hands."
- "Form of teaching that required students to do a lot of research on their own and then to come back with questions.".
- "PBL helps students to start thinking like a practitioner."
- "What PBL has definitely done is open my eyes to how I can do things so that students are becoming more active learners".
- "This will be the fourth year that we've done a version of this (project) and we keep doing it better and better."
- "Despite the challenges the participants encountered while implementing PBL, the participants in the study felt that the benefits for student learning made the move to PBL worth the time and effort."

Appendix C

Example of a PBL module in Law: Law, Testimony and Trauma, convened by Natalie Ohana:

- A 15-credit module.
- Form of assessment: individual research projects exploring the social and legal dimensions of traumatic events.
- Each student chooses as their project topic a traumatic event that occurred at any point in history and that was followed by a legal response (legal proceeding/change in legislation, etc.).
- The first part of the project focuses on survivors', families', and communities' knowledge of the trauma; the second part analyses the legal proceeding in response to the trauma and the third to reflection on whether the legal proceeding made it more likely or less likely that a similar event would recur.

- The module is divided into lectures and seminars. Lectures cover concepts, theories and case studies in the field of law and trauma and seminar hours are dedicated to working jointly on the students' individual projects.
- Projects are second marked. This year they were marked by Karen Walsh.
- Example of a final project (student provided permission to share): Ronald Dadey – The Brute Caricature and The Central Park 5. Available at: https://medium.com/@rDsays_/the-brute-caricature-and-the-central-park-five-4baaa070b158

Appendix D

Indicative examples of discussions that could be incorporated into core modules as a starting point, which are not intended to be prescriptive. The examples are taken/adapted from Jivraj, Suhraiya (2020) *Towards Anti-racist Legal Pedagogy: A Resource* – available at https://kar.kent.ac.uk/82763/. This resource is not intended as a blueprint for decolonising the curriculum but does provide examples of basic steps that can be taken to centre anti-racist perspectives.

Contract law	Discussion of the Zong case (*Gregson v Gilbert* (1783) 3 Doug. KB 232, which sought enforcement of an insurance contract compensating slave owners for "loss of cargo" and the conception of enslaved people in law.
Property law	Contrast liberal/enlightenment views of property rights with indigenous conceptions – e.g. the extinguishing of "native title" in Australia through the British government declaring sovereignty over the land.
Equity and trusts	Consider universities' legacies from slavery and empire, including through the use of charitable and non-charitable trusts.
Constitutional & administrative law	Explore the colonial context of cases such as *Bancoult v Foreign Secretary (No 2)* [2009] 1 AC 453 (HL) relating to the Chagos islanders. Contrast the domestic judgment with the European Court of Human Rights and International Court of Justice rulings.
Criminal law	Address stereotyping of racialised groups as engaging in "gang violence" and the implications of race in joint enterprise law e.g. *R v Jogee* [2016] UKSC 8.
Tort law	Discuss the role of tort law in facilitating extraction and appropriation of and from indigenous land – see e.g. Collins, Lynda Margaret and Morales, Sarah, *Aboriginal Environmental Rights in Tort* (2014)

Digital reading list and bibliography

The references used and discussed by the group throughout the two years can be accessed at https://rl.talis.com/3/exeter/lists/15D0139C-F768-6E73-98A9-4730064CD33F.html