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CENTRING NEW STUDENTS’ ‘NON-TRADITIONAL’ STRENGTHS: A CHALLENGE FOR LEGAL EDUCATION

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I INTRODUCTION

Not that long ago, Australian law schools could be reasonably confident that the majority of their students were ‘traditional’ university students.¹ ‘Traditional’ university students ‘enter university shortly after completing their secondary education, and, owing to their prior socialization, schooling and attainment, are relatively well prepared for academic study’,² because they enter university with a stock of ‘traditional’ cultural capital; ‘proficiency in and familiarity with dominant cultural codes and practices’ of university.³ However, the proliferation of law schools and the increase in the number of students undertaking law degrees⁴ mean that law schools are now less homogenous.⁵ This is to be encouraged, because diversity in legal

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¹ David Weisbrot, ‘Recent Statistical Trends in Australian Legal Education’ (1990) 2(1) *Legal Education Review* 219; Mark Israel et al, ‘Fostering “Quiet Inclusion”: Interaction and Diversity in the Australian Law Classroom’ (2017) 66(2) *Journal of Legal Education* 332, 335–6; Michael Kirby, ‘Unmet Legal Needs in Australia: Ten Commandments for Australian Law Schools’ (Speech, Australian Law Teachers’ Association Conference, La Trobe University, Melbourne, 17 July 2015) 10–14.

² Digby Warren, ‘Curriculum Design in a Context of Widening Participation in Higher Education’ (2002) 1(1) *Arts & Humanities in Higher Education* 85, 86–7.

³ Angela Daddow, ‘Curricula and Pedagogic Potentials when Educating Diverse Students in Higher Education: Students’ Funds of Knowledge as a Bridge to Disciplinary Learning’ (2016) 21(7) *Teaching in Higher Education* 741, 742.

⁴ See generally Angela Melville, ‘It Is the Worst Time in Living History to Be a Law Graduate: Or is It? Does Australia Have Too Many Law Graduates?’ (2017) 51(2) *The Law Teacher* 203. See also Margaret Thornton, ‘What is the Law School for in a Post-Pandemic World?’ in Rachel Dunn, Paul Maharg and Victoria Roper (eds), *What Is Legal Education For? Re-Assessing the Purposes of Early Twenty-First Century Learning and Law Schools* (Routledge, 1st ed, 2022) 231, 235–6. According to the Council of Australian Law Deans website, there are currently 38 law schools in Australia; see Council of Australian Law Deans, ‘Deans & Law Schools’, *Council of Australian Law Deans* (Web Page) <<https://cald.asn.au/home/deans-law-schools/>>.

⁵ Aidan Ricciardo et al, ‘Understanding, Promoting and Supporting LGBTQI+ Diversity in Legal Education’ (2022) 56(3) *The Law Teacher* 307, 307–8; Israel et al (n 1) 335–8; Marie Iskander, ‘The Deserving and the Under-Served: A Comment on the Oversupply of Law Graduates, Diversity in the Legal Profession and Access to

education should lead to diversity in the legal profession and the judiciary,⁶ which ultimately has implications for access to justice.⁷ A recent report concerning the future of Australian legal education argues that diversity in legal education and the profession is needed:

to reflect the multicultural and heterogeneous make-up of the Australian population, to meet diverse client needs and to promote a professional culture of respect, sensitivity, awareness and inclusion more broadly, all of which seem greatly needed.⁸

A more diverse legal profession also requires far greater representation of Indigenous lawyers, educators and law students, and legal curriculum that supports a greater degree of cultural competence on the part of all lawyers, legal educators and law students.⁹ Over the past ten years in particular, Australian legal education has been ‘fundamentally altered’ by the work of Indigenous scholars.¹⁰ In 2020, the Council of Australian Law Deans (‘CALD’) Australian Law Schools Standards were updated to include ‘Aboriginal and Torres Strait Islander perspectives on and intersections with the law’ in curriculum content,¹¹ and, in 2024, CALD published a ‘Statement on Racism and Law Schools’ which asked all law schools to ‘work in partnership with First Nations peoples to build cultural competence and safety into courses’.¹² Innovative scholarship exists to show non-

Legal Representation’ (2017) 5(1) *Griffith Journal of Law and Human Dignity* 66, 74–8.

⁶ Maxine Evers, Bronwyn Olliffe and Angela Dwyer, ‘Law’s Not Hard; It’s Just Hard to Get Into: A Study of Alternative Entry Students to Law School’ (2017) 51(2) *The Law Teacher* 151, 168.

⁷ See generally Russell Pearce and Sinna Nasser, ‘The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values’ (2012) 19 (2–3) *International Journal of the Legal Profession* 357; Avner Levin and Asher Alkoby, ‘Is Access to the Profession Access to Justice? Lessons from Canada’ (2012) 19(2–3) *International Journal of the Legal Profession* 283; Kirby (n 1) 10–14; Lady Hale, ‘Lord Upjohn Lecture 2021 - “When There Are 12”: Legal Education and a Diverse Judiciary’ (2021) 55(4) *The Law Teacher* 425, 429–30; Dennis Foley, ‘Quadrivium: So You Want to be a Lawyer?’ (2014) 8(11) *Indigenous Law Bulletin* 19; Naveen Khan, ‘An Evolution, Not a Revolution’ (2017) 91 *Law Institute Journal* 65; Anna Cody and Sandy Noakes, ‘Valuing Diverse Students: An Ethical Response to Building Success in First-Year Law Students and Broadening the Legal Profession’ (2022) 25(1–2) *Legal Ethics* 64, 66, 69; Brian Opeskin, ‘Dismantling the Diversity Deficit: Towards a More Inclusive Australian Judiciary’ in Gabrielle Appleby and Andrew Lynch (eds), *The Judge, the Judiciary, and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2021) 89–90; Sally Kift and Kana Nakano, *Reimagining the Professional Regulation of Australian Legal Education* (Report, 1 December 2021) 80.

⁸ Kift and Nakano (n 7) 80.

⁹ Marcelle Burns, Anita Lee Hong and Asmi Wood, *Indigenous Cultural Competency for Legal Academics Program* (Report, 2019).

¹⁰ Larissa Behrendt, ‘Storytelling — The Power of First Nations Jurisprudence’, in Nicole Watson and Heather Douglas (eds), *Legal Education Through an Indigenous Lens: Decolonising the Law School* (Routledge, 2024) 105, 107.

¹¹ Council of Australian Law Deans, *Australian Law School Standards with Guidance Notes* (Standards Statement, 30 July 2020) 17, cl 2.3.3 (Curriculum Content) <<https://cald.asn.au/wp-content/uploads/2024/04/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>>.

¹² ‘CALD Statement on Racism and Law Schools’, *Council of Australian Law Deans* (Web Page, 2024) <<https://cald.asn.au/first-peoples-partnership/>>.

Indigenous academics how this might be done.¹³ 'Indigenising the curriculum' or 'decolonising the curriculum' are topics that feature in the programs of major academic conferences.¹⁴ However, while the legal profession in Australia still lags behind others where admission requirements mandate the inclusion of Indigenous perspectives in the curriculum¹⁵ there is wide recognition of the importance of embedding Indigenous Australian content and cultural competency within legal education.¹⁶

Research related to widening participation in university education has recognised the dominance of traditional cultural capital and the way in which university culture implicitly favours the 'traditional' student.¹⁷ In the United Kingdom ('UK'), this has included research concerning legal education¹⁸ However, research tends to frame the 'non-traditional' student in deficit and needing support to learn the 'rules of the game' of learning and doing at university.¹⁹ Even the term 'non-traditional student', commonly deployed in the literature, is exclusionary, framing the student as who they are *not*, rather than who they *are*. Applied to legal education, at best, the concept of 'traditional cultural capital' has been used to interrogate structural impediments to

¹³ See, eg, Ambelin Kwaymullina, 'Teaching for the 21st Century: Indigenising the Law Curriculum at UWA' (2019) 29 *Legal Education Review* 1; Annette Gainsford, Marcus Smith and Alison Gerard, 'Accrediting Indigenous Australian Content and Cultural Competency Within the Bachelor of Laws' (2021) 31(1) *Legal Education Review* 59; Nicole Watson and Heather Douglas (eds), *Legal Education Through an Indigenous Lens: Decolonising the Law School* (Routledge, 2024).

¹⁴ See, eg, the program of the 2025 Australasian Law Academics Association (ALAA) Conference: 'Navigating Tradition and Change: How Can we Incorporate Contemporary Challenges into Legal Education and Scholarship?', 2025 *Australasian Law Academics Association (ALAA) Conference* (Web Page) <<https://alaa2025.netlify.app/>>; and the proposed themes of the UNSW Legal Education Research Conference 2025: 'Legal Education Research Conference: the Crowded Curriculum', *UNSW Sydney Law and Justice* (Web Page) <<https://www.unsw.edu.au/law-justice/news-events/events/legal-education-research-conference>>.

¹⁵ Annette Gainsford, Alison Gerard and Emma Colvin, 'Challenges and Strategies for Incorporating Indigenous Laws and Histories across Legal Education Curriculum' in Nicole Watson and Heather Douglas (eds), *Legal Education Through an Indigenous Lens: Decolonising the Law School* (Routledge, 2024) 87, 96.

¹⁶ Ibid 95-96.

¹⁷ See, eg, Stéphane Farenga, 'Early Struggles, Peer Groups and Eventual Success: An Artful Inquiry into Unpacking Transitions into University of Widening Participation Students' (2018) 20(1) *Widening Participation and Lifelong Learning* 60; Daddow (n 3); Marcia Devlin, 'Bridging Socio-Cultural Incongruity: Conceptualising the Success of Students from Low Socio-Economic Status Backgrounds in Australian Higher Education' (2013) 38(6) *Studies in Higher Education* 939; Sarah O'Shea, 'Avoiding the Manufacture of "Sameness": First-in-Family Students, Cultural Capital and the Higher Education Environment' (2016) 72(1) *Higher Education* 59 ('Avoiding the Manufacture of "Sameness"').

¹⁸ Lisa Webley et al, 'Access to a Career in the Legal Profession in England and Wales: Race, Class, and the Role of Educational Background' in Spencer Headworth et al (eds), *Diversity in Practice* (Cambridge University Press, 1st ed, 2016) 198.

¹⁹ Ryan Naylor and Nathan Mifsud, 'Towards a Structural Inequality Framework for Student Retention and Success' (2020) 39(2) *Higher Education Research & Development* 259, 264-6.

the full participation of non-traditional law graduates in the legal profession.²⁰

As Australian law schools become more diverse places, it is no longer sufficient for law schools to understand that there are implicit academic and social cultures that need to be made explicit to ‘non-traditional’ students. It also is not sufficient to ‘support’ these ‘non-traditional’ students to overcome their perceived deficits by learning those implicit codes and assimilating at law school. What is needed is curricula which foregrounds and celebrates cultural capitals that are not always seen and valued at university, but which are ultimately likely to result in law graduates who are equipped for an increasingly diverse and complex society.

This article proposes an alternative lens for framing ‘non-traditional law’ students, based on Tara Yosso’s concept of community cultural wealth (‘CCW’).²¹ We argue that law curricula which harnesses CCW can support student success. To demonstrate, this article focuses on a project conducted at Western Sydney University (‘WSU’) Law School during 2023 in the lead up to the Voice Referendum. In 2023, WSU Law School conducted the elective subject Law and Public Policy: Referendum 2023 — Engaging in Constitutional Change (‘LPP2023’). Students in LPP2023 examined the link between law, public policy and social reform and adopted a range of social, political, and legal perspectives to examine the policy process and its interaction with law. LPP2023 invited students to engage, study and reflect on discourse and activism around the Voice Referendum proposal. The centrepiece of assessment in LPP2023 was a community engagement project designed and implemented by each student, to inform and engage local communities on the issues around the Referendum.

The Western Sydney region is home to one of the most diverse populations in Australia,²² and the student cohort at WSU reflects this diversity.²³ As educators of future lawyers in one of the most diverse regions in Australia, we saw a unique opportunity to reach communities who may not have otherwise engaged with the Voice Referendum, by relying on the strengths of our students, and supporting them to demonstrate those strengths through their community engagement projects.

This article first outlines the context for our application of CCW, including a description of the student cohort, and the theoretical framework of CCW. We discuss our methodology for the design and implementation of LPP2023, and the qualitative methods used to explore the students’ experience of their community engagement projects. We then present and discuss our findings through the lens of

²⁰ Webley et al (n 18).

²¹ Tara Yosso, ‘Whose Culture Has Capital? A Critical Race Theory Discussion of Community Cultural Wealth’ (2005) 8(1) *Race, Ethnicity and Education* 69.

²² Cody and Noakes (n 7) 71–2; Sandra Noakes and Anna Cody, ‘Building a (Self) Reflective Muscle in Diverse First-Year Law Students’ (2022) 32(1) *Legal Education Review* 70, 88–9.

²³ Cody and Noakes (n 7) 72; Noakes and Cody (n 22) 88.

CCW. Finally, we consider implications for law curricula in centring students' CCW.

II CONTEXT FOR COMMUNITY CULTURAL WEALTH

A *WSU Law School and the 'non-traditional' or 'new' student*

Academic literature often juxtaposes 'traditional' students and 'non-traditional' or 'non-standard' students.²⁴ While there is no agreed definition of the 'non-traditional' university student,²⁵ the term attempts to capture an 'eclectic range' of attributes, which may include students from low-SES backgrounds, students from culturally and linguistically diverse backgrounds, mature-aged students, students who are first-in- family to attend university, and students who do not have prior formal qualifications.²⁶ These categories of non-traditionality also intersect, so that students may possess more than one 'non-traditional' characteristic.²⁷ References to 'non-traditional' and 'non-standard' students are exclusionary, because they define students by who they are *not*, rather than who they *are*.²⁸ This positions the 'traditional' student as the norm, and the 'non-traditional' student as 'other'.²⁹ It has been suggested that other terms for non-traditional students might be 'diverse' or 'new' students.³⁰ Recognising that the term 'non-traditional' student is exclusionary, we will use the term 'new student' to describe these students for the remainder of this article.

Many of the law students at WSU Law School are new law students. The student cohort is representative of the community in which its campuses are located. Western Sydney is the fastest growing region of greater metropolitan Sydney,³¹ and has the third largest economy in Australia.³² Thirty-five percent of the people in Western Sydney were

²⁴ Michelle Morgan, 'Student Diversity in Higher Education' in Michelle Morgan (ed), *Supporting Student Diversity in Higher Education: A Practical Guide* (Routledge, 2013) 10, 11.

²⁵ Morgan (n 24) 11; Ethel Chung, Deborah Turnbull and Anna Chur-Hansen, 'Differences in Resilience Between "Traditional" and "Non-Traditional" University Students' (2017) 18(1) *Active Learning in Higher Education* 77, 79.

²⁶ Morgan (n 24) 11; Warren (n 2) 86–7; Daddow (n 3) 742.

²⁷ Lisa Thomas and Jennifer Heath, 'Institutional Wide Implementation of Key Advice for Socially Inclusive Teaching in Higher Education: A Practice Report' (2014) 5(1) *The International Journal of the First Year in Higher Education* 125, 126; Chung, Turnbull and Chur-Hansen (n 25) 79, citing Karen Kim et al, 'Redefining Non-Traditional Students: Exploring the Self-Perceptions of Community College Students' (2010) 34(5) *Community College Journal of Research and Practice* 402.

²⁸ Noakes and Cody (n 22) 74.

²⁹ Daddow (n 3) 742.

³⁰ *Ibid.*

³¹ The Centre for Western Sydney, *Where Are the Jobs? Part 1: Western Sydney's Short-Lived Jobs Boom* (Report, 2020) 7.

³² Regional Centre of Expertise on Education for Sustainable Development, 'About Greater Western Sydney', *Western Sydney University* (Web Page, 11 July 2022) <https://www.westernsydney.edu.au/rcegws/rcegws/About/about_greater_western_sydney>.

born overseas.³³ It is home to 170 different nationalities, who speak over 100 different languages.³⁴ It has one of the largest Indigenous populations in Australia.³⁵ Local government areas in Western Sydney generally have a higher proportion of socio-economic disadvantage compared to the rest of the Sydney region,³⁶ and the area has higher unemployment, lower than average salary levels, and high levels of rent and mortgage stress.³⁷

Aggregated demographic data collated in relation to WSU Law School's commencing law cohorts from 2018-2021 revealed that 45% were from low-SES backgrounds,³⁸ 35% were from culturally and linguistically diverse backgrounds, 39% were first-in-family students, 53% were students who had not entered law directly from high school, and 10% did not have formal high school qualifications.³⁹

Understanding who WSU Law School is provides insight into why the Law School chose to make LPP2023 the centrepiece of its 2023 Voice Referendum initiatives,⁴⁰ and why the major piece of assessment was a community engagement project chosen by the student. LPP2023 encouraged law students to recognise and draw upon their CCW.

B *The cultural capital of new students: community cultural wealth*

Foregrounding the cultural capital of new students is rooted in critical race theory and was originally proposed by Yosso as a challenge to the misconceived deployment of Pierre Bourdieu's theory of cultural capital.⁴¹ Bourdieu distinguished between economic capital, social

³³ Ibid.

³⁴ Ibid; forty two per cent of the population of Western Sydney speak a language other than English: see Western Sydney University, *Securing Success: 2018-2020 Strategic Plan* (Report, 2018) 2.

³⁵ Regional Centre of Expertise on Education for Sustainable Development (n 32).

³⁶ Jawed Gebrael, 'Socio-Economic Index for Areas in Greater Western Sydney' (Report, August 2018) 5.

³⁷ Regional Centre of Expertise on Education for Sustainable Development (n 32).

³⁸ Western Sydney University bases low socio-economic status on the students' postcode of permanent home residence within the socio-economic status value derived from the Australian Bureau of Statistics *2016 Census Socio-Economic Indexes for Areas Index for Education and Occupation for Postcodes*: see Western Sydney University, *Western Sydney University Annual Report 2023: The Year in Review Volume 1* (Report, 2023) 66, app 4, table 7; Australian Bureau of Statistics, 'Details: Socio-Economic Indexes for Areas (SEIFA) 2016' (Web Page, 27 March 2018) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/2033.0.55.001.2016?OpenDocument>>.

³⁹ Noakes and Cody (n 22) 88.

⁴⁰ For other projects conducted as part of the WSU Law School's Referendum project, see Western Sydney University, '2023 Referendum Project: Empowerment, Engagement and Education', *Western Sydney University* (Web Page) <<https://www.westernsydney.edu.au/schools/sol/referendum>>.

⁴¹ Yosso (n 21). For references to Bourdieu's work, see Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* (Routledge, 1984); Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge University Press, 1977); Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (University of Chicago Press, 1992); Pierre Bourdieu, 'The Forms of Capital' in Nicole Woolsey Biggart (ed), *Readings in Economic Sociology* (Wiley, 1st ed, 2002) 280; Pierre Bourdieu and Passeron, *Reproduction in Education, Society and Culture* (Sage, 1990).

capital and cultural capital.⁴² While economic capital refers to material wealth, and social capital refers to social connections, cultural capital refers to 'an accumulation of specific forms of knowledge, skills, and abilities that are valued by privileged groups in society'.⁴³ 'Traditional' cultural capital, in the Bourdieusian sense, is 'proficiency in and familiarity with dominant cultural codes and practices' of educational institutions.⁴⁴ In the context of higher education, it has been suggested that, as many of these codes and practices are implicit, this reproduces existing educational hierarchies and 'excludes the democratic participation' of new students.⁴⁵

As noted by Yosso, Bourdieu's theory of cultural capital recognises that 'knowledges of the upper and middle classes are considered capital valuable to a hierarchical society'.⁴⁶ However, Bourdieu's work has been incorrectly deployed to frame students from 'non-traditional' backgrounds in deficit, as a way of explaining the poorer educational outcomes of new students, suggesting that these 'disadvantaged' students need assistance to acquire the requisite 'traditional' cultural capital.⁴⁷ Naylor and Mifsud observe that this misuse of Bourdieu's theory in higher education research often places the onus on students to access support services within university systems to assist them to 'assimilate' and 'build' their cultural capital.⁴⁸ It also ignores Bourdieu's insight that access to cultural capital 'gives privileged access to further capital, allowing the dominant classes to monopolise resources and reinforce their dominance'.⁴⁹ Yosso observes that:

while Bourdieu's work sought to provide a structural critique of social and cultural reproduction, his theory of cultural capital has been used to assert that some communities are culturally wealthy while others are culturally poor. This interpretation of Bourdieu exposes White, middle-class culture as the standard, and therefore all other forms and expressions of 'culture' are judged in comparison to this 'norm'.⁵⁰

As a counterpoint to this (mis)use of Bourdieu's theory of cultural capital, Yosso proposes a framework for understanding the CCW that students from culturally and linguistically diverse backgrounds students bring to education. These are:

Aspirational capital — 'the ability to maintain hopes and dreams for the future, even in the face of real and perceived barriers';⁵¹

⁴² Bourdieu, 'The Forms of Capital' (n 41) 281.

⁴³ Yosso (n 21) 76.

⁴⁴ Daddow (n 3) 742.

⁴⁵ *Ibid* 742.

⁴⁶ Yosso (n 21) 70.

⁴⁷ *Ibid*.

⁴⁸ Naylor and Mifsud (n 19) 264–5.

⁴⁹ Naylor and Mifsud (n 19) 264; see also Yosso (n 21) 70.

⁵⁰ Yosso (n 21) 76.

⁵¹ *Ibid* 77.

Linguistic capital — ‘the intellectual and social skills attained through communication experiences in more than one language and/or style’;⁵²

Familial capital — ‘those cultural knowledges nurtured among familia (kin) that carry a sense of community history, memory and cultural intuition’, the ‘pedagogies of the home’;⁵³

Social capital — ‘networks of people and community resources. These peer and other social contacts can provide both instrumental and emotional support to navigate through society’s institutions’;⁵⁴

Navigational capital — ‘skills of manoeuvring through social institutions’, and particularly institutions not designed to support ‘non-traditional’ students;⁵⁵

Resistant capital — ‘knowledges and skills fostered through oppositional behaviour that challenges inequality’.⁵⁶

While Yosso’s original CCW framework focused on domestic students from culturally and linguistically diverse backgrounds, it has been used to foreground the strengths of other new students in higher education; for example, students from low-SES backgrounds,⁵⁷ first-in-family (‘FIF’) students,⁵⁸ and students from refugee backgrounds.⁵⁹ Research has emphasised the importance of centring and valuing ‘non-traditional’ cultural capital(s) in higher education.⁶⁰ For instance,

⁵² Ibid 78.

⁵³ Ibid 79.

⁵⁴ Ibid.

⁵⁵ Ibid 80.

⁵⁶ Ibid.

⁵⁷ Jade McKay and Marcia Devlin, “‘Low Income Doesn’t Mean Stupid and Destined for Failure’: Challenging the Deficit Discourse around Students from Low SES Backgrounds in Higher Education” (2016) 20(4) *International Journal of Inclusive Education* 347; Amy French and Shelley Price-Williams, ‘Economic Stratification in Higher Education: An Asset-Based Approach to Low-SES Students’ Sense of Belonging’ in *The Impact of a Sense of Belonging in College* (Routledge, 1st ed, 2023) 129; Georgianna Martin, Matthew Smith and Brittany Williams, ‘Reframing Deficit Thinking on Social Class’ (2018) 2018(162) *New Directions for Student Services* 87.

⁵⁸ O’Shea ‘Avoiding the Manufacture of “Sameness”’ (n 17); Sarah O’Shea et al, ‘Disrupting the Deficit: Beyond Notions of Lack for First-in-Family Students’ in Sarah O’Shea et al (eds) *First-in-Family Students, University Experience and Family Life* (Palgrave Macmillan UK, 1st ed, 2017) 55 (‘Disrupting the Deficit’); Catherine Mobley and Catherine Brawner, “‘Life Prepared Me Well for Succeeding’: The Enactment of Community Cultural Wealth, Experiential Capital, and Transfer Student Capital by First-Generation Engineering Transfer Students’ (2019) 43(5) *Community College Journal of Research and Practice* 353; Jesse McCain and Josipa Roksa, “‘It’s a Strength That I Draw From’: First-Generation Background as a Cultural Resource in Law School’ (2023) 3(2) *Journal of First-Generation Student Success* 71.

⁵⁹ Andrew Harvey and Mark Mallman, ‘Beyond Cultural Capital: Understanding the Strengths of New Migrants within Higher Education’ (2019) 17(5) *Policy Futures in Education* 657.

⁶⁰ See, eg, Bonnie Pang et al, ‘Forging Strengths-Based Education with Non-Traditional Students in Higher Education’ (2018) 9(2) *Curriculum Studies in Health and Physical Education* 174; Lynda Measor, Paula Wilcox and Philip Frame,

studies demonstrate how new students harness use their 'outsider' knowledge to understand that a university's ways of knowing and doing is an example of *one* culture; not necessarily a superior culture.⁶¹ The knowledge that Indigenous students bring to higher education has also been framed as a strength.⁶² In its critique of university approaches to supporting academic literacy, the Academic Literacies ('AcLits') movement proposes that new students are often *better* able than traditional students to see that academic discourse is just one of many communication styles, and are able to dexterously 'code-switch' between different modes of discourse, because they possess a meta-knowledge of language.⁶³

Critical approaches to 'traditional' cultural capital have been applied to the study of legal education. For example, the ubiquity of traditional cultural capital has been exposed to interrogate structural barriers to certain strata of the legal profession in Britain for Black, Asian and Minority Ethnic ('BAME') and low-SES law graduates.⁶⁴ Webley et al harness Bourdiesian theory to demonstrate how certain proxies for merit in selection processes, such as the school and university a law graduate attended and their participation in certain extra-curricular activities, perpetuate barriers to entry to elite law firms for BAME and graduates from low-SES backgrounds. The authors observe that:

[t]here is no reliable evidence to suggest that law graduates with excellent grades from non-elite institutions are any less lacking in merit as would-be lawyers than their counterparts from elite institutions, even if they may have lesser [traditional] cultural or symbolic capital,⁶⁵

and yet the implicit value placed on traditional cultural capital by elite law firms reproduces barriers to entry and participation 'to the benefit

'Transformation or Trauma: The Transition to Higher Education of Non-Traditional Students' in Tamsin Hinton-Smith (ed), *Widening Participation in Higher Education* (Palgrave Macmillan UK, 2012) 146, 153–4; O'Shea, 'Avoiding the Manufacture of "Sameness"' (n 17); O'Shea et al, 'Disrupting the Deficit' (n 58); McKay and Devlin (n 57) 354–5; Harvey and Mallman (n 59).

⁶¹ Diane Reay, Gill Crozier and John Clayton, "'Strangers in Paradise'? Working-Class Students in Elite Universities' (2009) 43(6) *Sociology* 1103, 1111–2.

⁶² Martin Nakata, Vicky Nakata and Michael Chin, 'Approaches to the Academic Preparation and Support of Australian Indigenous Students for Tertiary Studies' (2007) 37(S1) *The Australian Journal of Indigenous Education* 137; Melodie Bat, Claire Kilgariff and Tina Doe, 'Indigenous Tertiary Education — We Are All Learning: Both-Ways Pedagogy in the Northern Territory of Australia' (2014) 33(5) *Higher Education Research & Development* 871.

⁶³ See Siân Preece, 'Multilingual Identities in Higher Education: Negotiating the "Mother Tongue", "Posh" and "Slang"' (2009) 24(1) *Language and Education* 21 ('Multilingual Identities in Higher Education'); Ann-Marie Priest, "'I Have Understanding as Well as You': Supporting the Language and Learning Needs of Students from Low Socio-Economic Status Backgrounds' (2009) 3(2) *Journal of Academic Language and Learning* A70, A76; Daddow (n 3) 745.

⁶⁴ Webley et al (n 18). BAME stands for 'Black, Asian and Minority Ethnic' and is the acronym used in Webley et al's paper.

⁶⁵ *Ibid* 219.

of those already privileged by the field'.⁶⁶ MacLeod has similarly used Bourdiesian theory to suggest that disruptions to the profession caused by legal technology might provide legal educators with opportunities to also disrupt entrenched hierarchies in the legal profession in England and Wales.⁶⁷

Yosso's framework has been deployed to frame the experiences of new students at law school. For example, in a number of studies, it has been used as a lens to explore the experiences of minority students in law schools in the USA.⁶⁸ McCain and Roksa's study of the experiences of FIF law students in the USA argues that students' FIF status motivates them to succeed, incentivises community building with other FIF students, means that they were resourceful, independent learners, and provides them with an alternative lens for critiquing inequities in the law.⁶⁹ It has also been suggested that Yosso's framework could support law students' well-being, particularly in relation to providing a safe learning environment in an increasingly diverse student cohort.⁷⁰ In Australia, Cody and Noakes have advocated for a strengths-based approach to support the first year experience of law students in diverse cohorts, by recognising students' 'non-traditional' cultural capital(s).⁷¹

However, there are limited examples of law curricula which centre the cultural capital of new law students. Using Yosso's model, Garcia makes some suggestions about how law schools might adapt teaching practices and extra-curricular support to improve the experiences of female Latino law students at US law schools.⁷² However, this research does not really foreground students' CCW. Instead, it recommends ways to 'build up' students' CCW so that it more closely resembles traditional cultural capital.⁷³ This tends towards an assimilationist model, rather than focusing on ways that law school curricula might centre students' strengths. It has also been suggested that problem-based learning in clinical legal education allows new students to 'bridge their home lives, professional lives, and academic lives', by tapping into

⁶⁶ Ibid 219.

⁶⁷ Kryss Macleod, 'The Role of Legal Educators in Disruption of Hierarchies within Education and the Profession' in *Biopolitics and Resistance in Legal Education* (Routledge, 1st ed, 2023) 75.

⁶⁸ Lezlie Theresa Borden-Sistrunk, 'Minority Law Students Descriptions of the Challenges and the Strategies They Used in Law School' (PhD Thesis, Grand Canyon University, 2024); Jeb David Butler, 'Understudied and Underserved: A Phenomenological Exploration of How First-Generation Students of Color Perceive Challenges and Supports During Law School' (PhD Thesis, University of California, 2024); Glenda Beatriz Garcia, 'Breaking Down the Walls: Supporting Latinas to Law School Success' (2019) 7(2) *Indiana Journal of Law and Social Equality* 374. Note that the term 'minority' is used by Borden-Sistrunk to mean 'members of races that are not Caucasian': Ibid 9.

⁶⁹ McCain and Roksa (n 58) 79–84.

⁷⁰ Nigel Duncan, Caroline Strevens and Rachael Field, 'Resilience and Student Wellbeing in Higher Education: A Theoretical Basis for Establishing Law School Responsibilities for Helping Our Students to Thrive' (2020) 1(1) *European Journal of Legal Education* 83, 111–2.

⁷¹ Cody and Noakes (n 7).

⁷² Garcia (n 68).

⁷³ See, eg, Garcia's discussion of navigational capital and social capital: Ibid 393–5, and her discussion of resistant capital: Ibid 398–9.

their CCW.⁷⁴ Menis has described the perspectives that mature-aged culturally and linguistically diverse students can bring to a criminal law subject based on critical legal pedagogy⁷⁵ Bunbury and Philippopoulos-Mihalopoulos' 'My Degree Journey' project at Westminster Law School in the UK was implemented in the context of a diverse cohort of students,⁷⁶ and encouraged students to draw on their lived experience to produce a material artefact that reflected their understanding of 'law, justice, and their political and social responsibility as law students'.⁷⁷ However, their study of this project is not explicit about how students' CCW was supported, except for a brief discussion of assigning personal tutors to support students and encouraging the students to discuss what they did outside of university.⁷⁸

The analysis below explains in detail how the learning and assessment in LPP2023 was designed to allow students to foreground and harness their CCW.

III METHODOLOGY

A Subject Design

In 2022, following the commitment by the Labor Government to hold the Voice Referendum, WSU Law School was involved in discussions with other Australian law schools concerning participation in education about the Referendum. It became clear to us that many law schools were planning to focus on the education of their own law students, with community outreach consisting of engagement by law academics with the broader public. It seemed we were in a unique position to harness the strengths of our students in community education and engagement about the Voice Referendum. We decided that the best way to do this was by allowing our students to attain academic credit for participating in this community engagement work, rather than as an extracurricular activity. From prior research concerning our student cohort,⁷⁹ we were aware that many of our students had complex lives and multiple commitments outside of university, and we did not want to unfairly exclude students who were unable to devote the time to an extracurricular project. We also decided that the main assessment in LPP2023 would be a community engagement project designed by each student, to inform and engage

⁷⁴ Ethan Youngerman and KC Culver, 'Increasing Equity through Project-Based Learning in Graduate and Professional Schools' in *Promoting Meaningful Student-Faculty Experiences in Graduate Education* (Routledge, 1st ed, 2024) 62, 69; see also *ibid* 69–72.

⁷⁵ Susanna Menis, 'Non-Traditional Students and Critical Pedagogy: Transformative Practice and the Teaching of Criminal Law' (2017) 22(2) *Teaching in Higher Education* 193.

⁷⁶ Stephen Bunbury and Andreas Philippopoulos-Mihalopoulos, 'The Law School Degree Show: Law, Materiality, Decolonization and Authentic Assessment' (2023) 57(2) *The Law Teacher* 187, 194.

⁷⁷ *Ibid* 187.

⁷⁸ *Ibid* 194–5.

⁷⁹ Cody and Noakes (n 7).

their chosen community about the Voice Referendum. This required students to recognise strengths that they may not have always had the opportunity to deploy at university.

However, while the subject design of LPP2023 focused on the CCW of students from many different backgrounds, it was important to avoid situating Indigenous people as ‘one of many social groups, rather than the prior occupiers of the soil’.⁸⁰ As Ambelin Kwaymullina has observed, such an approach can undermine Indigenous sovereignty, as it fails to recognise that Indigenous peoples’ ‘unique position gives rise to unique rights in domestic and international law, and founds contemporary conversations around such matters as sovereignty, treaty, and Constitutional change’.⁸¹ Most of the students in LPP2023 were not Indigenous,⁸² and so while the Subject foregrounded students’ strengths, it was important to appreciate that understanding CCW is a reflexive process, necessitating awareness of the limitations of one’s own and others’ CCW, and the need for cultural humility.⁸³

These considerations informed the design and delivery of LPP2023. LPP2023 was designed by a working party of WSU Law School academics in consultation with the University’s Pro-Vice Chancellor, Indigenous Education (‘PVC’).⁸⁴ The involvement of the PVC was an important element building the cultural competence of both students and staff. As well as advising on the Subject design and reading list,⁸⁵

⁸⁰ Ambelin Kwaymullina, ‘Teaching for the 21st Century: Indigenising the Law Curriculum at UWA’ (2019) 29 (1) *Legal Education Review* 1, 11.

⁸¹ *Ibid.*

⁸² Top line demographic data on the student cohort in LPP2023 obtained under the Ethics protocol for this research indicated that 4% of the student cohort were Aboriginal or Torres Strait Islander students: see below for details of the Ethics protocol.

⁸³ Kwaymullina (n 80) 21–22.

⁸⁴ The Pro Vice-Chancellor Indigenous Education at Western Sydney University is Professor Susan Page. The project team is extremely grateful to Professor Page for her review of, and contribution to the Subject. Its success would not have been possible without her generosity.

⁸⁵ The LPP2023 Subject Outline included readings foregrounding the perspectives of Indigenous legal scholars and authors, including Eddie Synot, Larissa Behrendt, Megan Davis and Thomas Mayor. This reading list was reviewed by the PVC twice before publication. Examples of readings that were included were: Larissa Behrendt, ‘The 1967 Referendum: 40 Years On’ (2007) 11 *Australian Indigenous Law Review* 12; Thomas Mayor, ‘The Torment of Our Powerlessness: The Uluru Statement and Enshrining a Voice for Indigenous Peoples’ (2018) 87 *Australian Options* 7; Eddie Synot, ‘The Meaningful Expression of Indigenous Sovereignty through the Uluru Statement from the Heart’ in Julian Meyrick (ed), *The New Platform Papers: From the Heart, The Voice, the Arts and Australian Identity, Volume 2* (Currency House, Griffith University, 2022); Eddie Synot, ‘The Uluru Statement and Changing the Culture and Power of Decision-Making’, *Indigenous Constitutional Law* (Blog Post, 28 October 2021) <<https://www.indigconlaw.org/home/the-ururu-statement-and-changing-the-culture-of-power-and-decision-making>>; Eddie Synot, ‘Arresting the Tide of History: the Uluru Statement from the Heart’, #13/2020 *Third World Approaches to International Law Review* (online) <<https://twailr.com/arresting-the-tide-of-history-the-ururu-statement-from-the-heart/>>; Eddie Synot, ‘The Universal Declaration of Human Rights at 70: Indigenous Rights and the Uluru Statement from the Heart’ (2019) 73 (4) *Australian Journal of International Affairs* 320; Gabrielle Appleby and Megan Davis, ‘The Uluru Statement and the Promises of Truth’ (2018) 49(4) *Australian Historical Studies* 501.

the PVC delivered guest seminars in LPP2023, specifically directed to the issue of Indigenous understandings of law and legal reform. The PVC made clear in seminars that foregrounding Indigenous understandings was essential when engaging in debate relating to First Nations issues, including the Voice.

Following the PVC's seminars, the teaching team included in every class a discussion and reflection focused on the issue of 'standpoint'.⁸⁶ As Marcelle Burns observes '[s]tandpoint theory ... recognises that all knowledges are historically, socially and culturally contingent'.⁸⁷ Its particular contribution to the LPP2023 centred around how power often determines what counts as truth or knowledge, privileging some types of 'knowledge' over others.⁸⁸ Class discussions focused on analysis of key texts relevant to or related to the Voice Referendum, around questions such as: Whose standpoint is reflected in the text? Whose voices or experiences are missing? How might the outcome change if the standpoint of a different group had been central?

Towards the end of the semester, the teaching team also benefited from the presence and involvement of a Visiting Scholar in the Law School, Dr Graeme Binyup La Macchia, a member of the Gumbaynggirr and Yuin community of coastal New South Wales.⁸⁹ Over the course of Dr La Macchia's two-week visit to the Law School, he sat in on seminars as students in LPP2023 presented their community engagement projects, inviting students to reflect on their objectives from the perspective of Indigenous experiences. Involvement of an Indigenous academic was an integral part of expanding teaching staff and students' knowledge and understanding of Indigenous perspectives. As well as an essential resource for advice on appropriate terminology and cultural protocols in different contexts, Dr La Macchia's involvement ensured that Indigenous students enrolled LPP2023 did not carry the responsibility of providing the 'Indigenous perspective'.⁹⁰

At the beginning of LPP2023, teaching staff and students in the Law School expressed the view that their lack of Indigenous CCW made them ill-equipped to engage in public debate on the Voice Referendum. However, the readings from Indigenous academics, the involvement of the PVC, and the involvement of Dr LaMacchia, helped staff and students reconcile with the idea that understanding and accepting the limitations of one's own standpoint was not a reason to disengage from careful debate and proposals for reform about issues that relate to

⁸⁶ See Marcelle Burns, 'Dealing with the "Wicked" Problem of Race and the Law: A Critical Journey for Students (and Academics)' (2018) 28(2) *Legal Education Review* 1, 16-17 ('Dealing with the "Wicked" Problem'); Marcelle Burns, 'Relationality in Indigenous Teaching Praxis in Legal Education' in Nicole Watson and Heather Douglas (eds), *Legal Education through an Indigenous Lens: Decolonising the Law School* (Routledge, 2025) 134 ('Relationality in Indigenous Teaching Praxis in Legal Education').

⁸⁷ Burns, 'Relationality in Indigenous Teaching Praxis in Legal Education' (n 86) 139.

⁸⁸ Burns, 'Dealing with the Wicked Problem' (n 86) 17.

⁸⁹ As part of his Visiting Scholarship to WSU, Dr LaMacchia was employed full time on a contract at a level that reflected his experience and qualifications and reimbursed for accommodation and travel expenses.

⁹⁰ Burns, Hong and Wood (n 9) 17.

Indigenous people. By the time students undertook their community engagement projects, they understood the Voice Referendum as part of a claim to Indigenous self-determination and sovereignty and saw their role as being to explicate the various dimensions of this claim in ways that did not undercut self-determination.

LPP2023 was delivered at both undergraduate and post-graduate levels and was open to students from disciplines other than law. Prior to the commencement of the Subject, the Law School also conducted a design competition, which was open to all students at WSU.⁹¹ The two winning entries were printed on t-shirts, posters, tote bags and drink bottles that students undertaking LPP2023 could use, wear or distribute when delivering their community engagement projects.⁹² One of the aims of the design competition was to raise awareness about LPP2023 across the University, to encourage students from other disciplines to enrol. We also wanted to create a sense of identity, community and excitement among law students, to encourage them to enrol in LPP2023. LPP2023 was not designed to be a platform for advocacy, but a means of sharing knowledge about the Australian Constitution and the issues at stake in the Voice Referendum.

However, we were mindful that, in embarking on their community engagement projects, students would be venturing beyond the relative safety of the Law School and into their communities, and we did not want to set either up for failure. While authentic, ‘real-life’ assessments such as the community engagement project in LPP2023 may be exciting and engaging for students, they can also be stressful.⁹³ This type of real-life learning can be messy and unpredictable, which means that it needs to be carefully scaffolded to support student well-being.⁹⁴ Studies have demonstrated that novel, creative assessments can be especially daunting for law students, who are used to text-based assessments.⁹⁵

For these reasons, strong support for the development of students’ community engagement projects was provided in the form of weekly small group three-hour seminars, which covered topics such as active citizenship and deliberative democracy; interactive case studies of social and constitutional change in Australia and elsewhere; the legal and political framework in relation to the Voice Referendum; the Uluru Statement from the Heart; how history matters: dispossession and genocide; constructing the future: Voice, Treaty, Truth; assessing public debate; engaged citizenship- practices and processes; debating in the public square; artists and change.

⁹¹ ‘Referendum Design Competition’, *Western Sydney University* (Web Page) <<https://www.westernsydney.edu.au/schools/sol/referendum-design-competition>>.

⁹² The terms and conditions of the design competition permitted this.

⁹³ Stephanie Wake et al, ‘Balancing Pedagogical Innovation with Psychological Safety? Student Perceptions of Authentic Assessment’ (2024) 49(4) *Assessment & Evaluation in Higher Education* 511, 514.

⁹⁴ Ibid 519; Anna Wiewiora and Anetta Kowalkiewicz, ‘The Role of Authentic Assessment in Developing Authentic Leadership Identity and Competencies’ (2019) 44(3) *Assessment and Evaluation in Higher Education* 415, 420; Joseph McDonald, ‘Dilemmas of Planning Backwards: Rescuing a Good Idea’ (1992) 94(1) *Teachers College Record* 152.

⁹⁵ Bunbury and Philippopoulos-Mihalopoulos (n 76) 197.

The content of LPP2023 was 'front-loaded' at the start of the semester. Students then had to complete a knowledge-based quiz on the subject-matter content of LPP2023 prior to commencing their community engagement projects. In the early weeks of seminars, students were also encouraged to think about ways they could harness their strengths to develop their community engagement projects, and were supported to recognise these strengths through a series of tutorial discussion questions:

- Do you like to discuss ideas with other people, and listen different perspectives to yours?
- Do you want to make your community/society/ the world a more just place? Why/why not?
- Are you interested in current world events, and how they relate to the law?
- Do you speak more than one language?
- Are you involved in any community organisations (eg sporting, religious, cultural)?
- Have you or family members or friends experienced interactions with the legal system in Australia? What was that experience?
- Do you have personal experience of a legal system other than the Australian legal system? What do you know about this legal system?
- Do you work (either in paid work or volunteer work)?
- Do you have skills or experience in areas other than law (for example, the arts, IT, social media, sport).

Most of our law students were used to this type of activity, because it is also done as part of their early classes in first year in a module called 'Being a Law Student'. As part of this first-year module, students are asked to reflect, in pairs, about what strengths and interests they may already possess that will assist them with their law studies, and how these strengths and interests might be deployed.

Front-loading content and encouraging students to think about their strengths allowed time in the latter half of the semester to be devoted to students designing their projects and obtaining tutor and peer feedback on them in seminars. Students presented a project plan to their tutors and obtained individual formative feedback prior to proceeding with their project.⁹⁶ In addition, where students' proposed projects involved in-person or virtual interactions with members of the public, they were provided with the opportunity to practise potential interactions, and to discuss how they might handle difficult conversations and challenging situations. Towards the end of the semester, students were provided with an opportunity to formally present their projects to their seminar group. They were also required, as part of the assessment in LPP2023, to complete a final reflection, and were provided with a scaffolded self-

⁹⁶ A copy of the project plan scaffold can be found in Appendix 1 to this article.

assessment report document to guide them in the completion of their community engagement projects and their reflections.⁹⁷

Figure 1: Scaffolding of Community Engagement Project



B *Methodology for study*

This study was conducted under WSU's Student Transition and ReTention ('STaRT') Umbrella Ethics approval,⁹⁸ which permits researchers to use student data collected routinely by the University, unless students opt out. The opt-out process is explained to students shortly after enrolment, and the University removes the data of students who opt out from any project under the STaRT program. Of the 172 students originally enrolled in LPP2023, we were permitted to access data relating to 129 students. We also obtained express consent from 33 students to examine their community engagement projects, project plans, reflections and self-assessments. As can be seen from the list below, there was a wide range of projects submitted by these 33 students:

⁹⁷ Copies of the marking rubrics for the community engagement project and the reflection, as well as the scaffold used for the self-assessment report, are contained in Appendices 2, 3 and 4 to this article.

⁹⁸ See Ethics approval H15391 [Subproject H13567] Evaluation of student experience in relation to Law School curriculum concerning the 2023 referendum proposal to change the Australian constitution to include a First Nations Voice to Parliament; 'Research into Student Retention', *Western Sydney University* (Web Page) <https://www.westernsydney.edu.au/learning_futures/home/curriculum_renewal/academic_transition/stars/research_and_publications>.

- Blog posts
- Dinner party discussion cards
- Discussions with members of the public in local neighbourhood
- Information pamphlets handed out in local communities
- Lunch hosted at local church with members of African community
- Portrait of Indigenous activist
- Presentation at local church
- Presentation at local Mosque
- Street art
- Submission to Joint Select Committee on the Aboriginal and Torres Strait Island Voice Referendum
- TikTok videos
- Video in Hazaragi disseminated on social media platforms
- Video presentation with University's Director of Indigenous Learning and Teaching
- Webinar at student's workplace
- Workshops at local high schools
- YouTube videos

Our study design was characterised by an ethical separation of teaching practice from teaching research. Research relating to pedagogical practices in higher education may benefit students, and, as most university students are adults, they are not normally identified as a vulnerable group of subjects for human research.⁹⁹ However, university students' participation in the research should not be influenced by 'deference to the researcher's perceived position of power'.¹⁰⁰ This consideration is particularly important when conducting research involving new students, who may not understand that they can say 'no' to participating in research. We observed the usual protocols of providing students with a detailed information statement relating to the project which explained that there was no requirement for them to agree to have their work in the Subject collected and analysed for the purposes of our research. We also put additional protections in place. One researcher did not teach into LPP2023 and conducted all the relevant communication with students in relation to this research project. The other researcher conducted the Subject and was the leader of the teaching team but did not communicate with the students about the research project, and did not know the identity of the students who consented to their work being

⁹⁹ Shirley Comer, 'The Ethics of Conducting Educational Research on Your Own Students' (2009) 13(4) *Journal of Nursing Law* 100, 100–5.

¹⁰⁰ Australian Government, *National Statement on Ethical Conduct in Human Research 2023* (National Health and Medical Research Council, 2023) cl 2.2.9, ch 4.3; see also Comer (n 99); Scott DeVito, 'Experimenting on Law Students: Why Imposing No Ethical Constraints on Educational Research Using Law Students is a Bad Idea and Proposed Ethical Guidelines' (2010) 40(2) *Southwestern University Law Review* 285; Mark MacLean and Gary Poole, 'An Introduction to Ethical Considerations for Novices to Research in Teaching and Learning in Canada' (2010) 1(2) *The Canadian Journal for the Scholarship of Teaching and Learning* 1.

collected and analysed. Students were also advised that their work would not be collected and analysed until after they received their final results in LPP2023. All student work was de-identified prior to collection and analysis.

We used conventional qualitative content analysis to code students' reflections, project plans and self-assessments, using NVivo software.¹⁰¹

IV FINDINGS AND ANALYSIS

A *Harnessing new students' CCW*

There was a high level of engagement across the Law School with LPP2023. This was demonstrated by the fact that we had three times the enrolments in LPP2023 compared to our standard law electives.¹⁰² There was also a very high skew in the students' results in the Subject, with 60% of the cohort receiving a Distinction result or above. The student satisfaction ratings for the Subject were also high, at 91% overall satisfaction for the undergraduate cohort and 100% satisfaction for the post-graduate cohort.¹⁰³

However, these quantitative results do not provide the rich picture of the students' experience of this subject, which is captured in the qualitative data. A very strong theme which emerged from the qualitative data was students' identification of their strengths, and how they brought them to their community engagement projects. It is possible to situate the students' observations about their strengths in Yosso's CCW framework.

1 *Linguistic capital*

As discussed above, one of the forms of capital identified by Yosso is 'linguistic capital – 'the intellectual and social skills attained through communication experiences in more than one language and/or style'.¹⁰⁴ This linguistic capital was harnessed in a number of student community engagement projects. Students translated their projects into languages such as Hazaragi, Arabic and Spanish. Student REFR33, who produced a YouTube video as their community engagement project, commented that 'I made a script in Spanish and English so that I could add subtitles in both languages to my video and thus be able to reach a wider audience'.¹⁰⁵

¹⁰¹ Hsiu-Fang Hsieh and Sarah Shannon, 'Three Approaches to Qualitative Content Analysis' (2005) 15(9) *Qualitative Health Research* 1277.

¹⁰² 95% of the undergraduate students who participated in the subject were law students and all of the post-graduates were law students.

¹⁰³ Data obtained under Ethics approval H15391. [Subproject H13567] Evaluation of student experience in relation to Law School curriculum concerning the 2023 referendum proposal to change the Australian constitution to include a First Nations Voice to Parliament.

¹⁰⁴ Yosso (n 21) 78.

¹⁰⁵ Student REFR33 reflection. Project: YouTube video in Spanish.

However, 'linguistic capital' as a form of CCW does not only relate to the ability to speak more than one language. As discussed above, the AcLits movement in higher education has proposed that new students are often better able perceive that academic discourse is just one of many communication styles and can use their meta-knowledge of language to 'code switch' between communication styles, depending on the audience.¹⁰⁶

Students also drew on their ability to communicate with diverse audiences as a strength:

I researched the demographic in Parramatta and included multiple languages [in my project]. I used easy to read and understand language as I knew I needed to transform legal jargon and politics into text that a diverse audience can read and understand.... having a background in school teaching for many years has equipped me with communication skills, de-escalation skills and the ability to empathise as well as adapt and cater language to a diverse audience. This addresses the challenges I thought I may face such as non-English speaking public, and those who have difficulty understanding in general.¹⁰⁷

[M]y usual job is a change manager which involves stakeholder engagement and translating complex concepts into what it means for a user or stakeholder group. With this in mind I wanted to produce information that is multi-layered and can be quite hard to understand re the Voice in that more digestible format which I settled on something on paper ie a pamphlet + some prints of key supporting information.¹⁰⁸

I chose a Netflix-themed presentation because I knew that Netflix was a popular streaming platform and that would be an engaging way to make my target audience interact and understand my presentation.¹⁰⁹

2 *Familial capital*

Students also drew on their 'familial capital': 'those cultural knowledges nurtured among familia (kin) that carry a sense of community history, memory and cultural intuition', the 'pedagogies of the home'.¹¹⁰ For example, Student REFR02, whose community engagement project involved the distribution of a pamphlet at a WSU campus, inviting students to stop and discuss the Voice Referendum with them, observed:

To prepare myself for the discussions, I practiced [sic] with my mum, dad, and sister. During role play, my mum was asked to argue yes, my dad was asked to oppose the referendum, and my sister was asked to pretend as though she did not know anything about the referendum. Role playing helped me feel centred and calmed my nerves on the actual day because my family enabled me to practice for most scenarios and encouraged me to remain composed during all interactions with students. I am very content

¹⁰⁶ Preece (n 63); Priest (n 63) A76; Daddow (n 3) 745.

¹⁰⁷ Student REFR04 self-assessment. Project: distribution of pamphlet and discussions with public outside of Parramatta City Campus.

¹⁰⁸ Student REFR27 self-assessment. Project: Brochure handed out in local community, and discussions with community members

¹⁰⁹ Student REFR28 Reflection. Project: TikTok video.

¹¹⁰ Yosso (n 21) 79.

with the audience for my project and am satisfied that I was able to engage with them....¹¹¹

As discussed above, in delivering LPP2023, the teaching staff were mindful to ensure that Indigenous students enrolled LPP2023 did not carry the responsibility of providing the ‘Indigenous perspective’ in relation to the Voice Referendum. However, students drew on their existing connections with Indigenous communities for their projects:

I am grateful to have been given the opportunity to discuss these issues as it was something close to my heart as I have family friends from the Indigenous community, so it was important to me that I presented something I was proud of and that I believed in.¹¹²

I’ve organised a rehearsal with a friend who works for the Djaara Corporation [a First Nations organisation] in governance and community organising to see if I’m communicating effectively and appropriately...¹¹³

3 *Social capital*

Students’ recognition of their social capital – ‘networks of people and community resources’ the ‘social contacts [which] can provide both instrumental and emotional support to navigate through society’s institutions’ emerged as a theme in two main forms.¹¹⁴

The first of these was students’ reliance on their peers for feedback on their community projects. For new students, peer support has been shown to be an important form of social cultural capital.¹¹⁵ Specific research in relation to the law student cohort at WSU indicates that students rely on their peers for academic support, even where more formal support structures are available to them.¹¹⁶ For these reasons, peer support for the students’ community engagement projects was embedded into class time in LPP2023, to ensure that all students had access to feedback from their peers. Student reflections indicated that opportunities for peer support were valued:

Feedback from my fellow classmates on this idea was very positive, and some individuals commented on the usefulness of a feedback form to measure gaps as they also wanted to implement the same method. I was ecstatic to receive such feedback as it meant that we were on the right track for the project.¹¹⁷

I was appreciative of the class I was in and that no one was judgemental, and the tutor made sure to make one feel at ease.¹¹⁸

¹¹¹ Student REFR02 Reflection. Project: Pamphlet handed out at WSU campus and discussion with students on campus.

¹¹² Student REFR14 reflection. Project: short film.

¹¹³ Student REFR25 self-assessment. Project: live webinar presentation on social media.

¹¹⁴ Yosso (n 21) 79.

¹¹⁵ Pang et al (n 60) 182.

¹¹⁶ Cody and Noakes (n 7) 81, 84; see also Pang et al (n 60) in relation to health and physical education students at WSU.

¹¹⁷ Student REFR06 Reflection. Project: workshop held at a local high school.

¹¹⁸ Student REFR14 reflection. Project: short film.

I thought that my colleagues' projects were fascinating and instructive. Some of them set up a booth to tell Western Sydney University students about the Referendum 2023. Additionally, some of them utilise social media, while others create amazing artwork. We discuss our own experiences, which were a key component of this issue, during presentations.¹¹⁹

Being a witness to all of my classmates' projects was also a real insight into how everyone is a part of this referendum and how your background can affect your understanding of the topic.¹²⁰

The second form of social capital recognised by students was their unique position as leaders in Western Sydney communities, and how these social connections were vital in their community engagement projects:

People of my community have refugee background and many of them do not have any knowledge about the Australia's system of government. - **I am active person in my community** and my ideas are based on the experience and understanding that I have from working with community.... My audience will be the "Hazara" communities in Australia. I have a Facebook page with 5.5 K follower that mostly are from my community from all parts of Australia. I also be able to ask my friends in social media to share the video for getting more views and feedbacks [sic].¹²¹

..I feel that if people of my [Hazara] community hear about the referendum from a **trusted member of the community**, it will help them to conclude and cast their vote based on that....¹²²

I have chosen also to engage with Filipino Australians with whom I have known for over 20 years through sports. I believe that I am able to connect with them in a meaningful way because **I understand their culture, background and we speak the same first language.**¹²³

I think being well respected in the community and the fact that they knew me on a personal level and could trust me gave me an advantage, in that they wanted to listen to me and wanted me to explain what the issue was and how they could help....

I arranged to hold a seminar and to present the information on a PowerPoint and to make sure that I spoke in Arabic clearly so I didn't cause confusion or lose their attention....

...My presentation went on to translate words they will hear on the news such as; treaty, voice, sovereignty (very hard to explain), referendum, constitution and Uluru Statement from the Heart. It was such a good way to

¹¹⁹ Student REFR30 reflection. Project: Participant in joint video project supported by WSU's Indigenous Learning and Teaching.

¹²⁰ Student REFR31 reflection. Project: Card game for dinner party. Questions uploaded to website.

¹²¹ Student REFR12 self-assessment. Project: video with information about the Voice. In Hazaragi. Disseminated on social media.

¹²² Student REFR12 reflection. Project: video with information about the Voice. In Hazaragi. Disseminated on social media.

¹²³ Student REFR15 self-assessment. Project: webinar presented to management at student's workplace, and also presentation at local Filipino golf/social club.

have their attention because the majority didn't know what those words meant and how it all affected them. After translating the words and explaining the meaning I moved on to present the research material and where they could go onto read or have their children read for them. I had some come up and take photos of the slides that had the website links. I was becoming confident that they are actually interested and wanted me to continue.

I went on to all the other slides and the content I had translated. Once I was finished I had so many questions that I am sure they had the courage to ask **because I spoke their language and because they could trust me....**

....I took this project as a way to connect with my community and pass information that would help them make an informed decision. My aim of this project was to create a conversation, get people talking and I think I have achieved this and I couldn't be happier with the outcome. People at home were talking about the presentation.¹²⁴

For student REFR32, recognition of their project at their mosque also led to them being asked to present their project in classes in other law subjects:

As well as presenting to my community I was asked by [another law academic] to present my information to my criminal [law] class. [The other academic] heard a talk about my presentation from Public Law & Policy class and we were doing Aboriginal and Torres Strait Islander People and the Criminal Justice System so she asked me to come up in front of the class and talk about the presentation and how was my community feedback. **I felt so happy and honored [sic] to see that students were talking to me about the project, teachers wanted to hear what I had done and that it actually was a positive impact on my community....**¹²⁵

4 *Navigational capital*

Navigational capital as a form or CCW relates to 'skills of manoeuvring through social institutions', especially institutions not designed to support 'non-traditional' students.¹²⁶

Traditional university study is usually modelled around the full-time student who has a linear progression through their studies. This is not the law student cohort at WSU; many students are juggling study with carer commitments, full-time work and community obligations. Our experience of working with these students is that there is limited flexibility in their lives outside of university.¹²⁷ We frame their multiple commitments as a strength, rather than a distraction from university study, and advise students, from first year, that they are not expected to adjust their lives outside of university to 'fit' to law school.¹²⁸ The fact that students have these multiple commitments means that they are adept multitaskers and strategic learners, qualities that are likely to make them excellent lawyers.

¹²⁴ Student REFR 32 reflection. Project: presentation at Mosque in Arabic.

¹²⁵ Student REFR 32 reflection. Project: presentation at Mosque in Arabic.

¹²⁶ Yosso (n 21) 80.

¹²⁷ Cody and Noakes (n 7) 80.

¹²⁸ Ibid 83.

Students drew on their navigational capital for their projects:

I decided to introduce the topic to people in the office, I went straight to the top and spoke to the Managing Director and the Board, after completing the quarterly report which I had just presented via Teams....¹²⁹

As a former PASS [Peer Assisted Study Sessions] facilitator, and current PASS mentor, I believe I have the relevant knowledge and experience to organise and conduct an interactive workshop presentation and ensure that it remains a safe and encouraging environment that is sensitive to and respectful of different cultures and viewpoints.¹³⁰

One of my challenges was how to get people to interact with me when I was handing out pamphlets. The morning I was due to hand them out I asked my husband to do a social media post about what I was doing. Due to his local business, there are many locals that know both of us and I was hoping it would encourage any in the area to come and speak to me.¹³¹

....I regularly work at a local brewery so I interact with a lot of locals so have a feel for how interactions might go but the Voice will inevitably be seen as political by some and thus some animosity might come out in the interactions.... I have had customer service experience dealing with unhappy customers which hopefully will help.¹³²

....as a lawyer in my own country I am used to a different constitution, I used to compare every aspect of how it is done here and back in my country. Due to their [sic] being some similarities like the rights and obligations of a citizen, I didn't have to stress a lot while learning about it.¹³³

Another other form of navigational capital which emerged was the way in which students used their community engagement projects as an opportunity to foreground talents that had previously not been recognised at university. One particularly striking example of this was the work of Students REFR07 and REFR16, who collaborated on a piece of street art to raise awareness about the Voice Referendum. They successfully negotiated with a shop owner situated near a busy Western Sydney railway station to display their art. In addition, they engaged a friend, a TikTok influencer with over 75 000 followers, to display their art on TikTok and encourage awareness about the Referendum. As observed by Student REFR16:

I felt a sense of excitement and responsibility when embarking on this project. It was an opportunity to contribute to a cause of immense social and political significance. Collaborating with my classmate... and engaging

¹²⁹ Student REFR15 reflection. Project: webinar presented to management at student's workplace, and also presentation at local Filipino golf/social club.

¹³⁰ Student REFR19 self-assessment. Project: presentation and workshop at local high school.

¹³¹ Student REFR27 reflection. Project: Brochure handed out in local community, and discussions with community members.

¹³² Ibid.

¹³³ Student REFR29 Reflection. Project: Participant in joint video project supported by WSU's Indigenous Learning and Teaching.

with social media influencers allowed us to **amplify our message and reach a wider audience.**¹³⁴

Another student, who also produced and disseminated an artwork, observed that:

As I attended more [LPP2023] classes, the freedom of discussion and deliberation reminded me of some of my high school classes. What I liked most from school was being recognised and remembered as a **radical and creative person...**¹³⁵

My project design is my favourite component of my project. I think it is thoughtful, creative, and sensitive. I have considered how I can engage with my community personally and I believe my approach **draws upon my skills I wouldn't otherwise show at university.**¹³⁶

Navigational capital was also demonstrated by the way in which students approached challenges or setbacks in their community engagement projects. One of the challenges of implementing an authentic assessment task such as the community engagement project is that, in engaging in 'real world tasks', students will inevitably encounter the messy logistics of real-life situations. As discussed above, this underscores the importance of properly scaffolding authentic assessment.¹³⁷ A strong theme to emerge from the data was that students found aspects of their projects quite challenging. However, they also explained how they addressed these challenges and overcame them, demonstrating considerable resilience. This resilience derived from the students' navigational capital, supported by in-class exercises in which students were encouraged to identify their strengths, role play potential challenging conversations, and obtain formative peer and tutor feedback on their projects:

I was rejected and ignored followed by eye rolls several times when trying to give a pamphlet or start a discussion with students. While the first few times I felt disheartened and very embarrassed that I had been rejected in front of other students, **I quickly told myself that this is to be expected with civic engagement and that everyone does not have to respond to me.** I quickly recentered my thoughts to what I had set out to achieve and continued to approach students with hopes that they will be willing to learn or chat about the referendum... I felt growth within me at the end of the day because of how I handled approaching random students and public rejection. I would have never thought I would be comfortable approaching students and publicly being rejected.¹³⁸

I had a thought that after providing the information, that people would be onside with my way of thinking and that they would vote yes. After all, they have the facts and time to consider their opinions.... I had to be a good listener, not judge people, and keep calm, even though it was upsetting at

¹³⁴ Student REFR16 reflection. Project: street art an Tiktok-partnered with student REFR07.

¹³⁵ Student REFR20 reflection. Project: artwork: sketch of Faith Bandler.

¹³⁶ Student REFR20 self-assessment. Project: artwork: sketch of Faith Bandler.

¹³⁷ Wake et al (n 93).

¹³⁸ Student REFR02 reflection- Project was a pamphlet handed out at WSU Bankstown campus, and a video of some of the student's interactions with other students.

times....**I had to use super good listening skills**, as I was genuinely interested in the thoughts of the people being interviewed. **I had to bite my tongue as I wanted to hear the people's thoughts and why they thought it.** It was interesting to listen to them. I did not want to force my opinion onto them as I wanted to use my work to gauge what the general public was thinking on the issue.¹³⁹

My tutor and I also discussed the possibility of negative commentary, such as discriminatory or provocative language, as one of the main challenges that could arise in the process of implementation of the workshop. This is something that [the other student doing the community engagement project] and I had thought of beforehand and consequently noted a few ideas on how we may address this issue if it arises, such as redirecting questions to the class, providing facts for answers, or moving on if the topic became time consuming. In our planning stage, we made sure that the resource booklet included many sources and fact-checking sites that the students could access with any questions and queries after the workshop...¹⁴⁰

I knew some of my strengths lay in research, but my major weakness was in any discussions I would have to engage in, within the public sphere. With my University experience, I have had assignments where I had to present topics however, I have limited experience in speaking to those outside of this institution. The luncheon I conducted as part of my project enabled me to do this and understand what it truly meant to be an active citizen and the importance of the shift from the public square to the Twitterverse.¹⁴¹

I reached out to the local mosque board members to be able to hold a seminar for the men and women about the Voice. I was told I am not allowed to present to the men and women due to the mosque religious based rules and that I was allowed only to present to the women. To overcome this issue, I converted the same information into a pamphlet and my husband and dad went down to the men's section of the mosque and handed out the information and start a discussion.¹⁴²

From the beginning, I thought it was going to be a bit difficult to get the attention of my social circle because it is a topic that may not involve international students very much, as some feel that it is a situation that does not affect them in any way. However, I received positive feedback from those who watched my video and most importantly, they were curious and asked me to tell them more about it.... This part of the project was especially challenging for me because I had never given an oral presentation in English before and the idea of doing so made me feel self-conscious. Additionally, on the day of my presentation we had a special guest who was Aboriginal, and of course I did not want to make any mistakes or be reckless in my delivery. **The support of my peers was invaluable as they made me feel confident** when I was in front and gave me words of encouragement when I finished my presentation.¹⁴³

¹³⁹ Student REFR03 reflection. Project: distribution of fact sheet about the referendum and then discussion of people's views.

¹⁴⁰ Student REFR06 reflection-project was a workshop held at a local high school.

¹⁴¹ Student REFR11 reflection. Project: student hosted lunch at their church. Church attended by members of the African community in Western Sydney.

¹⁴² Student REFR32 reflection. Project: presentation at local Mosque.

¹⁴³ Student REFR33 reflection. Project: Youtube video in Spanish.

5 *Resistant capital*

Resistant capital is ‘knowledges and skills fostered through oppositional behavior that challenges inequality’.¹⁴⁴ Many WSU law students choose to study law because they have a strong sense of social justice born from personal experience, or from the experiences of their families or communities. We were aware that engaging the subject matter of LPP2023 had the potential to raise well-being issues for Indigenous students in the Subject, and so we regularly checked in with these students, and sought advice and support from University’s Centre for Indigenous Education, Badanami.¹⁴⁵ We were also mindful of the impact of the subject on students whose families or communities had experienced the effects of colonialism and settler violence in other countries.

Resistant capital is a particular strength of new law students. Margaret Davies emphasises the importance of ‘outsider jurisprudence’ in legal education.¹⁴⁶ In a more traditional law cohort, ‘outsider jurisprudence’ needs to be made explicitly taught, because traditional students’ experience of the law is likely to be that it is a benevolent, or perhaps benign force. They need to be exposed to alternative narratives of law, which may, for example, frame it as a historically, socially and politically contingent institution that can entrench and replicate structures of inequality and injustice. Many WSU law students have lived ‘outsider’ experience of the law, so they do not need to have this explained to them. They may need to learn the academic, theoretical language to describe their lived experience, but they already understand alternative narratives of law. This is powerfully and poignantly expressed in WSU Law School’s Joint Select Committee submission to the Aboriginal and Torres Strait Islander Voice Referendum, prepared by the students in LPP2023 as one of the community engagement projects:

...[WSU] law students - the lawyers of the future- have a deep commitment to social justice borne from their life experiences. **Many of our students, and their parents and grandparents, fled to Australia from countries where there is persecution and fear.** This submission approaches the political and legal questions around recognition and self-determination of First Peoples in Australia drawing from this perspective.¹⁴⁷

This same sentiment was reflected in some of the students’ reflections about their individual projects:

¹⁴⁴ Yosso (n 21) 80.

¹⁴⁵ ‘Badanami Centre for Indigenous Education’, *Western Sydney University* (Web Page) <[¹⁴⁶ Margaret Davies, *Asking the Law Question* \(Thomson Reuters, 4th ed, 2017\) 12–22.](https://www.westernsydney.edu.au/aboriginal-and-torres-strait-islander/badanami#:~:text=Welcome%20to%20Badanami&text=It%20provides%20Indigenous%20students%20with,their%20student%20journey%20at%20Western.></p></div><div data-bbox=)

¹⁴⁷ Western Sydney University, Submission No 175 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum - Constitution Alteration (Aboriginal And Torres Strait Islander Voice) 2023* (21 April 2023) 1.

... **As an Indigenous person myself from Mesopotamia**, I connect with this issue very closely since my community has been through similar ordeals since our existence.....My strengths in research applied here, particularly for the section regarding the history of violence and dispossession of First Nation people.¹⁴⁸

This was also a question that was addressed during the [community engagement project] luncheon, **that as a disadvantaged group both in Africa and Australia, would the Indigenous group fully be recognised.** This recognition moves beyond just addressing current issues but also past issues, such as the displacement of Indigenous families and the inherent racism towards them that has been perpetuated throughout centuries....**One way I was able to connect to it was in realising the importance of speaking up for potentially marginalised groups** and issues affecting them to those around me as it may create an avenue for them to speak to others regarding the issue or even get involved in certain tasks [related to the Referendum].¹⁴⁹

Given my interest in domestic violence advocacy, radical and intersectional feminism, and the relationship between law and gender, I knew I wanted to draw a First Nations woman. I wanted to learn and inform myself of the experiences of other First Nations women, alongside a conversation about the proposed Voice to Parliament and its possibilities.¹⁵⁰

... the people I spoke to [in the student's Colombian community in Australia]... agreed that while the process of giving a voice in parliament to Aboriginal people in Australia is a good idea, it is surprising that it is only being decided as late as 2023. Some of my friends compared the situation in Australia with the situation in our country (Colombia) with regard to Indigenous People and their current participation in politics. **We were able to observe that in Colombia, Indigenous People not only have a voice in Congress, but also a vote.** Additionally, in the comparisons we made between the two countries, some of them were concerned about the negative result of a plebiscite held in our country in 2016, which generated great indignation among Colombians and subsequently sparked protests and marches that led to a strike. ...¹⁵¹

6 *Implications for law curricula*

As law schools become more diverse places, it is important to design curricula that resists the assumption that there is one type of law student, and which avoids framing in deficit those who do not fit the mould of the 'traditional' law student. Yosso's CCW provides legal educators with a framework for thinking about the strengths that new students

¹⁴⁸ Student REFR06 reflection. Project: presentation/workshop at local high school.

¹⁴⁹ Student REFR11 reflection. Project: student hosted lunch at their church. Church attended by members of the African community in GWS.

¹⁵⁰ Student REFR20 reflection. Project: artwork: sketch of Faith Bandler, Indigenous activist.

¹⁵¹ Student REFR33 reflection. Project: YouTube video in Spanish

might bring to their law studies, and for encouraging students to recognise and celebrate them.

Law curricula that support new students are vital to ensure their success. However, this support should not simply consist of measures to help students address their perceived deficits and ‘build up’ their stock of traditional cultural capital. Nor should it stop at revealing and interrogating the implicit ‘rules of the game’ of the dominant academic and social cultures at law school and university. Curricula that celebrate students’ CCW are likely to result in law graduates who are better lawyers.

For example, deployment of linguistic capital in the form of speaking more than one language is likely to be highly valued by clients who speak languages other than English. As demonstrated by the student projects in LPP2023, this form of linguistic capital broadens the audience for important discussions about law and law reform. Further, linguistic capital in the form of being able to ‘code-switch’ into different modes of communication is also a valuable skill for lawyers in order to communicate effectively with diverse audiences. This is demonstrated in the reflections of the students in LPP2023 who drew on their life experience outside of law school to deploy appropriate communication styles in their engagement with members of the public.

Broadening understanding of what counts as ‘social capital’ in legal education and the profession is vital if we want to avoid the stratification of the legal profession which has occurred in the UK, where greater diversity in the law student cohort has *not* led to diversity across the legal profession. Instead, the UK has a ‘fragmented’ legal profession,¹⁵² which marginalises practitioners from diverse backgrounds.¹⁵³ Lawyers from diverse backgrounds are ‘under-represented in corporate firms’,¹⁵⁴ due to an entrenched hegemony which favours white, male, middle-class lawyers.¹⁵⁵ It has recently been observed that, despite elite law firms and the Bar in the UK ostensibly embracing diversity and inclusivity, ‘homosociability, the process of socialising among groups possessing similar social characteristics...is promoted and reinforced’,¹⁵⁶ locking out law graduates who are

¹⁵² Hilary Sommerlad et al, *Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices* (Report, 2013) 51 (‘*Diversity in the Legal Profession in England and Wales*’).

¹⁵³ Hilary Sommerlad and Ole Hammerslev, ‘Lawyers in a New Geopolitical Conjunction: Continuity and Change’ in Richard L Abel et al (eds), *Lawyers in 21st-Century Societies: Volume 1* (Hart Publishing, 2020) 32.

¹⁵⁴ Sommerlad et al, *Diversity in the Legal Profession in England and Wales* (n 152) 51; see also Jennifer Barton-Crosby et al, *Judicial Diversity: Barriers and Initiatives* (Report, February 2023) 12, 24; Hilary Sommerlad et al, ‘Race, Ethnicity and the Legal Profession’ in Richard L Abel et al (eds), *Lawyers in 21st-Century Societies: Volume 2* (Hart Publishing, 2022) 173, 190-1.

¹⁵⁵ Sommerlad et al, *Diversity in the Legal Profession in England and Wales* (n 152) 38-9.

¹⁵⁶ Anna Chronopoulou, ‘Neo-Tribal Sociality in the Upper Echelons of the Legal Profession: Issues of Race’ in Avis White, Patricia Tuit and Judith Bourne (eds), *The Long Walk to Equality: Perspectives on Racial Inequality, Injustice and the Law* (University of Westminster Press, 2024) 55, 58.

perceived not to possess the 'right' social capital.¹⁵⁷ For new students, recognising that they are leaders — 'trusted members' of their communities¹⁵⁸ who 'understand [the] culture, background...speak the same first language'¹⁵⁹ — is an important first step in reframing social capital. Throughout the course LPP2023, WSU Law School celebrated the fact that our students' unique positions as respected members of their communities meant that the Law School was involved in conversations with more 2,000 people in the wider Western Sydney community, many of whom may not have engaged with the traditional campaigns about the Voice Referendum.

This project and others concerning new students also demonstrate the importance of social capital in the form of peer support for new students.¹⁶⁰ The LPP2023 student reflections demonstrate the importance of building spaces in classes where 'no one [is] judgemental'.¹⁶¹ Law Schools need to consider how to reinforce this support for new students, both while they are at university and as they transition into the profession.

Navigational capital is also a vital skill for lawyers, who will often need to traverse complex bureaucracies and institutional hurdles on behalf of clients. Resilience — and in particular the ability to work through challenges, feeling 'disheartened... embarrassed... rejected'¹⁶² — is clearly demonstrated in the LPP2023 student reflections. It is also demonstrated in students' problem solving, and strategic decisions to use the LPP2023 project to foreground 'skills [they] wouldn't otherwise show at university'.¹⁶³ Attributes of resilience and strategic thinking which equip new students to negotiate the idiosyncrasies of institutions which are not always set up to assist them should be supported and celebrated.

At a time where there is a recognised social justice 'drift' among law students,¹⁶⁴ resistant capital—lived experience of 'outsider jurisprudence'—provides innate critical thinking skills and is also likely to result in more empathic lawyering. Adopting Yosso's model should help legal educators avoid the 'access paradox', which is the process by which new students are provided with access to the tools and knowledge of the dominant culture of higher education to participate in a discipline, but in doing so lose their individual, critical voice.¹⁶⁵ The strengths-based approach of Yosso's model should ensure that new

¹⁵⁷ Ibid 58–9.

¹⁵⁸ Student REFR12 reflection. Project: video with information about the Voice. In Hazaragi. Disseminated on social media.

¹⁵⁹ Student REFR15 self-assessment. Project: webinar presented to management at student's workplace, and also presentation at local Filipino golf/social club.

¹⁶⁰ Cody and Noakes (n 7) 81, 84; see also Pang et al (n 60).

¹⁶¹ Student REFR14 reflection. Project: short film.

¹⁶² Student REFR02 reflection- Project was a pamphlet handed out at WSU Bankstown campus, and a video of some of the student's interactions with other students.

¹⁶³ Student REFR20 self-assessment. Project: artwork: sketch of Faith Bandler.

¹⁶⁴ Libby Newton, 'Law School Culture and Curriculum: Correcting Social Justice Drift' (2025) 50(1) *Alternative Law Journal* 19.

¹⁶⁵ K Manià, A Janse van Rensburg and R Bird, 'Writing into Design: An Embedded Writing Course for Architectural Studies' (2017) 31(5) *South African Journal of Higher Education* 172, 175–6.

students do not become ‘passive recipients’ of the dominant codes and cultures of university education,¹⁶⁶ such that they dilute or lose their unique perspectives.

In terms of practical steps to apply a CCW framework, at Subject level, in elective law subjects, this can be achieved by designing creative, authentic assessments that permit students to ‘play to their strengths’, while also ensuring that they have support to succeed. We acknowledge that projects such as LPP2023 can involve considerable academic and emotional labour for legal educators, especially where students are venturing beyond the confines of the law school, and the authenticity of the assessment means that there is a level of messiness and unpredictability which cannot be avoided. However, this project demonstrates how assessment can be used as a vehicle for deep learning, so that the Subject does not become overcrowded with content, and time can be built into the Subject for formative feedback from both peers and teachers. The time and effort put into the initial design and delivery of LPP2023 has provided WSU Law School with a ‘prototype’ elective subject which can now form the basis of other electives with a public policy focus. For example, following its delivery in the first half of 2023, LPP2023 was ‘repurposed’ in the second half of 2023 to focus on drug law and policy, providing early career academics teaching this new elective with a blueprint to conduct a Subject centred around students’ CCW.

In the core law curriculum, students could be encouraged to draw on their lived experience as a lens through which to understand key concepts. Simple examples of this include, in Property Law subjects, teaching the topic of leases through a focus on residential tenancies rather than the more traditional approach of foregrounding commercial leases,¹⁶⁷ or discussing the role of translators in Evidence, and partnering with students who speak more than one language to co-design learning activities on this topic.

At program level, the recognition of CCW needs to start early, in first year, by supporting students to recognise their strengths, and how these might be deployed at law school and in their professional lives. Across the curriculum, it could be deployed to support the development of cultural competence. Rather than discussing cultural competence as something that lawyers should exercise in relation to others,¹⁶⁸ legal education should empower law students from diverse backgrounds to think about how their lived experience may *already* equip them with an understanding of what it is like to be ‘othered’. In addition, as discussed above, CCW requires students and academics to reflect on their own and others’ CCW, and the need to learn from others. These considerations can inform discussions about culturally competent

¹⁶⁶ Marcia Devlin and Jade McKay, ‘Reframing “the Problem”’: Students from Low Socio-Economic Status Backgrounds Transitioning to University’ in Heather Brook et al (eds), *Universities in Transition: Foregrounding Social Contexts of Knowledge in the First Year Experience* (University of Adelaide Press, 2014) 97, 105.

¹⁶⁷ Newton (n 164) 22.

¹⁶⁸ See, eg, Sally Kift et al, *Curriculum Renewal in Legal Education* (Report, 2013) 50–1.

lawyering by placing new students at the centre of discussions about the ways in which the legal system might privilege some competencies over others.¹⁶⁹ Initiatives to decolonise law curricula should engage students as partners, centring resistant cultural capital as a source of knowledge and insight.¹⁷⁰

V CONCLUSION

This article has demonstrated how the CCW of new law students can be centred and supported in law curricula. When we have presented the LPP2023 project to legal educators from other law schools, we have been asked whether we think it would be possible to replicate a subject like LPP2023 at another law school, where perhaps the cohort did not possess as much CCW. We acknowledge that the unique characteristics of the Western Sydney community and students afforded WSU Law School access to communities of varying religious and cultural backgrounds, ages and socio-economic status. However, we still think it would be possible to replicate this project at other, more 'traditional' institutions. For those 'traditional' students who may insist that they 'do not have a culture' to access for a community engagement project such as that in LPP2023,¹⁷¹ the concept of CCW may present a framework for discussions about the invisible pervasiveness of the dominant culture in higher education and encourage students to critically evaluate why legal education privileges some types of knowledge and skills over others. These discussions benefit all students, regardless of background.

¹⁶⁹ For a recent example of practical exercises in a clinical legal education setting that may assist with this, see Rachel Spencer, 'Reflection, Self-Awareness, and Cultural Competency as a Foundational Pedagogy for Clinical Legal Education' in *Contemporary Challenges in Clinical Legal Education* (Routledge, 1st ed, 2023) 76. However, while Spencer's exercises encourage students to share the cultural backgrounds, it does not explore how students' strengths might be harnessed in this context.

¹⁷⁰ For an example of a study exploring students as partners in embedding cultural competence in various disciplines at the University of Sydney, see Amani Bell et al, 'Students and Academics Working in Partnership to Embed Cultural Competence as a Graduate Quality' in Jack Frawley, Gabrielle Russell and Juanita Sherwood (eds) *Cultural Competence and the Higher Education Sector: Australian Perspectives, Policies and Practice* (Springer, 2021). For an example of a study which appears to have engaged students as partners to integrate Indigenous perspectives across various academic disciplines at Charles Darwin University, see Seb Dianti, 'Innovative Partnerships: Embedding Indigenous Perspectives into Curriculum' (Conference Paper, HERDSA Annual Conference, 8-11 July 2024).

¹⁷¹ Burns, 'Relationality in Indigenous Teaching Praxis in Legal Education' (n 86) 142.

Appendix 1: Scaffold for Project Plan

Student Name(s) Completing Project:	
Project Title:	Project Date / Dates:
What does the project involve? Please provide a description of what you are doing:	
Preparation involved (e.g. what do you think will happen? What do you think the audience's response will be? Do you foresee any challenges? How are you preparing for any negative responses?)	
Anticipated outcomes (e.g. what do you think will happen? What do you think the audience's response will be? Do you foresee any challenges? How are you preparing for any negative responses?)	
Tutor's comments:	
Date form discussed with tutor:	
Tutor's signature:	

Appendix 2: Marking rubric for community engagement project

Criteria	High Distinction	Distinction	Credit	Pass	Unsatisfactory
Deep understanding of the central issues, arguments and counterarguments concerning constitutional amendment to enshrine a First Nations Voice to Parliament in the Australian Constitution	Excellent understanding of the central issues, arguments and counterarguments concerning constitutional amendment to enshrine a First Nations Voice to Parliament in the Australian Constitution	Very good understanding of the central issues, arguments and counterarguments, concerning constitutional amendment to enshrine a First Nations Voice to Parliament in the Australian Constitution	Good understanding of the central issues, arguments and counterarguments, concerning constitutional amendment to enshrine a First Nations Voice to Parliament in the Australian Constitution	Adequate understanding of the central issues, arguments and counterarguments, concerning constitutional amendment to enshrine a First Nations Voice to Parliament in the Australian Constitution	Unable to demonstrate understanding of the central issues, arguments and counterarguments, concerning constitutional amendment to enshrine a First Nations Voice to Parliament in the Australian Constitution
Demonstrates a thoughtful, creative and sensitive approach to engaging the community in conversations around constitutional reform	Exceptionally thoughtful, creative and sensitive approach to engaging the community in conversations around constitutional reform	Very thoughtful, creative and sensitive approach to engaging the community in conversations around constitutional reform	Thoughtful, creative and sensitive approach to engaging the community in conversations around constitutional reform	Demonstrates some sensitivity to questions of how best to engage the community in conversations around constitutional reform	Demonstrates no sensitivity to engaging the community in Conversations around constitutional reform

<p>High level communication skills and interpersonal skills in listening, receiving feedback, and deliberating with fellow students, members of the community and teaching staff</p>	<p>Extremely high level communication skills and interpersonal skills in listening, receiving feedback, and deliberating with fellow students, members of the community and teaching staff</p>	<p>Very high level communication skills and interpersonal skills in listening, receiving feedback, and deliberating with fellow students, members of the community and teaching staff</p>	<p>High level communication skills and interpersonal skills in listening, receiving feedback, and deliberating with fellow students, members of the community and teaching staff</p>	<p>Adequate communication skills and interpersonal skills in listening, receiving feedback, and deliberating with fellow students, members of the community and teaching staff</p>	<p>Demonstrates low level communication skills and undeveloped interpersonal skills in listening, receiving feedback, and deliberating with fellow students, members of the community and teaching staff</p>
<p>Applies significant effort in preparing and carrying out community engagement process</p>	<p>Student dedicated very significant levels of time and effort in preparing and carrying out community engagement process</p>	<p>Student dedicated significant levels of time and effort in preparing and carrying out community engagement process</p>	<p>Student dedicated time and effort in preparing and carrying out community engagement process</p>	<p>Student dedicated minimum acceptable levels of time and effort to preparing and carrying out community engagement process</p>	<p>Student dedicated very little time and effort in preparing and carrying out community engagement process</p>

Appendix 3: Marking rubric for reflection

Criteria	High Distinction	Distinction	Credit	Pass	Unsatisfactory
Engagement and critical reflection	Excellent engagement and critical reflection of the topic.	Very good engagement and critical reflection of the topic.	Good engagement and clear reflection of the topic.	Satisfactory engagement and reflection of the topic.	Little to no engagement and poor reflection of the topic.
Understanding and accuracy	Demonstrates a deep and critical understanding of the readings and issues and accurately summarises them.	Demonstrates a deep understanding of the readings and issues and accurately summarises them.	Demonstrates a sound understanding of the readings and issues but may include some minor inaccuracies.	Demonstrates a satisfactory understanding of the readings and issues but has some minor inaccuracies.	Insufficient evidence of a satisfactory understanding of the relevant issues and / or major inaccuracies in summary.
Structure	Logically and succinctly structures the content to create a cohesive and coherent piece of work.	Logically structures the content to create a cohesive and coherent piece of work.	Logically structures the content to create a mainly descriptive piece of work.	Partially structures the content into loosely linked rudimentary paragraphs to create a comprehensible descriptive piece of work.	Partially structures the content.
Grammar	Uses plain English. Consistently adheres to grammar and punctuation conventions. No spelling errors.	Uses plain English. Generally adheres to grammar and punctuation conventions.	Occasionally uses plain English. Mostly follows grammar and punctuation conventions.	Did not accurately proofread the work before the submission	Uses language that is difficult to understand or not suited for the task.

In class presentation reflection	Extremely high level of preparation and thoughtfulness in presenting the results of your engagement in the subject matter and relevant issues with the class.	High level of preparation and thoughtfulness in presenting the results of your engagement in the subject matter and relevant issues with the class.	Prepares thoughtfully about presenting the results of your engagement in the subject matter and relevant issues with the class.	Evidence of some preparation and thought about how to present the results of the semester's learning and engagement.	No evidence of having prepared or given thought to how best to present the reflection.
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Appendix 4: Scaffold for Self – Assessment Report

This assessment is designed around an understanding that students are **partners in learning**. Students have a significant amount of **autonomy** in deciding on the design and execution of their project for Assessment 2. Our hope is that this will make your experience in undertaking this assessment a rewarding one.

We expect you to apply a significant degree of effort in this Assessment, reflecting the 40% weighting of this assessment in terms of your final mark for this subject.

You can expect your effort to be marked fairly and on the basis of the criteria set out in the rubric (see the Learning Guide) – please read the criteria carefully.

This kind of assessment entails a considerable amount of **trust** between students and teachers. The checklist /self-reflection table below is to help you gauge whether you have properly prepared for your assessment. You are required to submit this self-assessment, along with the original form noting your tutor's approval of your Project, before you undertake your Project. Your tutors will refer to this document when they are finalising your mark for this assessment.

Name _____

Title of Engagement
Project _____

Date tutor approved your assessment

	Yes / No and Comments	Your own view of your level of engagement \effort\activity - 1 (low)- 5 (very high) – and any comments
I have discussed my Project with my Tutor and Peers; I have responded to feedback about my Project appropriately; I have received approval for my Project from my Tutor		
My Project design is thoughtful, creative and sensitive in its approach to engaging the community in conversations around constitutional reform. I have drawn upon my knowledge / skills /		

<p>experience to create / do something I am proud of.</p>		
<p>I have read / listened to / researched and understood the materials discussed in class, and I understand the central issues, arguments and counterarguments concerning constitutional amendment. I have drawn upon the materials in the 'Resources' section of vUWS, and the Learning Modules, in preparing my assessment.</p>		
<p>I have thought hard about my audience and what means of communication is required to properly engage them, and I have thought about how to listen to / interact with the people I need to in order to complete this Assessment, including by receiving and applying constructive feedback. I understand that my audience could include fellow students, members of the community and / or teaching staff.</p>		
<p>I understand that this assessment is worth 40% of my final mark for this subject, and requires significant effort in preparing out the activity. I have dedicated a great deal of time and effort in preparing and carrying out this community engagement process / project / activity.</p>		
<p>I have thought about the challenges that might be involved in my chosen activity and worked out a plan for dealing with / addressing them if they arise. I can explain some of my anticipated challenges and responses when asked.</p>		
<p>I have thought about ethical issues involved in my activity – for example, I know that my activity / engagement needs to be respectful, fair-minded and that I need to be open to engaging with diverse views about the Referendum. I know that I cannot do things like raise money / carry out surveys as part of this assessment and that my tutor needs to sign off on my plan.</p>		