3

Curriculum theorising and curriculum planning

3.1   Introduction

The concept of curriculum can be differently understood, and there is no single agreement on how it should be understood.[1] Furthermore, the term does not always form part of the commonly used language of academics.[2] Academics' understanding of curriculum planning and curriculum change greatly influences their interest, involvement and commitment to curriculum change management. Similarly, curriculum developers' grasp of curriculum, curriculum planning and curriculum models inform their approach to curriculum change management. This chapter deals specifically with the way in which the notions of curriculum and curriculum planning can be conceptualised and understood. Chapter 4 deals with curriculum change management theorising.

In an attempt to understand the concept of curriculum, the chapter begins with an overview of the curriculum theorising of four prominent curriculum movements. Thereafter, the concept is explored from a higher education perspective. Considering the importance of curriculum planning model(s) for a curriculum developer,[3] such as I, the chapter describes three leading curriculum planning archetypes and their implications for developing an LLB Curriculum Change Management Model (CCMM). I then explore curriculum development in higher education by focusing on constructive alignment, the National Qualifications Framework (NQF) and curriculum mapping as a backward design process. The chapter ends with a brief conclusion on

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1   G du Toit 'Curriculum types and models' in E Bitzer & N Botha *Curriculum inquiry in South African higher education* (2011) 20; G Coşkun Yaşar & B Aslan 'Curriculum theory: A review study' (2021) 11 *International Journal of Curriculum and Instructional Studies* 239.

2   SP Fraser & AM Bosanquet 'The curriculum? That's just a unit outline, isn't it?' (2006) 31 *Studies in Higher Education* 269.

3   M Priestley & W Humes 'The development of Scotland's curriculum for excellence: Amnesia and *déjà vu*' (2010) 36 *Oxford Review of Education* 346.

applying curriculum theorising and curriculum planning models and, more specifically, on developing the Draft LLB CCMM in the next chapter.

3.2   Curriculum theorising

The concept of curriculum has evolved over time.[4] In 1820, the term 'curriculum' was used for the first time in Scotland.[5] The term is derived from the Latin word *currere*, which means 'to run',[6] 'race-course' or the 'race' itself.[7] Over the years, the term was translated to mean 'course of study'[8] and a series of things that children and the youth need to do.[9] In the parts below I briefly discuss the curriculum theorising of four prominent curriculum movements within the school context, namely, the (i) social efficiency; (ii) progressive reform; (iii) reconceptualised; and (iv) reconceptualised twenty-first century curriculum movements. Nevertheless, scholars have effectively used these theories in higher education settings. The part ends with an exploration of the higher education curriculum.

3.2.1   The social efficiency curriculum

Bobbitt, a social efficiency curriculum theorist, published two books on the curriculum: *The curriculum: A summary of the development concerning the theory of the curriculum*[10] and *How to make a curriculum*.[11] The social efficiency movement was primarily concerned with the development of the relationship between curriculum and the political, cultural, economic and social development of a society.[12] The movement

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4   Coşkun Yaşar & Aslan (n 1) 238.
5   N Dillard & L Siktberg 'Curriculum development: An overview' in DM Billings & JA Halstead (eds) *Teaching for nursing: A guide for faculty* 107.
6   (n 5) 79.
7   F Bobbit 'Scientific method in curriculum making' in DJ Flinders & S J Thornton (eds) *The curriculum studies reader* (2004) 10.
8   Dillard & Siktberg (n 5) 79; M Marope *Reconceptualizing and repositioning curriculum in the 21st century: A global paradigm shift* (2019) 13.
9   Bobbit (n 7) 428.
10   (1918).
11   (1924).
12   S Melesse & S Belay 'Curriculum conceptualization, development, and implementation in the Ethiopian education system: Manifestations of progressive curriculum orientations' (2022) 202 *Journal of Education* 75.

claimed that the curriculum's primary role is to prepare individuals to be competent citizens.[13] As such, the curriculum is essential in resolving prevailing societal problems such as inequity, injustice, inequality and oppression.[14]

Bobbitt paved the way for curriculum practitioners and researchers who advocate and support social efficiency in curriculum design.[15] The social efficiency curriculum perspective is manifested in the NQF with its transformative aims[16] and the LLB Qualification Standard, emphasising social justice and transformative constitutionalism and requiring legal education to produce 'enlightened citizens'.[17]

3.2.2   The progressive curriculum

Although the progressive reform movement started with Colonel Francis Parker in 1896,[18] the work of Dewey[19] and Tyler[20] in the first half of the twentieth century paved the way for curriculum practitioners and researchers who advocate and support the progressivist view on curriculum design.

Contrary to social education, progressive educationalists argue that education is 'a process of living and not a preparation for future living'. These educators have a humanitarian view and believe that the curriculum has to develop and cultivate an individual's intellectual, expressive, social and constructive instincts, which are vital for human living.[21] The curriculum is student-centred and focuses on meaningful, active learning. Typically, progressive education underlines the value of real-life experience in developing individuals. For example, including

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13   As above.
14   As above.
15   (n 7).
16   National Qualification Framework Act 67 of 2008 sec 5. Also see part 3.2.1.
17   The graduate attributes that LLB graduates should possess are prescribed by the CHE Qualification Standard for the Bachelor of Laws (LLB) (2015) 7, 11, https://www.che.ac.za/publications/standard-reviews/standards-bachelor-laws-llb (accessed 10 November 2024).
18   J Dewey 'My pedagogic creed' (1896) 53 *The School Journal* 47.
19   Eg, J Dewey *The school and society* (1899); J Dewey (1916) *Democracy and education: An introduction to the philosophy of education* (1916).
20   RW Bobbit Tyler *Basic principles of curriculum and instruction* (1949) 123.
21   BH Lam 'A reflective account of a preservice teacher's effort to implement a progressive curriculum in field practice' (2011) 8 *Schools Studies in Education* 22-24.

clinical legal education in the LLB curriculum supports the progressive curriculum theory. Instead of focusing on authority, discipline and didactic teaching techniques, progressive educators focus on cultivating democratic classroom relationships.

3.2.3   The reconceptualised curriculum

Schwab's thought-provoking article published in 1969, 'The practical: A language for curriculum', stated that the curriculum was moribund due to 'inveterate, unexamined and mistaken reliance on theory' that is inappropriate for solving actual teaching and learning problems.[22] He called for a reconceptualisation of the curriculum by moving away from curriculum theory and pursuing practical curriculum enquiry. Wraga and Hlebowitsh criticised the reconceptualists for repudiating curriculum history and pronouncing its death.[23] Instead, they suggested that reconceptualists build on past accomplishments to secure a constructive synthesis between historic curriculum principles and new theories.

Instead of relying on theoretical models to guide the design (technical matters) of the curriculum, reconceptualist educators focus on moral and ideological issues that can improve the social, political, and economic development of society at a local, national, and international level. They argue that students will understand their world better if they understand themselves better.[24] They ultimately aim to engage students in critical analysis to advance social justice and address humanity's problems.[25]

The attempt to advance social justice aligns with the characteristics of a changing student cohort discussed in part 2.3.2 and the LLB Qualification Standard that requires law faculties to develop LLB graduates who recognise, reflect on and can apply social justice imperatives.[26]

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22   JJ Schwab 'The practical: A language for curriculum' (2013) 45 *Journal of Curriculum Studies* 591.

23   WG Wraga & PS Hlebowitsh 'Towards a renaissance in curriculum theory and development in the USA' in BS Stern & ML Kysilka (eds) *Contemporary readings in curriculum* (2008) 72.

24   C Marsh & K Stafford *Curriculum: Practices and issues* (1988) 30.

25   AC Ornstein & FP Hunkins *Curriculum: Foundations, principles and issues* (2009) 205.

26   CHE (n 17) 11.

The reconceptualised movement asserts that a multiplicity of voices be heard. Morrison eloquently summarised his view on the reconceptualising of the curriculum as follows:[27]

> So I would argue that we need a hundred thousand voices, a hundred thousand theories, a hundred thousand curriculum development approaches; I rule out nothing ... In an emergent, dynamical theoretical present and future, holism and integration are the watchwords. Bringing together voices, rationalisations and rationalities, arguments, ideas, stories, exchanges, and experiences.

I support Morrison's argument for a diversity of voices to be heard when developing a curriculum. Consequently, the Draft LLB CCMM in chapter 4 requires the input of a range of stakeholders during the curriculum change process.[28] Stakeholders include the media, researchers and authors of scholarly and non-scholarly works;[29] academic staff members, students, alumni, employers;[30] academic peers serving on an external institutional review panel;[31] the Higher Education Qualification Committee (HEQC) and its Report on the National Review of the LLB;[32] and the Curriculum Change Committee.[33] The question arises as to how the twenty-first-century curriculum can be conceptualised.

3.2.4   The reconceptualised twenty-first-century curriculum

Contemporary curriculum research has explored the curriculum from both a theoretical and an empirical viewpoint, often embracing a variety of contexts and methodological and theoretical views. Consequently, it is not the exception to deal with two or more contexts and to apply a range of methodological and theoretical perspectives in a specific curriculum study. Furthermore, contemporary curriculum studies tend to embed the curriculum in complex cultural, political, economic, sociological and philosophical problems.[34] It is also the case for LLB curriculum development in South Africa. The LLB Qualification Standard explicitly

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27   KRB Morrison 'The poverty of curriculum theory: A critique of Wraga and Hlebowitsh' (2004) *36 Journal of Curriculum Studies* 487.
28   See, eg, DPs B2 to B7, B25, B30, B33, C3 and D11.
29   See DP B2 in part 4.5.2.
30   See DP B3 in part 4.5.2.
31   See DP B4 in part 4.5.2.
32   See DP B5 in part 4.5.2.
33   See DPs B7 in part 4.5.2
34   BB Gundem 'European curriculum studies, continental overview' in C Kridel (ed) *Encyclopedia of curriculum studies* (2010) 356.

requires law students to have a sound knowledge of 'the dynamic nature of law and its relationship with relevant contexts such as political, economic, commercial, social and cultural contexts'.[35]

In 2017 the International Bureau of Education (IBE) – a United Nations (UN) Education, Scientific and Cultural Organisation (UNESCO) institute – published a normative paper entitled 'Reconceptualizing and repositioning curriculum in the 21st century: A global paradigm shift'.[36] The document is the product of numerous consultations with global 'thought leaders', reviews, comments and inputs from curriculum experts of 50 UNESCO member states. The IBE calls for a global paradigm shift towards a reconceptualised and repositioned curriculum focusing on eight key dimensions. In the following parts I briefly explain each of these dimensions and their implications, where appropriate, for this study.

Curriculum as the core of development policies

The curriculum plays an essential role in realising global and national development policies, dialogues, interventions and strategies. For example, with its modernist neo-liberal paradigm, the 'White paper for post-school education and training'[37] and the National Qualifications Framework (NQF)[38] aim to create a highly-skilled labour force that can participate in the economy and support South Africa in earning its rightful place in the global marketplace.[39] This aspiration corresponds with the LLB Qualification Standard, which requires the LLB curriculum to be responsive to globalisation.[40]

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35   CHE (n 17) 8.
36   Marope (n 8).
37   Government Notice 11, GG, 15 January 2014, 37229 (White paper for post-school education and training) 39-40.
38   SM Allais 'The National Qualifications Framework in South Africa: A democratic project trapped in a neo-liberal paradigm?' (2003) 16 *Journal of Education and Work* 305.
39   P Ensor 'The National Qualifications Framework and higher education in South Africa: Some epistemological issues' (2003) 16 *Journal of Education and Work* 327.
40   CHE (n 17) 7.

Curriculum as a catalyst for disruption, innovation and social transformation

This dimension is concerned with the proactive role that the curriculum can play in changing an individual's attitude, mindset and social disposition to racial groups, gender roles and sexual orientation. This curriculum dimension shows elements of the social efficiency[41] and progressive[42] curriculum development models. It aligns well with the LLB Qualification Standard that requires higher education to foster the ideals of transformative constitutionalism[43] and to develop LLB graduates with knowledge and an appreciation of the democratic values of human dignity, equality and freedom enshrined in section 7 of the Constitution. Furthermore, Greenbaum emphasised that integrating the Constitution and the Bill of Rights in substantive law modules still requires the LLB curriculum to specifically address issues about diversity, racism and social justice.[44]

Curriculum as a force for justice, cohesion, equity, peace and stability

The curriculum can also be regarded as a powerful stabilising force. As such, the curriculum conserves and imparts the traditions, expertise, age-old wisdom and values for new generations. The LLB Qualification Standard acknowledges this role of the curriculum by requiring higher education to equip LLB graduates with knowledge of the South African legal system, its values and historical background.[45]

Curriculum as the integrative core of the education system

Considering that the curriculum encompasses the core elements of education – teaching, learning and assessment – it plays an integral role in ensuring coherence among the core elements. I discuss the implications

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41   See part 3.2.1.
42   See part 3.2.2.
43   CHE (n 17) 7. Also see part 2.3.2.
44   L Greenbaum 'Legal education in South Africa: Harmonizing the aspirations of transformative constitutionalism with our educational legacy' (2016) 60 *New York Law School Law Review* 480.
45   CHE (n 17) 8.

of this curriculum dimension in part 3.4.1, which deals with constructive alignment between the three core curriculum elements.

Curriculum as an enabler for lifelong learning

The rapid pace of change that characterises the twenty-first century requires the curriculum to enable graduates for lifelong learning. The LLB Qualification Standard supports the quest for life-long learning by requiring law faculties to prepare LLB graduates with the skills to engage in life-long learning throughout their careers.[46]

Curriculum as a lifelong learning system in its own right

Contrary to the previous curriculum dimension that focused on equipping the graduate with life-long learning skills, this dimension focuses on the curriculum as a lifelong learning system. It requires the curriculum to react to twenty-first-century contextual changes. Consequently, the curriculum must continually renew itself, be innovative and adapt quickly to changing circumstances.[47] The LLB Qualification Standard supports this notion of the curriculum by requiring legal education to be responsive to the needs of the legal profession, economy, globalisation and the ever-evolving information technology.[48]

Curriculum as a determinant of quality

This notion of the curriculum emphasises the crucial role that the curriculum plays in leading and enhancing quality teaching, learning and assessment. Consequently, the notion of curriculum as a determinant of quality strongly links with the 'curriculum as the integrative core of the education system'. In part 2.3.2 I explained the three attempts by the Council on Higher Education (CHE) to address the quality of LLB curricula. All of the draft principles (DPs) of the Draft LLB CCMM were designed to enhance the quality of the LLB curriculum. The Draft LLB CCMM focuses explicitly on quality assurance of the curriculum by

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46   CHE (n 17) 14.
47   Marope (n 8) 34.
48   CHE (n 17) 7. DPs D5 and D6 of the Draft LLB CCMM in part 4.5.3 provide for the inclusion of these curriculum imperatives when changing the LLB curriculum.

providing for annual external evaluation of modules;[49] regular reviewing of student pass rates, throughput and retention rates;[50] graduate and employer tracking surveys;[51] and an amendment to the LLB admission criteria.[52]

Curriculum as a determinant of key cost drivers in education and learning systems

The curriculum dictates the number, type and qualifications of academics needed to achieve the desired teaching and learning outcomes. Human resources constitute the highest cost for higher education, followed by the costs associated with the physical teaching and learning environment. Costs related to the latter include the physical infrastructure, equipment, consumables, textbooks and reading materials required to present the curriculum efficiently.[53] The conceptualisation of the 'curriculum as a determinant of key cost drivers in education and learning systems' is evident in the DPs of the LLB CCMM that require carrying out a workload analysis to prevent the possible overloading of lecturers,[54] an evaluation of academic staff development trajectories,[55] and the allocation of sufficient resources to successfully implement the new LLB curriculum.[56]

The reconceptualisation of the curriculum by the twenty-first-century curriculum movement seems to be the most applicable approach or theorising for this study. The discussion above showed how the LLB Qualification Standard and South African higher education curriculum development policies support the curriculum dimensions identified by the 2017 IBE normative paper. The contextualisation of this study in chapter 2 highlighted the complex context that had to be considered in developing the Draft LLB CCMM. Embracing a variety of contexts is one of the characteristics of the reconceptualised curriculum movement. Furthermore, the reconceptualised movement provides for incorporating

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49   See DP B31 in part 4.5.2.
50   See DP B32 in part 4.5.2.
51   See DP B35 in part 4.5.2.
52   See DPs B29 to B35.
53   Marope (n 8) 34.
54   See DP B36 in part 4.5.2.
55   See DP B37 in part 4.5.2.
56   See DP B31 in part 4.5.2.

two or more theoretical perspectives in a specific curriculum study. As described in parts 3.2.1 and 3.2.2, elements of the social efficiency and progressive curriculum movements also apply to the development of the Draft LLB CCMM.

The discussion above identified how different theories that were primarily developed in the school setting can be applied to LLB curriculum theorising. The emphasis was not on curriculum change management theory, which will be dealt with in chapter 4. The following part elaborates on the theorising of the higher education curriculum and the implications of such theorising on the development of the LLB CCMM.

3.2.5   The higher education curriculum

International scholars agree that curriculum theorising and research have not received much attention in higher education.[57] This is also the case in South Africa. For example, Bitzer and Botha stated that, while the school curriculum has drawn considerable attention, the higher education curriculum remains relatively unexplored in South Africa. Consequently, there is a lack of research into higher education curricula.[58]

Despite the limited curriculum theorising in higher education, Barnett and Coate identified six tacit conceptualisations of the higher education curriculum.[59] They acknowledged that these notions do not necessarily present a coherent picture and an exhaustive list of all conceptualisations. Furthermore, the conceptualisations sometimes overlap and are not equally influential. Below is a brief description of Barnett and Coate's six conceptualisations of the higher education curriculum and their implications for this study.

Curriculum as outcome

This conceptualisation of the curriculum implies adopting the outcomes-based approach to learning. Therefore, a curriculum typically consists of a

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57   R Barnett & K Coate *Engaging the curriculum in higher education* (2005) 27; Marope (n 8) 13.
58   E Bitzer & N Botha 'Introductory chapter' in Bitzer & Botha (n 1) 23; Du Toit (n 1) 65.
59   Barnett & Coate (n 57) 27-28.

rationale or purpose, goals and learning outcomes, and the sequencing of modules presented as semester or year-long modules.[60] The 'curriculum as outcome' notion is consistent with the 'curriculum as product' planning model described in part 3.4.

Curriculum as special

This notion of the curriculum acknowledges the concepts of academic freedom and autonomy, which imply that 'discipline experts know best'. Given the complexities of higher education, there is generally a 'hands-off' tendency that supports the view not to prescribe curriculum content to academics.[61] However, to a limited extent, the LLB Qualification Standard prescribes specific knowledge that graduates should acquire.[62]

Curriculum as culture

This conceptualisation of the curriculum is the product of different disciplinary specialisations within higher education.[63] It implies that a curriculum is distinctly informed and determined by the norms, values and rules of a specific discipline, in this case, the discipline of law. These attributes can only be developed through long-term immersion, initiation and enculturation into specific academic communities.[64] This conceptualisation of the curriculum has triggered tension between theory and doctrinalism, on the one hand, and practice and skills, on the other, as highlighted in part 2.3.2. Fortunately, the LLB Qualification Standard, at least to some extent, has clarified the purpose of the LLB.[65]

Curriculum as social reproduction

The 'hidden curriculum' is a central feature of the curriculum as social reproduction and refers to the curriculum that does not appear in lecturers' notes or textbooks. The hidden curriculum teaches students specific attitudes and values in an 'accidental' or sometimes even 'sinister'

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60   See DP D2 in part 4.5.3.
61   Barnett & Coate (n 57) 30-33.
62   CHE (n 17) 8-9. Also see section 2.3.2.
63   Barnett & Coate (n 57) 33.
64   As above.
65   CHE (n 17) 8-9. Also see part 2.3.2.

way.[66] Although the hidden curriculum is written 'between the lines', students must learn the hidden rules to succeed.[67] As such, the hidden curriculum seems to benefit some students disproportionately and performs a 'gatekeeping' function by replicating societal divisions. Teaching students to be racists or chauvinists often occurs through the hidden curriculum.[68] For example, students whose mother tongue differs from their lecturers or the language of instruction at higher education institutions are more likely to be excluded by the hidden rules. Also, students can be excluded by the hidden curriculum that ignores or devalues traditional ways of knowing and knowledge, hence the drive for the decolonisation of the curriculum.[69]

Curriculum as transformation

Political debates steered this conceptualisation of the curriculum as a means to empower and transform the lives of students. The contemporary transformative model of curriculum views the development of graduate attributes as being empowering for students.[70] This approach supports the employability and outcomes-based agenda and is prominent in the Higher Education Qualifications Sub-Framework (HEQSF)[71] and the set of graduate attributes prescribed by the LLB Qualification Standard.[72] The Draft LLB CCMM in part 4.5 requires academic staff members to be familiar with these attributes.[73] Furthermore, the graduate attributes must be appropriately mapped across modules and years of the new LLB curriculum.[74]

Curriculum as consumption

Students are presented as consumers of the notion of the curriculum as consumption. As a result of the commodified curriculum and marketisation of higher education, some academics perceive their modules

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66   AV Kelly *The curriculum: Theory and practice* (2009) 10-11.
67   Barnett & Coate (n 57) 35.
68   Kelly (n 66) 10-11.
69   See part 2.2.2.
70   Barnett & Coate (n 57).
71   See part 3.4.2 for a detailed discussion on the NQF.
72   CHE (n 17) 8-11. Also see part 2.3.2.
73   See DP B18 in part 4.5.2.
74   See DPs D5 and D6 in part 4.5.3.

as products that universities can sell to niche markets. Modularisation, semesterisation, career-focused and rebranded programmes characterise this conceptualisation of the curriculum.[75]

The liberal curriculum

The liberal curriculum opposes most of the above perceptions about the role of the higher education curriculum. Instead of a narrow vocational focus, the liberal curriculum aims to provide a general education that prepares students to fulfil their broader roles in society.[76] In this regard, the LLB Qualification Standard states: 'The purpose of the LLB is to offer a broad education that develops well-rounded graduates.'[77] Including sufficient non-law modules in the LLB curriculum can assist in this regard.[78]

The discussion above revealed that different conceptualisations of the curriculum can be applied in higher education, with particular relevance to the LLB. Considering that scholars view the concept of curriculum differently, a curriculum can be designed in various ways. The part below provides a bird's eye view of the most prominent curriculum planning models and their applicability to developing the LLB CCMM.

3.3   Curriculum planning models

Curriculum planning is a complex task.[79] Although applicable to higher education, most discussions about curriculum planning occurred within the school context.[80] Curriculum planning requires careful consideration of the planning model that will be most applicable to the task. Kelly proposed three archetypal curriculum planning models: (i) the 'curriculum as product'; (ii) the 'curriculum as content'; and (iii) the 'curriculum as process'.[81]

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75   Barnett & Coate (n 57) 37.
76   Barnett & Coate (n 57) 39-40.
77   CHE (n 17) 8.
78   CHE (n 17) 32-33.
79   Kelly (n 66) 20-21.
80   Du Toit (n 1) 65; Marope (n 8) 13.
81   Kelly (n 66) 56, 67, 89.

Priestley and Humes argue that the higher education curriculum is an 'uneasy' combination of the three models.[82] These three models provide starting points for curriculum planning and are not mutually exclusive. For example, although Priestley and Humes support the 'curriculum as process' model, they do not view 'curriculum content' as unimportant.[83] They simply perceive the 'curriculum as content' planning model as supplementary to the 'curriculum as process' planning model.[84]

Smith identified four archetypal curriculum planning models.[85] Three of these models are similar to the models proposed by Kelly. The additional archetypal curriculum planning model added by Smith is the 'curriculum as praxis'. The following parts elaborate on the four approaches to curriculum planning and identify the theorists who played a significant role in their conceptualisation. Where appropriate, a brief critique of the models is also provided.

3.3.1   Curriculum as product

'Curriculum as product' primarily focuses on what the student should learn in particular contexts and how it is 'packaged'.[86] Therefore, a curriculum typically consists of a rationale or purpose, goals and learning outcomes, and the sequencing of modules. Bobbit and Tyler were instrumental in developing the 'curriculum as product' planning model. The contributions of these scholars towards the 'curriculum as product' planning model are briefly discussed below. Furthermore, I also explain the links between the NQF and 'the curriculum as product' planning model.

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82   Priestley & Humes (n 3).
83   Priestley & Humes (n 3) 347.
84   As above.
85   MK Smith 'Curriculum theory and practice: The encyclopedia of informal education' (2000), https:www.infed.org/biblio/b-curricu.htm (accessed 15 April 2025). The four approached identified by Smith are (i) curriculum as a body of knowledge to be transmitted; (ii) curriculum as product, which is seen as an attempt to achieve certain ends in students; (iii) curriculum as process; and (iv) curriculum as praxis. These ways of approaching curriculum planning are in line with Aristotle's influential categorisation of knowledge into three disciplines: the theoretical, the productive and the practical.
86   B Boitshwarelo & V Sivaram 'Conceptualising strategic alignment between curriculum and pedagogy through a learning design framework' (2017) 22 *International Journal for Academic Development* 279.

Bobbit's curriculum development theory along scientific lines

Bobbitt believed that the role of education was to develop citizens to work productively, work effectively with fellow citizens, and earn a living in the new industrial society of the time.[87] He argued that education had to develop students' intellectual powers in line with perennial thoughts.

He suggested 'curriculum-making along scientific lines'.[88] This approach entails five steps: (i) study the daily activities of an efficient adult and determine what qualities or graduate attributes the specific work environment requires of the adult;[89] (ii) prioritise the collected information into objectives; (iii) identify students based on their ability and interest for the future roles that they will perform upon graduation;[90] (iv) differentiate the curriculum for each group of students according to the future roles that they will fulfil as adults; and (v) conduct research on the students reaching adulthood, to determine whether the curriculum prepared them to function efficiently in their roles.[91]

I outlined the implications of the LLB Qualification Standard on curriculum development in part 2.3.2. In line with the first and second questions of Bobbit's curriculum development model, expert academics of the LLB Standards Development Working Group analysed several articles dealing with the expected graduate attributes of law and LLB graduates.[92] They prioritised the collected information and used their expert knowledge and skills to contribute towards developing the LLB Qualification Standard. Furthermore, academics from all higher education institutions offering the LLB in South Africa, the Law Society of South Africa, its affiliates and the General Bar Council were invited to comment on the final draft of the LLB Qualification Standard. The recommendations received were considered and used to enrich and validate the final draft of the LLB Qualification Standard.

Consistent with the third step, the LLB Qualification Standard explicitly addresses the purpose of the LLB and future career

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87   RC Doll *Curriculum Improvement: Decision and process* (1974).
88   Bobbit (n 7) 11.
89   The LLB Qualification Standard states the graduate attributes that are required of LLB graduates. See part 2.3.2.
90   The purpose of the LLB, as stated in the LLB Qualification Standard, provides an answer to this question. See part 2.3.2.
91   See DP B33 in part 4.5.2.
92   CHE (n 17) 4-5. Also see part 2.3.2

opportunities for LLB graduates.[93] The Standard was developed expressly for LLB students, and no differentiation was made based on the intended careers of graduates. Although the LLB Qualification Standard does not explicitly require institutions to conduct employability surveys among graduates and their employers, criterion 18 of the CHE's 'Criteria for programme accreditation' requires institutions to perform graduate tracking surveys to assess graduates' employability.[94] Aspects of Bobbit's steps were incorporated as DPs into the Draft LLB CCMM in chapter 4.

Bobbit's curriculum making forms part of the traditionalist approach that designs curricula for specific disciplines using a top-down approach, while students play no role in curricula development. Curriculum developers have employed Bobbit's curriculum-making model to design professional degrees, such as for chartered accountants and medical doctors.[95]

Tyler's rationale for curriculum development

Following eight years of research during the Great Depression,[96] Tyler's book titled *Basic principles of curriculum and instruction* was published in 1949,[97] reprinted 36 times and translated into six languages.[98] Due to its simplicity and ease of use, Tyler's model, also known as the 'Tylor rationale',[99] probably is the most popular curriculum-making model used at different education levels[100] and is regarded as an icon in the field of curriculum development.[101] More than 60 years later, Läänemets and Kalamees-Ruubel still regarded Taylor's rationale as relevant, mainly for those educational systems that function within a market economy based on political orientations.[102]

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93   CHE (n 17) 8 Also see part 2.3.2.
      As above.
94   CHE 'Criteria for programme accreditation' (2004) 23-24, (accessed 10 November 2024). Also see DP B33 and DP B34.
95   Du Toit (n 1) 66.
96   U Läänemets & K Kalamees-Ruubel 'The Taba-Tyler rationales' (2013) 9 *Journal of the American Association for the Advancement of Curriculum Studies* 1.
97   Tyler (n 20) 439.
98   His work was translated into Danish, Dutch, German, Japanese, Portuguese, and Spanish. See Wraga & Hlebowitsh (n 23) 227.
99   P Slattery *Curriculum development in the postmodern era* (2013) 55.
100   Morrison (n 27) 491; Du Toit (n 1) 67.
101   Slattery (n 99) 8.
102   Läänemets & Kalamees-Ruubel (n 96) 3.

Tyler's rationale embraces the student, disciplinary knowledge or content and society as three essential curriculum elements. This approach was unprecedented and extraordinary, considering the time when he wrote his book.[103] Tyler's model is an example of an 'aims-objective' model that is product-driven.[104] It is perceived as a means-end model. The end is first envisaged through backward design (see part 3.4.1). Thereafter, the means to reach the end is decided upon.

Four classical curriculum questions underpin Tyler's model.[105] Aspects of these questions were incorporated as DPs into the Draft LLB CCMM in part 4.5. First, what are the graduate attributes that need to be developed?[106] Answering the first question requires curriculum planners to obtain information from three curriculum sources: disciplinary experts, students and contemporary society.[107] Second, what educational experiences will assist in attaining these purposes?[108] Third, how should these educational purposes be organised? Lastly, were the purposes of the curriculum met?[109]

Kliebard referred to Tyler's suggestion to use three sources to determine the purposes of the curriculum as 'simple eclecticism'.[110] He claimed that Tyler's model was value-neutral,[111] behaviouristic[112] and philosophically neutral.[113] Hlebowitsh investigated the claims of Kliebard and found them problematic and based upon misrepresentations,[114] but Kliebard rejected these findings.[115] Despite the attempts of Hlebowitsh to correct the misrepresentations by Kliebard, other curriculum scholars continue to interpret Tyler's model as linear, behaviouristic and a narrow

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103 WG Wraga 'Understanding the Tyler rationale: Basic principles of curriculum and instruction in historical context' (2017) 4 *Espacio, Tiempo y Educación* 243.

104 Du Toit (n 1).

105 Slattery (n 99) 55.

106 See DP B18 in part 4.5.2.

107 Tyler (n 20) 1-7, 16-19, 25-33. Also see DPs B3 to B5 in part 4.5.2.

108 See DPs B20 and B21 in part 4.5.2.

109 See DPs B28, B29, B31 to B34 in part 4.5.3.

110 HM Kliebard 'Reappraisal: The Tyler rationale' (1970) 78 *School Review* 260.

111 Kliebard (n 110) 265.

112 Kliebard (n 110) 268.

113 Kliebard (n 110) 266.

114 PS Hlebowitsh 'Interpretations of the Tyler rationale: A reply to Kliebard' (1995) 27 *Journal of Curriculum Studies* 89.

115 HM Kliebard 'The Tyler rationale revisited' (1995) 27 *Journal of Curriculum Studies* 81.

technical model of curriculum making.[116] However, Wraga perceived Tyler's rationale more as a manifestation of pragmatism in curriculum development than a 'curriculum as product' planning model.[117]

The National Qualifications Framework

The 'curriculum as product' approach is also evident in the requirement of the South African Qualifications Authority (SAQA) to have all qualifications registered in terms of learning outcomes on the NQF.[118] These outcomes aim to make the curriculum more transparent, and students' performance is measured against these objectives. I provide more information about the NQF and its implications for curriculum development in part 3.4.2.

3.3.2   Curriculum as content

The 'curriculum as content' planning approach perceives content selection as the foundation or sometimes the only consideration in curriculum planning.[119] In the 1960s and 1970s, the philosophical work of Peters[120] and Hirst[121] dominated curriculum theorising in the United Kingdom. These scholars perceived all forms of knowledge as 'intrinsically worthwhile'.[122]

'Curriculum as content' focuses either on the individual modules that academics teach or on the whole study programme that the student undertakes in a specific discipline.[123] Selecting content usually depends on tradition (the module subject or course has always been taught in this manner) or on pragmatic considerations (the readily available

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116 WF Pinar and others *Understanding curriculum* (1995) 148-149; CJ Marsh & G Willis *Curriculum: Alternative approaches, ongoing issues* (2007) 72.
117 Wraga (n 103) 247.
118 SAQA The National Qualifications Framework and curriculum development (2000), https://www.yumpu.com/en/document/view/30722438/the-national-qualifications-framework-an d-curriculum-development (accessed 15 September 2024).
119 D Lawton *Class, culture and the curriculum* (1975) 70; AV Kelly *The curriculum: Theory and Practice* (2004) 47.
120 *Ethics and education* (1966).
121 *Knowledge and the curriculum* (1974).
122 See, eg, Priestley & Humes (n 3) 347.
123 Fraser & Bosanquet (n 2) 272. Also see Priestley & Humes (n 3) 347.

resources).[124] Another consideration for the choice of the content focuses on content that is representative of the culture of the society.[125]

The 'curriculum as content' model finds application in this study since the LLB curriculum is specifically developed for the discipline of law. To some extent, the LLB Qualification Standard supports the 'curriculum as content' planning model. For example, it requires graduates to have a comprehensive and sound knowledge of the South African Constitution and basic areas or fields of law. However, it is silent on whose knowledge and whose ways of knowing should be taught. 'Curriculum as content' is particularly relevant when one considers the student protests of 2015 and 2016 that were characterised by demands for a decolonised curriculum.[126] Prior to the student protests, only a few education scholars had engaged in debates about transforming knowledge and the curriculum.[127] Their debates failed to influence policy making and did not filter down to debates in other disciplines. Since the student unrest, decolonisation has become a topic for discussion among law academics.[128] However, there is no common understanding of the concept of decolonisation, and the implementation of the process has been slow.[129]

Curriculum planning as a content-driven approach has been questioned for several reasons.[130] Personal ideological preconceptions of the person who selects the knowledge could play a significant role in the knowledge that is taught. Questions also arise concerning for whom and whose knowledge should be chosen. Specific knowledge may also be privileged at the cost of other knowledge. In a multi-cultural society, choosing to teach from a dominant cultural perspective could raise concerns about alienation and relevance, while issues such as the decolonisation of the curriculum, as described in part 2.2.2, also come into play. Planning the curriculum from a content focus can also be critiqued for encouraging passive learning and didactic teaching of

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124 Priestley & Humes (n 3) 347.
125 CHE (n 17) 9.
126 See part 2.2.2.
127 L Lange '20 years of higher education curriculum policy in South Africa' (2017) 68 *Journal of Education* 33, 39.
128 Several SALDA workshops on the decolonisation of legal education have taken place since 2006.
129 See part 2.2.2 and AE Tshivhase 'Principles and ideas for the decolonisation of legal education in South Africa' in AE Tshivhase, LG Mpedi & M Reddi (eds) *Decolonisation and Africanisation of legal education in South Africa* 5.
130 Priestley & Humes (n 3) 348.

decontextualised and incoherent facts.[131] It does not consider the learner, who is the recipient of the knowledge.[132]

I adopted the 'curriculum as content' planning model as a complementary approach to the 'curriculum as product' planning model when changing the University of the Free State (UFS) LLB curriculum and developing the LLB CCMM. Consequently, decolonising the curriculum is regarded as one of the curriculum imperatives in the Draft LLB CCMM.[133] I did not only adopt the 'curriculum as content' approach. The 'curriculum as process' was also used as a corresponding curriculum planning model.

3.3.3   Curriculum as process

The 'curriculum as process' development model is primarily based on advancing the individual's democratic values, reflexivity, the ability to question and good citizenship.[134] This curriculum planning model does not perceive the curriculum as a static product or fixed blueprint. Instead, it focuses on the interaction of teachers (lecturers), learners (students) and knowledge. In order words, the curriculum is what actually happens in the classroom and learning environment. Dewey and Stenhouse are closely associated with this model.

Dewey's experimental approach toward curriculum development

In 1902 Dewey emphasised the critical role that education plays in preparing students to be good citizens and competent actors in a democratic society.[135] He advocated an experimental approach to curriculum design. Dewey believed that students need to experiment and interact with the curriculum. They, therefore, need to learn by doing.[136] Dewey described the concept of curriculum as follows:[137]

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131 Priestley & Humes (n 3) 347.
132 Kelly (n 119) 52.
133 See DP B19 in part 4.5.2.
134 Kelly (n 119) 78.
135 J Dewey *The child and the curriculum* (1902) 27. Also see J Dewey 'My pedagogic creed' in DJ Flinders & ST Thornton (eds) *The curriculum studies reader* (2004) 19-22.
136 (n 135) 'My pedagogic creed' in DJ Flinders & ST Thornton (eds) *The curriculum studies reader* (2004) 17, 18, 22, 23.
137 Dewey (n 135) 27.

[A] map, a summary, an arranged and orderly view of previous experiences, [that] serves as a guide to future experience; it gives direction; it facilitates control; it economises effort, prevents useless wandering, and points out the paths which lead most quickly and most certainly to a desired result.

The four approaches toward curriculum development of Stenhouse

Stenhouse was a notable advocate for the process model for curriculum planning.[138] Instead of focusing on the curriculum contents or objectives, Stenhouse suggested that teachers concentrate on the concepts and procedures of disciplines. As such, science and history students, for example, will learn how to think like scientists or historians. In line with this approach, teaching law students to 'think like lawyers' has gained popularity in law schools around the globe.[139]

Stenhouse did not entirely dismiss the significance of the 'aims-objective' approach to curriculum.[140] He presented four education processes: training, instruction, initiation and induction.[141] Stenhouse acknowledged that the objectives curriculum could be of value when training students to exhibit specific skills (first education process) or instructing them to acquire information through memorisation and retention (second education process). However, he suggested an initiation process to familiarise students with the norms and values expected of them and to interpret the social environment (third education process). The 'curriculum as process' also plays a critical role in inducting students to understand, evaluate and construct relationships among concepts (fourth education process). Stenhouse emphasised that, although the initiating process draws on the disciplines, it entails more than merely

138 L Stenhouse *An introduction to curriculum research and development* (1975) 45. He defined the term 'curriculum' as follows: 'A curriculum is an attempt to communicate the essential principles and features of an educational proposal into such a form that it is open to critical scrutiny and capable of effective translation into practice.'

139 C Menkel-Meadow *Thinking or acting like a lawyer* (2019); SA Bandes 'Feeling and thinking like a lawyer: Cognition, emotion, and the practice and progress of law' (2021) 89 *Fordham Law Review* 2427; P du Plessis 'Thinking like a lawyer: The case for Roman law'' (2022) 99 *Acta Universitatis Lodziensis* 165.

140 M James 'An alternative to the objectives model: The process model for the design and development of curriculum' in N Norris & J Elliott (eds) *Curriculum, pedagogy and educational research: The work of Lawrence Stenhouse* (2012) 68.

141 Stenhouse (n 138) 80.

acquiring existing knowledge. It requires students to develop critical and creative thinking in the disciplines.

Greenbaum argued in 2009 that the 'curriculum as process' has not commonly been accepted as a curriculum planning model in South Africa.[142] She based her view on the premise that law academics predominantly perceive themselves more as lawyers than as teachers. They generally use the 'transmission' mode to teach large classes and believe that they need to focus on the 'essential body of substantive legal doctrine' or 'core legal content'. Generally, limited attention was paid to skills development, clinical legal education and teaching ethics. Twenty years later, the 'Report on the National Review of the LLB' found that skills development at most universities was inadequate and compulsory clinical legal education took place at only seven universities. However, ethics were addressed in the curricula of most higher education institutions.[143]

The LLB Qualification Standard supports aspects of the 'curriculum as process' planning model. The LLB Qualification Standard does not only require LLB graduates to possess knowledge of the 'theories, concepts, principles, ethics, perspectives, methodologies and procedures of the discipline of law',[144] but it also requires them to conduct themselves ethically and with integrity in their 'relations within the university and beyond, with clients, the courts, other lawyers and members of the public'[145] and to exhibit critical thinking skills within the discipline.[146]

Stenhouse acknowledged that the success of the process curriculum approach depends mainly on the quality and judgment of the academics.[147] The process curriculum demands more from academics and can sometimes be too demanding for some of them. Furthermore, the assessment of students' work can also be more difficult. Instead of judging

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142 LA Greenbaum 'The undergraduate law curriculum: Fitness for purpose?' PhD thesis, University of KwaZulu-Natal, 2009 102 (on file with author).
143 CHE (n 17) 23, 34.
144 The graduate attributes that LLB graduates should possess are prescribed by the CHE Qualification Standard for the Bachelor of Laws (LLB) (2015) 8, https://www.che.ac.za/publications/standard-reviews/standards-bachelor-laws-llb (accessed 10 November 2024).
145 CHE (n 144) 10.
146 CHE (n 144) 9.
147 Stenhouse (n 138) 94.

students' work formally and objectively, he proposed development learning that is informal, creative and critical.

3.3.4   Curriculum as praxis

The fourth curriculum planning model identified by Smith is 'curriculum as praxis'.[148] This planning model builds on the process model and also emphasises judgment and meaning making. However, at the centre of the 'curriculum as praxis model' is collective human well-being and emancipation. Contrary to the process model that often overlooks collective human well-being and emancipation, the praxis model integrates informed and committed action. Embedded in critical pedagogy, it emphasises dialogue between teachers and learners and acknowledges both perspectives as complex and worthy of reflection. This engagement encourages learners to confront real-life issues and their own oppression. Consequently, the curriculum becomes an emancipatory and transformative practice and not merely a process to follow.

The theoretical framework for transformative legal education by Quinot is aligned with the 'curriculum as praxis' model.[149] Also corresponding with this model is the LLB Qualification Standard, which requires students to engage critically with the role of law in society and to be empowered as agents for transformation and justice. The 'curriculum as praxis' model is evident when aspects such as social justice, human rights, decolonisation, feminism, critical race theory, queer legal theory and access to justice form part of the curriculum.

As mentioned above, most discussions about curriculum planning took place within the school context. The following part addresses curriculum planning in the context of higher education.

3.4   Curriculum planning in higher education

Compliance with national regulatory frameworks, especially the HEQSF, is crucial in curriculum planning. South Africa has adopted an outcomes-based approach to student learning, which underpins

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148   See part 2.3.3.
149   G Quinot 'Transformative legal education' (2012) 129 *South African Law Journal* 411.

the NQF and the LLB Qualification Standard. The core elements that inform the designing of a higher education outcomes-based curriculum are outcomes, teaching and learning and assessment. These elements need to be constructively aligned.[150] In the following parts I explore the influence of constructive alignment, the NQF and the mapping of the higher education curriculum.

3.4.1   Constructive alignment

Scholars regard constructive alignment as one of the most influential and dominant theories for contemporary higher education curriculum development.[151] It has been applied in Australia, New Zealand, the UK and South Africa as a tool for higher education curriculum development.[152] In 1996 Biggs coined the term 'constructive alignment'.[153] He described it as a 'common sense' approach[154] that aims to enhance teaching by marrying two concepts, namely, constructivism and an aligned design for teaching and learning.[155]

The first aspect is constructivism, which refers to the constructivist theory of education and student learning. Constructivism encompasses a family of theories emphasising that students construct their own learning by 'actively selecting, and cumulatively constructing their own

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150 As above.
151 K Edström 'Doing course evaluation as if learning matters most' (2008) 27 *Higher Education Research and Development* 105; P Kandlbinder & T Peseta 'Key concepts in postgraduate certificates in higher education teaching and learning in Australasia and the United Kingdom' (2009) 14 *International Journal for Academic Development* 23; E Bitzer 'Trans disciplinarity and curriculum space in health sciences education Master's programmes' in E Bitzer & N Botha *Curriculum inquiry in South African higher education* (2011) 197; J Zimmerman 'Academic libraries and accreditation: A theory-based framework for assessing modern library spaces' in SE Montgomery (ed) *Assessing library space for learning* (2017) 66.
152 P Kahn 'Critical perspectives on methodology in pedagogic research' (2015) 20 *Teaching in Higher Education* 445; S Clarence 'Knowledge and knowers in teaching and learning: An enhanced approach to curriculum alignment' (2016) 66 *Journal of Education* 65.
      Clarence (n 152) 65.
153 JB Biggs 'Enhancing teaching through constructive alignment' (1996) 32 *Higher Education* 347.
154 JB Biggs 'What the student does: Teaching for enhanced learning' (1999) 18 *Higher Education Research and Development* 73; J Biggs & C Tang *Teaching for quality learning at university* (2011) 61.
155 Biggs (n 153) 347.

knowledge, through both individual and social activity'.[156] All of these theories focus on a student-centred approach.[157] The lecturer acts as the catalyst and facilitates the learning process.[158] The focus is on what the student does and learns and no longer is on teaching by the lecturer.

The second aspect, alignment, aims to ensure that all three components of the curriculum, namely, the desired learning outcomes, the teaching and learning activities and assessment, are interlinked.[159] The three components of the curriculum support each other and speak to the same agenda.

Figure 3.1:   *The three components of the curriculum and constructive alignment*
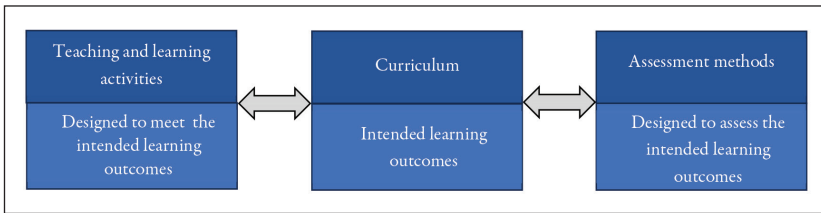

Figure 3.1 illustrates that the desired learning outcomes stand at the centre of the three curriculum elements and, in essence, constitute the curriculum.[160] Contrary to the usual teacher-based approach that requires a simple list of the topics that lecturers will cover, Biggs and Tang stated that the curriculum consists of curriculum objectives or desired learning outcomes.[161] Students' desired graduate attributes upon graduation are expressed as intended learning outcomes in the curriculum.[162] These outcomes indicate the level of understanding that lecturers will require of students, the topics that lecturers will be teaching, and the 'performance of understanding' that would signify that students have acquired the

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156   Biggs (n 153) 348.
157   Biggs (n 153) 347.
158   Biggs (n 154) 1.
159   Biggs (n 154) 2.
160   Biggs & Tang (n 154) 91. Lower-level quantitative verbs include words such as 'identify, list, enumerate, combine and describe', while higher-level qualitative verbs are verbs such as 'compare, analyse, relate, apply, and reflect'. See Biggs (n 154) 64; Biggs (n 154) 2.
161   (n 725) 11.
162   Biggs & Tang (n 154) 1.

expected knowledge. The learning outcomes are expressed according to a hierarchy of verbs (for example, explain, solve, analyse, compare, apply, elaborate, classify and hypothesise),[163] representing different performance levels of understanding.[164] The learning contents comprise the objects of the verbs.[165] The taxonomy of educational outcomes by Bloom and others[166] has gained substantial support and is widely used when writing learning outcomes. Although the original publication of his work dates back to the 1950s, his taxonomy was investigated and adapted in a more recent version that is now labelled 'the revised Bloom's taxonomy'.[167] These two frameworks play a significant role in developing learning outcomes.

To constructively align the curriculum components, lecturers must align the 'performance of understanding systematically' (verbs) in the intended learning outcomes with the teaching and learning activities and assessment,[168] which I will address next.

The teaching and learning activities in which lecturers select to engage students should enable students to acquire the 'performance of understanding' stated in the intended learning outcomes.[169] Biggs advised that teaching and learning activities should not be limited to lectures. It could include lecturer-controlled activities such as field excursions, seminars, tutorials, group discussions, learning partnerships and brainstorming. Teaching and learning activities for which the lecturer plans can also include peer-controlled activities such as group work, informal student collaboration and peer teaching. The students can engage in self-controlled activities such as summarising, general study skills, note-taking and metacognitive strategy use.[170]

In a constructively aligned curriculum, the 'performance of understanding' or verbs of the intended learning outcomes prescribe

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163 The lower quantitative verbs require students to, eg, list, identify or perform a simple procedure, while the higher qualitative verbs require students to, eg, explain, analyse, reflect and theorise.
164 Biggs (n 154) 64.
165 Biggs (n 153) 1.
166 BS Bloom and others *Taxonomy of educational objectives: The classification of educational goals* (1956).
167 LW Anderson & DR Krathwohl *Taxonomy for learning, teaching and assessing: A revision of Bloom's taxonomy of educational objectives* (2001).
168 Biggs (n 154) 348.
169 Biggs (n 154) 353.
170 Biggs (n 154) 354; Biggs (n 153) 68.

what the student should be able to do at a specific level. The verbs would be evident in the chosen teaching and learning activities and embedded in the assessment task.[171] As such, curriculum designers can follow a backward design process by envisioning the end product (intended learning outcomes) and then aligning teaching and learning activities and assessments with that end product.[172]

The Draft LLB CCMM provides for constructive alignment[173] and incorporates innovative teaching, learning and assessment practices to facilitate curriculum change.[174] It is evident from the discussion above that drafting learning outcomes can be a daunting task. Thus, the Draft LLB CCMM emphasises the importance of empowering academic staff members to draft such outcomes.[175]

The constructive alignment model is not free from critique. On the one hand, scholars criticise constructive alignment and its emphasis on predetermined outcomes for being almost the same as a list of contents[176] and for being too rigid and not flexible enough.[177] Constructive alignment does not allow space for unintended learning[178] or emergent learning outcomes that sometimes arise when lecturers engage with students, present modules or assess students.[179] On the other hand, they criticise constructive alignment for requiring lecturers to continuously revise and update their module documentation due to the 'emergent learning outcomes'.[180] Consequently, constructive alignment can only be maintained if the higher education institution's systems allow for frequent changes to the learning outcomes of modules.

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171 Biggs (n 153).
172 S Joseph & C Juwah 'Using constructive alignment theory to develop nursing skills curricula' (2012) 12 *Nurse Education in Practice* 56.
173 See DP D7 in part 4.5.3
174 See DPs B20 and B21.
175 See DPs B23 and B24.
176 T Hussey & P Smith 'Learning outcomes: A conceptual analysis' (2008) 13 *Teaching in Higher Education* 112.
177 M Huxham and others 'Student and teacher co-navigation of a course: Following the natural lines of academic enquiry' (2015) 20 *Teaching in Higher Education* 534.
178 C Bovill & C Woolmer 'How conceptualisations of curriculum in higher education influence student-staff co-creation in and of the curriculum' (2019) 78 *Higher Education* 411.
179 W Houghton *Engineering subject centre guide: Learning and teaching theory for engineering academics* (2004) 28.
180 LM Jervis 'What is the constructivism in constructive alignment?' (2005) 6 *Bioscience Education* 9.

Jervis and Jervis criticised the constructivist element that is embedded in the behaviourist pedagogy and described it as being 'profoundly unscientific'.[181] They argue that the requirement for students to enact the verbs of understanding in the intended learning outcomes resembles behaviourism regarding stimulus and response.[182] Consequently, some scholars perceive a constructively aligned curriculum as linear and preferring outcomes over student learning.[183] Further critique is that it is too narrow and does not consider broader societal variables that may influence the curriculum.[184] As a result of the critique of its constructivist element, scholars advocate that the terms 'curriculum congruence' or 'curriculum alignment' more accurately describe the philosophy and are what most lecturers have been doing over the years, in preference to the term 'constructive alignment'.[185]

Although constructive alignment is useful for curriculum design, the approach focuses primarily on curriculum enactment and pedagogy.[186] It does not address the knowledge that curriculum developers and lecturers should include in the curriculum and the various kinds of knowers students ought to become. In other words, constructive alignment ignores the typical characteristics of different forms of knowledge and positions disciplinary knowledge in the background.[187] Consequently, in an attempt to overcome this criticism, the LLB curriculum planning model and LLB CCMM should address the calls for decolonisation described in part 2.2.2.

Outcomes-based education and constructivist philosophy underpin South Africa's NQF.[188] The following part investigates the influence of the NQF on higher education curriculum development.

3.4.2   National Qualifications Framework

The NQF aims to (i) create a single integrated national framework for learning achievements; (ii) facilitate access to, and mobility and

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181 As above.
182 As above.
183 Bovill & Woolmer (n 178) 411.
184 Bitzer (n 151) 197.
185 Jervis (n 180) 10.
186 Kahn (n 152) 451; Clarence (n 152) 66.
187 Kahn (n 152) 451.
188 Du Toit (n 1) 73.

progression within, education, training and career paths; (iii) enhance the quality of education and training; (iv) accelerate the redress of past unfair discrimination in education, training and employment opportunities.[189]

In 2002 a generic LLB was registered on the NQF at level seven.[190] The purpose of this LLB was to assist role players[191] in understanding 'factors determining the level and nature of the LLB qualification'. The generic qualification prescribed specific exit-level outcomes and at least 480 credits for an LLB to be accredited.

On 5 October 2007, the Higher Education Qualifications Framework (HEQF) was promulgated in terms of the Higher Education Act 101 of 1997.[192] The HEQF provided the basis for integrating all higher education qualifications into the NQF.[193] In the meantime, higher education institutions awaited the publication of the implementation plans for the ambitious 2007 HEQF.[194]

On 10 October 2010, the CHE, Department of Higher Education and Training and SAQA published a joint Communiqué on the implementation of the HEQF that would span from January 2011 until December 2015. All higher education institutions were affected by the implementation[195] and had to allocate their programmes into three categories. Category A programmes required minor or no changes to comply with the HEQF. Category B programmes needed less than 50 per cent changes to the programme structure, outcomes or total credits. Category C programmes required 50 per cent or more changes to the programme structure, outcomes or total credits. It implied the submission

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189 NQF Act 67 of 2008 sec 5.
190 Government Notice 1190, *GG*, 20 September 2002, 23845 (Bachelor of Laws, NQF Level 7 NLRD ID: 22993).
191 As above. The generic LLB identified role players as 'employers, professional associations, curriculum developers and learning-programme providers, education and training bodies, accrediting bodies and moderators, and students and their families'.
192 Government Notice 928, *GG*, 5 October 2007, 30353 (The Higher Education Qualifications Framework).
193 GN 928 (n 192) 3.
194 D Blackmur 'Arguing with Stephanie Allais. Are national qualifications frameworks instruments of neoliberalism and social constructivism?' (2015) 21 *Quality in Higher Education* 213.
195 CHE *Higher Education Qualification Framework handbook* (2011) 2, https://www.che.ac.za/sites/default/files/publications/HEQF_Implementation_Handbook.pdf (accessed 29 October 2024).

of a new programme to the HEQC for accreditation.[196] As explained in part 1.2, the UFS Faculty adopted a resolution in April 2015 to develop a new LLB for accreditation by the HEQC. Consequently, the UFS LLB was identified as a Category C programme.

The NQF Act 67 of 2008 replaced the SAQA Act 58 of 1995 and provided in section 27(e) for an extended mandate to the CHE to develop and manage the HEQF. In line with this mandate, the CHE began in 2010 with the revision of the HEQF. The primary aim of the revision was to address the following: 'unresolved concerns about the number, nature and purposes of the qualification types ... and a number of inconsistencies and gaps in the HEQF, which had an adverse impact on meeting national policy goals and objectives. [197]

The final version of the HEQSF was published on 30 August 2013.[198] Similar to the HEQF, the HEQSF provides a nested approach to programme design,[199] as depicted in Figure 2.2. This approach requires curriculum designers to consider the NQF level descriptors, the qualification type and standard developed for a specific qualification type, and the 'Criteria for programme accreditation' of the CHE when designing a programme.

The NQF level of the qualification and its level descriptors represent the outer layer within the nested approach.[200] The level descriptors are the most generic standards that do not refer to any essential knowledge, skills and applied competences that characterise a specific qualification. As discussed in part 2.3.2, the LLB Qualification Standard provides more information about these aspects.
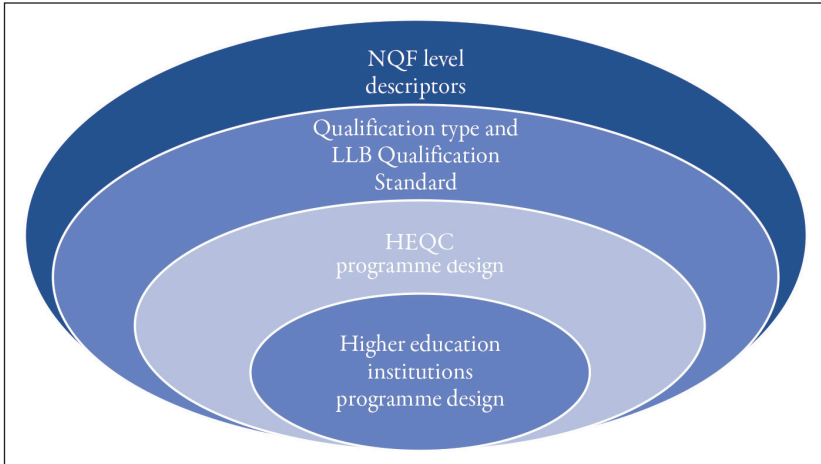
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196   CHE (n 195) 8.
197   Government Notice 578, *GG*, 30 August 2013, 36797 (Publication of the General and Further Education and Training Qualifications Sub-Framework and Higher Education Qualifications Sub-Framework of the National Qualifications Framework).
198   As above.
199   GN 578 (n 197) 48.
200   GN 578 (n 197) 46.

Figure 3.2:   *The nested approach to programme design*

The second layer within the nested approach is the qualification type (for example, certificate, diploma or degree) and its corresponding NQF level.[201] The qualification type of the LLB is a professional Bachelor's degree[202] on NQF level 8. As discussed in part 2.3.1, the LLB is the minimum educational requirement for admission and enrolment to the professions of advocate and attorney.[203]

A qualification descriptor and qualification designator are nested within the qualification type.[204] The qualification descriptor identifies the exit level of the qualification type, its minimum credit rating and its purpose and characteristics. The qualification designator for the LLB is a Bachelor of Laws, with a minimum of 480 credits. It implies 4 800 notional hours of learning and a minimum of 120 credits on NQF level eight.[205]

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201 GN 578 (n 197) 48-49.
202 GN 578 (n 197) 68.
203 Legal Practice Act 28 of 2014 sec 26 states the following: '(1) A person qualifies to be admitted and enrolled as a legal practitioner, if that person has – (a) satisfied all the requirements for the LLB degree obtained at any university registered in the Republic, after pursuing for that degree - (i) a course of study of not less than four years; or (ii) a course of study of not less than five years if the LLB degree is preceded by a bachelor's degree other than the LLB degree, as determined in the rules of the university in question and approved by the Council'.
204 GN 578 (n 197) 48-49.
205 GN 578 (n 197) 68.

In addition to the LLB with a minimum of 480 credits, the HEQSF added a level eight Advanced Bachelor's degree with a minimum of 240 credits.[206] Graduates with Bachelor's degrees such as the Bachelor of Commerce (BCom) and Bachelor of Arts (BA) with specialisation in law at level 7 usually qualify to enrol for a further Advanced LLB over two years.

Although the HEQSF only prescribes the minimum credits, the credits should be realistic concerning the study time available to students.[207] The HEQSF defines the generic purpose and characteristics of the professional Bachelor's degree, such as the LLB, as follows:[208]

> The professional Bachelor's Degree prepares students for professional training, post-graduate studies or professional practice in a wide range of careers. Therefore, it emphasises general principles and theory in conjunction with procedural knowledge in order to provide students with a thorough grounding in the knowledge, theory, principles and skills of the profession or career concerned and the ability to apply these to professional or career contexts.

A higher education institution should use the CHE 'Criteria for programme accreditation'[209] and perform a self-evaluation of the programme, in this case, the LLB, that it submits for accreditation. The HEQC then evaluates the self-evaluation report and supporting evidence provided by the institution against the criteria in its decision to accredit the programme.

It is one of the characteristics of the HEQSF to give higher education institutions the autonomy to develop their own curricula.[210] In this regard, the HEQSF states: 'Higher education institutions have a broad scope within which to design educational offerings to realise their different visions, missions and plans, and to meet the varying needs of the stakeholders and communities they serve.'

Recently, the Draft Revised Higher Education Qualification Sub-Framework, 2025 was circulated for comments. This framework aims, among other things, to enhance the alignment of the HEQSF with other international education systems and to articulate qualification sub-types, such as the professional Bachelor's degree, more explicitly

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206   GN 578 (n 197) 76. Also see DP D1 in part 4.5.3.
207   GN 578 (n 197) 50.
208   GN 578 (n 197) 69.
209   CHE (n 195).
210   GN 928 (n 192) 10.

when compared to the HEQFS.[211] Although some of the statements in the professional Bachelor's degree, such as the LLB, align across the two mentioned frameworks, there are also some notable differences. In terms of the Draft Revised Higher Education Qualification Sub-Framework, 2025, it is the purpose of the professional Bachelor's degree to prepare students for a specific field of practice and not for a wide range of careers stated in the HEQSF. Also, the HEQSF refers to general principles, theory and procedural knowledge that should be developed in graduates, while the Draft Revised Higher Education Qualification Sub-Framework, 2025 is more specific. The latter framework provides a more structured blend of principles, methodologies and concepts, which are discipline-specific and have a direct connection to professional or industry-related practice. Also, contrary to the HEQSF, the Draft Revised Higher Education Qualification Sub-Framework, 2025 requires the curriculum to include a research project or report that is aligned with the exit level of the qualification. Although both frameworks acknowledge work-integrated learning as an optional component of the curriculum, the Draft Revised Higher Education Qualification Sub-Framework, 2025 explicitly states that this component is usually developed in collaboration with a professional body. The implications of the Draft Revised Higher Education Qualification Sub-Framework, 2025 on the development of the LLB CCMM will not be considered further in this book since currently it is merely in draft form.

It is clear from the discussion above that both the HEQSF and Draft Revised Higher Education Qualification Sub-Framework, 2025 inform curriculum development. However, both fail to directly address the curriculum and more recent curriculum-related issues, such as the decolonisation of the curriculum. Lange criticises the HEQSF for not focusing on the 'real' curriculum, namely, the 'curriculum as content'.[212] Instead, the policy focuses on the curriculum's purpose, structure or 'exoskeleton'. This is also the case for the Draft Revised Higher Education Qualification Sub-Framework, 2025. Other scholars have critiqued the NQF for its behaviourist underpinnings and narrowness of vision.[213]

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211   CHE 'Draft Revised Higher Education Qualification Sub-Framework, 2025' 11, 44 (on file with author).

212   Lange (n 127) 33, 39.

213   L Chisholm & B Fuller 'Remember people's education? Shifting alliances, state-building and South Africa's narrowing education policy agenda' (1996) 11 *Journal*

Higher education academics initially rejected outcomes-based education and believed that one cannot always convert higher-order knowledge into clearly defined learning outcomes. Davis and Harden caution that implementing an outcomes-based curriculum is a difficult task that requires curriculum mapping.[214] The following part explains this process.

3.4.3   Curriculum mapping

Following the identification of graduate attributes that students need to exhibit upon graduation, academics must carefully map the desired knowledge, skills, attitudes and values across appropriate modules, years of study and credits of the curriculum. Kift describes the curriculum mapping as follows:[215]

> Broadly, this curriculum approach starts with a whole program matrix onto which the discipline's desirable knowledge, skills and attitudes are carefully mapped for multiple learning opportunities and contexts, which increase in complexity over the course of the degree program. After this, each individual subject of study ('subject') within the program is assessed for its contribution to holistic curriculum development.

Curriculum mapping is a complicated,[216] backward design process[217] that forms part of the outcomes-focused education paradigm and aims for constructive alignment of the elements of the curriculum.[218] In addition

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of Education Policy 693; M Samson & S Vally 'Snakes and ladders: Promises and potential pitfalls of the NQF' (1996) 20 *South African Labour Bulletin* 7; J Jansen & P Christie *Changing curriculum: Studies on outcomes-based education in South Africa* (1999); L Chisholm 'The politics of curriculum review and revision in South Africa in regional context' (2005) 35 *Compare: A Journal of Comparative and International Education* 79.

214   MH Davis & RM Harden 'Planning and implementing an undergraduate medical curriculum: The lessons learned' (2003) 25 *Medical Teacher* 598.

215   S Kift '21st century climate for change: Curriculum design for quality learning engagement in law' (2008) 18 *Legal Education Review* 7.

216   Davis & Harden (n 214) 598. Also see RM Hakken 'Curriculum mapping: A tool for transparent and authentic teaching and learning' (2001) 23 *Medical Teacher* 123; BH Lam & KT Tsui 'Curriculum mapping as deliberation – Examining the alignment of subject learning outcomes and course curricula' (2016) 41 S*tudies in Higher Education* 1376.

217   F Rawle and others 'Curriculum mapping across the disciplines: Differences, approaches, and strategies' (2017) 10 *Collected Essays on Learning and Teaching* 83.

218   A Huggins 'Incremental and inevitable: Contextualising the threshold learning outcomes for law' (2015) 38 *University of New South Wales Law Journal* 283; Lam & Tsui (n 216); A Vashe and others 'Curriculum mapping of dental physiology

to constructive alignment,[219] the Draft LLB CCMM suggests that the curriculum imperatives and graduate attributes of the LLB Qualification Standard are appropriately mapped across modules[220] and study years.[221]

A curriculum map provides a spatial representation of the different components of the curriculum so that one can view not only a complete picture of the curriculum, but also the connections and relationships among the various parts of the map.[222] Part 5.5.2 briefly discusses how curriculum mapping was approached during the UFS curriculum change.

Contrary to the traditional law curriculum that prescribes a 'one-shot' or single skills module at the beginning of the programme and a 'booster' skills unit at the end, research into the development of graduate attributes suggests that skills should be embedded in the law curriculum to ensure that they develop incrementally over the years employing a whole-of-curriculum mapping approach.[223] Developing a particular skill or graduate attribute does not have to occur in a specific module.[224] Instead, the development process for skills such as written communication, oral communication[225] and critical thinking skills[226] can be optimised if it is spread over several modules over the years of study. Christensen and Kift, supporters of whole-of-curriculum mapping, submit that it is imperative to develop skills in those substantive law modules that are suitable for their development.[227] Skills development should ideally occur not only in identified substantive law modules, but also in modules expressly set aside for developing these skills.[228] Ultimately, each skill should be

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curriculum: The path towards outcome-based education' (2020) 24 *European Journal of Dental Education* 524.

219   See DP D7 in part 4.5.3.
220   See DP D5 in part 4.5.3.
221   See DP D6 in part 4.5.3.
222   Lam & Tsui (n 216); Vashe and others (n 218) 519.
223   S Christensen & S Kift 'Graduate attributes and legal skills: Integration or disintegration?' (2000) 11 *Legal Education Review* 219. Also see R Johnstone, 'Whole-of-curriculum design in law' in S Kift and others (eds) *Excellence and innovation in legal education* (2011) 1, 15; Huggins (n 218) 283.
224   Christensen & Kift (n 223) 219. Also see G Quinot & L Greenbaum 'The contours of a pedagogy of law in South Africa' (2015) 26 *Stellenbosch Law Review* 40.
225   Christensen & Kift (n 223) 219.
226   N James & K Burton 'Measuring the critical thinking skills of law students using a whole-of-curriculum approach' (2017) 27 *Legal Education Review* 13.
227   Christensen & Kift (n 223) 219.
228   E Syman-Van Deventer & CF Swanepoel 'Teaching South African law students (legal) writing skills' (2013) 24 *Stellenbosch Law Review* 526.

developed horizontally as an integrated package in a specific year[229] and vertically throughout the programme.[230]

The curriculum-mapping process aims to ensure that (i) there is constructive alignment between teaching, learning and assessment; (ii) the level of knowledge development or skills progression is achieved in the different modules of the curriculum; (iii) modules, through scaffolding, build on previous knowledge and skills; (iv) modules, through the horizontal development of graduate attributes, complement concurrent modules; (v) the modules prepare students for higher-order learning as they progress through the curriculum; (vi) the relevance of the modules to students' future employability and careers are explicitly communicated to students and employers; and (vii) students' professional identity is gradually developed.[231]

Moss and Curtis added that curriculum mapping could prevent lecturers from teaching their modules in silos.[232] They found that law lecturers have a poor sense of the curriculum as a whole and often do not know what their colleagues teach in other modules. Consequently, the Draft LLB CCMM explicitly provides for modules to be presented in an integrated manner.[233] Moss and Curtis described curriculum mapping as an empowering tool[234] that enables academics to understand what is taught, when it is taught, how it is taught and whether it is taught more than once.[235] Ultimately, it assists academics in building on students' existing knowledge and skills, preparing them for where they will be heading,[236] and correlating assessments and learning to ensure that what is being taught is assessed and *vice versa*.[237]

3.5   Conclusion

The discussion of the different conceptualisations of curriculum in this chapter confirmed that there is no consensus on how the term should be

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229 See DP D4 in part 4.5.3.
230 Christensen & Kift (n 223) 219. Also see DP D3 in part 4.5.3.
231 Kift (n 215) 7. Also see DM Curtis & DM Moss 'Curriculum mapping: Bringing evidence-based frameworks to legal education' (2015) 34 *Nova Law Review* 486.
232 Curtis & Moss (n 231) 476.
233 See DP D4 in part 4.5.3.
234 Curtis & Moss (n 231) 505.
235 Curtis & Moss (n 231) 476. Also see Vashe and others (n 218) 520.
236 Curtis & Moss (n 231) 479.
237 Curtis & Moss (n 231) 480.

understood. The curriculum theorising of the social efficiency, progressive reform, and the reconceptualised curriculum relate to developing an LLB CCMM. The professional character of the LLB supports the theorising of the curriculum in the social efficiency movement. At the same time, the focus of the LLB on disciplinary knowledge and students endorses the notions of curriculum of the progressive reform movement. In line with my pragmatist worldview, I perceive the conceptualisation of the curriculum in the reconceptualised curriculum reform movement to be most appropriate for this study. The curriculum theories mentioned above were predominantly applied in the school context. From a higher education curriculum perspective, I also found support for the theorising of 'curriculum as outcome', 'curriculum as transformative' and the 'liberal curriculum'.

I have adopted a holistic conception of the curriculum that gives preference to the reconceptualised notion of curriculum. However, I do not support the movement's repudiation of curriculum history. I prefer a constructive synthesis between historic curriculum principles and new theories so that the concept of curriculum includes elements of the different curriculum theorising movements for schools and tacit conceptualisations of the higher education curriculum.

The discussion of the three curriculum planning models revealed that the approaches in the models are not mutually exclusive. Consequently, one can incorporate elements of the three archetypal curriculum planning models to develop the LLB curriculum. I selected the 'curriculum as product' model as the primary curriculum planning model for the purposes of the development of the LLB CCMM. My decision is based on the support of the HEQSF for outcomes-based education, my preference for conceptualising the 'curriculum as outcome', and my pragmatist worldview (see part 1.3) that resonates well with the Tyler rationale. The 'curriculum as content' and 'curriculum as process' models played a secondary role in developing the new LLB. Constructive alignment requires the three components of the curriculum, namely, desired learning outcomes, teaching and learning activities and assessment, to be constructively aligned.

The literature review in this chapter informed the development of 33 DPs for inclusion in the Draft LLB CCMM proposed in the next

chapter. Seven are associated with the curriculum planning process,[238] and the remainder with the curriculum change process.[239]

The term 'curriculum', for the purposes of this study, is understood as the integrative core of the education system. The curriculum articulates the desired learning outcomes that students will acquire through quality teaching, learning and assessment during the educational process. These learning outcomes are mapped across appropriate modules, years and credits of the curriculum. The curriculum serves to empower and transform students' lives, to prepare them to fulfil their broader roles in society, as an enabler for lifelong learning, and as a determinant of quality.

The following chapter builds on the insights gained in this chapter and explores how the curriculum change process can be managed.

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238   See DPs D1 to D7 in part 4.5.3.
239   See DPs B2 to B7, B18 to B25, B 28 to B38 and C3 in part 4.5.2.