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INDIGENOUS CONTEXTS IN THE LAW CURRICULUM: PROCESS AND STRUCTURE

KATE GALLOWAY*

I INTRODUCTION

The role of the law in the dispossession and oppression of Indigenous peoples world-wide is not a new idea. In Australia, in particular since the rise of critical race studies¹ in the academy and the momentum of the reconciliation movement in wider Australian society,² legal scholars have increasingly engaged in critical inquiry into diverse areas of law, brought together under the subject field that might be described as Indigenous Australians and the law.³ Additionally, law schools have in the past decade or so apparently attempted to design and deliver curricula that engage with Indigenous Australians⁴ experiences before the law, though with varying degrees of success.⁵ The challenge for the academy of incorporating Indigenous contexts into the law curriculum remains.⁶

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¹ For an example of its application in teaching, see, eg, Juliana McLaughlin and Susan Whatman, 'The Potential of Critical Race Theory in Decolonizing University Curricula' (2011) 31 *Asia Pacific Journal of Education* 365.

² See, eg, discussion in Jan Gray and Quentin Beresford, 'A "Formidable Challenge": Australia's Quest for Equity in Indigenous Education' (2008) 52 *Australian Journal of Education* 197.

³ Outside the law school, this may be termed 'Indigenous Studies': see, eg, Bronwyn Fredericks, 'The Epistemology That Maintains White Race Privilege, Power and Control of Indigenous Studies and Indigenous Peoples' Participation in Universities' (2009) 5 *Australian Critical Race and Whiteness Studies Association eJournal* 1. This is exemplified in texts such as Heather McRae and Garth Nettheim, *Indigenous Legal Issues: Commentary and Materials* (Thomson Reuters, 4th ed, 2009); Greta Bird, Gary Martin and Jennifer Nielsen (eds), *Majah: Indigenous Peoples and the Law* (Federation Press, 1996).

⁴ I acknowledge that Aboriginal Australians and Torres Strait Islanders are distinct peoples. The term 'Indigenous Australians' is intended to encompass both Aboriginal and Torres Strait Islander Australians without intending to negate the independent cultural identities of either.

⁵ See, eg, 'Special Focus Edition: Racism and the Law' (2005) 6(8) *Indigenous Law Bulletin*. More recently, see Marcelle Burns, 'Towards Growing Indigenous Culturally Competent Legal Professionals in Australia' (2013) 12(1) *International Education Journal: Comparative Perspectives* 226; Angela Melville, 'Educational Disadvantages and Indigenous Law Students: Barriers and Potential Solutions' (2017) 4 *Asian Journal of Legal Education* 95.

⁶ As it does in education more broadly. See, eg, Gray and Beresford, above n 2.

Having experienced the challenges of program design, and in teaching what I describe here as ‘Indigenous contexts’ in the law curriculum, this article synthesises what I have learned over the last 14 years as a non-Indigenous law teacher, and sometime leader in learning and teaching in Australian law schools. Over this time, I have embarked on a systematic cycle of experimentation through planning, acting, observing, reflecting, and revising, in designing and teaching law subjects and programs incorporating Indigenous contexts. This article draws from my experience to date, articulating my current understanding of curriculum design principles that incorporate Indigenous contexts and the processes to achieve that curriculum. As part of my educational practice, the ideas presented here aim to promote practical development in legal education, and of legal academics’ better understanding of their practices.⁷ While I acknowledge the central role of the student experience in analysing teaching, this paper focuses on the identified challenge of curriculum design ie the teaching side of the educational equation.

To achieve this purpose, my method is informed by practitioner action research.⁸ In Part II, I frame this article in terms of my standpoint as teacher-as-researcher and establish a practitioner action research inspired framework of inquiry. Part III explains a curriculum design model based on a collaborative project undertaken while I worked at the law school at James Cook University.⁹ Part IV concludes with a reflection on the utility of this curriculum design model as a technical solution to the challenge of designing a law curriculum that engages with Indigenous contexts.

Before moving to the substantive part of this article, there are questions of language and voice to be clarified. In the last decade, the discourse around Indigenous issues in higher education curricula, including in legal education, has shifted: ‘perspectives’ and

⁷ Ortrun Zuber-Skerritt, ‘Emancipatory Action Research for Organisational Change and Management Development’ in Ortrun Zuber-Skerritt (ed), *New Directions in Action Research* (Falmer Press, 2005) 68, 68.

⁸ See, eg, Kimberly Hill Campbell, ‘A Call to Action: Why We Need More Practitioner Research’ (2013) 21(2) *Democracy and Education* 1.

⁹ ‘Design and Implementation of Reconciliation Principles within the Faculty of Law Business and Creative Arts’ (‘Walking Forward Together’ project) at James Cook University. The project was part of the James Cook University ‘Curriculum Refresh’, funded through the office of the Senior Deputy Vice Chancellor by Department of Education, Employment and Workplace Relations through its Diversity and Structural Adjustment fund. I acknowledge with respect my colleagues at the time, Mrs Florence Onus, Mrs Robyn Boucher, Dr Felecia Watkin Lui, and Heron Loban all of whom collaborated in this project.

‘knowledges’;¹⁰ in curriculum, from ‘embedding’¹¹ to ‘inclusion’;¹² from cultural awareness to cultural competency¹³ and cultural intelligence, to the concept borrowed from social work of cultural humility;¹⁴ from a reconciliation framework to one of decolonisation.¹⁵ This article canvasses my own experiences with some of these concepts in a curriculum design context. Not all have been embraced by Aboriginal and Torres Strait Islander academics or advisers, and some concepts may now seem dated or inappropriate. Others use terms uncritically to label their work. In short, there will inevitably be differences of opinion in the terms used to describe the broader project.

With respect, in this article I use the terms Indigenous knowledges, perspectives, and experiences, and cultural competencies, embraced within the term ‘Indigenous contexts’, to attempt to capture a broad idea of including Indigenous contexts in the law curriculum and the law classroom. This grouping comes at the cost of appreciating the differences between each concept, although articulating the meaning of each one can be a challenging task where each term may have gained — and lost — currency, and where the terms have also been received critically and divergently by different scholars.¹⁶

For the purposes of this article, following Dei, Hall and Rosenberg, I suggest that Indigenous *knowledges* comprise

¹⁰ Cf, eg, Karen Martin, ‘Aboriginal Worldview, Knowledge and Relatedness: Reconceptualising Aboriginal Schooling as a Teaching-Learning and Research Interface’ (2009) 12 *Journal of Australian Indigenous Issues* 66; Irene Watson and Marcelle Burns, ‘Indigenous Knowledges: A Strategy for First Nations Peoples Engagement in Higher Education’ in Sally Varnham, Patty Kamvounias and Joan Squelch (eds), *Higher Education and the Law* (Federation Press, 2015) 41.

¹¹ See, eg, Juliana McLaughlin and Susan Whatman, ‘Embedding Indigenous Perspectives in University Teaching and Learning: Lessons Learnt and Possibilities of Reforming/Decolonising Curriculum’ in Robert Heber (ed), *Indigenous Education: Asia/Pacific* (Indigenous Studies Research Centre, First Nations University of Canada, 2008) 123.

¹² See, eg, Filiz Polat, ‘Inclusion in Education: A Step Towards Social Justice’ (2011) 31 *International Journal of Educational Development* 50.

¹³ Universities Australia, *National Best Practice Framework for Indigenous Cultural Competency in Australian Universities* (October 2011) <https://www.universitiesaustralia.edu.au/uni-participation-quality/Indigenous-Higher-Education/Indigenous-Cultural-Compet#_V_WbwMI0VnE>; Burns, above n 5; Marcelle Burns et al, *Indigenous Cultural Competency for Legal Academics Program* (2017) <<http://law.unimelb.edu.au/research/research-activities/funded-research/olt>>.

¹⁴ Craig Moncho, ‘What is Cultural Humility?’ on Craig Moncho, *The Social Work Practitioner* (19 August 2013) <<https://thesocialworkpractitioner.com/2013/08/19/cultural-humility-part-i-what-is-cultural-humility/>>.

¹⁵ McLaughlin and Whatman, ‘Embedding Indigenous Perspectives in University Teaching and Learning’, above n 11.

¹⁶ See, eg, discussion in Riyad Ahmed Shahjahan, ‘Mapping the Field of Anti-Colonial Discourse to Understand Issues of Indigenous Knowledges: Decolonizing Praxis’ (2005) 40 *McGill Journal of Education* 213; Australian Government, ‘Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People’ (Final Report, Department of Education and Training, July 2012) 94–5 <<https://www.education.gov.au/review-higher-education-access-and-outcomes-aboriginal-and-torres-strait-islander-people>> (‘Behrendt Review’).

a body of knowledge associated with the long-term occupancy of a certain place. This knowledge refers to traditional norms and social values, as well as to mental constructs that guide, organize, and regulate the people's ways of living and making sense of their world. It is the sum of the experience and knowledge of a given social group, and forms the basis of decision making in the face of challenges both familiar and unfamiliar ... It is accumulated by the social group through both historical and current experience. This body of knowledge is diverse and complex given the histories, cultures, and lived realities of peoples.¹⁷

In the context of law, Indigenous knowledges provide a context for legal education but also content. Thus Borrowers, for example, points out that

Indigenous legal traditions are vibrant sources of knowledge. They pragmatically assist in finding answers to complex and pressing legal questions and contain significant sources of authority. They are precedential, that is, standard setting, and generate criteria for making sound judgments. Indigenous law helps produce binding measurements through persuasion and compulsion, is attentive to ethical redress and remedial actions when harm has occurred, and facilitates genuine gift giving and bequests. Indigenous laws can be constitutional. They can support the creation of internally binding obligations. Indigenous peoples' own legal systems also undergird the creation of intersocietal commitments with external bodies. Evidence of Indigenous laws' force is found in various agreements related to consultation, accommodation, contractual matters, and treaties. Indigenous laws are also a key ingredient in protecting group and individual privileges and freedoms.¹⁸

Indigenous *perspectives* is a concept used throughout the Australian school curriculum, and is endorsed in the recommendations of the *Behrendt Review*.¹⁹ It can be understood to offer a learning environment consonant with Indigenous ways of knowing. It can also be understood to provide diversity of standpoints on historical or contemporary events. In the context of the law, this latter approach would comprise a critical understanding of the text or operation of the law from the perspective of the experiences of Indigenous Australians.²⁰ Introducing Indigenous perspectives is designed to provide balance to the Anglo-Australian perspective that dominates the law and higher education, for the benefit of all students.

¹⁷ George J Sefa Dei, Budd L Hall and Dorothy Goldin Rosenberg (eds), *Indigenous Knowledges in Global Contexts: Multiple Readings of Our World* (University of Toronto Press, 2000) 6.

¹⁸ John Borrowers, 'Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education' (2016) 61 *McGill Law Journal* 795, 797–8 (citations omitted). By way of example, see George Pascoe Gaymarani, 'An Introduction to the Ngarra Law of Arnhem Land' (2011) 1 *Northern Territory Law Journal* 283; James Gurrwannu Gaykamangu, 'Ngarra Law: Aboriginal Customary Law from Arnhem Land' (2012) 2 *Northern Territory Law Journal* 236.

¹⁹ Behrendt Review, above n 16, chapters 4, 12.

²⁰ For example, as contained in evidence to the Stolen Generations Inquiry: Australian Human Rights Commission, 'Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families' (Report, Australian Human Rights Commission, 1997).

Perspectives overlap with *experiences*. The focus in each case is on the ways in which Aboriginal and Torres Strait Islander Australians perceive and experience the world — including the law.

Cultural competency on the other hand might be regarded as a blend of knowledge, skills, and dispositions. Burns observes that:

Accepted definitions of cultural competency incorporate not only an understanding of Indigenous cultures but also the ability to reflect upon the culturally specific nature of what constitutes ‘knowledge’, especially in the disciplinary context. To be culturally competent one must be able to interrogate what Bagele (2012) describes as ‘academic discourse systems’ which [construct] ‘canons of truth around whatever its participants decide is “admissible evidence” ... and come to determine what counts as knowledge’.²¹

Thus, the knowledges, perspectives and experiences of Indigenous Australians form the foundation upon which cultural competency might be developed.

Importantly, a non-Indigenous law teacher cannot, by definition, provide Indigenous knowledges, perspectives or experiences first hand. Their own experiences even working with Indigenous Australians in, say, native title (involving ‘Indigenous issues’) may provide insight into Indigenous perspectives or experiences but cannot themselves be regarded as ‘Indigenous’. Simply adding ‘Indigenous issues’ to curriculum may not be sufficient to overturn the dominance of the mainstream legal system.²²

Recognising these concepts as sometimes contested but inevitably distinct, I acknowledge that it is both institutional and personal imperatives that will inform the way in which curriculum is described (‘embedding’, ‘perspectives’, ‘knowledges’, ‘indigenisation’, etc) and the approach to developing it. The gist of this article lies more in how law teachers might design teaching purposefully both as to the framing and enactment of curriculum within the approach relevant to the teacher’s own teaching environment. This article is not intended to be a critique of these different approaches themselves.

Lastly, I declare my voice to be that of a non-Indigenous Australian woman. I make no claims to speak for Aboriginal or Torres Strait Islander Australians. I am cognisant of the propensity of white academics to recolonise Indigenous Australia through teaching and research.²³ In particular I note that in writing this article I represent that I ‘hold what is considered “legitimate knowledge” that underpins and maintains [my] power within the university.’²⁴ I suggest, however, that there is an essential role for non-Indigenous law teachers in decolonising curriculum: to acknowledge the complicity of the law in the ongoing colonisation project, and to engage law students in striving

²¹ Burns, above n 5, 232 (citations omitted).

²² Watson and Burns, above n 10, 41, 44

²³ Allan Ardill, ‘Non-Indigenous Lawyers Writing About Indigenous People: Colonisation in Practice’ (2012) 37 *Alternative Law Journal* 107.

²⁴ See, eg, Fredericks, above n 3, 1, 6.

for justice. This article seeks to identify what I see as key components of this process through curriculum design.

II PRACTITIONER ACTION RESEARCH

This article is informed by a practitioner action research framework.²⁵ It is sole-authored, reflecting my engagement as an individual teacher and sometime curriculum leader in ‘disciplined inquiry, in which a personal attempt is made to understand, improve and reform [educational] practice’.²⁶ Kemmis and McTaggart point out that action research aims to transform theory and practice.²⁷ The practice in question is that of the effective and appropriate incorporation of Indigenous contexts into the Australian law curriculum.

Beyond mere reflection that would normally accompany teaching, this work represents an action research method, through its adoption of structured planning, acting, observing, and reflecting in what has been described as a ‘spiral’. The deliberate intention of this process ‘recognises the explicit possibility of acting differently through progressively learning from experience’.²⁸ That this is an intentional process, designed to achieve specific outcomes, differentiates the inquiry from my ‘ordinary’ work as a reflective teacher.²⁹

Action research is implicitly participatory. Although it requires commitment to personal, or individual, change it is concerned also with broader cultural and social change.³⁰ Importantly, it attaches to justice,³¹ a key component of this inquiry. Aligned with the generally participatory nature of action research, I have worked alongside colleagues, with students, and with community, in designing, testing, and reflecting on models that equip law teachers to integrate Indigenous contexts within the law curriculum.

While I report on this process in terms of my own present understanding, my findings have developed iteratively through active engagement in diverse fora. On occasion I have participated in working groups to lead curriculum development where all participants are consciously engaged in curriculum planning. Some of these groups have existed within my own institution, addressing practice in our own curricula — and others are better described as nationally-dispersed

²⁵ See, eg, Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (Routledge, 6th ed, 2007); Wilfred Carr and Stephen Kemmis, ‘Educational Action Research: A Critical Approach’ in Susan E Noffke and Bridget Somekh (eds), *The Sage Handbook of Educational Action Research* (Sage, 2009) 74.

²⁶ Dave Ebbutt, ‘Educational Action Research: Some General Concerns and Specific Quibbles’ in Robert G Burgess (ed), *Issues in Educational Research: Qualitative Methods* (Falmer Press, 1985) 152, 156.

²⁷ Stephen Kemmis and Robin McTaggart, ‘Participatory Action Research: Communicative Action and the Public Sphere’ in Norman K Denzin and Yvonna S Lincoln (eds), *Strategies of Qualitative Inquiry* (Sage, 3rd ed, 2008) 271, 283.

²⁸ Robin McTaggart, ‘Participatory Action Research: Issues in Theory and Practice’ (1994) 2 *Educational Action Research* 313, 315.

²⁹ Exemplified in the work of Stephen D Brookfield, *Becoming a Critically Reflective Teacher* (Jossey-Bass, 1995).

³⁰ McTaggart, above n 28, 318.

³¹ See, eg, Kemmis and McTaggart, above n 27, 273, 324.

communities of practice. In other instances, I have taught with colleagues using a ready-designed syllabus incorporating Indigenous contexts. Outside my institution I have engaged in unstructured conversation with legal academics nationally about their own practices and understanding of Indigenous contexts in the law curriculum.

My practice and the findings I share here have not only been *informed* through my participation in diverse experiences over a decade. This would suggest a serendipitous insight into curriculum design. Rather, what I have learned arises *because* I have made it my business to find out how the law curriculum might embrace Indigenous contexts, and I have done this — and continue to do so — through systematic, participatory praxis. It is praxis that engages the *practitioner* aspect of action research: ‘...evaluation, research, development or more general inquiry that is small-scale, local, grounded, and carried out by professionals who directly deliver those self-same services’.³²

In the mould of action research, I outline the narrative of reaching the point of this article, establishing my standpoint of teacher-as-researcher and participant in my own research.

My background of 14 years in commercial law practice had not equipped me for the intercultural context of practice in a native title representative body when I joined in 2004. I drew on my notions of professionalism to inform myself on how best to serve my Aboriginal clients and my employer, a grassroots Indigenous corporation. At the same time, I started as a law teacher, and quickly realised the opportunity to draw on my experiences as a native title lawyer to inform my teaching.

My starting point for teaching law was twofold. The first was an intellectual endeavour. I had knowledge of law relating to Aboriginal and Torres Strait Islander interests in, and claims to, land. My knowledge was both doctrinal and practical. I had the capacity to critique the justice of this law, and to bring these perspectives to students attending my classes. These are not ‘Indigenous perspectives’. They are, rather, practitioner perspectives on the effect of law and its processes upon Indigenous clients.

The second was a professional endeavour. Through my understanding of the lawyer’s role as serving and empowering the client I could offer students perspectives on the efficacy of lawyering in a cross-cultural context.³³ At this point I would describe myself as engaging in professional reflection: both as a lawyer, and as a teacher. Through this process I started to think more critically about my role as a practitioner and about the text of the law itself in the context of my interactions with my clients.

³² Ian Shaw, ‘Practitioner Research: Evidence or Critique?’ (2005) 35 *British Journal of Social Work* 1231, 1232.

³³ Kate Galloway, ‘Is Native Title Law Destroying Native Title?’ (26 April 2006) SSRN <<http://dx.doi.org/10.2139/ssrn.2278701>>.

It was not long before I started to teach also in the first year of law, in a revamped curriculum.³⁴ As with most contemporary introductory law courses, and in contrast to my own experience at law school, our students were introduced to Indigenous Australian contexts. I taught critically, challenging assumptions of the common law, including questioning terra nullius and the doctrine of reception in terms of subsisting sovereignties, colonisation, and conquest. In a first-year law-in-context subject I also taught about race, focusing on the operation of Anglo-Australian law and policy as an ongoing tool of colonisation.

In each case I was gaining knowledge through research into areas that I had previously only general knowledge about—and some areas that were new to me. I encountered critical race theory and chartered what was for me, new intellectual territory. At no stage did I question my capacity to teach these topics but rather saw it as my responsibility to engage intellectually with the materials and to engage students likewise.³⁵

The turning point came at the intersection of two events that together comprised a transformative experience for me — changing my reflective intellectual endeavour into a structured quest for reform in the law curriculum. The first event was attending a teaching and learning event at Griffith Law School, featuring a powerful presentation by Phil Falk about the experience of Aboriginal and Torres Strait Islander law students.³⁶ Falk articulated central questions about justice in the law curriculum that I possibly knew but had not given voice to. More deeply, listening to his story and the way that he told it exposed me to a way of knowing the law and the study of law that had otherwise escaped me. Energised by his presentation, I knew that I needed to change and to make change.

The second event, at about the same time, involved students' experiences in my class. Presenting the 'sovereignty story' of colonisation and conquest to a first-year law class in a way that I had believed to be respectful to Indigenous Australians, two students whom I knew to identify as Aboriginal and Torres Strait Islander seemed to be crying in class. They did not return after the break. I made discreet inquiries about these students' wellbeing, hoping that I had not caused them distress. It transpired that hearing the stories, especially of the seminal *Mabo* decision,³⁷ from the perspective of the law itself and outside of their own lived experiences, had been unexpected and difficult to handle.³⁸ Falk's words returned to me.

³⁴ Lisa Westcott and Mandy Shircore, 'The Experience of a Small Regional Law School in Preparing Students for a Journey through Law' (2006) 13 *James Cook University Law Review* 81.

³⁵ At this point I demonstrated my understanding of 'book knowledge' within a Western framework. Fredericks, above n 3, citing Bell Hooks, *Talking Back: Thinking Feminist, Thinking Black* (South End Press, 1989) 16.

³⁶ While the address itself is not published, his sentiments appear in: Phil Falk, 'Law School and the Indigenous Student Experience' (2005) 6(8) *Indigenous Law Bulletin* 8.

³⁷ *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

³⁸ Asmar and Page describe similar emotional responses in Indigenous teachers, faced with discussion of racial issues in the classroom: Christine Asmar and Susan Page,

Although I started by searching for a method to improve my teaching of Indigenous contexts in my subjects, I quickly learned that no one had an ‘answer’ for the ‘problem’ I was encountering — of how best to address what I saw to be foundational questions of power and justice in the law as well as in the classroom. Moreover, it was clear that the issue was bigger than an individual teacher. Therefore, personal reflection and scholarly endeavour alone would not answer this question or the broader question of the law curriculum beyond my allocated teaching.

At this point I intentionally became teacher-as-researcher, implementing a structured approach that I describe here as informed by practitioner action research: social, participatory, practical, emancipatory, critical, reflexive, and with the goal of transforming theory and practice.³⁹

Informed initially by an institution-led reconciliation approach,⁴⁰ I started to work with the concept of curriculum as the means of understanding, theorising, and implementing change to the way in which law is taught. The outcome was intended to constitute a comprehensive ‘answer’ to what I had diagnosed as technical questions⁴¹ of design. But putting this into practice, and through observation of structural institutional constraints and personal responses of academic colleagues, revealed the obstacles to effective rollout of a targeted solution. More deeply, and thanks to the work of colleagues nationally, it revealed the need for significant transformation at the level of legal academics’ own knowledge and skills.⁴²

But my own journey started with the quest for a model of curriculum design: one that would address the technical question of *how* to frame a law curriculum either at program or subject level, that would engage with Indigenous contexts.

III A CURRICULUM DESIGN MODEL

Despite acknowledgement of the imperative of Indigenous contexts within higher education generally,⁴³ and the law curriculum in particular,⁴⁴ the response of legal education to incorporating Indigenous contexts remains slow and inconsistent. The Discipline Standards for Law for example,⁴⁵ do not specifically mention Indigenous Australians.

‘Sources of Satisfaction and Stress Among Indigenous Academic Teachers: Findings from a National Australian Study’ (2009) 29 *Asia Pacific Journal of Education* 387, 393.

³⁹ Kemmis and McTaggart, above n 27, 281–3.

⁴⁰ Walking Forward Together, above n 9.

⁴¹ Robert Keegan and Lisa Laskow Lahey, *Immunity to Change* (Harvard Business Press, 2009). Keegan and Lahey differentiate between *technical* and *adaptive* problems.

⁴² Notably of Burns et al, above n 13.

⁴³ Universities Australia, above n 13; Behrendt Review, above n 16.

⁴⁴ See, eg, ‘Special Focus Edition: Racism and the Law’, above n 5.

⁴⁵ Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010) (‘Threshold Learning Outcomes’ or ‘TLOs’).

They do mention that ‘Indigenous perspectives’ form part of the ‘broader contexts of the law’,⁴⁶ but Watson and Burns describe the TLOs as a ‘virtual terra nullius’.⁴⁷ In referring to Indigenous ‘perspectives’, Watson and Burns identify in the TLOs an assimilationist bent. They suggest that in expressing a ‘mental view’ rather than ‘knowledge’ the Standards preserve the dominance of the mainstream legal system.⁴⁸ Either way, the TLOs provide no explicit threshold for student engagement with Indigenous contexts and therefore no real curriculum guidance.

There does, however, appear to be an attempt to incorporate at least some Indigenous Australian contexts into the traditional Anglo-Australian legal narrative, revealed for example through a review of a range of commonly-prescribed introductory law textbooks.⁴⁹ Some do a more thorough and more explicit job than others, but overall it is clear that the last 15 years or so has seen mainstream introductory texts at least attempt to introduce to law students the effect of Anglo-Australian law on Aboriginal and Torres Strait Islander Australians. Also relevant to foundation subjects is the small number of texts that take a critical perspective (so-called ‘law in context’ texts) that critique the dominant colonial narrative of the law.⁵⁰ Beyond this there is a range of texts on Indigenous Australians and the law designed more for an elective subject.⁵¹ Again, however, these resources form only a small component of the capacity for curriculum to engage with Indigenous contexts, and fail to evidence the state of curriculum design nationally.

⁴⁶ Ibid 13.

⁴⁷ Watson and Burns, above n 10, 44.

⁴⁸ Ibid 45.

⁴⁹ Russell Hinchy, *The Australian Legal System: History, Institutions and Method* (Lawbook Co, 2nd ed, 2015) ch 3; R A Hughes, G W G Leane, A Clarke, *Australian Legal Institutions: Principles, Structure and Organisation* (Lawbook Co, 2nd ed, 2003) 316–20; Claire Macken and Madeleine Dupuche, *Law Essentials: Foundations in Australian Law* (Lawbook Co, 2011) 14–16 ‘The Importance of the *Mabo* decision’; Richard Chisholm and Garth Nettheim, *Understanding Law* (LexisNexis, 8th ed, 2012) ch 2; Prue Vines, *Law and Justice in Australia* (Oxford, 2005) chs 2, 3; Elizabeth Ellis, *Principles and Practice of Australian Law* (Lawbook Co, 2nd ed, 2009) ch 2; James Miller, *Getting into Law* (LexisNexis, 2002) chs 2, 3; Gabrielle Appleby, Alexander Reilly and Laura Grenfell, *Australian Public Law* (Oxford, 2nd ed, 2014) ch 113; David Clark, *Principles of Australian Public Law* (LexisNexis, 2nd ed, 2007) 307–8; Catriona Cook et al, *Laying Down the Law* (LexisNexis, 9th ed, 2014) ch 4; Michelle Sanson, Thalia Anthony and David Worswick, *Connecting with Law* (Oxford, 2nd ed, 2010) ch 9; Gary N Heilbronn et al, *Introducing the Law* (CCH, 6th ed, 2002) ch 10; Patrick Parkinson, *Tradition and Change in Australian Law* (Lawbook Co, 4th ed, 2010) ch 10.

⁵⁰ Such as: Greta Bird, *The Process of Law in Australia: Intercultural Perspectives* (Butterworths, 2nd ed, 1993); Stephen Bottomley and Simon Bronitt, *Law in Context* (Federation Press, 3rd ed, 2006); Nickolas James, *Critical Legal Thinking* (Pearson, 3rd ed, 2011); Kathy Laster, *Law as Culture* (Federation Press, 2nd ed, 2001); Rosemary Hunter, Richard Ingleby and Richard Johnstone (eds), *Thinking about Law: Perspectives on the History, Philosophy and Sociology of Law* (Allen and Unwin, 1995); Margaret Davies, *Asking the Law Question* (Lawbook Co, 3rd ed, 2008).

⁵¹ See, eg, Larissa Behrendt, Chris Cunneen and Terri Libesman, *Indigenous Legal Relations in Australia* (Oxford, 2009); Elliott Johnston, Martin Hinton and Daryle Rigney (eds), *Indigenous Australians and the Law* (Routledge, 2nd ed, 2008); McRae and Nettheim, above n 3.

More hopefully, a recent report published by the Indigenous Cultural Competency for Legal Academics Program (ICCLAP)⁵² reveals that curriculum encompasses Indigenous contexts in core subjects in 10 of the 40 Australian law schools.⁵³

While this data is somewhat encouraging, it remains disappointing on the whole. There is after all, a solid literature on incorporating Indigenous contexts into the Australian law curriculum,⁵⁴ including as skills.⁵⁵ Overall, however, and aligned with the comments of Watson and Burns, it is entirely possible that Australian legal education gives a nod to Indigenous perspectives — a state of mind — without embracing the more substantial knowledges and experiences, together with cultural competencies, that are required to equip all Australian graduates with the requisite knowledge, skills, and attitudes expected of the contemporary practitioner and educated citizen.

It is against this background that I initially saw a need to understand *how* to design an integrated curriculum — positing that with a technical approach, law teachers would be equipped to embed Indigenous contexts within the law degree.

A Curriculum as ‘Content’

Amongst the challenges in establishing a method for the design of curriculum that embraces Indigenous contexts is to clarify the scope of the project. As became clear with the publication of the *Behrendt Review*,⁵⁶ such curriculum aims to do different things.

The first task is creating an inclusive environment conducive to attracting, retaining, and graduating Aboriginal and Torres Strait Islander Australians from university programs. This is achieved by introducing into curriculum perspectives and experiences, knowledge, and ways of knowing, that are familiar to Aboriginal and Torres Strait

⁵² Burns et al, above n 13.

⁵³ ICCLAP, *Law School Survey Report* (ICCLAP, 2017) <http://www.icclap.edu.au/rw_common/plugins/stacks/armadillo/media/ICCLAPLawSchoolSurveyReportOctober2017V2.pdf> (*‘Survey Report’*).

⁵⁴ See, eg, Anthony O’Donnell, ‘Thinking “Culture” in Legal Education’ (1996) 7 *Legal Education Review* 135; Anthony O’Donnell and Richard Johnstone, *Developing a Cross-cultural Law Curriculum* (Cavendish, 1997); Margaret Stephenson et al, ‘International and Comparative Indigenous Rights via Videoconferencing’ (2009) 19 *Legal Education Review* 237; ‘Special Issue – Incorporating Indigenous Perspectives in the Law Curriculum’ (2009) 19(2) *Legal Education Review* <<https://epublications.bond.edu.au/ler/vol19/iss2/>>; Heron Loban, ‘Embedding Indigenous Perspectives in Business Law’ (2011) 5(2) *e-Journal of Business Education & Scholarship of Teaching* 11; ‘Special Edition: Putting the “Black” in Black Letter Law Subjects’ (2012) 4 *Ngiya: Talk the Law* <<http://www.austlii.edu.au/au/journals/NgiyaTLaw/2012/>>; Melissa Castan, ‘The Recognition of Indigenous Australians in the Teaching of Federal Constitutional Law’ (2014) 7 *Journal of the Australasian Law Teachers Association* 87; Amy Maguire and Tamara Young, ‘Indigenisation of Curricula: Current Teaching Practices in Law’ (2015) 25 *Legal Education Review* 95.

⁵⁵ See, eg, Michael Weir, ‘The Wytiga Negotiation — Native Title and Skills Training’ (1996) 7 *Legal Education Review* 253; Burns, above n 5.

⁵⁶ Behrendt Review, above n 43.

Islander students, but which may be foreign to other students. Butler and Young refer to this as the ‘curricular justice goal’.⁵⁷

Notably, some reject the institutional imperative of student retention as part of the recolonising approach of higher education.⁵⁸ Instead, as Nakata points out, the imperative must properly lie in ‘a definitive commitment to Indigenous people first and foremost’.⁵⁹ There is certainly a tension, but one that might be alleviated through consciousness of the damage wrought by an instrumental approach to students as metrics. Instead, considering the human purpose of education and the implication of the academy and the law in colonisation might deliver a definitive commitment to Indigenous Australians through retention and graduation, via a pathway of effective curriculum.

The second aim is to teach all students about Indigenous issues, perspectives, and ways of knowing — collectively here called ‘Indigenous contexts’. In particular, this ‘wider responsibility’ goal⁶⁰ would contribute to the decolonisation of law and legal practice.

Together these approaches to curriculum comprise a ‘social reconstruction’ ideological approach to curriculum.⁶¹ Importantly, however, to achieve this aim requires a ‘broad view’ of curriculum — one that encompasses ‘the whole process of teaching and learning and all the activities in their various contexts which take place during that process’.⁶² This broad view involves understanding and making explicit the dimensions of curriculum that affect student learning.

Reflecting concerns expressed by law teachers about *what* to teach, observations of gaps in student knowledge and skills, experience in pastoral care in transition courses, experiences of Indigenous students and staff in learning law and teaching it, and through engagement in the literature, I embarked with colleagues on a formal project⁶³ to design a curriculum model embracing three identifiable but interrelated dimensions: content, pastoral care, and community engagement. While recognising the imperative of a broad curriculum, this article focuses on the law teacher herself and those narrower aspects of curriculum design that grapple with what colleagues might understand as ‘content’.

While ‘content’ is insufficient to explain the real task at hand, experience shows that a considerable proportion of law teachers

⁵⁷ Kathleen Butler and Anne Young, ‘Indigenisation of Curricula: Intent, Initiatives and Implementation’ (Paper presented at the Australian Universities Quality Forum, Alice Springs, 1–3 July 2009) 2.

⁵⁸ See, eg, Fredericks, above n 3, 2, citing Andrew Gunstone ‘Australian Indigenous Studies and Australian Universities’ in Andrew Gunstone (ed), *History, Politics and Knowledge: Essays in Australian Indigenous Studies* (Australian Scholarly Publishing, 2008) xi, xii.

⁵⁹ Martin Nakata, ‘Australian Indigenous Studies: A Question of Discipline’ (2006) 17 *Australian Journal of Anthropology* 265, 266.

⁶⁰ Butler and Young, above n 57, 2, citing Vigilante, 2007.

⁶¹ Michael Stephen Schiro, *Curriculum Theory: Conflicting Visions and Enduring Concerns* (Sage, 2008).

⁶² Barbara Bagilhole and Jackie Goode ‘The “Gender Dimension” of Both the “Narrow” and “Broad” Curriculum in UK Higher Education: Do Women Lose Out in Both?’ (1998) 10 *Gender and Education* 445, 449.

⁶³ Walking Forward Together, above n 9.

perceive curriculum as content delivery.⁶⁴ If this term reflects law teachers' understanding of what they do, it might serve as a starting point for building capacity in Indigenous contexts. In more than one project, I have therefore worked with interested colleagues to ascertain more methodically:

- Which subjects in the program contain 'Indigenous content';
- Whether colleagues would consider introducing 'Indigenous content'; and
- Whether colleagues had ever engaged Aboriginal and Torres Strait Islander guest speakers for any of their subjects.

Having worked on similar projects with law teachers in various law schools, responses have consistently reflected the challenges reported in the literature⁶⁵ including, most recently, from the ICCLAP project.⁶⁶

First, many law teachers do not see their field as relevant in terms of Aboriginal and Torres Strait Islander 'content'. Most who do develop curricula that integrate Aboriginal and Torres Strait Islander 'content', tend to do so in first year (foundation) subjects, property law, and constitutional law.⁶⁷ Others include this content through case studies that identify Aboriginal and Torres Strait Islander communities as 'sub-cultures' — for example, and problematically, through the use of stereotypes in criminal law problems,⁶⁸ or as native title claimants in property law.

Many colleagues feel constrained by the content they are already required to teach: that there is 'not enough room' in the subject to introduce 'more'.⁶⁹ This is a distinct down-side of interpreting this project as concerning 'content' in what is already a crowded curriculum. It also represents a misapprehension of the task at hand — which can be comprehended as a shift in perspective and a way of thinking rather than bare information ('content').

Secondly, some law teachers do not 'feel qualified' to teach Indigenous contexts. Of these, some actively seek more information and understanding of Aboriginal and Torres Strait Islander issues. On the

⁶⁴ The content focus of the law curriculum in general has been critiqued elsewhere. See, eg, Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26 *Sydney Law Review* 537; Gabrielle Appleby, Peter Burdon and Alexander Reilly, 'Critical Thinking in Legal Education: Our Journey' (2013) 23 *Legal Education Review* 345.

⁶⁵ See, eg, Rhonda Hagan and Henk Huijser 'Are the Sciences Indigenisable: Of Course They Are!' (Paper presented at 2nd Annual Psychology and Indigenous Australians: Teaching, Practice and Theory Conference, Adelaide, Australia, 14-15 July 2008.).

⁶⁶ See ICCLAP, *Consultation Workshop Report* (ICCLAP, 2016) <http://www.icclap.edu.au/rw_common/plugins/stacks/armadillo/media/ICCLAPConsultationWorkshopReport2016.pdf> ('*Consultation Workshop*'); ICCLAP, *Indigenous Cultural Competency in Law: Deliberating Future Directions Workshop – Final Participant Report* (ICCLAP, 2017) <http://www.icclap.edu.au/rw_common/plugins/stacks/armadillo/media/ICCLAPConsultationWorkshopReportFinal.pdf> ('*Future Directions*').

⁶⁷ See also *Survey Report*, above n 53.

⁶⁸ See, eg, *Future Directions*, above n 66, 11 [G].

⁶⁹ See, eg, *ibid* 7 [A], 11 [B].

other hand, many are simply not interested. For example, I have frequently heard law teachers identify the possibility of introducing Aboriginal and Torres Strait Islander content as being ‘tokenistic’⁷⁰ or ‘politically correct’ — especially for those who perceive no relevance to their subject.

Some law teachers invite Aboriginal or Torres Strait Islander people into their classrooms as expert guest speakers.⁷¹ Many however, fail to recognise the nature of ‘expertise’ that an Indigenous speaker might bring. For example, in teaching native title a law teacher might consider an Indigenous native title lawyer to have relevant expertise — failing to see that expertise might lie instead in being a declared native title holder, a claimant, or an Indigenous Australian who has been dispossessed of their land without recourse. Such attitudes reflect a non-Indigenous epistemology, seeing ‘book knowledge’ and Western credentialism as the hallmark of expertise.

Finally, I recognise that there is fear amongst law teachers about incorporating Indigenous contexts. Again, ‘content’ as a term fails to encompass the epistemic challenge posed by such contexts to students’ world-view. This can create discord in the classroom,⁷² some of which can be directed at the teacher. For example, my own teaching of a first-year class has aimed to challenge the settler narrative by, for example, drawing on works by Aboriginal and Torres Strait Islander authors.⁷³ In response, students have commented:

Kate has a very polarized view of ... contributions to early colonial history which compromise open debate and analysis.

Kate imports her ... racial views too strongly in lectures. In contrast to other lecturers who are impartial about ‘programming’ students to think and believe in certain ways. Other lecturers are not like this.

Felt material was biased at time[s] teaching her own agenda.

These comments are made to me, a non-Indigenous, or non-racialised lecturer. In observations that may explain student resistance, Nicoll points out that in her classes, some white students ‘explicitly expressed discomfort at being addressed as “white” by Indigenous and other theorists racialised as nonwhite’.⁷⁴ This is part of a broader ‘sense of being visible targets of discrimination by “politically correct” persons in positions of authority’.⁷⁵

⁷⁰ Ibid 15 [1B]. See also *Consultation Workshop*, above n 66, 7–8.

⁷¹ See also *Future Directions*, above n 66, 15 [1C].

⁷² See also Kate Galloway, ‘Sustainability in the Real Property Law Curriculum: Why and How’ (2015) 8(2) *Journal of Learning Design* 31, 32–3.

⁷³ For a range of different approaches, see, eg, Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (University of Minnesota Press, 2015); Megan Davis and Marcia Langton (eds), *It’s Our Country: Indigenous Arguments for Meaningful Constitutional Recognition and Reform* (Melbourne University Press, 2016); Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2014).

⁷⁴ Fiona Nicoll, ‘“Are You Calling Me a Racist?” Teaching Critical Whiteness Theory in Indigenous Sovereignty’ (2004) 3(2) *Borderlands e-Journal* 1, 4.

⁷⁵ Ibid.

By contrast, other students in the same class did not perceive an ‘agenda’ or a ‘bias’.

Engaging and friendly. Actively encouraged relevant discussion and allowed all views to be aired.

Approachable, interesting and open to questions and discussions from the class.⁷⁶

In terms of the academic’s experience of teaching such materials, although for the non-Indigenous academic there may be ‘some degree of emotional labour due to their investment in social justice and relationships with Indigenous Australians’⁷⁷ this is not vested in ‘familial and personal risk’⁷⁸ in the way that it is for Indigenous academics. My own discussions with Indigenous and racialised academics, both tenured and sessional, reflects findings in the literature, namely that such law teachers are likely to be challenged in the classroom about views concerning race and in ways that are less constrained than they might be for non-racialised academics.⁷⁹ It is now well-recorded that Indigenous Australian academics bear a considerable burden in bringing their expertise to the academy.

As well as manifesting as resistance in class, negative attitudes will inevitably come through in staff feedback scores. As putative measures of ‘good teaching’, the scores represent a source of anxiety for lecturers and tutors — especially those whose work is precarious.⁸⁰ Academic staff in such a position are less likely to teach in ways they see as risky.

The curriculum as ‘content’, or a narrower view of curriculum, thus represents a challenge for law teachers. What to teach and how to teach it lie at the forefront of concerns about Indigenous contexts. We identified therefore a need to establish a framework that would assist in understanding curriculum design attentive to the purpose of integrating Indigenous contexts.

B Curriculum Structure

This section describes the outcomes of the ‘Walking Forward Together’ project, to design a curriculum model that ‘embedded Indigenous perspectives, experiences, and knowledges’.⁸¹ The project was undertaken in 2009–10. Reflecting a commitment to the expertise of Indigenous educators, the project team sought the assistance of three leaders in Aboriginal and Torres Strait Islander perspectives in

⁷⁶ Comments from student evaluation of teaching, used pursuant to institutional ethics approval H6714.

⁷⁷ Jonathan Bullen and Helen Flavell, ‘Measuring the “Gift”: Epistemological and Ontological Differences Between the Academy and Indigenous Australia’ (2017) 36 *Higher Education Research and Development* 583, 589.

⁷⁸ *Ibid.*

⁷⁹ See, eg, Asmar and Page, above n 38. See also discussion generally in Mary Heath et al, ‘Learning to Feel Like a Lawyer: Law Teachers, Sessional Teaching and Emotional Labour in Legal Education’ (2017) 26 *Griffith Law Review* 430.

⁸⁰ Discussed, eg, in Heath et al, *ibid.*

⁸¹ Walking Forward Together, above n 9.

education.⁸² The approaches of each consultant contributed to an overall picture of a higher education curriculum model,⁸³ focussing here solely on the role of the law teacher within the narrower concept of curriculum. The outcome of the project included a description of three aspects of this conception of curriculum design: the meta-, macro- and micro-curriculum. Each component reflects the leadership and expertise of one of our experts. Together the components provide a structure for curriculum, including a law curriculum, that engages with Indigenous contexts — or in the case of this project, ‘perspectives’.

1 *‘Meta’ Curriculum*

What became clear was the importance for law teachers of knowledge of the historical and current relationship between Indigenous peoples and government, and role of law in shaping that relationship. This was considered a crucial foundation from which to equip teachers to understand issues facing Aboriginal and Torres Strait Islander peoples and thereby to teach ‘Indigenous contexts’ within their curricula.⁸⁴ An assumption of this knowledge underpinned the framework for curriculum design more specifically.

An important aspect of the meta-curriculum lies in the breadth of its application. The concept relates not just to educating law students, but to the necessary precursor of educating academic and professional staff in the realities experienced by Aboriginal and Torres Strait Islander Australians in the face of colonisation.⁸⁵ For those academics who are actively engaged in Indigenous Australians’ experiences before the law, or in critical race theory, it may seem surprising that colleagues may be unaware of historical and contemporary contexts. Experience shows, however, that regardless of good intentions, many colleagues do not know about matters of record.

Further, connection with place is part of the knowledge relevant to support curriculum design. Fully understanding the history of a place and its people, and how they are connected, provides the foundation for designing curriculum that enhances student learning of Indigenous contexts.

This project focused on designing curriculum that embedded Indigenous ‘perspectives’. We interpreted ‘perspectives’ to mean that a teacher possessed a ‘grounded, working, authentic knowledge base’:⁸⁶ the perspectives to be ‘embedded’ in curriculum would therefore

⁸² We engaged Doctors Ernie Grant, Karen Martin, and Tyson Yunkaporta as leaders and advisers.

⁸³ I give full credit to our consultants for their ideas and accept that all errors and omissions are mine. While colleagues in the faculty formed part of this project, we acknowledge the leadership and the ideas of our consultants that underpin our understanding that I now represent here.

⁸⁴ I acknowledge the important input here of Dr Ernie Grant in leading our thinking in this area.

⁸⁵ This approach was adopted also in the Smart Casual project: Ambelin Kwaymullina, *Indigenous Peoples and the Law: Support for Indigenous Teachers* (15 November 2016) Smart Casual <<https://smartlawteacher.org/modules/>>.

⁸⁶ Email from Karen Martin to Kate Galloway, 31 January 2011.

‘emanate from a knowledge base’.⁸⁷ That base, the meta-curriculum, underpins curriculum design.

2 ‘Macro’ Curriculum

While the ‘meta’ curriculum informs the teacher’s capacity to teach Indigenous contexts, the ‘macro’ represents the outward-looking structure of curriculum design. I have drawn heavily on the work of Karen Martin in this sphere. Of note, Martin distinguishes three curriculum frameworks: ‘incorporating’ and ‘embedding’ Indigenous perspectives, and what she describes as Indigenous studies. Importantly, it is not sufficient to rely on a stand-alone subject or capstone to represent a whole-of-program embedding of Aboriginal and Torres Strait Islander perspectives.⁸⁸ Learning must be infused into the program through scaffolding and alignment. Martin’s curriculum model accommodates both.⁸⁹

At its least structural iteration, Martin’s conceptualisation of the outward-facing curriculum ‘incorporates’ Indigenous perspectives, reflecting the more incidental practice, for example, of referring to news and current affairs to explain legal concepts. It may be serendipitous within a subject, as it relies on providing examples from contemporary sources to illustrate subject matter.⁹⁰

‘Embedding’ Indigenous perspectives requires learning outcomes reflecting Aboriginal and Torres Strait Islander perspectives and aligned assessment of student attainment of those outcomes.⁹¹ As a structural feature of the law curriculum, this can be mapped to chart student learning throughout a degree.

Martin’s final iteration is what she terms ‘embedding Aboriginal studies’. This might take the form of a final year or capstone subject, which comprises solely Aboriginal and Torres Strait Islander content. In the law program, this would be akin to an ‘Indigenous Australians and the Law’ elective subject.

In particular with reference to ‘incorporating’ Indigenous perspectives, Martin’s work reveals that program or subject design at this ‘macro’ level requires the precursor of the ‘meta’ curriculum. But it also depends upon a concomitant ‘micro’ level, relating to ‘pedagogical decisions of academic staff’.⁹²

⁸⁷ Ibid.

⁸⁸ A similar argument has been made about teaching ethics and professional responsibility. See, eg, Michael Robertson, ‘Renewing a Focus on Ethics in Legal Education?’ (Paper presented at the Australian Lawyers and Social Change Conference, Australian National University, Canberra, 22–24 September 2004).

⁸⁹ Martin, above n 10.

⁹⁰ See, eg, my own lecture materials developed in response to then-Prime Minister Tony Abbott’s ‘lifestyle choices’ comments: Kate Galloway, *Conquest and Colonisation in Australia* (14 March 2015) Slideshare <<http://www.slideshare.net/katgallow/conquest-colonisation-in-australia>>.

⁹¹ Exemplified, eg, in John Biggs, *Aligning Teaching for Constructing Learning*, Higher Education Academy 1 <<https://www.heacademy.ac.uk/knowledge-hub/aligning-teaching-constructing-learning>>.

⁹² Karen Martin, Meg O’Reilly and Adele Wessel, ‘Making it Matter: A Framework for Embedding Aboriginal Perspectives and Evaluation of the Pedagogical Approaches

3 'Micro' Curriculum

To describe the pedagogical approach at the 'micro' level, our project drew upon Yunkaporta's 'relationally responsive pedagogy'.⁹³ In a curriculum design sense — from a program to a subject to the moment of meeting face-to-face with a class — relationally responsive pedagogy works from a foundation of ethics, through one of connection to place and each other, then deals with knowledge, and finally practice. I understand this to be a representation of an Indigenous way of knowing — one that contrasts with a Western approach that might commence with the knowledge or the 'doing' aspects of curriculum.⁹⁴

There are three valuable contributions of such a framework to curriculum design.

First is the capacity of such a framework to meet the worldview of Aboriginal and Torres Strait Islander students through its focus on establishing a foundation of connection to support student learning.⁹⁵ Understanding that Indigenous students experience the world differently from the ways of knowing that are traditionally privileged in the Western industrial educational model, will help empower them to engage in their university studies.

Secondly, following from the first, this exemplifies what is described in other contexts as student-centred learning.⁹⁶ With the diversity of student population and experience in contemporary higher education,⁹⁷ such a model shifts the balance of power in the classroom, validating students' experiences and promoting a cohesive curriculum rather than a disaggregated and compartmentalised curriculum that is so often the reported experience of the student body generally.⁹⁸

Thirdly, we learned through engaging with our experts in the Walking Forward Together project that this approach allows for a new space for learning: one that exists outside existing tacit Western knowledge and tacit Aboriginal and Torres Strait Islander knowledge. This space exists at the frontier where a synthesis of worldview,

by Staff in School of Education Units' (unpublished) (Report on Vice Chancellor's Fellowship, Southern Cross University).

⁹³ Tyson Yunkaporta and Melissa Kirby, 'Yarning up Indigenous Pedagogies: A Dialogue About Eight Aboriginal Ways of Learning' in Nola Purdie, Gina Milgate and Hannah Rachel Bell (eds), *Two Way Teaching and Learning: Toward Culturally Reflective and Relevant Education* (ACER, 2011) 205.

⁹⁴ Reflected in Threshold Learning Outcomes, and subject learning outcomes as the building blocks of curriculum design. See, eg, Kift, Israel and Field, above n 45; Biggs, above n 91. The paradox of this is not lost on the author, but nor is it yet resolved.

⁹⁵ See, eg, Samantha McMahon et al, 'Lessons from the AIME Approach to the Teaching Relationship: Valuing Biepistemic Practice' (2017) 25 *Pedagogy, Culture and Society* 43.

⁹⁶ See, eg, Gloria Brown Wright, 'Student-Centered Learning in Higher Education' (2011) 23 *International Journal of Teaching and Learning in Higher Education* 92.

⁹⁷ Heath et al, above n 79; Mark Israel et al, 'Fostering "Quiet Inclusion": Interaction and Diversity in the Australian Law Classroom' (2017) 66 *Journal of Legal Education* 332.

⁹⁸ Sally Kift, Karen Nelson and John Clarke, 'Transition Pedagogy: A Third Generation Approach to FYE – A Case Study of Policy and Practice for the Higher Education Sector' (2010) 1 *International Journal of the First Year in Higher Education* 1.

experience, perspectives, and knowledges might generate new understandings. Nakata describes this as the ‘cultural interface’.

In this space are histories, politics, economics, multiple and interconnected discourses, social practices and knowledge technologies which condition how we all come to look at the world, how we come to know and understand our changing realities in the everyday, and how and what knowledge we operationalise in our daily lives.⁹⁹

This pedagogy might involve explicit acknowledgement of place so that the curriculum is grounded in the site of learning.¹⁰⁰ Connecting place to the people of that place is also an essential aspect of relationally responsive pedagogy. Likewise, visual representations of concepts, connectedness of learning to people and place support student learning in a variety of meaningful ways.¹⁰¹ The rise of graphics software and multimedia resources in contemporary higher education teaching should facilitate such learning — though the extent to which they are fully — or knowingly — integrated into law teaching remains unknown.¹⁰²

As a framework for curriculum design and for teaching, the components presented here continue to represent my best understanding of the technical requirements for a law curriculum engaging in Indigenous contexts. The meta-curriculum is the requisite foundation of knowledge of historical and contemporary experience, coupled with attention to place. Its complement, the so-called micro-curriculum, subverts a more Western way of knowing, privileging instead ethics and relationships over knowledge and doing — which then follow. These components inform the structure of a program or subject: the macro components of incorporating these elements, embedding them, or offering a standalone Indigenous studies experience. The meta-underpins the macro-, and the micro- organises the way in which to carry out — to teach — the macro- structure.

While this structure provides a technical solution to curriculum design, it is highly dependent upon the capacity of individual law teachers to enact it. In particular, the micro-curriculum represents knowledge that not all academics might have — or seek. What has become clear throughout attempts to refresh curriculum using this model is that contrary to my initial assumptions about the work of

⁹⁹ Martin Nakata, ‘The Cultural Interface’ (2007) 36(S1) *Australian Journal of Indigenous Education* 7, 9.

¹⁰⁰ This is represented in a Western context by place-based pedagogy. See, eg, David A Grunewald, ‘The Best of Both Worlds: A Critical Pedagogy of Place’ (2003) 32(4) *Educational Researcher* 3; Kate Galloway, ‘Refreshed in the Tropics: Developing Curriculum Using a Thematic Lens’ (2011) 4 *Journal of the Australasian Law Teachers Association* 119; Amanda Kennedy et al, ‘Educating Law Students for Rural and Regional Legal Practice: Embedding Place Consciousness in Law Curricula’ (2014) 24 *Legal Education Review* 7.

¹⁰¹ See, eg, Tyson Yunkaporta and Sue McGinty, ‘Reclaiming Aboriginal Knowledge at the Cultural Interface’ (2009) 36(2) *Australian Educational Researcher* 55.

¹⁰² In the context of law, see, eg, Tania Leiman, ‘Where are the Graphics? Communicating Legal Ideas Effectively Using Images and Symbols’ (2016) 26 *Legal Education Review* 47.

curriculum design and teaching, there is no linear process that will necessarily facilitate implementation of a program that will promote law graduate skills in Indigenous contexts. Indeed, the iterative nature of the ‘embedding’ process challenges Western concepts of linear progression arguably better reflecting an Indigenous knowledge according to a cyclical nature of things. Reflecting on this project has disclosed the implicit epistemological orientation of my own work.

IV REFLECTION AND CONCLUDING THOUGHTS

Having articulated a means of designing how to teach law students a curriculum enriched with Indigenous contexts, the original project and my work in law schools since has sought to implement this system, along with a broader curriculum, testing it as a means of meeting the challenge of incorporating these ‘broader contexts’ of the law. As a research project, my focus has been on the teacher, and the capacity of this framework to assist educators to enact curriculum — rather than on students’ learning experiences. Drawing on collaboration with colleagues, peer review of teaching, targeted discussions with colleagues and engagement in communities of practice, it is clear that although the framework may satisfy the need for clear structural development of curriculum, considerable barriers remain. Most recently, the work of ICCLAP has been critical in understanding the state of play nationally, and in providing both data and a collaborative process for reflection.

Together with the work of ICCLAP, there are a number of factors involved in succeeding in the ambitious but essential project of law curriculum reform: academics’ foundation knowledge, interrelated curriculum components rather than a linear design process, and the necessary interplay between institutional and individual commitment.

A Academics’ Foundation Knowledge (Meta-curriculum)

In terms of the curriculum framework presented here, my observation is that the meta- aspects of curriculum represent the most persistent barrier to an enhanced curriculum. While many law teachers may be able to design relevant learning outcomes or identify what to teach in the macro- or structural aspects of the curriculum, the less foundation (meta-) knowledge a law teacher has, the more difficult it will be to enact the macro-. Providing a curriculum design template — best represented by the macro-curriculum — is necessary but not sufficient to equip most law academics to teach Indigenous contexts.

For curriculum leaders, this poses a challenge for developing a program-wide structure of mapped learning outcomes. It is difficult to assure student learning of Indigenous contexts at the end of a degree where law teachers may not be equipped to deliver the promised curriculum throughout the program. The challenge in enacting Indigenous curriculum is more than technical and intellectual: it

requires academics' adaptive change to develop their capacity to design and teach curriculum that embraces Indigenous contexts.

The difficulty in setting up the macro-curriculum reflects the challenge of decolonising curriculum in the face of entrenched racism, the perception of legal knowledge and expertise as doctrinal and neutral¹⁰³ including as free from race,¹⁰⁴ and the ongoing debate about the role of critical perspectives in the law degree.¹⁰⁵ To make the shift from the traditionally-perceived nature and purpose of legal education requires the reorientation of academics' knowledge which, as I have argued elsewhere, challenges professional identity and in doing so engenders resistance.¹⁰⁶

B *Interrelated Parts vs Linear Design*

In attempting to design a structure, I had anticipated a linear process of understanding the context (meta-), designing learning outcomes and assessment (macro-) and working relationally with students to teach (micro-). On reflection however, it is clear that all components of curriculum are interrelated, with no start or end point. Consequently, rolling out a whole-of-program curriculum is unlikely to bear the hallmarks of a tidy, contained project neatly encapsulated in a written report and implemented by academic staff. Instead, implementing Indigenous curriculum involves an iterative process with an openness to engaging and capturing teaching practice, while actively supporting development of teachers' capacity over time. This process contradicts somewhat the established method of providing in advance a concrete statement of learning outcomes or graduate attributes, or a fully mapped curriculum.

C *Institutional and Individual Commitment*

As indicated by the need to engage a broad curriculum to achieve the goals of this project, personal commitment by individual academics to inform themselves of the history and contemporary experience of Aboriginal and Torres Strait Islander Australians before the law and government policy is not enough to broach a persistent gap within the legal academy. Reorientation of curriculum is a structural issue, requiring institutional responses.

On the other hand, however, it is only through the ongoing commitment of individual academics that the law curriculum can be transformed. Law teachers must avail themselves of institutional and

¹⁰³ Where 'contexts' such as race, or sustainability, are seen as ideological: Galloway, 'Sustainability in the Real Property Law Curriculum', above n 72.

¹⁰⁴ See, eg, Nicoll, above n 74; Bullen and Flavell, above n 77.

¹⁰⁵ See, eg, Margaret Thornton, 'Inhabiting the Neoliberal University' (2013) 38 *Alternative Law Journal* 72; Margaret Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2001) 8 *International Journal of the Legal Profession* 37.

¹⁰⁶ Kate Galloway and Peter Jones, 'Guarding Our Identities: The Dilemma of Transformation in the Legal Academy' (2014) 14(1) *QUT Law Review* 15.

collegiate support but must also take responsibility for investing the intellectual and emotional energy to develop the knowledge that will equip them to teach Indigenous contexts. The process of doing this will differ from person to person. Thus, individual academics are likely to ‘find their level’ in an Indigenous curriculum at different points. For some, engagement in the meta-curriculum will provide the impetus for their teaching. Materials are available to support development of this knowledge¹⁰⁷ but law schools must take responsibility also to provide regular and cyclical professional development for all staff, reflecting a ‘just-in-time’ approach to learning and teaching.¹⁰⁸

Access to subject-specific ‘Indigenous content’ appears also to be an alternative entry point for academics’ professional development. Many have identified the need for repositories of such material to assist in teaching Indigenous contexts within particular subjects.¹⁰⁹ There is of course already a wide range of published material relating to specific law subjects that will help.¹¹⁰ I observe also however, that academics must take personal responsibility for seeking out these materials and for learning about their context within the law¹¹¹ — for being a learner, rather than a knower in this area. Indeed, to do so is to model the kind of cultural intelligence we seek in our students.¹¹² Although within the curricular framework presented here the meta-curriculum is necessary to provide the relevant critical context for presenting these materials, some may benefit from anchoring their understanding first within the discipline knowledge offered in subject content.

Importantly, however, to embark on a process of decolonisation of curriculum, at all of the ‘levels’ described here, requires a broader commitment to social justice; ‘interrogating ideologies, institutions and societal structures, thus allowing educators with the basis for praxis, [and] critically informed action’.¹¹³

D Conclusion — A Call to Action

This article has described the importance of a broad approach to curriculum in aiming to integrate Indigenous contexts in higher education. For law teachers who would like to teach Indigenous curriculum but do not feel equipped to do so, and within the broader curriculum, it has identified three layers that together comprise a holistic approach to the narrower curriculum design. As with any reorientation of curriculum, and despite the importance of this project, experience shows that it is unrealistic to expect academics to implement

¹⁰⁷ See, eg, Kwaymullina, above n 85.

¹⁰⁸ Described in Scott Simkins and Mark H Maier (eds), *Just-in-Time Teaching: Across the Disciplines, Across the Academy* (Stylus Publishing, 2010).

¹⁰⁹ See, eg, *Future Directions*, above n 66, 26.

¹¹⁰ See, eg, above n 54.

¹¹¹ This is borne out by the *Consultation Workshop* recommendations, above n 66, 3.

¹¹² As suggested in Juliana McLaughlin, “‘Crack in the Pavement’: Pedagogy and Political and Moral Practice for Educating Culturally Competent Professionals’ (2013) 12(1) *International Education Journal: Comparative Perspectives* 249, 255.

¹¹³ *Ibid* 255.

an entirely revised curriculum all at once. It is however possible to start in small steps, approaching curriculum at the most accessible point of entry for an individual academic. Learning the name of the traditional owners of the area. Using contemporary news stories about Indigenous Australians and relevant to the subject to promote class discussion. Working through materials that provide the knowledge relevant to the meta-curriculum. Finding one case that deals with Indigenous Australians in your subject area. And so on. Each semester, each academic might build on what has gone before.

For program leaders, a fully scaffolded, mapped program curriculum will provide structure for individual law teachers. The structure is necessary but not sufficient, and implementation at a whole of curriculum level is a project to be achieved over time. The goal for program leaders therefore must be to recognise the iterative nature of curriculum development and to provide relevant and just-in-time resources to support professional development to generate a sustainable phased-in program.

While knowledge — of Indigenous Australians' experiences before the law, and of discipline specific contexts — comprises the foundation for teaching Indigenous curriculum, ultimately it is attitude that lies at its heart. Curiosity, humility (including cultural humility), self-reflection, and courage — hallmarks of critical thinking¹¹⁴ — are essential for law academics to contribute to an enhanced Indigenous curriculum and thereby to provide an enhanced education for all law graduates.

For all the discussion, analysis, reflection, writing, collaboration, and implementation over these past years in working towards substantive curriculum reform, the outcome to date is a somewhat unremarkable conclusion. Despite a clear and largely shared imperative to integrate Indigenous contexts in legal education, the process involves multiple layers of engagement: institutions, faculties, programs, and individuals; academic attitudes, skills, and knowledge; and a curriculum that is both expansive and institutional, while at the same time highly structured and personal. Perhaps the most useful insight is to embrace diverse and iterative processes of development of personnel and structures as the academy moves towards shared goals.

¹¹⁴ Philip C Abrami et al, 'Strategies for Teaching Students to Think Critically: A Meta-Analysis' (2015) 85 *Review of Educational Research* 275.