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INDIGENISATION OF CURRICULA: CURRENT TEACHING PRACTICES IN LAW

AMY MAGUIRE* AND TAMARA YOUNG**

I INTRODUCTION

Indigenous collaboration initiatives aim, in part, to address the disadvantages experienced by Aboriginal and Torres Strait Islander peoples and to assist in the process of Aboriginal reconciliation.¹ Indigenous peoples² in Australia are notably disadvantaged in the higher education context, with participation rates and successful outcomes significantly below the population as a whole.³ For example, in 2008, 45.4% of Aboriginal and Torres Strait Islander 20–24 year olds reported completing Year 12 or equivalent, compared to 88.1% of non-Indigenous 20–24 year olds, and only 40.8% of Aboriginal and Torres Strait Islander students who commenced a bachelor degree in 2005 had completed their degree by 2010, compared to 68.6% of non-Indigenous students.⁴

The tertiary education sector in Australia is shifting in line with changes in global and national social, political and institutional developments. Over the past decade, Indigenous cultural competency and

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¹ Reconciliation, in this context, is a term used to refer to the bringing together of Indigenous and non-Indigenous Australians in an attempt to overcome underlying divisions and inequalities, which have arisen from Australia's colonialist roots: Reconciliation Network, *What is Reconciliation?* (2007) <<http://www.reconciliation.org.au/nsw/education-kit/what-is-reconciliation/#what>>. For a more comprehensive discussion of the meaning of the term 'reconciliation' see Nina Burridge, 'Meanings of Reconciliation in the School Context' (2006) 68 *Australian Journal of Indigenous Education* 35.

² The authors note that the term 'Indigenous' does not have universal support. Some people prefer the use of specific identifiers of individual customary groups, while others prefer the use of 'Aboriginal and Torres Strait Islander peoples'. We use the term 'Indigenous' and note its prevalence in our discipline communities, while acknowledging that it is not an ideal or entirely representative term.

³ See Larissa Behrendt, Steven Larkin, Robert Griew and Patricia Kelly, *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People: Final Report* (Department of Industry, Innovation, Science, Research and Tertiary Education, 2012).

⁴ *Ibid* 18, 61.

the Indigenisation of curricula have emerged as significant priorities for universities across Australia. This development reflects a commitment to social justice and an awareness that service delivery to Indigenous people is too often framed by a 'neo-colonial' framework.⁵

An awareness of the need for cultural competence is reflected in the strategic plans of various universities,⁶ including that of the University of Newcastle, the institution where the authors of this article are based. The University is committed to developing pathways for academic attainment for Indigenous students, embedding Indigenous knowledge systems into programs, fostering commitment to social justice in our students, and developing the cultural competence of staff and students.⁷ Indeed, the Indigenisation of curricula has been positioned as a 'whole-of university-responsibility'.⁸

This strategic direction was more broadly taken up by Universities Australia in its 2011 report, which defined cultural competence as:

Student and staff knowledge and understanding of Indigenous Australian cultures, histories and contemporary realities and awareness of Indigenous protocols, combined with the proficiency to engage and work effectively in Indigenous contexts congruent to the expectations of Indigenous Australian peoples.⁹

On this basis, Universities Australia recommends that the guiding principle for teaching and learning be: 'All graduates of Australian universities should be culturally competent.'¹⁰

In the context of legal education, the Indigenisation of the curriculum is essential in signalling to students that Indigenous-related content and perspectives are important in learning about the law. By integrating Indigenous material throughout the law curriculum, academics can shift the expectations of students and teachers regarding the intellectual boundaries of their fields of study, and challenge them to critique the

⁵ Marcelle Burns, 'Towards Growing Indigenous Culturally Competent Legal Professionals in Australia' (2013) 12(1) *International Education Journal: Comparative Perspectives* 226, 230

⁶ For example, The University of Melbourne and The University of Sydney have strategic goals specifically aimed at Indigenous collaboration and engagement: The University of Melbourne, *The University Plan 2011-2014* (2011), <<http://www.unimelb.edu.au/publications/docs/universityplan2011-2014.pdf>>; The University of Sydney, *Strategic Plan 2011-2015* (2010), <http://sydney.edu.au/strategy/docs/strategic_plan_2011-2015.pdf>. The Australian National University and The University of Queensland also aim to have greater numbers of Indigenous staff and students: Australian National University, *ANU by 2020* (2011) <http://about.anu.edu.au/_documents/strategic-plans/anu-2020-strategy.pdf>; The University of Queensland, *Strategic Directions and Plan 2013-2017*, 10 <<http://www.uq.edu.au/about/docs/strategicplan/StrategicPlan2013.pdf>> and The University of Queensland, *Aboriginal and Torres Strait Islander Strategic Plan 2013-2017* <<http://www.uq.edu.au/about/strategic/ATSI-Strategic-Plan.pdf>>.

⁷ The University of Newcastle, *NeW Directions Strategic Plan 2013-2015* (2012) 3, 5, 6, 8 & 11 <http://www.newcastle.edu.au/_data/assets/pdf_file/0004/33538/NeW-Directions-StrategicPlan.pdf>.

⁸ Kathleen Butler and Anne Young, 'Indigenisation of Curricula: Intent, Initiatives and Implementation' (2009) 19 *Australian Universities Quality Forum* 50.

⁹ Universities Australia, *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities* (2011) 3.

¹⁰ *Ibid* 9.

relationship between the Australian legal system and Indigenous people. These actions can promote curricular justice for Indigenous students, and meet the wider responsibility of educating all students for equity, social justice and anti-racism.

In this article, literature pertaining to the Indigenisation of curricula is reviewed. We consider the need to take a whole-of-curriculum approach to the treatment of Indigenous issues, and we examine the value of introducing Indigenous perspectives to unsettle assumptions embedded in the teaching of Anglo-Australian law. The literature review documents current research on the Indigenisation of tertiary curricula, particularly in law. Our analysis focuses on four areas: Indigenous issues; Indigenous perspectives; Indigenous law; and Indigenous law students.

Following this review, we present the findings of our exploratory study, which investigated the extent to which Indigenous-related content and perspectives are currently incorporated into the Newcastle Law School curriculum. Our study involved interviews with teaching staff, who reflected on the degree to which they deal with Indigenous issues, and the teaching methods used to convey Indigenous-related content. The findings raise some qualitative questions regarding the Indigenisation of curricula. These questions allow us to reflect on our responsibilities as teachers of Indigenous-related material, including the scope we have to make distinctive contributions to the Indigenisation of curricula and the ways by which we can enhance our capacities. As gatekeepers for student learning, we represent the Indigenisation of curricula as a key means of broadening the scope of student enquiry, and reinforcing the centrality of justice in teaching and learning about the law.¹¹

II INDIGENISING CURRICULA

The Indigenisation of curricula requires the sensitive and appropriate incorporation of Indigenous-related content and perspectives in university courses and programs. Butler and Young offer an open-ended definition of Indigenisation, finding that Indigenised curricula should encompass the following objectives:

- (1) A curricular justice goal, aiming to provide educational opportunity and outcomes, and address the disadvantages faced by Indigenous students seeking tertiary education.
- (2) A wider responsibility goal, focusing on educating all students for social justice through programs of anti-racism education.¹²

This definition has been adopted by the University of Newcastle.¹³ The broad nature of this definition supports our University's commitment

¹¹ An earlier version of this article was presented at the 2013 Australasian Law Teachers' Association conference, relating to the theme of 'Law Teachers as Gatekeepers'.

¹² Butler and Young, above n 8, citing Tace Vigilante, 'Social Justice through Effective Education: A Survey of Pre-Service Teachers' (2007) 7(1) *Journal of Education Enquiry* 103.

¹³ Butler and Young, above n 8, 1.

to a diverse and responsive approach to Indigenisation, rather than a homogenising and ultimately essentialist position.

Carey notes that the inclusion of Indigenous studies value-adds to other disciplines because it diversifies the knowledges and skills with which students will leave university.¹⁴ However, an Indigenised curriculum is not only concerned with educating students to understand historical and cultural Indigenous perspectives, it also involves the inclusion of Aboriginal and Torres Strait Islander students (in areas such as recruitment, retention and support), and the inclusion of non-Western knowledges in general. These central tenets of Indigenisation of curricula are explored, below, in the context of legal education in Australia.

A Indigenising the Law Curriculum

Three overarching types of Indigenous content can be incorporated into the law curriculum: Indigenous issues; Indigenous perspectives; and Indigenous law.¹⁵

1 Indigenous Issues

The key rationales for incorporating Indigenous legal issues into the law curriculum are that it represents essential training for students who will work in Indigenous communities, it enables Indigenous students to see the relevance of state law to their communities, and it contributes to an ongoing discussion of the social role of law by raising questions about the universality of law's application and effects.¹⁶

Various concerns emerge in Australian legal education given the historical context of Indigenous issues and the methods by which Indigenous legal issues are introduced into the law curriculum. For instance, Watson draws on critical race theory to argue that racism is organic in Australian law schools and is propagated by the teaching of highly doctrinal or 'black letter' law.¹⁷ She argues that Indigenous people only appear in the law curriculum due to interest convergence, 'when our meagre rights can be melded to the interests of the colonisers'.¹⁸ She urges change, so as to ensure a level playing field for Indigenous students, and enable the law profession to accommodate the needs of the whole of society.¹⁹

A means by which this critique may be addressed is through the incorporation of Indigenous legal issues throughout the law curriculum, where appropriate. Rodgers-Falk refers to this approach as 'vertical

¹⁴ Michelle Carey, 'Indigenisation, Interdisciplinarity and Cultural Competency: Working the Dialogic Space between Indigenous Studies and Other Disciplines at Curtin University' (Paper presented at the Psychology and Indigenous Australians: Teaching, Practice and Theory Conference, Adelaide, 14 July 2008).

¹⁵ Carwyn Jones, 'Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand Law Curriculum' (2009) 19 *Legal Education Review* 257, 258.

¹⁶ *Ibid* 259-260.

¹⁷ Nicole Watson, 'Indigenous People in Legal Education: Staring into a Mirror Without Reflection' (2004) 6(8) *Indigenous Law Bulletin* 4.

¹⁸ *Ibid* 6.

¹⁹ *Ibid*.

integration’ and finds that it ‘produces a coordinated account of questions and issues of “Indigeneity” in Australian legal thought’.²⁰ Meyers states that the introduction of Indigenous issues into foundation year courses is particularly important as it sets the tone for the rest of the degree and provides a knowledge platform that can be built on in later year courses.²¹ In this respect, he presents three aims for incorporating Indigenous issues: first, to introduce the idea that when Europeans first arrived in Australia Indigenous legal systems were already established; second, to consider how these systems are currently reflected in Australian law; and third, to explore whether Indigenous customary laws might be better recognised in Australian law.²² Furthermore, Indigenous issues and cases involving Indigenous litigants can be helpful in teaching legal processes, such as the role of the High Court, judicial techniques, common law, and legislative process.²³

Certainly, there is a need for Indigenous issues to not merely be taught as an add-on.²⁴ Indigenous materials should be integrated into a course rather than representing stand-alone topics.²⁵ One way of introducing relevant material is to use the skills of professionals working in minority communities to provide information and resources for course-building. Meaningful assessment of Indigenous content is important as it emphasises the centrality of Indigenous issues to Australian law.²⁶ Course materials must also be selected sensitively.²⁷

On a practical level, Stephenson et al have described a method of teaching comparative Indigenous issues in the law across four different countries via videoconferencing.²⁸ This broadens knowledge and avoids ethnocentrism, while allowing critical evaluation of different policies, institutions, reform measures and legal principles across jurisdictions and contexts.²⁹ Within this space, there has been particular focus in the

²⁰ Philip Rodgers-Falk, ‘Growing the Number of Aboriginal and Torres Strait Islander Law Graduates: Barriers to the Profession’, Research report commissioned by the panel for *The Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People*, Department of Education and Training, Australian Government (2011) <<http://docs.education.gov.au/documents/growing-number-aboriginal-and-torres-strait-islander-law-graduates-barriers-profession>> 11.

²¹ Gary Meyers, ‘Two Examples of Incorporating Indigenous Issues in Law School Curricula: Foundation Year Courses and Environmental/Natural Resource Law’ (2006) 7(9) *Indigenous Law Bulletin* 6.

²² *Ibid* 7.

²³ Melissa Castan and Jennifer Schultz, ‘Teaching Native Title’ (1997) 8 *Legal Education Review* 75.

²⁴ Nicole Graham, ‘Indigenous Property Matters in Real Property Courses at Australian Universities’ (2009) 19 *Legal Education Review* 289, 290.

²⁵ Greta Bird, Susan Campbell, Maria Barbayanis and Helen Smith, ‘Preparing Lawyers for a Multi-Cultural Society’ (1986) 4 *Journal of Professional Legal Education* 5.

²⁶ Meyers, above n 21, 7. See also Castan and Shultz, above n 23, 86 and Michael Weir, ‘The Wytiga Negotiation: Native Title and Skills Training’ (1996) 7 *Legal Education Review* 253, 260.

²⁷ Graham, above n 24, 296.

²⁸ Margaret Stephenson, Bradford Morse, Lindsay Robertson, Melissa Castan, David Yarrow and Ruth Thompson, ‘International and Comparative Indigenous Rights via Videoconferencing’ (2006) 19 *Legal Education Review* 237, 237.

²⁹ *Ibid* 247-248.

literature on teaching Indigenous issues in property, administrative, and constitutional law courses, and in criminal law and procedure.

(a) *Property Law* - In 1992, the High Court of Australia delivered a landmark judgment in a case of deep significance to Australia's colonisation and settlement, the relationship between Indigenous and non-Indigenous peoples, competing conceptions of land and property, and Anglo-Australian common law principles. In *Mabo v Queensland* [No 2],³⁰ the High Court concluded that the doctrine of terra nullius, or 'land belonging to no one', had been improperly advanced as the justification for English settlement of Australia. It was not possible for the Australian Commonwealth to assert that settlement automatically transferred title to all lands to the Crown. As a consequence, Indigenous Australian peoples retained the capacity to claim rights over their traditional lands, as recognised by the common law through 'native title'.³¹ Well before that decision was handed down,³² and particularly since, there has been significant interest and controversy regarding land rights in Australia, and specifically the legal recognition of Indigenous rights to land.³³ Notwithstanding the co-existence of Crown, native and other titles within Australian property law, there is a tendency to marginalise Indigenous property concepts in the property law curriculum.³⁴ When learning about native title, for instance, students should be presented with material written and created by Indigenous people. Castan and Schultz argue that this is particularly important when teaching Indigenous relationships to land and country.³⁵ Bookending native title as a separate category of law obscures the complexity of competing proprietary interests.³⁶ Instead, Indigenous property issues should be incorporated throughout property law courses.

Bond University (Queensland, Australia) has taken a novel approach to incorporating Indigenous legal issues into the law curriculum, by including a simulated exercise in its negotiation course. The negotiation involves four parties: Aboriginal traditional owners; the state government; pastoralists; and a mining company.³⁷ Most students participating in this simulation felt that their understanding of native title law had been improved³⁸ and that this activity provided context for the substantive law.³⁹

³⁰ (1992) 175 CLR 1.

³¹ Ibid 37-38, 53-54, 58, 85, 178-179.

³² The Aboriginal Australians resisted the forces of colonisation from the outset and in the decades following settlement mounted a strong land rights movement: Justin Healey, *Aboriginal Land Rights* (Spinney Press, 2002) 9.

³³ There have been many articles and works dedicated to the issue of native title and property law in Australia and indeed it has been the focus of significant public attention. For some insightful commentary see Peter Russel, *Recognising Aboriginal Title* (UNSW Press, 2005).

³⁴ Castan and Schultz, above n 23, 80.

³⁵ Ibid 84.

³⁶ Graham, above n 24, 292.

³⁷ Weir, above n 26, 253.

³⁸ Ibid 260.

³⁹ Ibid 262.

However, Australian property law ought also to be recognised as a contentious site in the law curriculum for Indigenous students. According to Wood,

to go to law school and learn about the rule of law and, at the same time, the continuing challenges of establishing native title, and the ongoing lack of recognition of Indigenous customary law, creates an inherent tension for Indigenous students.⁴⁰

In courses such as property law, which go to the heart of Indigenous dispossession in Australia, lecturers should ideally be explicit in addressing the differential experiences of Indigenous and non-Indigenous peoples in relation to land.

(b) *Administrative Law* - Reilly finds that administrative law, while technical, can be used to present Indigenous perspectives, due to its political nature.⁴¹ There is currently an absence of direct engagement with Indigenous issues in administrative law, as legal challenges to government decision making focus on the legality of decisions, not on their merits.⁴² The political role of administrative law could be more effectively drawn on to highlight aspects of Indigenous law and policy.⁴³ Furthermore, Indigenous issues could be incorporated into administrative law courses through sensitive interrogation of the significance of the applicants' claims and the provision of historical and cultural context for case studies.⁴⁴

(c) *Constitutional Law* - Castan has identified constitutional law, a fundamental course in the Australian law curriculum, as a site for significant development in terms of Indigenisation. She notes the opportunity to shift the traditional approach of commencing study with the idea of 'reception' of British law following colonisation, and instead begin by noting that Indigenous peoples in Australia have never ceded sovereignty.⁴⁵ Throughout the constitutional law curriculum, opportunities present themselves to engage students in discussion of the marginalisation of Indigenous people at key moments in Australian history. Castan gives the examples of the process of Federation and the text of the Constitution, both of which deliberately denied the sovereignty and equality of Indigenous people.⁴⁶

(d) *Criminal Law and Procedure* - Considering the severe over-representation of Indigenous people in the Australian criminal justice system, it is important for teachers of criminal law and procedure to

⁴⁰ Asmi Wood, 'Law Studies and Indigenous Students' Wellbeing: Closing the (Many) Gap(s)' (2011) 21 *Legal Education Review* 251, 261.

⁴¹ Alexander Reilly, 'Finding an Indigenous Perspective in Administrative Law' (2009) 19 *Legal Education Review* 155, 271, 278.

⁴² Ibid 277.

⁴³ Ibid 279.

⁴⁴ Ibid 273.

⁴⁵ Melissa Castan, 'The Recognition of Indigenous Australians in the Teaching of Federal Constitutional Law' (2014) 7(2) *Journal of the Australasian Law Teachers Association* 1, 3.

⁴⁶ Ibid 4-5.

consider how to specifically address the experiences of Indigenous people in their courses. Anthony and Schwartz have set out a wide range of helpful proposals for teaching criminal law in a culturally competent way. They note particularly that criminal law should do more than acknowledge the impact of colonisation on Indigenous people; the course must also acknowledge the impact of British law on Indigenous laws.⁴⁷ Then, to appreciate the connection between the colonisation of Indigenous peoples and criminal law, students can be encouraged to understand criminal law as a tool of subjugation.⁴⁸ Students learning through this perspective may find their preconceived notions challenged⁴⁹ in ways that encourage the development of cultural competence and a stronger sense of social justice.

2 Indigenous Perspectives

Beyond the inclusion of Indigenous issues in the law curriculum, Indigenousisation requires the incorporation of Indigenous perspectives. Indigenous perspectives can assist in developing students' understanding of the social role and effect of law, by reflecting on law in action and providing a critical framework for analysing laws and legal systems.⁵⁰ Indigenous perspectives will sometimes (but not always) reflect whole communities; if possible, a range of Indigenous perspectives should be included in a course, to avoid essentialising Indigenous experience.

In a humanities context, Williamson and Dalal have argued that some pedagogical approaches can translate cultural interface complexities into curricular outcomes, which then link to graduate capabilities.⁵¹ These approaches require an unsettling of Western authority and hence critical self-reflection.⁵² This is done by engaging on levels other than the 'intellectual', using holistic teaching methods that connect with students on emotional, spiritual and intellectual levels, and acknowledging the limits of Western knowledge.⁵³ Young et al discuss Indigenousisation through the opening up of a 'Third Space'.⁵⁴ This is done through challenging students' existing beliefs, and opening up a space for students to consider alternative views and interruptions to their common sense understandings. In this context, it may be useful to consider Martin and

⁴⁷ Thalia Anthony and Melanie Schwartz, 'Invoking Cultural Awareness Through Teaching Indigenous Issues in Criminal Law and Procedure' (2013) 23 *Legal Education Review* 31, 38.

⁴⁸ Ibid 40.

⁴⁹ Ibid 43.

⁵⁰ Jones, above n 15, 263.

⁵¹ Jane Williamson and Priya Dalal, 'Indigenising the Curriculum or Negotiating the Tensions at the Cultural Interface? Embedding Indigenous Perspectives and Pedagogies in a University Curriculum' (2007) 36 *Australian Journal of Indigenous Education* 51, 52.

⁵² Ibid.

⁵³ Ibid 56.

⁵⁴ Tamara Young, Kathleen Butler and Annona Pearse, 'Indigenising Curricula: Lessons from Tourism Studies' (Paper presented at CAUTHE National Conference Program and Proceedings - Tourism: Creating a Brilliant Blend, Adelaide, April 2011).

Miraboopa's three main constructs of a theoretical framework for Indigenist research.⁵⁵

In a legal context, Indigenous issues are often taught as a new doctrinal or substantive category of law.⁵⁶ As noted above, in property law, native title is often taught as a separate category of law. This approach can inhibit lawyers by failing to acknowledge that Indigenous perspectives on Anglo-Australian law also exist.⁵⁷ Embedding Indigenous perspectives on land and Anglo-Australian property law can promote intellectual integrity in a course and avoid the need to substantially extend already tightly designed course content.⁵⁸ The incorporation of Indigenous perspectives can enhance student understanding of the dominant legal system.⁵⁹ Indeed, Indigenous perspectives are useful in terms of evaluating the conflicts inherent in orthodox legal doctrines.⁶⁰

The following are suggestions for incorporating Indigenous perspectives.

- (1) Provide broader context to cases where the subject matter involves Indigenous people.⁶¹
- (2) Draw on the political nature of course topics such as administrative law to assess Indigenous policy.⁶²
- (3) Include non-competitive moots that require students to engage with current Indigenous legal issues.⁶³
- (4) Invite Indigenous presenters into classrooms.⁶⁴ Such presenters need not be academics, as many traditional owners and custodians of Indigenous knowledge are located outside the tertiary sector.⁶⁵
- (5) Show a provocative video to start discussion.⁶⁶
- (6) Present students with material written created by Indigenous people.⁶⁷
- (7) In smaller classes, divide students into groups or pairs to prepare a brief to advise on different positions or perspectives on Indigenous issues.⁶⁸

⁵⁵ The authors title these three constructs 'Ways of Knowing', 'Ways of Being' and 'Ways of Doing': Karen Martin and Booran Miraboopa, 'Ways of Knowing, Being and Doing: A Theoretical Framework and Methods for Indigenous and Indigenist Research' (2003) 76 *Journal of Australian Studies* 203, 208.

⁵⁶ Graham, above n 24, 290.

⁵⁷ Ibid.

⁵⁸ Ibid 290-291.

⁵⁹ See, eg, Graham, above n 24, 298-299.

⁶⁰ Castan and Schultz, above n 23, 78.

⁶¹ Reilly, above n 41, 278.

⁶² Ibid 279.

⁶³ Kirsten Anker, 'Teaching Indigenous Peoples and the Law: Whose Law?' (2008) 33(3) *Alternative Law Review* 132, 136. See also Weir, above n 26, 256.

⁶⁴ Anna Cody and Sue Green, 'Clinical Legal Education and Indigenous Legal Education: What's the Connection?' (2007) 11 *International Journal of Clinical Legal Education* 51, 58-60; Castan and Schultz, above n 17, 84.

⁶⁵ Irene Watson, 'Some Reflections on Teaching Law: Whose Law, Yours or Mine?' (2005) 6(8) *Indigenous Law Bulletin* 23, 24.

⁶⁶ Castan and Schultz, above n 23, 83.

⁶⁷ Ibid 84.

- (8) Take smaller groups of students on field trips to sites such as the Native Title Tribunal.⁶⁹

Anker discusses how she invited a representative of a Canadian Indian tribe to tell students in her course, *Aboriginal Peoples and the Law*, about his tribe's creation story.⁷⁰ This formed part of her trans-systemic method of teaching that used both Indigenous and state law and perspectives to teach broader subject matter and themes.⁷¹

One innovative method of teaching Indigenous issues and perspectives has been developed through a comparative Indigenous rights course taught across universities in Australia, New Zealand, the United States and Canada via videoconferencing.⁷² The outcome of this form of teaching has been that students gain a broader understanding of society and are encouraged to become independent learners and think critically.⁷³ The comparative method that is utilised broadens students' perspectives on domestic law in the four jurisdictions as well as facilitating an understanding of international law in this field.⁷⁴ This method of teaching avoids ethnocentrism and allows for an evaluation of different policies and institutions, as well as an identification of common themes and global context and background to domestic legal principles.⁷⁵

3 *Indigenous Law*

Indigenous law is perhaps the most difficult aspect of Indigenous content to incorporate into the law curriculum as it derives from world-views, philosophies, and societies that are different to those from which common law legal systems have developed. However, the study of Indigenous law has similar benefits to learning a second language, and it enhances student understanding of the state's system of law. Furthermore, it is directly relevant to Australian state formation and provides context for our constitutional background.⁷⁶ Indeed, arguments persist in favour of offering greater recognition to a separate (and/or sovereign) Indigenous law within the Australian legal system. Watson notes, 'there existed, and still exists today, Aboriginal legal systems and ... these were the first legal systems of Australia'.⁷⁷ Watson argues that introducing Indigenous knowledge into legal education is a difficult task as there are few resources to work with. Further, an emphasis on Western knowledge works against the centring of Indigenous knowledges, as it 'posits Aboriginal peoples as pre-historic, native, without any formal knowledge

⁶⁸ Ibid 85.

⁶⁹ Ibid 86.

⁷⁰ Anker, above n 63, 134.

⁷¹ Ibid 133, 135.

⁷² Discussed in Stephenson et al, above n 28.

⁷³ Ibid 244.

⁷⁴ Ibid

⁷⁵ Ibid 247.

⁷⁶ Jones, above n 15, 266-267.

⁷⁷ Watson, above n 65, 23.

system'.⁷⁸ Many traditional owners and custodians of Indigenous knowledge are also located outside the tertiary sector. In contrast:

Aboriginal knowledges are focused on ownership, control and protection of Aboriginal cultural and intellectual property. I see that Aboriginal academics can have a role in such dissemination, however that role needs to be delineated by those Aboriginal peoples who have a proper and rightful voice to speak for the country in which any particular university takes their occupation.⁷⁹

In addition, Anker notes that current Indigenous law courses tend to focus on Australian state law, to the exclusion of Indigenous law.⁸⁰ She argues that lawyers need to be able to understand something about Indigenous law, particularly if a case arises involving some sort of recognition of this law, and this suggests a need for trans-systemic legal education.⁸¹ The obstacles she identifies in this context are the dominance of European ontology in education, the challenge posed to Western rights discourse by the concept of collective human rights, and the fact that notions of Indigenous law may be abstract in relation to the typical forms of Western legal systems.⁸² However, these obstacles may be overcome, at least to some extent, by creative teaching methods such as an Aboriginal Law Moot and a 'learning-by-doing' approach.⁸³

Edwards and Hewitson also promote the inclusion of Indigenous law in the law curriculum, arguing that the advancement of subjugated knowledges and Indigenous episteme can be emancipating for Indigenous peoples.⁸⁴ They note that the academy is not power neutral and the low level of Indigenous control of formal education greatly curtails the freedom of epistemological thought.⁸⁵ Current forms of Western education have covered over epistemological violence, and there is a need to explicitly challenge Eurocentric discourses and knowledge constructions.⁸⁶

At least three main challenges present themselves in relation to the incorporation of Indigenous law into the law curriculum. First, there is no one body of Indigenous law in Australia; rather, bodies of Indigenous law vary considerably between the many Indigenous nations. Second, law teachers may have limited access to Indigenous people qualified and authorised to speak to the nature and content of Indigenous law. Third, there are very few Indigenous legal academics teaching in Australian universities. At a basic level, however, it should not be beyond the capacity of any law teacher to acknowledge the existence of Indigenous legal systems in Australia, and the ways in which these systems have been affected by the imposition of Anglo-Australian sovereignty.

⁷⁸ Ibid 24.

⁷⁹ Ibid.

⁸⁰ Anker, above n 63,132.

⁸¹ Ibid.

⁸² Ibid 134-136.

⁸³ Ibid 136.

⁸⁴ Shane Edwards and Kieran Hewitson, 'Indigenous Epistemologies in Tertiary Education' (2008) 37 *Australian Journal of Indigenous Education* 96, 96.

⁸⁵ Ibid 97.

⁸⁶ Ibid 98.

The three modes of Indigenisation considered above – legal issues, Indigenous perspectives, and Indigenous law – can support one another and add greater complexity and richness to the law curriculum. Further, the attraction, retention and sensitive support of Indigenous law students are central to the effective Indigenisation of the law curriculum, and are discussed below.

B *Indigenous Law Students*

As noted earlier, supporting Aboriginal and Torres Strait Islander students in their pursuit of undergraduate and postgraduate qualifications is a fundamental principle of the Indigenisation of curricula. Encouraging and supporting Indigenous students to pursue tertiary education is particularly important from an equity and social justice perspective, given the history and contemporary experience of dispossession and disadvantage in Indigenous communities. Indeed, within Australian and Canadian law schools, significant numbers of Indigenous students surveyed have reported experiences of racial discrimination from staff and/or other students.⁸⁷

Douglas identifies three theories to justify law schools making an effort to attract and retain Indigenous law students; reparation, social utility and distributive justice.⁸⁸ This reasoning is not limited to the Australian context, but instead may apply in any jurisdiction with an Indigenous population. Douglas defines reparation as ‘the repairing of damage caused by historical discrimination.’⁸⁹ Of course, one of the myriad outcomes of historical and contemporary disadvantage and discrimination against Indigenous people in Australia is their minimal representation in the legal profession and weakened capacity to gain legal representation. Douglas adds that a range of social utility arguments promote the inclusion of Indigenous law students, including the eventual provision of culturally competent legal advice to Indigenous communities and the benefits of promoting diversity among typically homogenous Law School student bodies.⁹⁰ Finally, Douglas identifies fairness, justice and equality as the defining values encompassed by ‘distributive justice’, which seeks to promote the sharing of opportunity throughout society.⁹¹

Barriers to law school entry for Indigenous students are interlinked. Low socio-economic background, lack of formal education, language difficulties, a perception by Indigenous people that law schools are not places for them, and cultural differences, including ways of understanding what law means, may compound each other.⁹² Intersectional issues affect Indigenous students, particularly women.⁹³ A major barrier to study and a reason for discontinuing can be the experience of alienation, isolation or

⁸⁷ Rodgers-Falk, above n 20, 2-3.

⁸⁸ Heather Douglas, ‘Indigenous Australians and Legal Education: Looking to the Future’ (1996) 7 *Legal Education Review* 225, 233.

⁸⁹ *Ibid.*

⁹⁰ *Ibid* 233-234.

⁹¹ *Ibid* 234.

⁹² *Ibid* 226.

⁹³ Heather Douglas, ‘This is Not Just About Me: Indigenous Students’ Insights about Law School’ (1998) 20 *Adelaide Law Review* 315, 325.

racism at university.⁹⁴ Closely related to this are issues such as previous negative experiences with the law,⁹⁵ and cultural differences.⁹⁶ Indigenous students are not usually from a family or community where many people have legal qualifications,⁹⁷ and law school can feel like an extremely foreign environment.⁹⁸ This sense may be heightened by the need to be individualistic in order to succeed at law studies.⁹⁹ Attrition rates for Indigenous law students are typically high.¹⁰⁰ This suggests that University access schemes alone are not sufficient to overcome differential outcomes between Indigenous and non-Indigenous students.¹⁰¹ Flexible entry schemes need to be accompanied by ongoing, institutionalised support.¹⁰²

Alternative entry schemes, and particularly pre-law programs, are important in this context. Between 1991 and 2001, 11 pre-law programs were established and two law schools began to refer students to the Indigenous pre-law program offered at the University of New South Wales.¹⁰³ Evidence suggests that discretionary entrance schemes are enhanced by an intensive pre-law program for Indigenous students.¹⁰⁴ Deakin University has taken a different approach and instead runs an alternative first year for Indigenous students where first year is extended, two academics are dedicated to teaching Indigenous students and classes are run off-campus.¹⁰⁵

Douglas argues that pre-law programs may attract more Indigenous students to law school, as they send a positive message to students that Indigenous students are valued, and create a snowball effect whereby more Indigenous students enrol and collectively reduce feelings of alienation and marginalisation.¹⁰⁶ The University of New South Wales has also introduced two new law courses for Indigenous students.¹⁰⁷ These courses are run in conjunction with clinical legal training at the Kingsford Legal Centre in Sydney and are aimed at improving academic skills, confronting the seeming irrelevancy of law courses to Indigenous students, and visiting courts, public defenders, the Legal Aid commission and the pro bono section of a large law firm.¹⁰⁸

⁹⁴ Ibid 321; Heather Douglas, 'The Participation of Indigenous Australians in Legal Education 1991-2000' (2001) 24(2) *UNSW Law Journal* 485, 490; Carolyn Penfold, 'Indigenous Students' Perceptions of Factors Contributing to Successful Law Studies' (1996) 7 *Legal Education Review* 155, 157.

⁹⁵ Douglas, above n 88, 299; Douglas, above n 93, 318.

⁹⁶ Douglas, above n 88, 230.

⁹⁷ Ibid 228.

⁹⁸ Ibid 226.

⁹⁹ Douglas, above n 93, 333.

¹⁰⁰ Ibid 315; Douglas, above n 88, 225.

¹⁰¹ Douglas, above n 88, 225.

¹⁰² Douglas, above n 94, 511.

¹⁰³ Ibid 498.

¹⁰⁴ Daniel Lavery, 'The Participation of Indigenous Australians in Legal Education' (1993) 4 *Legal Education Review* 177, 197.

¹⁰⁵ Douglas, above n 94, 501.

¹⁰⁶ Ibid 504.

¹⁰⁷ Sean Brennan, Deborah Healey, Jill Hunter, Dani Johnson, Mehera San Roque and Leon Wolff, 'Indigenous Legal Education at UNSW: A Work in Progress' (2004) 6(8) *Indigenous Law Bulletin* 26, 28.

¹⁰⁸ See Cody and Green, above n 64, 52-55.

Although the incorporation of Indigenous content into the law curriculum is seen as generally positive, it can be problematic for Indigenous students if it is not handled sensitively.¹⁰⁹ For example, Indigenous students may be put under pressure to act as experts on Indigenous issues¹¹⁰ or to speak on behalf of Indigenous peoples. This is compounded if teachers deal with Indigenous issues superficially.¹¹¹ Sometimes a lack of understanding among teachers and non-Indigenous classmates can cause Indigenous students to seek to correct misunderstandings, and in doing so, generate emotional entanglement that complicates both study and relationships.¹¹² Further, as Wood has recognised, the under-representation of Indigenous students in higher education ‘significantly impacts on wellbeing among Indigenous law students’, particularly by reducing their capacity to form supportive peer groups at university.¹¹³

Lecturers can also unconsciously exacerbate the isolation felt by Indigenous students, suggesting a need for cross-cultural training.¹¹⁴ Consultation with Indigenous staff and students about the impact of culturally confronting curricula, and staff training to ensure that academic content is inclusive in an appropriate way, are crucial.¹¹⁵ The University of Newcastle has recently established the *Our Way* Indigenous Cultural Competence Program for academic and general staff.¹¹⁶ This program includes an online pre-workshop module, ‘Interactive Ochre’, which develops knowledge and understanding of Indigenous history, cultures, languages, and contemporary experiences in Australian society. The program centres on a collaborative workshop, which trains staff in developing cultural competence and inclusivity in their professional practice. Participants develop Indigenous Collaborative Action Plans, to ensure critical reflexivity about Indigenous people and issues throughout their professional lives.

Indigenising tertiary education curricula has multiple motivations and benefits. Principally, it is aimed at broadening the knowledge base of Indigenous and non-Indigenous students alike and addressing educational disadvantages within the Indigenous population, with consequential positive effects from the benefit of a tertiary education. In this context, Penfold has identified factors that Indigenous students regard as contributors to success at university. These include personal motivation and determination, the opportunity to network with other Indigenous students, the availability of role models, the supportive atmosphere of the

¹⁰⁹ Douglas, above n 88, 346-347.

¹¹⁰ Penfold, above n 94, 174.

¹¹¹ Ibid 175.

¹¹² Ibid 159.

¹¹³ Wood, above n 40, 253.

¹¹⁴ Douglas, above n 88, 326.

¹¹⁵ Elizabeth Stevens, Heather Douglas, Bridget Cullen-Mandikos and Rosemary Hunter, ‘Equity, Diversity and Student Engagement in a Law School: A Case Study Approach’ (2006) 16 *Legal Education Review* 1, 14.

¹¹⁶ We acknowledge our colleagues in The Wollotuka Institute, University of Newcastle, Australia for developing this program. Information on the program is available at <<http://www.newcastle.edu.au/community-and-alumni/community-engagement/indigenous-community-engagement/cultural-competency-workshops>>.

law faculty and university, relevant and appropriate curricula, tutorial assistance,¹¹⁷ cadetships and professional support and the availability of exchange programs.¹¹⁸

In the context of law schools, the research suggests that these ends can be achieved through the incorporation of Indigenous perspectives, Indigenous law and a focus on Indigenous issues within law school curricula, in conjunction with specific programs and sensitive support for Indigenous students. In the following section, we present the findings of the first empirical stage of our research, which considered developments in the Indigenisation of the curriculum at Newcastle Law School.

C Indigenous-Related Content in Newcastle Law School Courses

The graduate attributes for the Bachelor of Laws (Honours) program at the University of Newcastle do not include any specific statements about Indigenous peoples or their experience. Rather, there are less specific goals of attainment, including ‘apply critical and reflective analytical skills’ and ‘understand, evaluate and critically reflect upon the interaction of law and society, legal and policy issues and professional practice’. It is fair to say, however, that the goal of doing curricular justice to the experiences and knowledges of Indigenous peoples is implicit in the graduate attributes statement, particularly when read in the context of the University of Newcastle’s strategic plan.¹¹⁹

In February 2012, we conducted interviews with 14 academics¹²⁰ from Newcastle Law School (NLS) regarding the inclusion of Indigenous Related Content (IRC) in law courses. Respondents commented on 24 of the 33 courses offered during the study period.¹²¹ Eleven of the 24 courses were compulsory courses for all students, three were compulsory courses for students in the professional legal training module,¹²² and ten were elective courses. The only course that centralises Indigenous issues and perspectives at NLS (the elective course *Indigenous Peoples, Issues and the Law*) was not offered during the study period.

The interviews form the key part of the first stage of research into Indigenisation of the NLS curriculum. The respondents were asked how many courses they taught and if any IRC was included in them. Those respondents using IRC were then asked about the teaching methods they used when incorporating IRC. Some respondents also volunteered to share relevant teaching materials.

¹¹⁷ For example, through the Indigenous Tutorial Assistance Scheme, a government-funded program that provides free tutoring to Indigenous students at university. This scheme is administered by The Wollotuka Institute at The University of Newcastle, Australia.

¹¹⁸ Penfold, above n 94, 160.

¹¹⁹ University of Newcastle, above n 57.

¹²⁰ Approximately 75% of the staff of NLS during the study period. We note that, at this stage, no members of the NLS staff are Indigenous. This research was authorised by the University of Newcastle Human Research Ethics Committee (Protocol Number: H-2011-0346).

¹²¹ Approximately 72% of the courses offered during the study period. This figure counts all the Legal Practice courses as a single course, as we found significant overlap in the comments offered by teachers of these courses.

¹²² Students in the professional legal training program are studying towards both the Bachelor of Laws degree and the Diploma of Legal Practice.

Our findings are reported quantitatively, below, under three themes. Part 1 summarises the frequency of the inclusion of IRC within current NLS courses. Part 2 explores how this content is included with reference to the three categories of IRC introduced in the literature review (Indigenous issues, Indigenous perspectives, and Indigenous law). Finally, Part 3 considers how IRC is taught by staff of NLS.

1 *Frequency of Inclusion of Indigenous Content*

We measured the frequency of IRC inclusion on a scale from substantial to none.

Frequency of Inclusion	Definition	Number of Courses
Substantial Inclusion	IRC formed a major element or a significant component of the area of study. To fall under this category, a course had to include IRC as part of the assessment regime, as either a compulsory or optional question.	2
Major Theme	IRC formed a major element of the area of study, but was not so recurrent as to fall under the substantial category. IRC could be a major theme if only taught across one or two weeks. To fall under this category, a course had to include IRC as an optional assessment question.	3
Consistently	IRC was consciously and repeatedly incorporated into a course in a significant fashion, but did not form a whole topic.	5
Minor Theme	Context for IRC may not be provided, but the content forms a necessary and relevant element of a course or an area within a course.	5
Incidentally	IRC arises as incidental to the area of study, for example a key case where the factual scenario involves IRC. A course may also fall into this category where IRC or cases are used to illustrate a legal point or principle, but go no further.	4
None	No IRC is currently included in the course.	5

Our research shows that NLS staff have made significant progress towards the Indigenisation of the curriculum, in line with University policy, with 15 of 24 courses including IRC as at least a minor theme.

We note that some courses, particularly those regarded as highly doctrinal or ‘black-letter’, may be less likely to call for the inclusion of substantial amounts of IRC. Indeed, some teachers may not see IRC as appropriate or relevant for specific inclusion in certain courses. For example, compulsory ‘Priestly 11’ courses such as *Torts* and *Equity and Trusts* are typically taught without comprehensive inclusion of IRC. However, we believe that it is possible to at least include a case example involving Indigenous litigants in most, if not all, courses. Such an inclusion signals to students that the experiences of Indigenous litigants are often distinctive and are certainly of equal importance to the experiences of other litigants. It is also essential that IRC be incorporated

throughout the compulsory elements of the curriculum, in order that elements of this content reach all students in each cohort.

In contrast, only five of the 24 courses surveyed include IRC as an optional or compulsory assessment item. We note that many students tend to attach higher significance to an area of study if it is made assessable. On this basis, we question whether it might be possible for IRC to be more consciously incorporated into assessment regimes in other courses, as one means of emphasising the importance of this content.

Considering the number of staff currently teaching IRC in some form, NLS may draw on considerable practical experience in discussing and developing its collective approach to the Indigenisation of the curriculum. This will be discussed in more detail in Part 3 of this section, in which we set out the range of teaching methods currently used to deliver IRC.

2 *How is IRC Included?*

We measured the forms in which IRC was included in NLS courses by reference to the three categories of IRC discussed in our literature review: Indigenous issues; Indigenous perspectives; and Indigenous law. As shown in the table below, some courses incorporated IRC in more than one form. The table sets out data from the 15 courses that incorporated IRC as at least a minor theme.

Form of IRC included in course	Number of courses using this form
Indigenous issues	15
Indigenous perspectives	10
Indigenous law	5

As stated in our literature review, the Indigenisation of a curriculum is enriched by the inclusion of Indigenous perspectives. It is encouraging that seven of the 24 NLS courses surveyed already include both Indigenous issues and Indigenous perspectives. In a further three courses, where Indigenous content was not regarded as relevant to the area of study, Indigenous perspectives were nevertheless introduced as a means of critiquing dominant perspectives on the state of the law.

Markedly fewer courses – only five of 24 – deal with Indigenous law. Anecdotal evidence from our research suggests that staff may not feel qualified to teach in the area of Indigenous law, and/or believe that they would need to be supported by Indigenous colleagues or guests in delivering this content. Four of the five courses which included the study of Indigenous law also included Indigenous perspectives, which supports the conclusion that teachers can most confidently consider Indigenous law when they have access to Indigenous perspectives (for example, from visiting lecturers, multimedia resources or Indigenous-authored sources).

3 *Teaching Methods*

We found that NLS teachers employ nine different teaching methods to include IRC in their courses:

Method	Number of courses using this method to teach IRC
Lecture	12
Set readings	11
Class discussion	10
Student presentations	7
Case study	6
Assessment	5
Multimedia resources	5
In-class analysis of primary sources	3
Indigenous case examples given in place of 'traditional' black-letter examples	3

Lectures are the most commonly used teaching method for incorporating IRC. Five of the 12 courses delivering IRC through lectures involved guest lecturers (and, in this way, were able to incorporate an Indigenous perspective). We note that the frequent use of lectures may work to emphasise the importance of IRC in the curriculum, in that IRC is delivered directly by the teacher to the largest possible cohort of students.

On the other hand, we recognise the limitations of lectures in terms of the deep analysis of content, especially content that may challenge students' preconceptions. It is encouraging, then, to find that seven of the 12 courses using lectures to deliver IRC also explored this content through class discussions. Discussion can provide helpful opportunities for students to explore alternative perspectives and debate points of view. Three courses that did not consider IRC in lectures did include this content in class discussions. As noted in our literature review, the effectiveness of class discussion as a teaching method is strongly influenced by the capacity of the teacher to moderate debate and ensure that any Indigenous students in the class are not placed under pressure in the discussion.

NLS teachers were also likely to support the lecture-based delivery of IRC with set readings, with 11 courses including required or recommended readings relating to IRC. Again, this is encouraging in the sense that content delivered in lectures is reinforced through the written material provided to students. However, as with class discussion, it is important for teachers to interrogate the effectiveness of setting IRC-related material for students to read independently. In three courses where teachers placed strong emphasis on IRC material, those teachers chose to conduct in-class analysis of Indigenous-related primary materials rather than (or in addition to) setting material for independent student reading. This in-class document analysis can develop student understandings and prompt fruitful class discussions.

The next most frequently used teaching method for incorporating IRC was student presentations, with seven courses including at least one IRC-related presentation topic. In five of those courses, the presentation was

part of the assessment schedule. As with class discussion, student presentations have the capacity to introduce alternative perspectives to students and encourage debate. Again, they should be carefully administered by teachers, with different issues arising depending on whether the presentations are delivered by Indigenous or non-Indigenous students, and the extent to which the whole class is then engaged in related discussion.

Six of the courses we surveyed incorporated IRC through what we term case studies. We define case studies to include decisions by courts, and close study of particular legal issues relevant to Indigenous peoples. When presenting these case studies in class, teachers offered context in terms of the relationship between Indigenous peoples and the Australian legal system.

Five of the 24 courses surveyed contained an IRC-related assessment item. Only one of these courses included IRC in a compulsory assessment item; in the other four courses, IRC appeared in optional presentation, research essay or problem questions. This is an important finding, as it shows how few current students of NLS are assessed on IRC, even where teachers have chosen to include IRC in significant proportions in their course.

In five of the courses we surveyed, teachers used multimedia resources to assist in the inclusion of IRC. These included YouTube and other online videos, simulation videos, interviews with Indigenous people and interactive websites.

In three of the four courses that we assessed as presenting IRC ‘incidentally’, a case example featuring Indigenous litigants was provided to students. These cases were used where a more ‘traditional’ case law example could also have been used to illustrate the same point. In that sense, teachers made the decision to include Indigenous-related cases to demonstrate an awareness of the marginalisation of Indigenous peoples from mainstream legal discourse. However, the cases were considered in class without added discussion or context being provided, beyond what would ordinarily be given for any case example used.

III REFLECTIONS

The first stage of our research demonstrates that NLS has set a strong foundation for the teaching of IRC. Several staff incorporate IRC in some way, using a wide range of teaching methods. We continue to engage with NLS teachers to encourage the development of a collective approach to the Indigenisation of the law curriculum.

One means of achieving that goal would be to develop a repository of IRC resources, accessible to all teaching staff. This could include multimedia resources, contact information and biographical details for potential guest lecturers, recordings of previous guest lectures, recommended readings and case studies, and teaching notes on successful teaching practices. We also note the enthusiasm of NLS clinical teachers for incorporating culturally sensitive learning experiences into Legal Practice courses, and suggest that NLS staff consider how to expose increasing numbers of students to experiential learning in relation to

Indigenous peoples and legal issues.¹²³ Finally, we note that many NLS staff have undertaken the cultural competency training provided by the Wollotuka Institute – the Indigenous education institute of the University of Newcastle. This training has been well-received and has provided staff with tools to engage more deeply with the challenges and potential of an Indigenised curriculum.

A Qualitative Report

The first stage of this research sought quantitative data to determine the inclusion of IRC within NLS courses, however, most respondents also volunteered qualitative comments during their interviews. In this final section, we offer brief reflections on the themes emerging from the qualitative data gathered. We have grouped the qualitative comments into five categories: the importance of IRC, incorporating IRC, the courses, teaching and staffing.

We do not claim that this data provided a representative sample. However, it will help to guide the future development of our research project. The second stage of this project will ask qualitative questions such as ‘Why do University teachers include or exclude IRC?’ and ‘What benefits can the Indigenisation of curricula have for students, universities and the wider community?’ We have avoided imposing our own interpretations on this raw qualitative data and note that each statement was made by an individual respondent, unless otherwise indicated.

1 The Importance of IRC

Several respondents acknowledged the value of IRC in a law school curriculum. One considered IRC to be important as a means of addressing social justice issues and developing a critical framework for law in Australia, while other respondents regarded the teaching of IRC as important in producing graduates who are skilled in interacting sensitively with Indigenous people.

According to one respondent, IRC is important in its own right in addressing social justice issues, as well as in terms of creating a critical framework for law in Australia. Where content in the curriculum currently reflects Indigenous issues and perspectives, another respondent noted that IRC adds value to the course and is intellectually appropriate and fulfilling for teachers and students. This sense of value was confirmed by another respondent, who stated that: ‘Indigenous aspects should not be an obligatory footnote [to the law curriculum].’ Rather, IRC

¹²³ Newcastle Law School incorporates the University of Newcastle Legal Centre, a pro bono community legal centre, servicing the legal needs of clients who may not otherwise access representation. Students of Newcastle Law School have the opportunity to undertake Practical Legal Training alongside their study towards a Bachelor of Law or Juris Doctor degree, with much of this training taking place through interaction with live clients at the Legal Centre. As such, Newcastle Law School is a leader in experiential legal training in Australia. However, there is scope for the strengthening of ties between the academic and practical legal training arms of the School, and the consequential enhancement of practical learning opportunities for students at all stages of study.

is an important part of teaching within the Australian legal system and it needs to be integrated throughout the curriculum.

According to one lecturer, the ability of students to listen for voices other than the majority voice is important as it links to our graduate attribute of producing lawyers who advocate for the rule of law and for law reform. This is especially so considering our postcolonial environment. It is fundamental to building a cohesive society that we recognise that Indigenous people have been and continue to be influenced by the colonial experience.

In practical terms, one respondent acknowledged the need to equip our students with the skills to work in locations with high population diversity. It is vitally important for students to recognise that law is not a level playing field. IRC and contact with Indigenous people may more frequently involve those staff members responsible for supervising students in practical legal training, as they are more likely to have an Indigenous client. This can be a very effective learning experience, but the risk is that this does not occur across the whole cohort and can be piecemeal and dependent on the client traffic in a given semester.

In teaching legal practice students, supervisors need to encourage them to confront preconceptions and stereotypes: direct contact with Indigenous clients can help students to engage on emotional and empathic levels, rather than just on an intellectual level. In such cases, lawyers must learn to be slower to judge a person or situation than they might otherwise be. For students who may not meet Indigenous clients during their studies, it is especially important that Indigenous issues are addressed in their academic training. There needs to be an open awareness among students of disadvantaged people and their needs.

According to one respondent, a lot more interest is generated among students by including Indigenous perspectives, rather than just content. Simply adding Indigenous content into courses does not equal Indigenisation. Dissipation of apathy is achieved by giving students room to explore a variety of perspectives on our legal system. Similarly, acknowledgment of Indigenous people and heritage is important in creating an atmosphere of respect and open mindedness. Lecturers might consider commencing at least one lecture with an Acknowledgement of Country, which can stimulate student engagement with Indigenous legal issues, and show respect to Indigenous peoples and heritage. The Law School should consider inviting an elder to perform a Welcome to Country as a tangible reminder of our commitment to Indigenous social justice and the education of Indigenous students.

2 Incorporating IRC

In this section, we present comments relating to how IRC can be integrated into course design. We note that several staff agreed that IRC ought to be integrated throughout the curriculum. According to one lecturer, for the incorporation of IRC to be effective it needs to be a recurrent theme across the curriculum. Students should have many opportunities to reflect on IRC in class discussion. If we have a consistent approach through the curriculum, we signal its importance to the students,

helping to avoid the objection from some students that IRC is ‘shoved down peoples’ throats’. However, we do also need stand alone topics within courses, and an Indigenous-specific course, to appropriately demonstrate the full impact of the law on Indigenous peoples and their alternative perspectives on the law.¹²⁴

One responded found that student presentations and subsequent class discussions can be very effective means to educate students on IRC and Indigenous perspectives. However, if Indigenous students are involved in these presentations/discussions, they can be put under pressure to represent a viewpoint bigger than their own, or correct misconceptions among classmates. Therefore, academics need to be able to manage the way class debate and discussion flows from students when dealing with a difficult or sensitive area. This is particularly so where the academic may find some of the views expressed to be offensive. Perhaps academics should be encouraged to be more reflective about this question in advance of class. They need to be able to redirect debate to a more positive, constructive position, especially where there may be an Indigenous student in the class.

Another respondent argued that contextualisation of material is important in incorporating IRC as, at times, a bald reading of the facts of a case can lead to errors in understanding. There is also a need to take into account theoretical concerns, such as a postcolonial understanding of ‘race’, which is largely absent from the Australian legal system. In terms of teaching, if students are given a multiple-perspectives context, they are better able to understand the concept of race in a postcolonial environment.

Some courses with policy-focused content were identified as useful cases in the curriculum, because IRC can be introduced to explore whether the law currently deals with alternative Indigenous perspectives, and if so, whether the current approach is adequate or requiring reform. In these and other courses, staff might consider choosing Indigenous case examples where other cases could (and traditionally would) be used to convey the same message. One means of deeply engaging students in this process is to provide them first with a theoretical framework focusing on race. A familiar case study may then be used to examine a legal judgment involving Indigenous people from a racialised position. Through this process, students can engage with a familiar case in a new and enlightening way, because the alternative framework equips them with new tools of analysis. Finally, another respondent noted that some courses may be inappropriate for the conscious and sustained incorporation of IRC, but in most courses it would be easy to incorporate a case example involving Indigenous litigants, and give some context for this choice.

¹²⁴ We note that an Indigenous-specific elective course is available at Newcastle Law School – *Indigenous Peoples, Issues and the Law* – and is typically offered every second year.

3 *The Courses*

In this section, we reflect on the qualitative matters respondents raised in relation to the courses constituting the law curriculum. In a process of Indigenisation, these courses need to be considered individually, and in terms of how they collectively reflect the Law School's approach to teaching IRC.

Some staff commented that it was easier to incorporate Indigenous perspectives and integrate IRC throughout the whole course when teaching elective courses, as opposed to core courses. This is because electives involve smaller cohorts and less mandated content. Students may also be more open to how electives are taught. One respondent noted that it can take students longer to engage with alternative perspectives on the law, and this can cause a problem for staff trying to incorporate IRC while also covering other important content and perspectives. This is particularly true of courses that are compulsory, because significant content is mandated in order to meet accreditation requirements. An across-the-curriculum approach to Indigenisation could help in this regard, as students would get a consistent message from teachers regarding the importance of the content.

Another respondent acknowledged that in some courses, there may be no relevant case study or perspective from an Indigenous Australian point of view. However, such courses might usefully integrate content and/or perspectives from Indigenous peoples from other parts of the world. For example, the perspectives of Indigenous peoples are particularly topical and relevant when dealing with areas such as environmental law and human rights.

4 *Teaching*

NLS staff also raised some qualitative matters in relation to teaching methods. This is an area in which whole-of-institution approaches and leadership can guide future efforts in the Indigenisation of curricula. For example, in terms of teaching methods, it is preferable to have Indigenous people speak to Indigenous issues where possible, however this can raise time and resource constraints. Guest lecturers can be extremely helpful in this context, and if a guest lecturer is only available once, staff might consider recording their lecture or keeping notes which can be used in subsequent courses.

One lecturer suggested that the NLS could have a depository of common resources. For example, a wide-ranging interview could be recorded and split into short sections that can be played in lectures or placed on Blackboard. The online resource Interactive Ochre is available, offering staff and students at all law schools accessible Indigenous perspectives on a range of issues relevant to law teaching.¹²⁵ Another respondent noted that lecturers teaching IRC may wish to use multiple methods in the same course, for example lectures, class debate and

¹²⁵ This valuable resource is available at <<http://toolboxes.flexiblelearning.net.au/demosites/series9/907/swf/>>.

assessment. Mixing teaching techniques signals the significance of the content to students.

Another respondent expressed the view that new teachers or staff teaching new courses face particular challenges in becoming familiar with all the required content to the necessary standard. In this case, teachers may find it hard to balance what they see as competing priorities of developing overall expertise, while meeting the goal of Indigenisation of the curriculum. A clear recurrent message from School and University leadership regarding the importance of IRC can give confidence to new teachers in this regard.

5 *Staffing*

Finally, in this section we set out qualitative comments relating to the staffing of our Law School, which we regard as applicable more generally. Some commented that having an Indigenous academic on staff benefited teaching practice, by giving access to an Indigenous voice on a particular legal issue, as well as mentoring and discussion of culturally sensitive and appropriate teaching methods. Further, some non-Indigenous staff expressed concern that they might be taken to speak for a position they are not entitled to represent, or create misunderstanding for students regarding Indigenous perspectives. Indeed, non-Indigenous staff can feel fraudulent when presenting IRC, if they have not had the opportunity to discuss their approach with an Indigenous colleague or other mentor. This concern can, at least in part, be overcome by staff who make students aware of the limitations of their perspective as a non-Indigenous teacher. Cultural competency training may be helpful for staff in seeking to meet these aims.

IV CONCLUSION

On an institutional level, universities in Australia and other countries with Indigenous populations can do much to improve educational outcomes for Indigenous students. However, this research demonstrates that individual university teachers can do much at the level of individual courses to enhance learning opportunities and outcomes for Indigenous and non-Indigenous students. Teachers in law schools should consider building their courses with a view to the sensitive and appropriate inclusion of Indigenous issues, perspectives and law. More broadly, law teachers are challenged to ‘examine how “law” as an academic discipline and professional practice has been central to the colonisation and dispossession of Indigenous Australians’.¹²⁶

Law teachers should also be mindful of the particular needs and experiences of Indigenous students, and consider means by which they can encourage the admission, retention and successful tertiary education of Indigenous students. The twin goals of curricular justice and education for social justice should provide powerful motivation for law teachers seeking to engage with the goal of Indigenisation. Evidence from

¹²⁶ Burns, above n 5, 238.

Newcastle Law School, as explored in this article, suggests a range of means by which this goal may be progressively realised, particularly if law teachers are supported at the institutional level. Our aim in the next, qualitative stage of this research is to explore the development and realisation of Indigenised curricula from the perspective of academics and Indigenous students.

