Indigenizing International Law Education

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ABSTRACT

Law schools in countries as diverse as Australia, Canada, New Zealand, and the United States are engaging in movements to promote greater inclusion of Indigenous subject matter. In seeking to "indigenize" legal education, such efforts aim to integrate Indigenous voices and content into legal discourses. The inclusion of Indigenous subject matter, however, presents law schools with the challenge of identifying approaches appropriate for Indigenous concerns. Specifically, Indigenous rights movements call for strategies that push forward inter-cultural competency while seeking to move away from historical colonial legacies of scholarship that marginalized Indigenous peoples. To the extent that law schools maintain historical traditions of scholarship, they are at risk of perpetuating such colonial legacies. Complicating the positions of law schools are their connections to legal systems with colonial origins, which leave law schools in danger of reinforcing colonial orientations that can suppress Indigenous interests. The issues are exacerbated with the teaching of international law. Critics charge the prevailing international legal system with being a reflection of Western-based imperial expansion that sought the subjugation of Indigenous civilizations, making the teaching of international law a potential continuation of domination against Indigenous peoples. As a result, there is a need for guidance to help law schools with decision-making vis-à-vis the teaching of Indigenous subject matter, particularly for courses like international law. The present analysis responds to such a call, with the analysis formulating a framework to clarify strategies for the integration of Indigenous subject matter into the teaching of international law to appropriately address Indigenous concerns.

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I. INTRODUCTION

Diverse Indigenous rights movements are advancing agendas that call for greater inclusion of Indigenous subject matter within the schools of diverse countries such as the United States,[1] Canada,[2] Australia,[3] and New Zealand.[4] Within such agendas are goals to "indigenize" legal education, with movements seeking to promote deeper engagement between Indigenous and non-Indigenous cultures and nurture broader awareness of Indigenous concerns in discourse.[5] The efforts for greater engagement with Indigenous issues in legal education align with law school goals of diversity, inclusion, social justice, and cause lawyering as they expand understanding of legal scholarship and ethical practice.[6]

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1 Susan Haigh, *Push for Native American Curriculum in Schools Makes Gains*, AP NEWS (Sept. 14, 2021, 12:08 AM), https://apnews.com/article/education-race-and-ethnicity-racial-injustice-laws-connecticut-f6a9eb4604f5deab2d37b280dc557e9a [hereinafter AP 2021]. *See generally* NAT'L CONG. OF AM. INDIANS (NCAI), *Becoming Visible: A Landscape Analysis of State Efforts to Provide Native American Education for All* (2019), [hereinafter NCAI 2019].

2 Jasmine Kabatay & Rhiannon Johnson, *Charting Progress on Indigenous Content in School Curricula*, CBC NEWS (Oct. 2, 2019, 3:00 AM), https://www.cbc.ca/news/Indigenous/Indigenous-content-school-curriculums-trc-1.5300580; Jeffery Hewitt, *Decolonizing and Indigenizing: Some Considerations for Law Schools*, 33 WINDSOR Y.B. ON ACCESS TO JUST. 65, 65-84 (2016) [hereinafter Hewitt 2016]; Cailynn Klingbeil, *Canadian Universities Require Indigenous Studies: 'It Feels Good to Learn Our History'*, GUARDIAN (Aug. 26, 2016, 12:36 PM), https://www.theguardian.com/us-news/2016/aug/25/canada-universities-Indigenous-studies-university-of-winnipeg; Larry Chartrand, *Indigenizing the Legal Academy from a Decolonizing Perspective* (U. Ottawa Fac. L. Working Paper No. 2015-22, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2631163 [hereinafter Chartrand 2015].

3 *See generally* MICHAEL A. GUERZONI, U. TASMANIA, INDIGENISING THE CURRICULUM: CONTEXT, CONCEPTS, AND CASE STUDIES, ABORIGINAL RESEARCH AND LEADERSHIP (2020), https://www.utas.edu.au/__data/assets/pdf_file/0019/1452520/Indigenising-the-Curriculum-Context,-Concepts-and-Case-Studies.pdf [hereinafter Guerzoni 2020]; Amy Maguire & Tamara Young, *Indigenisation of Curricula: Current Teaching Practices in Law*, 25 LEGAL ED. REV. 95 (2016) [hereinafter Maguire & Young 2015]. Heather Douglas, *Indigenous Legal Education: Towards Indigenisation*, 6 INDIGENOUS L. BULL. 12, 12-18 (2005) [hereinafter Douglas 2005].

4 John McCrone, *New Zealand Challenged by Māori Academics to Decolonise its Legal Training*, STUFF (Jan. 9, 2021, 10:00 AM), https://www.stuff.co.nz/pou-tiaki/123424061/new-zealand-challenged-by-mori-academics-to-decolonise-its-legal-training. *See generally* Carwyn Jones, *Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand LLB Curriculum*, 19 LEGAL EDUC. REV. 257 (2009) [hereinafter Jones 2009].

5 *See, e.g.*, AP 2021, *supra* note 1; Mallory Hendry, *Reconciliation's Uphill Battle: Indigenous Legal Education*, CAN. LAW. (Mar. 5, 2020), https://www.canadianlawyermag.com/resources/legal-education/reconciliations-uphill-battle-Indigenous-legal-education/327115 [hereinafter Hendry 2020]; AUSTL. GOV'T DEP'T OF EDUC. & TRAINING, INDIGENOUS INTER-CULTURAL COMPETENCY FOR LEGAL ACADEMICS PROGRAM (2019), https://ltr.edu.au/resources/ID14-3906_Burns_FinalReport_2019.pdf [hereinafter ICCLAP 2019]; MAUREEN TEHAN & SHAUN EWEN, U. MELBOURNE, REVIEW OF THE MELBOURNE LAW SCHOOL'S INDIGENOUS STUDIES PROGRAMS (2019), https://law.unimelb.edu.au/__data/assets/pdf_file/0011/4118996/Review-of-MLS-Indigenous-Studies-Programs-Final-Report-24.11.19.pdf [hereinafter Tehan & Ewen 2019]; Kate Galloway, *Indigenous Contexts in the Law Curriculum: Process and Structure*, 28 LEGAL EDUC. REV., 2018, 1 [hereinafter Galloway 2018]; John Borrows, *Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education*, 61 MCGILL L.J. 795, 797-98 (2016) [hereinafter Borrows 2016]; Maguire & Young 2015, *supra* note 3; Jones 2009, *supra* note 4; Douglas 2005, *supra* note 3.

6 *See generally* Guerzoni 2020, *supra* note 3; Maguire & Young 2015, *supra* note 3; Douglas 2005, *supra* note 3.

The promotion of Indigenous subject matter presents law schools with the challenge of identifying the relevant approaches appropriate for Indigenous concerns. Specifically, Indigenous rights movements call for strategies to push forward inter-cultural competency, alternatively called cultural competency, while seeking to move away from historical colonial legacies of scholarship that marginalized Indigenous peoples.[7] Even though law schools have worked to take the relevant approaches towards Indigenous issues, they have tended to do so without coordination, creating reforms that vary by country, legal education system, and particular law schools.[8] Further, the *ad hoc* nature of ongoing efforts makes it difficult for actors in the legal education system to draw guidance from each other in pursuing potential strategies for engagement with Indigenous issues. For law schools that aspire to promote Indigenous content, there is a consequent need to clarify approaches that can guide decision-making vis-à-vis teaching of Indigenous subject matter.

The present analysis responds to such a need by contributing to discussions regarding the inclusion of Indigenous subject matter in the teaching of international law. The subject of international law is a target of critique from Indigenous rights scholars who see the prevailing international legal system as a product of history dominated by Western imperial powers that colonized Indigenous civilizations.[9] For Indigenous critics, international law reflects the orientations of past Western empires, with international law sustaining conceptions of sovereignty and statehood in structures of discourse that serve to ignore or marginalize the existence of Indigenous societies and Indigenous legal orders.[10] As a consequence, to the degree that the teaching of international law furthers the existing international legal system, it risks continuing a

7 *See, e.g.*, Hendry 2020, *supra* note 5; NCAI 2019, *supra* note 1; Hewitt 2016, *supra* note 2; Chartrand 2015, *supra* note 2; Douglas 2005, *supra* note 3; Jones 2009, *supra* note 4.

8 *Compare* Scott Franks, *Some Reflections of a Métis Law Student and Assistant Professor on Indigenous Legal Education in Canada*, 48 MITCHELL HAMLINE L. REV. 744 (2022) *with* Maguire & Young 2015, *supra* note 3 *and* Jones 2009, *supra* note 4.

9 *See, e.g.*, David Wilson, *European Colonisation, Law, and Indigenous Marine Dispossession: Historical Perspectives on the Construction and Entrenchment of Unequal Marine Governance*, 20 MAR. STUD. 387 (2021) [hereinafter Wilson 2021]; Hiroshi Fukurai, *The Decoupling of the Nation and the State: Constitutionalizing Transnational Nationhood, Cross-Border Connectivity, Diaspora, and "National" Identity-Affiliation in Asia and Beyond*, 7 ASIAN J. L. & SOC'Y 1 (2020) [hereinafter Fukurai 2020]; Steven Newcomb, *Domination in Relation to Indigenous ('dominated') Peoples in International Law*, *in* INDIGENOUS PEOPLES AS SUBJECTS OF INTERNATIONAL LAW 18, 18-28 (Irene Watson ed., 2018); KEVIN BRUYNEEL, THE THIRD SPACE OF SOVEREIGNTY: THE POSTCOLONIAL POLITICS OF U.S.-INDIGENOUS RELATIONS (2007) [hereinafter Bruyneel 2007]; Taiaiake Alfred & Jeff Corntassel, *Being Indigenous: Resurgences Against Contemporary Colonialism*, 40 GOV'T. & OPPOSITION 597 (2005) [hereinafter Alfred & Corntassel 2005]; ANTONY ANGHIE, IMPERALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW (2005) [hereinafter Anghie 2005]; JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW 26-34 (2d ed. 2004); Winona LaDuke, *Natural to Synthetic and Back Again*, *in* MARXISM AND NATIVE AMERICANS (Ward Churchill ed., 1983) [hereinafter LaDuke 1983].

10 *See supra* note 9 and accompanying text.

historical legacy oriented around the subjugation of Indigenous peoples. For broader agendas to promote Indigenous subject matter within legal education, the resulting implication is a need to reform the teaching of international law to address Indigenous concerns.

The analysis in the following sections seeks to advance such reforms with the purpose of aiding law school decision-making to integrate Indigenous subject matter into international law education. Specifically, the following sections draw upon diverse literature regarding the promotion of Indigenous issues within higher education, using their insights to synthesize a framework relevant for the context of law schools. The analysis directs construction of the framework to the particular issues of teaching international law with the goal of clarifying the complexities involved with efforts to "indigenize" international law education. The analysis concludes with a call for further research and identifies directions for future contributions that can advance the larger goals of promoting Indigenous concerns vis-à-vis law school instruction.

In setting the discussion in the following sections, it is necessary to clarify terminology associated with the issues at the center of analysis. First, the notion of "indigenizing" or "indigenization" in relation to education refers generally to efforts which integrate Indigenous content and Indigenous voices into systems of learning.[11] Movements for indigenization share common interests with decolonization discourse, which seek to identify and remove colonial legacies from schools, but differ in that calls for indigenization assert a further interest in integrating Indigenous-specific elements into schools.[12] In relation to legal education, indigenization involves the inclusion of Indigenous content, alternatively called Indigenous subject matter, such as Indigenous knowledge, perspectives, and experiences into the education of all students, as well as the inclusion of voices in terms of Indigenous faculty, staff, and students.[13]

Second, in identifying Indigenous subject matter, the concept of "Indigenous knowledge" relates to "traditional norms and social values, as well as to mental constructs that guide, organize, and regulate the people's ways of living" and understanding the world.[14] "Indigenous

11 *See generally* Maguire & Young 2015, *supra* note 3; Kathleen Butler & Anne Young, *Indigenisation of Curricula—Intent, Initiatives, and Implementation*, 19 PROC. AUSTL. U. QUALITY F. 50, 50 (2009); Douglas 2005, *supra* note 3.

12 *See generally* Guerzoni 2020, *supra* note 3.

13 *See generally* Maguire & Young 2015, *supra* note 3; Douglas 2005, *supra* note 3.

14 *See generally* Tyler Jessen et al., *Contributions of Indigenous Knowledge to Ecological and Evolutionary Understanding*, 20 FRONTIERS ECOLOGY & ENV'T. 93 (2021) [hereinafter Jessen et al. 2021]; Kyle Whyte, *What Do Indigenous Knowledges Do for Indigenous Peoples?*, *in* TRADITIONAL ECOLOGICAL KNOWLEDGE (Melissa Nelson & Daniel Shilling eds., 2018) [hereinafter Whyte 2018]; Nicole Latulippe, *Situating the Work: A Typology of Traditional Knowledge Literature*, 11

perspectives" refers to "standpoints on historical or contemporary events,"[15] and "[i]ndigenous experiences" encompass the ways Indigenous peoples perceive living in the world.[16] To the extent that they manifest in culture, language, narrative stories, philosophies, traditions, and spirituality, the body of Indigenous knowledge, perspectives, and experiences can extend to constitute Indigenous legal orders,[17] aspects that "undergird the creation of intersocietal commitments."[18] In situations where those intersocietal commitments are trans-nations, in the sense of bridging groups of people, and trans-boundary, in terms of crossing political and legal jurisdictions of states, they raise the possibility of constituting Indigenous forms of international legal orders.

Third, with respect to Indigenous voices, the motive is not just the physical presence of Indigenous speakers within law schools, but engagement of their knowledge, perspectives, and experiences with non-Indigenous content and voices.[19] Fourth, "international law education" is used interchangeably with "international law instruction" and "teaching of international law" to describe the status of international law as a subject of study. Last, the present analysis follows the United Nations' practice of using the capitalized "Indigenous" in the identification of peoples, with the lowercase "indigenous" reserved for use as an adjective indicating innate qualities.[20]

Additionally, the following should be noted regarding positionality in setting the scope of analysis.[21] The author is an Indigenous person (as a member of the Pa'Oh peoples of Shan State, Myanmar) and is a scholar

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ALTERNATIVE: AN INT'L J. INDIGENOUS PEOPLES 118 (2015) [hereinafter Latulippe 2015a]; INDIGENOUS KNOWLEDGES IN GLOBAL CONTEXTS: MULTIPLE READINGS OF OUR WORLD 5-7 (George Sefa Dei et al. eds., 2006). *See* Galloway 2018, *supra* note 5, at 4.

15 *See* Galloway 2018, *supra* note 5, at 4.

16 *Id.* at 5.

17 *See* Karen Jarratt-Snider & Marianne Nielsen, *Conclusion*, *in* TRADITIONAL, NATIONAL, AND INTERNATIONAL LAW AND INDIGENOUS COMMUNITIES 195-97 (Marianne Nielsen & Karen Jarratt-Snider eds., 2020); Val Napoleon & Hadley Friedland, *An Inside Job: Engaging with Indigenous Legal Traditions Through Stories*, 61 McGill L.J. 725 (2016) [hereinafter Napoleon & Friedland 2016]; Val Napoleon, *Thinking About Indigenous Legal Orders*, *in* DIALOGUES ON HUMAN RIGHTS AND LEGAL PLURALISM, IUS GENTIUM, COMPARATIVE PERSPECTIVES ON LAW & JUSTICE 143-44 (René Provost & Colleen Sheppard eds., 2013); Irene Watson, *First Nations, Indigenous Peoples: Our Laws Have Always Been Here*, *in* INDIGENOUS PEOPLES AS SUBJECTS OF INTERNATIONAL LAW 1, 101, 104, 108, 115-17 (Irene Watson ed., 2018); Whyte 2018, *supra* note 14.

18 *See* Borrows 2016, *supra* note 5, at 797-98.

19 *See generally* Guerzoni 2020, *supra* note 3; Marcelle Burns, *Are We There Yet? Indigenous Inter-Cultural Competency*, 28 LEGAL EDUC. REV. 1 (2018); Hadley & Friedland 2016, *supra* note 17.

20 *Editorial Manual: Capitalization in English*, UN DEP'T FOR GEN. ASSEMB. & CONF. MGMT. (2023), https://www.un.org/dgacm/en/content/editorial-manual/capitalization; Christine Weeber, *Why Capitalize "Indigenous"?*, SAPIENS (May 19, 2020), https://www.sapiens.org/language/capitalize-Indigenous/.

21 *See* Rhonda Shaw et al., *Ethics and Positionality in Qualitative Research with Vulnerable and Marginal Groups*, 20 QUALITATIVE RSCH. 277 [hereinafter Shaw et al. 2019]; Brian Bourke, *Positionality: Reflecting on the Research Process*, 19 QUALITATIVE REPORT, 2014, 1.

with American law school training who is teaching international law at an Australian law school granting Bachelor of Laws ("LLB"), Juris Doctor ("JD"), Master of Laws ("LLM"), and Doctorate ("PhD") degrees. As such, the author reflects the discourse of Indigenous law faculty in law schools with common law traditions, particularly with respect to the relationships between Indigenous peoples and the teaching of international law within prevailing legal education systems. In articulating an analysis which furthers indigenization of international law education, the author draws primarily upon the broader literature regarding the experiences of efforts to indigenize legal education in the common law countries of Australia, New Zealand, Canada, and the United States. While such a sample presents a limited scope, it serves as a starting point to delineate guidance for deeper reflection on potential legal education reforms. If law schools are to achieve the goals of diversity, inclusion, social justice, or cause lawyering in relation to Indigenous peoples, they must incur responsibilities for comprehensive considerations regarding the treatment of Indigenous peoples as subjects of the law and legal education. As cautioned by scholars such as Kate Galloway, "Simply adding 'Indigenous issues' to curriculum may not be sufficient to overturn the dominance of the mainstream legal system."[22]

II. INDIGENIZING INTERNATIONAL LAW IN THE CONTEXT OF LEGAL EDUCATION

The goal of indigenizing prevailing forms of instruction on international law connects to larger deliberations for change in legal education as a whole, which spans multiple movements intersecting over shared concerns regarding trends in law school instruction. On a global level, there is an ongoing convergence of legal education systems driven by continuing patterns of professional and intellectual globalization tied to increasing transnational legal practice, growing multi-lateral legal regimes, and expanding faculty and student exchange.[23] The convergence has largely been towards the models of American law schools, which have benefited from perceptions of representing appropriate standards in

22 *See* Galloway 2018, *supra* note 5, at 5.

23 *See* BRYANT GARTH & GREG SHAFFER, THE GLOBALIZATION OF LEGAL EDUCATION 14-15, 22, 24-25 (2022) [hereinafter Garth & Shaffer 2022]; Robert Lutz, *Reforming Approaches to Educating Transnational Lawyers: Observations from America*, 61 J. LEGAL EDUC. 449, 452 (2012); John Flood, *Legal Education in the Global Context: Challenges from Globalization, Technology, and Changes in Government Regulation*, 1, 5-6 (U. Westminister Sch. L., Working Paper No. 11-16, 2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1906687; James Faulconbridge & Daniel Muzio, *Legal Education, Globalization, and Cultures of Professional Practice*, 22 GEO. J. LEGAL ETHICS 1335 (2009); Simon Chesterman, *The Evolution of Legal Education: Internationalization, Transnationalization, Globalization*, 10 GER. L.J. 877, 879-82 (2009).

training for lawyers.[24] The result has been the propagation of American legal education approaches based on historical forms of common law training tied to positivist notions of scientific study involving the identification of objective facts and exercise of technocratic rationales in case analyses.[25]

The traditional justification behind such doctrinal methods has been the professional competency of law schools to prepare students to "think like a lawyer" in anticipation of their entrance in the legal profession.[26] The connection between legal education and legal profession influences the design of law school instruction, with the legal profession maintaining pressure upon law schools to address perceived needs of legal practice.[27] In some cases, like Australia and the United States, the character of legal education is heavily affected by expectations held by entities such as the Council of Australian Law Deans and the American Bar Association, respectively.[28]

To a degree, there are movements to challenge the dominance of doctrinal traditions in legal education, and the most prominent example of the discourse is spurred by the work of the Carnegie Foundation for the Advancement of Teaching (Carnegie Report), which critiques doctrinal approaches as being disconnected from the complexities of practice and calls for reforms to provide greater development of practical skills.[29] In essence, the aspiration is to focus less on "think like a lawyer" and turn more towards "act like a lawyer,"[30] so that legal education adopts practice-based orientations more responsive to realities of legal practice in

24 *See* Garth & Shaffer 2022, *supra* note 23, at 14-15, 24-27; Simon Chesterman, *The Globalisation of Legal Education*, SING. J. LEGAL STUD. 58 (2008); James Moliterno, *Exporting American Legal Education*, 58 J. LEGAL EDUC. 274, 278-80 (2008).

25 *See* James Moliterno, *The Future of Legal Education Reform*, 40 PEPP. L. REV. 423, 426 (2012); Paula Baron & Lillian Corbin, *Thinking Like a Lawyer/Acting Like a Professional: Communities of Practice as a Means of Challenging Orthodox Legal Education*, 46 L. TEACHER 100, 103-04 (2012) [hereinafter Baron & Corbin 2012]; William Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 U. ST. THOMAS L.J. 331, 334-35 (2018); WILLIAM SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 5-6 (2007) [hereinafter Sullivan et al. 2007].

26 *See generally* EDWIN FRUEHWALD, THINK LIKE A LAWYER: LEGAL REASONING FOR LAW STUDENTS AND BUSINESS PROFESSIONALS (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3685430; Kristen Holmquist, *Challenging Carnegie,* 61 J. LEGAL EDUC. 353 (2012) [hereinafter Holmquist 2012]; Baron & Corbin 2012, *supra* note 25.

27 *See generally* Holmquist 2012, *supra* note 26; Thomas Morgan, *The Changing Face of Legal Education: Its Impact on What it Means to Be a Lawyer*, 45 AKRON L. REV. 811 (2011) [hereinafter Morgan 2011].

28 *See generally* AUSTL. L. SCHS. STANDARDS COMM. & COUNCIL AUSTL. L. DEANS, AUSTRALIAN LAW SCHOOL STANDARDS (2022), https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf; A.B.A., STANDARDS: 2022-2023 STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2023), https://www.americanbar.org/groups/legal_education/resources/standards/.

29 *See generally* Sullivan et al. 2007, *supra* note 25.

30 *Id.*; Holmquist 2012, *supra* note 26.

regard to client subjectivities, nuances in morality and human suffering, and attendant fluidity of argumentation.[31] The movement towards practice-based learning facilitates alternative paradigms in teaching. However, the scope of potential reforms is limited because reforms continue a concern for practice, which preserves the orientation of law schools in directions dictated by the legal profession.

For Indigenous peoples, the above struggles over legal education offer little reassurance with respect to their status. To the extent that law schools function to deliver education to students who then graduate and become agents of the law, law schools exist as elements of larger legal systems. Many prevailing legal systems, however, possess colonial origins whose histories involve the subjugation of Indigenous civilizations, meaning that law schools that perpetuate those systems are at risk of also continuing their legacies of Indigenous subordination.[32] As a result, for Indigenous peoples, law schools that assert traditional approaches carry connotations of harmful practices from a negative colonial past. Likewise, reforms for practice-based orientations also suffer in the sense that they function to reinforce legal systems whose histories have been largely inimical to Indigenous interests.

Such concerns connect to the teaching of international law, in that the dispositions of law schools concerning Indigenous peoples present boundaries limiting potential reforms to indigenize international law education. Whether through adherence to traditions or to practice-based learning, law schools tied to legal systems with colonial legacies inherit a bias delimiting Indigenous knowledge, perspectives, and experiences. With respect to international law education, the bias is compounded by the nature of the field itself as a product of global history under Western imperial expansion. The prevailing conceptions of international law reflect the viewpoints of past Western empires, which sought to impose systems that supported their conquest and suppression of Indigenous civilizations.[33] As a consequence, international law as a subject entails particular approaches that echo colonial-era orientations towards Indigenous marginalization.[34] Thus, aspirations to indigenize teaching of

31 *See generally* William Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 U. ST. THOMAS. L.J. 331 (2018); Jonathan Black-Branch, *Modern Legal Education: Towards Practice-Ready Attitude, Attributes, and Professionalism*, 39 MAN. L.J. 1 (2017); Baron & Corbin 2012, *supra* note 26; Sullivan et al. 2007, *supra* note 26; Jason Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. W. L. REV. 219 (2007).

32 *See generally* Marcelle Burns, *Are We There Yet? Indigenous Cultural Competency in Legal Education*, 28 LEGAL EDUC. REV., 2018, 1 [hereinafter Burns 2018]; Galloway 2018, *supra* note 5.

33 *See* Wilson 2021, *supra* note 9; Fukurai 2020, *supra* note 9; Bruyneel 2007, *supra* note 9; Alfred & Corntassel 2005, *supra* note 9; Anghie 2005, *supra* note 9, at 3-6, 196-98; LaDuke 1983, *supra* note 9, at ii-iii.

34 *See supra* note 33 and accompanying text.

international law incur wider calls for more expansive reforms that go beyond the colonial foundations of law schools.

Some promise of change that meets Indigenous concerns is offered by movements asserting more progressive agendas in legal education. Specifically, there are efforts that critique traditional law school models and argue for broad alterations in curriculum and pedagogy, arguing for changes aimed at fostering higher-order thinking, richness in disciplinary diversity, and inquiry into different ways of describing facts.[35] For example, Kristen Holmquist goes beyond the Carnegie Report by arguing that traditional legal education "obscures the inter-dependence of knowing and doing that is at the heart of thinking like a lawyer" and that it "may also deny students the opportunity to engage in sophisticated higher-order thinking about law and policy, problems, and goals, and about potential paths, obstructions, and solutions."[36] Similarly, Thomas Morgan asserts that "[l]awyers must think about the facts they know, other facts they would find useful to know, and how to find out facts they do not have before them."[37] The arguments of critics like Holmquist and Morgan indicate interests to open legal education to a wider range of approaches in understanding to develop richer reflection and analysis. In doing so, these approaches open space for consideration of Indigenous ways of thinking, including Indigenous knowledge, perspectives, and experiences. Increasing possibilities to indigenize legal education also creates more opportunities to indigenize the teaching of international law in particular.

The motivations to reform international law education in relation to Indigenous approaches are supported by global trends in international law regarding Indigenous peoples. Since the era of the Cold War, there have been increased efforts by geographically diverse Indigenous groups to build transnational alliances to mobilize Indigenous activism within global institutions.[38] Their efforts have produced results, with evidence manifested in the United Nations ("UN") system, which addressed Indigenous concerns by launching thematic campaigns such as the 1994 International Decade of the World's Indigenous Peoples and the 2005 Second International Decade of the World's Indigenous Peoples.[39]

35 *See generally* Holmquist 2012, *supra* note 26; Morgan 2011, *supra* note 27.

36 *See* Holmquist 2012, *supra* note 26, at 357.

37 *See* Morgan 2011, *supra* note 27, at 830.

38 *See, e.g.*, Lin Poyer, *World War II and the Development of Global Indigenous Identities*, 24 IDENTITIES 417 (2017); SHERYL LIGHTFOOT, GLOBAL INDIGENOUS POLITICS (2016); JENS DAHL, THE INDIGENOUS SPACE AND MARGINALIZED PEOPLES IN THE UNITED NATIONS (2012); THOMAS HALL & JAMES FENELON, INDIGENOUS PEOPLES AND GLOBALIZATION (2009); ALEXANDRA XANTHAKI, INDIGENOUS RIGHTS AND UNITED NATIONS STANDARDS (2009).

39 *Indigenous Peoples at the United Nations*, UN, https://www.un.org/development/desa/Indigenouspeoples/about-us.html (last visited May 17, 2024) [hereinafter UN 2021a].

Additionally, the UN established mechanisms such as the UN Permanent Forum on Indigenous Issues ("UNPFII"), which creates a presence for Indigenous voices within the UN headquarters, the Expert Mechanism on the Rights of Indigenous Peoples ("EMRIP"), which advises the UN Human Rights Council in regards to Indigenous rights, and the Special Rapporteur on the Rights of Indigenous Peoples, which assists in articulating UN positions on Indigenous issues.[40]

Similar actions have occurred outside the UN, including fora like the Local Communities and Indigenous Peoples Platform ("LCIPP"), which represents an Indigenous caucus in the UN Framework Convention on Climate Change ("UNFCCC"), and the International Indigenous Forum on Biodiversity ("IIFB"), which facilitates Indigenous involvement with the Convention on Biological Diversity ("CBD").[41] Attendant with such events has been the recognition of Indigenous rights in international law, including dedicated instruments in the 2007 UN Declaration on Rights of Indigenous Peoples ("UNDRIP") and the 1989 International Labor Organization Convention Number 169 ("ILO No. 169"),[42] as well as complementary references in international human rights, environment, and development instruments that include the 2018 Framework Principles on Human Rights and Environment, the 1992 UN Conference on Environment and Development ("UNCED"), and the International Covenant on the Elimination of All Forms of Racial Discrimination ("ICERD").[43] The aforementioned developments demonstrate a growing presence of Indigenous issues in international law and a consequent increase in their potential association with international law practice. Hence, even in cases where law schools condition reforms to legal practice, Indigenous concerns are relevant in teaching international law.

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40 *See Expert Mechanism on the Rights of Indigenous Peoples*, OFF. OF THE HIGH COMM'R FOR HUM. RTS. (OHCHR), https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx (last visited May 17, 2024); UN 2021a, *supra* note 39; *Permanent Forum*, UN, https://www.un.org/development/desa/Indigenouspeoples/unpfii-sessions-2.html (last visited May 17, 2024) [hereinafter UN 2021b]; *Special Rapporteur on the Rights of Indigenous Peoples,* OHCHR, https://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx (last visited May 17, 2024) [hereinafter UN 2021c].

41 *See Local Communities and Indigenous Peoples Platform* (LCIPP), UN FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC), https://unfccc.int/LCIPP#eq-2 (last visited May 17, 2024); *Who Are We?*, INT'L INDIGENOUS F. ON BIODIVERSITY (IIFB), https://iifb-indigenous.org/ (last visited May 17, 2024).

42 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), UN, https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples (last visited May 17, 2024); International Labour Organization [ILO], Indigenous and Tribal Peoples Convention, 1989 (No. 169) June 27, 1989, 1650 U.N.T.S. 384.

43 Press Release, John H. Knox, OHCHR, *Framework Principles on Human Rights and the Environment*, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018); U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex 1 (Aug. 12, 1992); Commission on the Elimination of All Forms of Racial Discrimination (CERD), *General Recommendation 23 on the Rights of Indigenous Peoples*, U.N. Doc. A/52/18, Annex V (1997).

III. A FRAMEWORK FOR INDIGENIZATION

In considering the association of Indigenous subject matter with international law education, it is helpful to draw relevant insights from scholarly literature regarding the introduction of Indigenous approaches into more general higher education settings. In particular, there are concurrent ongoing discussions in higher education driven by Indigenous studies literature appearing in the fields of critical studies and curriculum studies. The individual discourse provides a collective body of work offering concepts that help to organize deliberations over Indigenous content into the teaching of international law.

A. Critical Studies

Critical studies regarding Indigenous peoples offer a theoretical basis for addressing the struggles of Indigenous voices in dominant scholarly discourse. In particular, Indigenous studies literature that applies critical approaches draws upon the concepts of Foucault regarding discourse to clarify the challenges that have faced efforts to advance Indigenous content in wider-issue spaces, with Foucault's works helping to explain the marginalization of Indigenous voices in the structures of knowledge production dominated by non-Indigenous actors.[44] To begin, Foucault's works characterize discourse as "practices that systematically form objects of which they speak,"[45] with practices involving speech, writing, and acts that frame interactions between people.[46] Such interactions center on "discursive formations" comprised of elements arising from "epistemes" of postulates and ways of reasoning that direct understanding of the world.[47] Foucault's theories on discourse highlight the role of structure in the production of knowledge in that they identify the ways discourse affects the flow of information and ideas.[48] The structure of knowledge production is tied to a structure of power, and Foucault

44 *See, e.g.*, Philip Batty, *Private Politics, Public Strategies: White Advisers and Their Aboriginal Subjects*, 75 OCEANIA 209 (2015); Morgan Brigg, *Biopolitics Meets Terrapolitics: Political Ontologies and Governance in Settler-Colonial Australia*, 42 AUSTL. J. POL. SCI. 403 (2007); PETER KULCHYSKI & FRANK TESTER, KIUMAJUT (TALKING BACK): GAME MANAGEMENT AND INTUIT RIGHTS 1900-70 (2007); Deirdre Howard-Wagner, *From Denial to Emergency: Governing Indigenous Communities in Australia*, *in* CONTEMPORARY STATES OF EMERGENCY: THE POLITICS OF MILITARY AND HUMANITARIAN INTERVENTIONS (Didier Fassin & Mariella Pandolfi eds., 2010); Marjo Lindroth, *Paradoxes of Power: Indigenous Peoples in the Permanent Forum*, 46 COOP. & CONFLICT 543 (2011); JONATHAN LILJEBLAD & BAS VERSCHUUREN, INDIGENOUS PERSPECTIVES ON SACRED NATURAL SITES: CULTURE, GOVERNANCE AND CONSERVATION (2019).

45 MICHEL FOUCAULT, THE ARCHAEOLOGY AND THE DISCOURSE ON LANGUAGE (2d ed. 2010) [hereinafter Foucault 2010].

46 ALAN HUNT & GARY WICKHAM, FOUCAULT AND THE LAW: TOWARDS A SOCIOLOGY OF LAW AS GOVERNANCE (1994) [hereinafter Hunt & Wickham 1994].

47 Foucault 2010, *supra* note 45, at 191; Hunt & Wickham 1994, *supra* note 46, at 9.

48 Hunt & Wickham 1994, *supra* note 46, at 8-9.

asserts that "power and knowledge directly imply one another."[49] Consequently, power affects the flow of information and ideas used to generate understanding, such that "it produces reality" in accordance with the preferences of those actors holding dominant positions of power.[50]

The subject of international law echoes the structural implications of Foucault. To the extent that the current system of international law is a product of historical domination by Western imperial powers,[51] Foucault's theories can be applied to a discussion of international law as a structure of knowledge production whose foundations were disposed towards Western colonial understandings of the world. While imperialism transitioned into the modern era of nation-states, international law carries a colonial legacy of practices and ideas favoring non-Indigenous perspectives whose heritage originates from a past imperial West. As a consequence, Indigenous peoples, as subjects of colonies and as subjects of their subsequent post-independence states, hold subordinate positions of power and are marginalized within the structures of international law discourse.

Foucault's ideas on discourse, however, also address aspects of agency that can work to resist structures of power in the production of knowledge. In particular, Foucault observes that power and knowledge can be unmade, and discourse can actually often serve as a "point of resistance . . . for an opposing strategy."[52] Under Foucault, dominant actors work through "technologies of power" that enable them to objectify others, controlling the identities of subordinate actors in ways that direct a discourse's treatment of their information and ideas.[53] However, as much as dominant actors wield technologies of power to maintain hegemonic positions, it is also possible for subordinate actors to resist marginalization through "technologies of the self," which are activities that allow them to exercise "operations on their own bodies and souls, thoughts, conduct, and way of being."[54] To the degree that such aspects relate to identity, "technologies of the self" support agency that allows actors to perform operations determining their own identity. In doing so, subordinate actors can operate autonomously to resist the subordination enforced by "technologies of power." Foucault labels the contest between "technologies of power" and "technologies of the self" as the "micro-

49 MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 27-28 (1977); Hunt & Wickham 1994, *supra* note 46, at 12.

50 Hunt & Wickham 1994, *supra* note 46, at 15-16.

51 *See generally* Fukurai 2020, *supra* note 9; Bruyneel 2007, *supra* note 9; Alfred & Corntassel 2005, *supra* note 9; Anghie 2005, *supra* note 9; LaDuke 1983, *supra* note 9.

52 *See* MICHEL FOUCAULT, POLITICS, PHILOSOPHY, CULTURE 37 (Lawrence Kritzman ed., 1988).

53 *See* MICHEL FOUCAULT, TECHNOLOGIES OF THE SELF: A SEMINAR WITH MICHEL FOUCAULT 18 (Luther Martin et al. eds., 1988) [hereinafter Foucault 1988b].

54 *Id.*

politics" of discourse, with the production of knowledge operating as a function of the interplay of power and identities in the struggle for information and ideas.[55]

For the topic of Indigenous peoples and international law education, the implication is that it is possible for Indigenous voices to counter the dominant approaches of international law teachings through the identification and exercise of "technologies of the self." To the extent that Indigenous identities involve unique understandings of the world, Indigenous actions over identity entail attendant assertions of Indigenous knowledge, perspectives, and experiences on broader international issues, which can encompass international law. Following Foucault, the task for Indigenous peoples is to identify and exercise "technologies of the self" that enable a "micro-politics" to contest dominant international law discourse. With respect to teaching international law, potential "technologies of the self" can be the strategies through which Indigenous peoples express information and ideas reflective of their identities in spaces of education. In essence, the concepts of Foucault raised by critical studies highlight the significance of strategies enabling Indigenous agency in countering dominant approaches to teaching international law.

B. Curriculum Studies

Identifying specific strategies that constitute Indigenous "technologies of the self" is assisted by complementary contributions from literature on curriculum studies. In relation to higher education, curriculum studies host discourse that delineates the types of reforms that are appropriate for promoting inclusion of historically marginalized voices, with overlapping works in decolonization and Indigenous studies clarifying the directions for education reform. Specifically, they focus reform on mitigation of contests over epistemology and ontology. Epistemology relates to the bases of knowledge in terms of *how* humans reason to produce understanding,[56] and echo Foucault's interests in the construction of knowledge by actors in a discourse. Ontology refers to an attendant issue of knowledge in considering *what* is the focus of human inquiry,[57] which evokes Foucault's attention to the outcomes that arise from practices of discourse. The concerns of curriculum studies differ from those held by critical studies. Critical studies highlight the issue of Indigenous

55 *See* STEVEN BEST & DOUGLAS KELLNER, POSTMODERN THEORY 56 (1991).

56 *See generally* KNOWING HOW: ESSAYS ON KNOWLEDGE, MIND, AND ACTION (John Bengson & Marc Moffett eds., 2012); Barry Stroud, *Epistemology, the History of Epistemology, Historical Epistemology*, 75 ERKENNTNIS 495 (2011).

57 *See generally* Jonathan Grix, *Introducing Students to the Generic Terminology of Social Research*, 22 POLITICS 175 (2002); JOHN CROTTY, THE FOUNDATIONS OF SOCIAL RESEARCH (1998).

agency within structures of international law education, but curriculum studies point to the potential directions such agency can pursue in driving change to those structures.

With respect to epistemology, curriculum studies host discussions which strive to "indigenize" universities, intending to change research and provide instruction to better support incorporation of Indigenous modes of understanding within higher education.[58] Referencing arguments of decolonization discourse, the literature on indigenization views the existing university form as originating in the West, such that they are institutions that carry a legacy of Western systems of learning.[59] Such a legacy, however, was propagated as a component of imperial history,[60] and as a result, it entailed modes of analysis with colonial dispositions to subordinate colonized Indigenous peoples.[61] The consequence is that prevailing university models follow a history that advanced a hierarchy of imperial civilizations being dominant over Indigenous cultures and which privileged imperial approaches of reasoning over Indigenous ways

58 *See, e.g.*, Neil Harrison & Ivan Clarke, *Decolonizing Curriculum Practice: Developing the Indigenous Cultural Capability of University Graduates*, 23 HIGHER EDUC. 183 (2022) [hereinafter Harrison & Clarke 2022]; Nadena Doharty et al., *The University Went to "Decolonise" and All They Brought Back Was Lousy Diversity Double-Speak! Critical Race Counter-Stories from Faculty of Colour in "Decolonial" Times*, 53 EDUC. PHIL. & THEORY 233 (2021) [hereinafter Doharty et al. 2021]; Amber Hughes, *Positioning Indigenous Knowledge Systems Within the Australian Mathematics Curriculum: Investigating Transformative Paradigms with Foucault*, 42 DISCOURSE: STUD. CULTURAL POL. EDUC. 487 (2021); Cathie Burgess, *Beyond Cultural Competence: Transforming Teacher Professional Learning Through Aboriginal Community-Controlled Cultural Immersion*, 60 CRITICAL STUD. EDUC. 477 (2017); Gurminder Bhambra, *Postcolonial and Decolonial Dialogues*, 17 POSTCOLONIAL STUD. 115 (2014).

59 *See generally* Priyamvada Gopal, *On Decolonisation and the University*, 35 TEXTUAL PRAC. 873 (2021); Nicholas Padilla, *Decolonizing Indigenous Education: An Indigenous Pluriversity Within a University in Cauca, Colombia*, 22 SOC. & CULTURAL GEOGRAPHY 523 (2021); Lawrence Meda, *Decolonising the Curriculum: Students' Perspectives*, 17 AFR. EDUC. REV. 88 (2020) [hereinafter Meda 2020]; Shannon Morreira et al., *Confronting the Complexities of Decolonising Curricula and Pedagogy in Higher Education*, 5 THIRD WORLD THEMATICS 1 (2020); UNSETTLING EUROCENTRISM IN THE WESTERNIZED UNIVERSITY (Julie Cupples & Ramón Grosfoguel eds., 2019); RAMON GROSFOGUEL ET AL., DECOLONIZING THE WESTERNIZED UNIVERSITY: INTERVENTIONS IN PHILOSOPHY OF EDUCATION FROM WITHIN AND WITHOUT (2016).

60 *See supra* note 59 and accompanying text.

61 *See generally* MARGARET KOVACH, INDIGENOUS METHODOLOGIES: CHARACTERISTICS, CONVERSATIONS AND CONTEXTS (2d ed. 2021) [hereinafter Kovach 2021]; BAGELE CHILISA, INDIGENOUS RESEARCH METHODOLOGIES (2d ed. 2020) [hereinafter Chilisa 2020]; Gawaian Bodkin-Andrews & Bronwyn Carlson, *The Legacy of Racism and Indigenous Australian Identity Within Education*, 19 RACE, ETHNICITY, & EDUC. 784 (2016) [hereinafter Bodkin-Andrews & Carlson 2016]; NORMAN DENZIN ET AL., HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES (2014) [hereinafter Denzin et al. 2014]; LINDA TUHIWAI SMITH, DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES (2007) [hereinafter Smith 2007]; Sonya Atalay, *Indigenous Archaeology as Decolonizing Practice*, 30 AM. INDIAN Q. 280 (2006) [hereinafter Atalay 2006]; Francesco Mauro & Preston Hardison, *Traditional Knowledge of Indigenous and Local Communities: International Debate and Policy Initiatives*, 10 ECOLOGICAL APPLICATIONS 1263 (2000) [hereinafter Mauro & Hardison 2000].

of understanding.[62] The critiques of universities raised by curriculum studies literature echo the charges of colonial legacies made against law schools, with both perceiving power structures within higher education as reflecting colonial dispositions that subordinate Indigenous interests. The distinction is that, while the concerns regarding law schools deal with the perpetuation of legal systems that marginalize Indigenous peoples, the concerns regarding universities deal with the imposition of forms of reasoning that suppress Indigenous knowledge, perspectives, and experience.

The colonial hierarchy is problematic because it means that universities that sustain the historical privilege of Western systems of learning are continuing their legacies of dehumanization against Indigenous peoples under the guise of perpetuating scholarly discourse, which fosters the objectification of Indigenous civilizations, misunderstanding of Indigenous cultures, and denial of Indigenous voices.[63] Hence, to the extent that universities continue to hold their historical traditions of education, they are continuing colonial systems of instruction which marginalize Indigenous peoples.[64] Indigenous critics argue that evidence of marginalization is apparent in prevailing academic practices, which they see as omitting Indigenous knowledge, failing to engage with Indigenous voices, and fetishizing Indigenous cultures.[65] Indigenous critics further argue that the treatment of Indigenous peoples in universities functions to distance scholarly discourse from Indigenous viewpoints, resulting in an epistemic divide, with teachers and students observing Indigenous peoples as specimens for study under frameworks held by university-prescribed systems of knowledge originating from the West.[66] In essence, phrased in the concepts of Foucault, universities employ epistemologies that function as "technologies of power" sustaining Western forms of

62 *See generally* Duane Champagne, *Centering Indigenous Nations Within Indigenous Methodologies*, 30 WICAZO SA REV. 57 (2015) [hereinafter Champagne 2015]; Atalay 2006, *supra* note 61; Smith 2007, *supra* note 61.

63 *See generally* Denzin et al. 2014, *supra* note 61; Smith 2007, *supra* note 61.

64 *See supra* note 63 and accompanying text.

65 *See generally* Marcus Barber & S. Jackson, "*Knowledge Making": Issues in Modelling Local and Indigenous Ecological Knowledge*, 43 HUM. ECOLOGY 119 (2015) [hereinafter Barber & Jackson 2015]; Annjeanette Belcourt et al., *Indigenous Methodologies in Research: Social Justice and Sovereignty as the Foundations of Community-Based Research*, *in* MAPPING INDIGENOUS PRESENCE: NORTH SCANDINAVIAN AND NORTH AMERICAN PERSPECTIVES 61-62 (Kathryn Shanley & Bjorg Evjen eds., 2015); Denzin et al. 2014, *supra* note 61; Annette Watson, *Misunderstanding the "Nature" of Co-Management: A Geography of Regulatory Science and Indigenous Knowledges (IK)*, 52 ENV'T MGMT. 1085 (2013); Jo Recht, *Hearing Indigenous Voices, Protecting Indigenous Knowledge*, 16 INT'L J. CULTURAL PROP. 233 (2009); Mauro & Hardison 2000, *supra* note 61.

66 *See* Harrison & Clarke 2022, *supra* note 58; Susan Page et al., *Fostering Indigenous Intercultural Ability During and Beyond Initial Teacher Education*, *in* INTERCULTURAL COMPETENCE IN THE WORK OF TEACHERS: CONFRONTING IDEOLOGIES AND PRACTICES (Fred Dervin et al. eds., 2020).

knowledge, suppressing the expression of subordinate voices outside Western forms of reasoning.

The recognition of epistemology assists efforts to advance Indigenous content in international law education since it outlines a target for contestation. Specifically, following the references to Foucault, it guides Indigenous activism by directing the exercise of "technologies of the self" towards practices that advance Indigenous epistemologies in the teaching of international law. In doing so, Indigenous activities can drive a "micro-politics" that works against the dominant position of Western approaches in existing international law education. Such clarification provides a means of discerning strategies that are appropriate for the desired outcome of elevating Indigenous subject matter in international law education.

Additional guidance comes from considering ontology. Discussions of ontology in relation to international law benefit from a dedicated discourse by Indigenous scholars identified by the term Fourth World Approaches to International Law ("FWAIL") or, alternatively Original Nations Approaches to International Law ("ONAIL").[67] Within its agenda, FWAIL sets an objective for Indigenous movements to articulate expectations for change in the field of international law and potential aspirations for activism spanning a spectrum between "thin" perspectives, which espouse a continued engagement of Indigenous peoples within the existing international legal system, and "thick" perspectives, which call for construction of a new international order outside of states altogether.[68] Within the continuum between "thin" and "thick" extremes lies a range of voices that includes those seeking *ad hoc* instrumental use of existing international law by Indigenous advocates,[69] those striving to reform international law to redress Indigenous marginalization,[70] others struggling for governance spaces granting Indigenous autonomy with

67 *See* JONATHAN LILJEBLAD, INDIGENOUS IDENTITY, HUMAN RIGHTS AND THE ENVIRONMENT IN MYANMAR: LOCAL ENGAGEMENT WITH GLOBAL RIGHTS DISCOURSES 98-100 (2022); HIROSHI FUKURAI & RICHARD KROOTH, ORIGINAL NATION APPROACHES TO INTER-NATIONAL LAW: THE QUEST FOR RIGHTS OF INDIGENOUS PEOPLES AND NATURE IN THE AGE OF THE ANTHROPOCENE (2021).

68 *See, e.g.*, IRENE WATSON, INDIGENOUS PEOPLES AS SUBJECTS OF INTERNATIONAL LAW 97, 118 (2018); GLEN COULTHARD, RED SKIN, WHITE MASKS: REJECTING THE COLONIAL POLITICS OF RECOGNITION 178-79 (2014); Amar Bhatia, *The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World*, 14 OR. REV. INT'L L. 131 (2012) [hereinafter Bhatia 2012]; Patrick Macklem, *Indigenous Recognition in International Law: Theoretical Observations*, 30 MICH. J. INT'L L. 177 (2008); Elena Cirkovic, *Self-Determination and Indigenous Peoples in International Law*, 31 AM. INDIAN L. REV. 375 (2007).

69 *See generally* Ryder McKeown, *International Law and Its Discontents: Exploring the Dark Sides of International Law in International Relations*, 43 REV. INT'L STUD. 430 (2017); Jennifer Pitts, *International Relations and the Critical History of International Law*, 31 INT'L RELS. 282 (2017).

70 *See generally* Dale Turner, THIS IS NOT A PEACE PIPE: TOWARDS A CRITICAL INDIGENOUS PHILOSOPHY (2006).

power to engage with states,[71] and voices aspiring to reconcile a state-based world with Indigenous peoples through processes of mutual education and connection of their disparate legal traditions.[72] More progressive positions assert a need to decolonize international law through the identification of Indigenous forms of international law concepts,[73] promote alliance formation between Indigenous peoples and other marginalized groups for greater leverage against dominant hegemons,[74] or advance broad resistance against the imperialist impacts of the international system in favor of an alternative one.[75]

The deliberations between "thin" and "thick" perspectives can work as an analogy for law schools in the sense that they help characterize the motivations for legal education reforms. Specifically, "thin" perspectives would be reflected in approaches that seek to retain existing systems, implying situations wherein Indigenous voices operate within the spaces afforded by the current structure of legal education. In contrast, "thick" perspectives would be illustrated by approaches that work to transform existing systems, implying efforts to expand spaces for Indigenous knowledge or, in the extreme, wholly replace the structures of legal education in favor of Indigenous models of learning. Phrased in the concepts of Foucault previously presented in the critical studies discussion in Section III(A), the delineation of aspirations serves to clarify the desired outcomes for legal education discourse. With respect to Indigenous peoples and the teaching of international law, such clarification helps further refine the exercise of "technologies of the self" by delimiting the scope of their applications. That is, as much as reflections on epistemology can help craft strategies that elevate Indigenous content in international law education, attendant considerations of ontology can aid in demarcating the desired extent of such elevation.

The scholarship raised in the above reviews of critical studies and curriculum studies presents a range of concepts that assist in organizing discussions to advance Indigenous subject matter in the teaching of international law. Collectively, they function as a theoretical framework providing guidance for discourse seeking to advance Indigenous topics and Indigenous voices in law schools. The following sections continue

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71 James Anaya, *Indian Givers: What Indigenous Peoples Have Contributed to International Human Rights Law*, 22 WASH. U. J. L. & POL'Y 107, 116 (2006).

72 *See* Bhatia 2012, *supra* note 68, at 174; Lillian Aponte Miranda, *Indigenous Peoples as International Lawmakers*, 32 U. PA J. INT'L L. 203, 213 (2010).

73 Leanne Simpson, *Looking After Gdoo-naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships*, 23 WICAZO SA REV. 29, 31, 38 (2008).

74 *See generally* Sunera Thobani, *Reading TWAIL in the Canadian Context: Race, Gender, and National Formation*, 10 INT'L CMTY. L. REV. 421 (2008); Seth Gordon, *Indigenous Rights in Modern International Law From a Critical Third World Perspective*, 31 AM. INDIAN L. REV. 401 (2007).

75 *See generally* Bhatia 2012, *supra* note 68; Anghie 2005, *supra* note 9.

the preceding commentary by applying the framework to the issues associated with integrating Indigenous approaches into international law education.

IV. APPLYING THE FRAMEWORK TO INTERNATIONAL LAW EDUCATION

Efforts to promote Indigenous approaches in international law education incur a series of considerations with respect to the selection of strategies to advance Indigenous subject matter in law schools. The framework drawn from Foucault's theories on discourse in connection with concerns for epistemology and ontology enables a means of guiding considerations about the appropriateness of potential strategies. The framework assesses appropriateness by the extent to which any individual strategy addresses the marginalization of Indigenous peoples through the facilitation of Indigenous agency in elevating Indigenous knowledge, perspectives, and experiences.

The considerations can be organized from general to specific. First, there are the general issues with introducing new topics into pre-existing legal education systems, with Indigenous content and Indigenous voices being a subset of a range of potential topics considered for inclusion by law schools. Second, there are more particular issues associated with the treatment of Indigenous concerns as being distinct from other topics, which focuses on addressing the legacies of subordination imposed upon Indigenous civilizations in higher education. Finally, there are specific issues in situating Indigenous subject matter and Indigenous voices within the teaching of international law. The above issues are addressed in the following subsections with commentary exercising the framework formed in preceding sections to help clarify decisions for appropriate strategies.

A. General Considerations

In terms of the general factors associated with the introduction of new subjects, there is guidance for law schools in pre-existing literature surrounding reforms in legal education to include topics like legal ethics and environmental law. Both topics tied in discourse that addressed similar issues when elevating their presence in law degree programs. With respect to legal ethics, law schools sought to make it a core element in education as a result of concerns raised by the legal profession over unethical lawyer conduct.[76] With respect to environmental law, law

76 *See generally* David Luban & W. Bradley Wendel, *Philosophical Legal Ethics: An Affectionate History*, 30 GEO. J. LEGAL ETHICS 337 (2017) [hereinafter Luban & Wendel 2017]; DEBORAH RHODE, IN THE INTERESTS OF JUSTICE (2000); Thomas Metzloff & David Wilkins, *Teaching Legal Ethics*, 58 L. & CONTEMP. PROBS. 1 (1995) [hereinafter Metzloff & Wilkins 1995].

schools worked to increase instruction in environmental issues in response to growing environmental activism by social movements and public policy.[77]

The discourse for both fields of study shared similar deliberations, and their respective discussions reflected a matching slate of issues: content, teaching approach, curriculum placement, and curricular hierarchy. First, content refers to the body of knowledge and skills deemed appropriate for a given subject, and it can involve decisions regarding the relevant body of laws, practices, professional duties, and issues that students should learn in association with a particular subject.[78] Second, teaching approach encompasses methods, materials, and assessments used to deliver chosen content. Teaching methods go beyond the doctrinal uses of lecture, case analysis, or Socratic instruction, and include methods such as role-play, argumentative debate, personal reflection, experiential learning, and interdisciplinary engagement. Each method requires different materials and unique modes of assessment.[79] Third, curriculum placement relates to the location of a subject within a larger schedule of courses, which contributes to graduating with a law degree. Curriculum placement can be discrete, in terms of a subject wholly contained within a dedicated course, or pervasive, with a subject being parsed into elements appearing within a range of other courses. Curriculum placement also deals with treatment of a subject as integrated with on-campus classroom instruction or allocated to off-campus programs such as internships, clinics, and field studies.[80] Finally, the status of a subject within a perceived curricular hierarchy is also an issue for discussion. Curriculum hierarchy may be a subjective consideration of individual

77 *See e.g.*, Jonathan Liljeblad, *Integrating the Anthropocene in Legal Education: Considerations for Asia*, 9 ASIAN J. L. & SOC'Y 207 (2022) [hereinafter Liljeblad 2022b]; *John Kerry to ABA: "You Are All Climate Lawyers Now*," A.B.A. (Aug. 11, 2021), https://www.americanbar.org/news/abanews/aba-news-archives/2021/08/john-kerry-to-aba—-you-are-all-climate-lawyers-now-/; Danielle Ireland-Piper & Nick James, *The Obligation of Law Schools to Teach Climate Change Law*, 40 U. QUEENSLAND L.J. 319 (2021); Joel Mintz, *Teaching Environmental Law: Some Observations on Curriculum and Materials*, 33 J. LEGAL EDUC. 94 (1983).

78 *See generally* Liljeblad 2022b, *supra* note 77; Luban & Wendel 2017, *supra* note 76; DANIEL MARKOVITS, A MODERN LEGAL ETHICS (2008); Judith Dickson & Susan Campbell, *Professional Responsibility in Practice: Advocacy in the Law School Curriculum*, 14 LEGAL EDUC. REV. 5 (2004) [hereinafter Dickson & Campbell 2004].

79 *See generally* Liljeblad 2022b, *supra* note 77; Robert Burns, *Teaching the Basic Ethics Class Through Simulation: The Northwestern Program in Advocacy and Professionalism*, 58 L. & CONTEMP. PROBS. 37 (1995); Mary Daly et al., *Contextualizing Professional Responsibility: A New Curriculum for a New Century*, 58 L. & CONTEMP. PROBS. 193 (1995) [hereinafter Daly, Green, & Pearce 1995]; David Wilkins, *Redefining the Professional in Professional Ethics: An Interdisciplinary Approach to Teaching Professionalism*, 58 L. & CONTEMP. PROBS. 241 (1995); Metzloff & Wilkins 1995, *supra* note 76, at 2-3; Dickson & Campbell 2004, *supra* note 78.

80 *See generally* Liljeblad 2022b, *supra* note 77; Dickson & Campbell 2004, *supra* note 78; Carrie Menkel-Meadow, *Taking Law and ____ Really Seriously: Before, During, and After "The Law"*, 60 VAND. L. REV. 555 (2007).

administrators, faculty, and students, but it affects the prominence of a subject and, thereby, its treatment relative to others.[81]

With respect to Indigenous peoples, some caution should be applied in limiting decisions solely to the above factors. The factors function to guide deliberations involving the introduction of content in terms of teaching materials, but they do not wholly address the role of instructors. Specifically, while they proffer a way of thinking through the presentation of Indigenous materials in the context of a larger law school environment, the factors do not extend to all possibilities of delivering material by Indigenous speakers. The issue is significant because it risks a disconnect where Indigenous content is decontextualized in the absence of guidance from associated Indigenous voices.[82] In the absence of Indigenous speakers, Indigenous materials risk becoming specimens of study, repeating the legacy of objectification of Indigenous civilizations and dehumanization of Indigenous peoples conducted by traditional models of law schools and higher education.

The significance of decontextualization becomes apparent when phrased in Foucault's concepts presented earlier in Section III of the present paper: the presentation of Indigenous materials such as speech or writing may represent tools of learning, but if they are controlled by hegemonic non-Indigenous powers, they function as "technologies of power" sustaining structures of dominations over Indigenous peoples. To become "technologies of the self," they must be connected to associated Indigenous voices who use them to express "their own bodies and souls, thoughts, conduct, and way of being."[83] To the extent that such expression articulates knowledge, perspectives, and experiences, "technologies of the self" position Indigenous speakers to give voice to Indigenous epistemologies and ontologies. Further, continuing the framing in concepts of Foucault, the absence of Indigenous speakers means that there are no Indigenous voices to claim agency. Without agency, Indigenous materials may be used on their own as representations of Indigenous epistemologies and ontologies, but they do so under threat of filtration or distortion conducted at the discretion of an existing structure of learning that

81 *See* Liljeblad 2022b, *supra* note 77; Luban & Wendel 2017, *supra* note 76; Dickson & Campbell 2004, *supra* note 78; Daly, Green, & Pearce 1995, *supra* note 79.

82 *See generally* Nicole Wilson et al., *A Systematic Scoping Review of Indigenous Governance Concepts in the Climate Governance Literature*, 171 CLIMATIC CHANGE 32 (2022) [hereinafter Wilson et al. 2022]; Zoe Todd, *An Indigenous Feminist's Take on the Ontological Turn:"Ontology" is Just Another Word for Colonialism*, 29 J. HIST. SOCIO. 4 (2016) [hereinafter Todd 2016]; Nicole Latulippe, *Bridging Parallel Rows: Epistemic Difference and Relational Accountability in Cross-Cultural Research*, 6 INT'L INDIGENOUS POL'Y J. 2 (2015) [hereinafter Latulippe 2015b]; Sarah Hunt, *Ontologies of Indigeneity: The Politics of Embodying a Concept*, 21 CULTURAL GEOGRAPHIES 27 (2014) [hereinafter Hunt 2014].

83 *See* Foucault 1988b, *supra* note 53, at 18.

privileges non-Indigenous interests.[84] Hence, to the extent that their ulterior motive is to elevate Indigenous agency, aspirations to promote Indigenous peoples should go beyond the general factors applied to the introduction of other law school subjects and consider additional factors addressing inclusion of Indigenous materials and Indigenous voices.

B. Particular Considerations in Promoting Indigenous Topics

Beyond the general considerations in advancing new subjects within legal education, there are additional complexities associated with the treatment of Indigenous peoples within scholarly inquiry. To the extent that law schools are classified as forms of higher education, there is scholarship available detailing higher education efforts to promote greater inclusion of Indigenous perspectives through a burgeoning array of strategies to integrate Indigenous topics into teaching. Specifically, in seeking to promote Indigenous subject matter, universities have acknowledged their historical adherence to Western-based modes of analysis, which dehumanized Indigenous peoples as objects of inquiry. To counter such objectification, various universities have pursued strategies encouraging greater engagement with Indigenous subjectivities.[85] In essence, they work to humanize Indigenous peoples by ensuring their presence as participants in scholarly discourse.[86]

The strategies for inclusion vary, but they fall generally within a typology that distinguishes: approaches based on promoting representation of Indigenous content within university curricula; approaches that seek to develop empathy within university communities for Indigenous peoples and the contexts which drive their conceptions of existence; and approaches that aspire to nurture reflexivity within university populations regarding the positions of institutions and individuals in directing the promotion of different worldviews, values, and knowledge systems, including those of Indigenous cultures.[87] The selection of strategies

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84 *See* Wilson et al. 2022, *supra* note 82; Todd 2016, *supra* note 82; Latulippe 2015a, *supra* note 14; Latulippe 2015b, *supra* note 82; Hunt 2014, *supra* note 82.

85 *See, e.g.*, Shaw et al. 2019, *supra* note 21; Michael Hart et al., *Working Across Contexts: Practical Considerations of Doing Indigenist/Anto-Colonial Research*, 23 QUALITATIVE INQUIRY 332 (2017); Barber & Jackson 2015, *supra* note 65; Champagne 2015, *supra* note 62; MARK FREELAND, ETHICS: A LIBERATIVE APPROACH (Miguel de la Torre ed., 2013) [hereinafter Freeland 2013]; Heather Castleden et al., "*I Spent the First Year Drinking Tea": Exploring Canadian University Researchers' Perspectives on Community-Based Participatory Research Involving Indigenous Peoples*, 56 CAN. GEOGRAPHER 160 (2012); Natalie Clark et al., *Ethical Dilemmas in Community-Based Research: Working with Vulnerable Youth in Rural Communities*, 8 J. ACAD. ETHICS 243 (2010); Smith 2007, *supra* note 61.

86 *See generally* Kovach 2021, *supra* note 61; Shaw et al. 2019, *supra* note 21; Champagne 2015, *supra* note 62; Freeland 2013, *supra* note 85; Smith 2007, *supra* note 61.

87 *See generally* Arinola Adefila et al., *Higher Education Decolonisation: #Whose Voices and Their Geographical Locations?*, 20 GLOBALISATION, SOC'YS & EDUC. 262 (2022) [hereinafter Adefila et al. 2022]; Harrison & Clarke 2022, *supra* note 58; Helen Margaret Murray, *Teaching About*

frequently connect to calls for "decentering," "co-production," and "inter-cultural competency." "Decentering" references efforts to shift prevailing paradigms of Western thought towards increased accommodation of non-Western perspectives. An example is the readjustment of course reading lists to allow for Indigenous-authored publications and the opening of classroom spaces to host Indigenous content.[88] "Co-production" sees knowledge as a product arising from social processes, such that goals of nurturing post-colonial understanding require collaborations between non-Indigenous and Indigenous communities.[89] "Intercultural competency" strives to promote engagement between universities largely serving the interests of dominant majorities and subordinate cultures frequently marginalized by those majorities, with competency developed through methods that include mentoring by Indigenous actors,[90] hosting Indigenous community members within schools,[91] or immersion of students and teachers in Indigenous communities.[92]

Indigenous Peoples in the EFL Classroom: Practical Approaches to the Development of Intercultural Competence, 13 TESOL J., June 2022, 1 [hereinafter Murray 2022]; Rebecca Audrey Wallace, *Beyond the "Add and Stir" Approach: Indigenizing Comprehensive Exam Reading Lists in Canadian Political Science*, 55 CAN. J. POL. SCI. 687 (2022) [hereinafter Wallace 2022]; Renae Watchman, *Teaching Indigenous Film Through an Indigenous Epistemic Lens*, 34 STUD. AM. INDIAN LITERATURES 112 (2022) [hereinafter Watchman 2022].

88 *See generally* Watchman 2022, *supra* note 87; Meda 2020, *supra* note 59; Alison Sammel & Arturo Segura, *Supporting Indigenization in Canadian Higher Education Through Strong International Partnerships and Strategic Leadership: A Case Study of the University of Regina*, *in* INDIGENIZING EDUCATION: DISCUSSION AND CASE STUDIES FROM AUSTRALIA AND CANADA (2020); Torjer Olsen, *Privilege, Decentring, and the Challenge of Being (Non-) Indigenous in the Study of Indigenous Issues*, 47 AUSTL. J. INDIGENOUS EDUC. 206 (2018); Kiara Rahman, *Belonging and Learning to Belong in School: The Implications of the Hidden Curriculum for Indigenous Students*, 34 DISCOURSE: STUD. CULTURAL POL. EDUC. 660 (2013); Jonathan Langdon, *Decolonising Development Studies: Reflections on Critical Pedagogies in Action*, 34 CAN. J. DEV. STUD. 384 (2013).

89 *See generally* Kaja Weaver, *Bridging Indigenous and Western Knowledge-Systems in Knowledge Co-Production with Amazonian Indigenous Communities: A Systematic Realist Review*, 10 DEV. STUD. RSCH., 2023, 1; Catherine Robinson et al., *Coproduction Mechanisms to Weave Indigenous Knowledge, Artificial Intelligence, and Technical Data to Enable Indigenous-Led Adaptive Decision Making: Lessons from Australia's Joint Managed Kakadu National Park*, 27 ECOLOGY & SOC'Y, 2022, 1; Melanie Zurba et al., *Learning from Knowledge Co-Production Research and Practice in the Twenty-First Century: Global Lessons and What They Mean for Collaborative Research in Nunatsiavut*, 17 SUSTAINABILITY SCI. 449 (2022); Crista Weise et al., *Designing a Deep Intercultural Curriculum in Higher Education: Co-Constructing Knowledge with Indigenous Women*, 17 ALTERNATIVE: AN INT'L J. INDIGENOUS PEOPLES 335 (2021); Belcourt et al. 2015, *supra* note 65; Linda Tuhiwai Smith, *The Art of the Impossible—Defining and Measuring Indigenous Research?*, *in* DISSIDENT KNOWLEDGE IN HIGHER EDUCATION 27-28 (Marc Spooner & James McNinch eds., 2018); Napoleon & Friedland, *supra* note 17.

90 *See generally* Cathie Burgess et al., *Decolonising Indigenous Education: The Case for Cultural Mentoring in Supporting Indigenous Knowledge Reproduction*, 43 DISCOURSE: STUD. CULTURAL POL. EDUC. 1 (2022).

91 Michelle Bishop et al., *Decolonising Schooling Practices Through Relationality and Reciprocity: Embedding Local Aboriginal Perspectives in the Classroom*, 29 PEDAGOGY, CULTURE & SOC'Y 193, 195, 204-05 (2021).

92 *See generally* Neil Harrison & Iliana Skrebena, *Country as Pedagogical: Enacting an Australian Foundation for Culturally Responsive Pedagogy*, 52 J. CURRICULUM STUD. 15 (2020); Burgess 2019, *supra* note 58; Neil Harrison & Maxine Greenfield, *Relationship to Place: Positioning Aboriginal Knowledge and Perspectives in Classroom Pedagogies*, 52 CRITICAL STUD. EDUC. 65 (2011).

Underlying the aforementioned efforts of decentering, co-production, and inter-cultural competency is a motive for Indigenous agency in the conduct of teaching and research, particularly in areas involving Indigenous interests.[93]

Such experiences offer a pre-existing body of empirically tested options available for law schools. The nuances of their utility, however, are better understood in relation to the parameters provided in previous sections regarding the empowerment of Indigenous peoples in scholarly discourse. In particular, decisions regarding the selection of strategies are informed by Foucault's theories of discourse in the assertion of Indigenous epistemologies and ontologies, which function as criteria to assess the potential value of a particular strategy for the ulterior aim of redressing the subordinate position of Indigenous content under prevailing approaches to teaching international law. To begin, the range of strategies reflects the concepts of Foucault, starting with their concerns for the hegemonic positions held by Western-based forms of reasoning, which indicate an awareness of power structures in knowledge production that marginalize Indigenous concerns. Reforms to counter the structure of knowledge production via greater inclusion of Indigenous voices point to desires for Indigenous agency, with the strategies to involve Indigenous content representing "technologies of the self" that facilitate the expression of ideas and arguments by Indigenous actors. In redressing the subordinate position of Indigenous peoples, the diverse strategies share an epistemological feature in that they are furthering Indigenous systems of understanding as a part of academic teaching. In addition, they carry an ontological implication to the extent they present alternatives for learning that lie outside the traditional approaches that define historical conceptions of higher education.

Following the preceding phrasing of strategies for indigenization, it is possible to assess each one in relation to the expectations of "technologies of the self" in empowering Indigenous peoples in systems of legal education. For example, strategies to integrate Indigenous-authored sources into existing course materials may present a measure of elevation for Indigenous forms of understanding that include Indigenous epistemologies towards particular law school topics, but they fall short of

93 *See e.g.*, Kovach 2021, *supra* note 61; Chilisa 2020, *supra* note 61; Denzin et al. 2014, *supra* note 61; Janet Jull et al., *Fostering the Conduct of Ethical and Equitable Research Practices: The Imperative for Integrated Knowledge Translation in Research Conducted by and with Indigenous Community Members*, 4 RSCH. INVOLVEMENT & ENGAGEMENT, 2018, 1; Maria Pontes Ferreira & Fidji Gendron, *Community-Based Participatory Research with Traditional and Indigenous Communities of the Americas: Historical Context and Future Directions*, 3 INT'L J. CRITICAL PEDAGOGY 153 (2011); Jessica Ball & Pauline Janyst, *Enacting Research Ethics in Partnerships with Indigenous Communities in Canada: "Do It In a Good Way*," 3 J. EMPIRICAL RSCH. ON HUM. RSCH. ETHICS 33 (2008); Smith 2007, *supra* note 61.

enabling agency because they omit engagement with Indigenous speakers. In comparison, strategies to host Indigenous speakers may provide a measure of self-expression that satisfies aspirations for Indigenous agency, but the extent of agency is limited if the knowledge provided by those voices is treated as epistemological outliers from dominant models of legal reasoning. In contrast, immersive strategies, such as those which call upon students to learn from Indigenous instructors using Indigenous knowledge systems in the context of Indigenous environments, may enable the full exercise of agency in conveying Indigenous epistemologies and can also mean a wholly transformative experience challenging traditional Western-based ontologies regarding the conceptual meaning of legal education.

To a degree, the preceding considerations apply to both law schools as a whole and international law as a subset–they address shared concerns to counter colonial legacies in the treatment of Indigenous peoples. The subject of international law, however, poses additional complexities since its global scope implies a wide scale, which challenges the aspirations for Indigenous agency in advancing Indigenous epistemologies and ontologies. As a consequence, it is necessary to direct further considerations to the specific issues posed by aforementioned concerns in the integration of Indigenous perspectives into the teaching of international law.

C. Specific Considerations Regarding Indigenous Peoples in International Law

In evaluating strategies to promote Indigenous subject matter and Indigenous voices, further attention should be directed to the specific circumstances of teaching international law. The subject of international law involves a global scope of analysis, with international instruments and institutions addressing transnational issues, such that the teaching of international law invariably covers a corresponding global breadth of study. Such scales open discussions of international law education vis-à-vis Indigenous peoples to the full span of Indigenous populations of the world. Indigenous cultures, however, are not a monolithic global phenomenon, but they encompass disparate Indigenous communities holding diverse approaches to understanding, thus presenting complexities that challenge goals for inclusion of Indigenous peoples within the available spaces accorded to the teaching of international law within law schools.[94] Specifically, data from the UN and World Bank estimate the

94 *See generally* Adefila et al. 2022, *supra* note 87; Hughes 2021, *supra* note 58; Wilson 2021, *supra* note 9; Bodkin-Andrews & Carlson 2016, *supra* note 61; J. Christopher Upton, *From Thin to*

number of Indigenous peoples in the world as being approximately 370-500 million, encompassing 5,000-7,000 languages across roughly 5,000 distinct groups situated in more than 90 countries.[95] Indigenous rights movements assert a context-specific nature to Indigenous lives, suggesting that the global array of Indigenous groups hosts a panoply of distinct forms of knowledge, perspectives, and experiences.[96] Such variety does not entirely disappear at more localized levels, in that some countries sustain a rich gamut of different Indigenous communities. For example, the Australian Bureau of Statistics estimates that in 2021, Australia contained more than 980,000 Aboriginal and Torres Strait Islander people speaking over 150 Indigenous languages.[97] In comparison, the United States hosts approximately 2.9 million people identifying solely as American Indian or Alaskan Native and 5.2 million claiming some combination with American Indian or Alaskan Native identity, with the federal government recognizing 574 Native American nations and a wider array of groups existing outside federal government recognition.[98]

The span of Indigenous diversity poses a potential issue for the teaching of international law, particularly for ambitions of inclusion that aspire for equitable treatment of all Indigenous peoples. Following the arguments of preceding sections, the calls to connect Indigenous materials with Indigenous speakers in the presentation of Indigenous content could be construed as incurring a corollary expectation for a global array of materials and speakers in teaching international law. Such an interpretation would pose potential issues in terms of consuming the resources allocated to international law education and, in extreme cases, conceivably challenging the capacities of individual law schools.

Thick Justice and Beyond: Access to Justice and Legal Pluralism in Indigenous Taiwan, 47 L. & SOC. INQUIRY 996 (2022).

95 *Fight Racism: Indigenous Peoples*, UN, https://www.un.org/en/fight-racism/vulnerable-groups/Indigenous-peoples (last visited May 17, 2024); *Indigenous Peoples*, WORLD BANK, https://www.worldbank.org/en/topic/Indigenouspeoples (last visited May 17, 2024).

96 *See generally* Wilson et al. 2022, *supra* note 82; Wilson 2021, *supra* note 9; James Ford et al., *Including Indigenous Knowledge and Experience in IPCC Assessment Reports*, 6 NATURE CLIMATE CHANGE 349 (2016); Ray Barnhardt & Angayuqaq Oscar Kawagley, *Indigenous Knowledge Systems and Alaska Native Ways of Knowing*, 36 ANTHROPOLOGY & EDUC. Q. 8 (2005); Robert Rundstrom, *GIS, Indigenous Peoples, and Epistemological Diversity*, 22 CARTOGRAPHY & GEOGRAPHIC INFO. SYS. 45 (1995).

97 *Estimates of Aboriginal and Torres Strait Islander Australians*, AUSTL. BUREAU OF STAT. (June 30, 2021), https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/30-june-2021; *Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians*, AUSTL. BUREAU OF STAT. (2016), https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/census-population-and-housing-characteristics-aboriginal-and-torres-strait-islander-australians/latest-release.

98 *An Overview, Tribal Nations and the United States: An Introduction*, NAT'L CONG. OF AM. INDIANS (2020), https://archive.ncai.org/about-tribes; *Demographics, Tribal Nations and the United States: An Introduction*, NAT'L CONG. OF AM. INDIANS (June 1, 2020), https://archive.ncai.org/about-tribes/demographics.

It is, however, possible to identify an alternative understanding by looking to Foucault's concepts of discourse and their implications regarding Indigenous agency. Specifically, subordinate actors in a discourse work to counter their marginal status by exercising "technologies of the self" to resist dominant powers. However, "technologies of the self" relate to the expression of ideas and information connected to identity, so the resistance of subordinate actors is, in essence, about altering the flow of ideas and information within the structure of discourse. The goal of resistance is to change the outcomes of discourse, which means that the ultimate purpose of influencing ideas and information is to affect the understanding of participants involved in scholarship. For aspirations of Indigenization, the central concern is to elevate the position of Indigenous peoples in the production of knowledge, with a desired outcome to promote understanding that counters the marginalization of Indigenous peoples brought by historical Western-based approaches to the teaching of international law.. Towards that end, the concern is less about universal inclusion via participation of *all* Indigenous peoples in teaching and more about expression of agency of *any* Indigenous peoples in the production of knowledge about international law. Moreover, so long as the instruction of international law functions to facilitate expression by some measure of Indigenous voices expressing Indigenous epistemologies and ontologies, it serves the ulterior purposes of expanding understanding of international law concerning the significance of Indigenous knowledge, perspectives, and experiences lived by Indigenous peoples. In doing so, it should be seen as a complement, rather than a competitor, to existing modes of international law education.

V. CAUTIONARY OBSERVATIONS

The analysis of the preceding sections should be accompanied by several cautionary notes that supplement the arguments with the experiences of various law schools in indigenizing their respective systems of legal education. Such experiences further refine the considerations over appropriate strategies to indigenize the teaching of international law, with their findings proffering additional observations that narrow the range of directions for advancing Indigenous perspectives. To begin, movements for the indigenization of legal education warn against the dangers of non-Indigenous instructors delivering Indigenous topics. As noted by scholars such as Kate Galloway, "a non-Indigenous law teacher cannot, by definition, provide Indigenous knowledges, perspectives, or experiences first hand."[99] The positioning of non-Indigenous academics

99 Galloway 2018, *supra* note 5, at 5.

to speak on behalf of Indigenous peoples or to study Indigenous issues risks "recolonization" in teaching and research and repeats the historical structures of colonial scholarship which treated Indigenous peoples as specimens under inquiry.[100]

The risk of academic recolonization, however, is not readily resolved through the allocation of Indigenous subject matter to Indigenous speakers. Expectations to delegate instruction of Indigenous subject matter to Indigenous speakers suffers from the issue of "tokenism" often raised by studies on racial, cultural, and gender minorities in higher education. In relation to faculty composition, "tokenism" occurs when universities employ minority individuals and accord them specific treatment on the basis of their minority status, rendering them as "tokens" of their respective minority groups. Tokenism is not benign; it raises issues, including "compulsory representation" when a minority person is expected to constantly represent their entire minority group, and "role encapsulation" when a minority person is essentialized into stereotypes ascribed to an associated minority group.[101] Such stigmatization can lead to the "diverse person's burden," which describes faculty situations where a dominant majority avoids diversity issues and instead assigns them to minority colleagues, who are then often segregated into a disproportionate share of campus community tasks outside the attention of mainstream faculty.[102] The result is isolation and alienation with minority faculty performing labor that is not known, not recognized, or discredited by their institutional peers, such that their duties constitute opportunity costs, in so far that they divert minority faculty from activities more likely to be acknowledged—and respected—by the majority faculty.[103]

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100 *Id.*; Allan Ardill, *Non-Indigenous Lawyers Writing About Indigenous People: Colonisation in Practice*, 37 ALT. L.J. 107 (2012).

101 *See generally* Phoebe Lin & Lynne Kennette, *Creating an Inclusive Community for BIPOC Faculty: Women of Color in Academia*, 2 SN SOC. SCI. 246 (2022) [hereinafter Lin & Kennette 2022]; Daniel Steel & Karoline Paier, *Pro-Diversity Beliefs and the Diverse Person's Burden*, 200 SYNTHESE 357 (2022) [hereinafter Steel & Paier 2022]; Yolanda Niemann, *Diffusing the Impact of Tokenism on Faculty of Color*, 30 TO IMPROVE ACAD.: A J. EDUC. DEV. 216 (2011), [hereinafter Niemann 2011].

102 *See generally* Steel & Paier 2022, *supra* note 101; Doharty et al. 2021, *supra* note 58; Debaleena Ghosh & Kristen Barber, *The Gender of Multiculturalism: Cultural Tokenism and the Institutional Isolation of Immigrant Women Faculty*, 64 SOCIO. PERSP. 1066 (2021) [hereinafter Ghosh & Barber 2021]; Guerzoni 2020, *supra* note 3; Anaru Eketone & Shayne Walker, *Bicultural Practice: Beyond Mere Tokenism*, *in* SOCIAL WORK FOR SOCIOLOGISTS (Kate van Heugten & Anita Gibbs eds., 2015).

103 *See generally* Lin & Kennette 2022, *supra* note 101; Steel & Paier 2022, *supra* note 101; Roopika Risam et al., *Confronting the Embedded Nature of Whiteness: Reflections on a Multi-Campus Project to Diversify the Professoriate*, 22 J. HIGHER EDUC. THEORY 69 (2022); Doharty et al. 2021, *supra* note 58; Ghosh & Barber 2021, *supra* note 102; Virginia Gewin, *The Time Tax Put on Scientists of Color*, 583 NATURE 479 (2020); Guerzoni 2020, *supra* note 3; Özlem Sensoy & Robin DiAngelo, *"We Are All for Diversity, But . . .": How Faculty Hiring Committees Reproduce Whiteness and Practice Suggestions for how They Can Change*, 87 HARV. EDUC. REV. 557 (2017); Yolanda Niemann, *The Social Ecology of Tokenism in Higher Education*, 28 PEACE REV. 451 (2016) [hereinafter Niemann 2016]; Niemann 2011, *supra* note 101.

Tokenism applies to efforts for inclusion of Indigenous speakers by law schools– Indigenous speakers comprise a minority in a law school faculty.[104] Tokenism, however, poses hazards not just for individual Indigenous members of faculty but also for larger Indigenous aspirations to reform the colonial legacies of higher education because it places the burden of diversity upon the individuals tasked to be tokens and thereby absolves the majority of responsibility for advancing change.[105] The delegation of diversity issues to Indigenous minorities, to the degree that it involves a corollary avoidance by majorities, implies a lack of mutual engagement regarding inter-cultural relations. The process of building inter-cultural competency requires communication across diverse cultures, and even when reduced to its simplest form of bicultural practice, still requires the involvement of more than one culture.[106] Phrased in the concepts of Foucault, actions that relegate Indigenous speakers outside of the majority essentially represent actions to distance them from discourse and alienate them altogether. Under such conditions, Indigenous speakers are physically accepted but intellectually silenced. Thus, they are rendered absent from the production of knowledge in faculty discourse. The consequence is that Indigenous issues are at the discretion of non-Indigenous majorities, repeating the structures of subordination against Indigenous peoples historically held under Western-based traditions of higher education.

The call for mutual engagement between non-Indigenous faculty and Indigenous colleagues calls for an attendant question as to the level of inter-cultural competency necessary to facilitate such engagement.[107] In particular, Universities Australia, an association of thirty-nine Australian universities, notes that it is critical to equip "both staff and students with the foundational knowledge and skills to develop effective working relationships with Indigenous peoples."[108] The need is comprehensive, in that it goes beyond institutional action by a given law school to encompass individual action by each member of its community. Law teachers hold particular responsibility "for investing the intellectual and emotional energy to develop the knowledge that will equip them to teach Indigenous contexts."[109] Hence, the goals of indigenization carry an

104 *See generally* Burns 2018, *supra* note 32; Galloway 2018, *supra* note 5.

105 *See generally* Niemann 2016, *supra* note 103; Niemann 2011, *supra* note 101.

106 *See generally* Sharon Kruse & Shannon Calderone, *Cultural Competency and Higher Education*, *in* HANDBOOK OF SOCIAL JUSTICE INTERVENTIONS IN EDUCATION (Caron Mullen ed., 2020); Burns 2018, *supra* note 33; Galloway 2018, *supra* note 5; David Hollinsworth et al., *Indigenous Cultural Competence in Australian Universities: Challenges and Barriers*, 20 J. AUSTL. INDIGENOUS ISSUES 27, 33-35, 37-38 (2017).

107 *See generally* Guerzoni 2020, *supra* note 3; Burns 2018, *supra* note 32.

108 Burns 2018, *supra* note 32, at 2.

109 Galloway 2018, *supra* note 5, at 22.

expectation for broad reforms that enable the involvement of all members of a law school in inter-cultural engagement.

Last, an additional issue compounding the above complexities is the dynamic nature of culture: an Indigenous culture is not static, but, instead, it is a collective function formed by the ongoing lives of individuals within that culture.[110] Static conceptions risk an interpretation of Indigenous peoples as "artifacts" with fixed characteristics, invoking attendant hazards of objectification that ignore the realities of Indigenous existence.[111] Indigenous studies literature, in particular, highlights the activities of Indigenous peoples in continually reconstructing their own cultures, thereby affirming the capabilities of Indigenous agency in directing Indigenous identities.[112] With respect to aspirations of engagement between non-Indigenous and Indigenous actors, such dynamics present the risk that efforts to build capacities for inter-cultural competency will be rendered irrelevant over time. The resulting implication is that agendas for indigenization lead to a need for iterative approaches that adapt to changing circumstances,[113] such that "law schools must take responsibility to provide regular and cyclical professional development."[114] Underlying the call for iterative approaches is a corollary acknowledgment that the dynamism of all cultures means (1) inter-cultural engagement entails a need for mutual learning, which encompasses learning from mistakes, and (2) inter-cultural engagement is less about the achievement of targets demarcating measures of resolution but instead more about "a process, not an event; a journey, not a destination; dynamic, not static; and involves the paradox of knowing."[115]

VI. CONCLUSION & FUTURE DIRECTIONS FOR RESEARCH

In conclusion, deliberations over indigenization, particularly those questioning its relevance or value, should reference the findings of indigenization programs undertaken by other law schools. Of particular note is literature that summarizes the collective experiences of Australian law schools in addressing the challenges that confront their efforts to

110 *See generally* Murray 2022, *supra* note 88; Burns 2018, *supra* note 32, at 11-12; Doreen Martinez, *Wrong Directions and New Maps of Voice, Representation, and Engagement: Theorizing Cultural Tourism, Indigenous Commodities, and the Intelligence of Participation*, 36 AM. INDIAN Q. 545 (2012) [hereinafter Martinez 2012].

111 Guerzoni 2020, *supra* note 3, at 13; Bodkin-Andrews & Carlson 2016, *supra* note 61; Smith 2007, *supra* note 61.

112 *See generally* Martinez 2012, *supra* note 110.

113 *See generally* Guerzoni 2020, *supra* note 3; Galloway 2018, *supra* note 5.

114 Galloway 2018, *supra* note 5, at 22.

115 ROB RANZIJN ET AL., DISSEMINATING STRATEGIES FOR INCORPORATING AUSTRALIAN INDIGENOUS CONTENT INTO PSYCHOLOGY UNDERGRADUATE PROGRAMS THROUGH AUSTRALIA 19 (2008), https://ltr.edu.au/resources/CG650_UniSA%20_Ranzijn_Final%20report_Feb09.pdf.

integrate Indigenous subject matter into legal education.[116] Such challenges involve resistance tied to arguments that Indigenous subject matter is not scholarly,[117] is limited to a "special needs" constituency,[118] lies outside the scope of various disciplines,[119] is illegitimate as a form of legal education,[120] or is irrelevant to existing law school subjects.[121] Various law schools in Australia respond to the aforementioned arguments with findings that indigenization: (1) promotes reflexive practice among teachers and students in terms of critical self-awareness of the assumptions and norms in legal reasoning, the resulting impact on the operation of legal systems, and consequent implications for outcomes of justice for marginalized populations;[122] (2) assists law school promotion of cross-cultural empathy and skills necessary for multi-cultural legal practice;[123] (3) furthers legal education goals to support diversity and social justice;[124] and (4) is complementary to existing knowledge systems and contributes to goals of inclusion by encouraging parallel respect for different approaches to knowledge.[125] Underlying such findings is an import that "it is equally important that Indigenous knowledges and cultures are valued, and seen as holding solutions, rather than simply being framed as the other."[126]

The work of the preceding sections contributed to the movements for indigenization of legal education, and the analysis across all the sections was focused on aiding deliberations within law schools over the treatment of Indigenous peoples in the teaching of international law. Specifically, the analysis sought to provide guidance in identifying strategies capable of advancing the goals of indigenization movements to counter the marginalization of Indigenous peoples within scholarly discourse. The analysis drew on literature from the fields of critical studies and curriculum studies to form a framework to evaluate the appropriateness of potential strategies to counter Indigenous marginalization. The framework assessed strategies with respect to their promotion of Indigenous agency vis-à-vis Indigenous knowledge, perspectives, and experiences, and reflecting Indigenous epistemologies and ontologies. The analysis

116 *See generally* Guerzoni 2020, *supra* note 3; ICCLAP 2019, *supra* note 5; Tehan & Ewen 2019, *supra* note 5; Burns 2018, *supra* note 32; Galloway 2018, *supra* note 5; Maguire & Young 2015, *supra* note 3.

117 Guerzoni 2020, *supra* note 3, at 22; Burns 2018, *supra* note 32, at 24.

118 Burns 2018, *supra* note 32, at 28.

119 Guerzoni 2020, *supra* note 3, at 23; Burns 2018, *supra* note 32, at 18-19, 24.

120 Burns 2018, *supra* note 32, at 28.

121 Guerzoni 2020, *supra* note 3, at 24.

122 Guerzoni 2020, *supra* note 3, at 20; Maguire & Young 2015, *supra* note 3, at 114-15.

123 Burns 2018, *supra* note 33, at 2-3, 9; Maguire & Young 2015, *supra* note 3, at 114-15.

124 *See supra* note 123 and accompanying text.

125 Guerzoni 2020, *supra* note 3, at 13.

126 ICCLAP 2019, *supra* note 5, at 22.

then demonstrated how the framework helps direct considerations regarding the promotion of Indigenous subject matter and Indigenous voices in law schools—distinguishing the general considerations posed by the introduction of new topics into legal education, the particular considerations tied to the historical status of Indigenous civilizations under law schools and higher education, and the specific considerations associated with the instruction of international law as a subject. The analysis then refined the framework's application with cautionary notes selected from the experiences of various law schools undertaking their own respective efforts to improve the status of Indigenous peoples in legal education.

The commentary from the preceding sections leaves several directions for future research. First, in addressing the movements for indigenization, the analysis assembled literature originating largely from legal scholars and law schools based in Australia, New Zealand, United States, and Canada. Indigenous peoples, however, are spread throughout the globe. Likewise, law schools struggling to address the concerns of Indigenous peoples are situated in multiple locations across the world. The limitations posed by reliance on scholarship from the four aforementioned countries leaves open the potential for alternative findings involving Indigenous peoples and law schools in other locations. The potential for alternative findings calls for future studies encompassing literature originating outside the countries involved in the present analysis, such that there is comparative analysis enriching the discussion presented in the preceding sections.

Second, the analysis faces another limitation in that the sample of countries in Australia, New Zealand, United States, and Canada all represent common law traditions with a shared colonial history under British imperialism. While the scope of analysis conditioned its findings to such origins, it misses the insights of concurrent efforts to indigenize legal education undertaken by law schools tied to other legal traditions whose histories reflect different approaches towards the treatment of Indigenous peoples. Critical voices in international law assert the widespread subjugation of Indigenous civilizations under the expansion of Western-based empires, but differences in legal traditions pose the possibility of different colonial legacies incurring different requirements regarding the mitigation of Indigenous marginalization. Such nuances inform wider deliberations to indigenize legal education, particularly for the subject of international law, whose scope encompasses the diversity of legal traditions in the world.

Third, in constructing the framework from scholarship appearing in critical studies and curriculum studies literature, the analysis confined its scope to exclude the potential contributions of comparable

scholarship from other disciplines. As much as the focus of discussion was on the teaching of international law in particular and legal education in general, the intent of the analysis was to exercise an interdisciplinary approach, which drew upon the insights of other disciplines to inform the considerations associated within indigenization in law schools. Hence, the intention for a multi-disciplinary analysis would be further served by the exploration of additional bodies of literature regarding the promotion of Indigenous peoples in scholarly institutions. Further, the findings of other literature fostering cross-disciplinary insights could enrich the deliberations of law schools as institutions of learning.

Finally, the work of the preceding sections is predicated on the assumption that there are Indigenous theories of international law that are wholly distinct from prevailing approaches employed by traditional models of teaching international law.[127] Indigenous scholars caution that efforts to find conceptual equivalencies between Indigenous and non-Indigenous legal systems may risk interpreting Indigenous laws through the values and structures of understanding specific to underlying paradigms of non-Indigenous legal traditions—in effect, using non-Indigenous knowledge systems to filter Indigenous ones, generating an attendant risk of distorting or restricting the form and substance of Indigenous approaches to law.[128] Such an assumption is supported by the work of FWAIL scholars, whose collective efforts seek to assert the existence of Indigenous legal orders that transcend the jurisdictions of states in the current international legal system. Implicit within FWAIL arguments are expectations to either advance Indigenous alternatives against more dominant conceptions of international law or to integrate Indigenous understandings into more prevalent international law discourse. The present analysis, in seeking to support the promotion of Indigenous perspectives in international law education, connects to the FWAIL agenda by highlighting the importance of Indigenous speakers in advancing Indigenous epistemologies and ontologies to counter the marginal status of Indigenous peoples in international law. The resulting implication of the analysis is an invitation for Indigenous scholars to give voice to Indigenous knowledge, perspectives, and experiences as constituting forms of international legal orders. In essence, the analysis sets forth a call for ongoing projects by Indigenous scholars to work collectively for a full, deep, and open expression of Indigenous theories of international law, not just as an assertion of the richness of Indigenous

127 *See, e.g.*, Watson 2018, *supra* note 17, at 115-16; Bhatia 2012, *supra* note 68, at 145-50.

128 Aimee Craft et al., *Decolonizing Ashinaabe nibi inaakonigewin and gikendaasowin Research*, *in* DECOLONIZING LAW: INDIGENOUS, THIRD WORLD, AND SETTLER PERSPECTIVES 27-29 (Sujith Xaiver et al. eds., 2021); Watson 2018, *supra* note 17, at 100-01; BRENDAN TOBIN, INDIGENOUS PEOPLES, CUSTOMARY LAW, AND HUMAN RIGHTS – WHY LIVING LAW MATTERS 29-32, 95 (2014).

thought, but also as an affirmation of the continued vibrancy of Indigenous existence in the world.