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Educating law students for rural and regional practice: embedding place based perspectives in law curricula

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Educating law students for rural and regional practice: embedding place based perspectives in law curricula

Abstract

The attraction and retention of professionals generally in rural and regional Australia is an on-going concern. Recent attention has focused upon the recruitment of lawyers and legal professionals to rural and regional areas, where the proportion of lawyers practising has steadily declined over the past twenty years. While the precise extent of the decline is difficult to assess, and the causes of recruitment and retention issues for lawyers in rural and regional areas are nuanced and can vary from region to region, it is clear that concern about attraction and retention is a national one. A national survey conducted in 2009 by the peak national representative body of the Australian legal profession, the Law Council of Australia, revealed that 43 per cent of law firm principals in rural, regional and remote areas believed they had insufficient staff to service their existing clientele. In addition, the survey identified difficulties in filling vacancies and forecasted that the retirement of experienced law firm staff over the coming years would further exacerbate this problem, as 42 per cent of the current practitioners surveyed indicated they would retire within five to ten years. Moreover, 30 per cent of the younger lawyers surveyed indicated that they intended to remain in rural, regional or remote practice for only around two years before exploring employment options in larger centres.

Keywords

place, perspectives, curricula, students, educating, rural, law, regional, practice, embedding

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EDUCATING LAW STUDENTS FOR RURAL AND REGIONAL LEGAL PRACTICE: EMBEDDING PLACE CONSCIOUSNESS IN LAW CURRICULA

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I INTRODUCTION

The attraction and retention of professionals generally in rural and regional Australia is an on-going concern.¹ Recent attention has focused upon the recruitment of lawyers and legal professionals to rural and regional areas,² where the proportion of lawyers practising has steadily declined over the past twenty

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¹ See RL Miles et al, 'Attraction and Retention of Professionals to Regional Areas' (2006) 12(2) *Australasian Journal of Regional Studies* 12; S Lee and L Mackenzie, 'Starting Out in Rural New South Wales: The Experiences of New Graduate Occupational Therapists' (2003) 11 *Australian Journal of Rural Health* 36.

² Trish Mundy, "'Placing" the Other: Final Year Law Students' "Imagined" Experience of Rural and Regional Practice within the Law School Context' (2012) *International Journal of Rural Law and Policy* <<http://epress.lib.uts.edu.au/journals/index.php/ijrlp/article/view/2669>>; Law Institute of Victoria and the Law Council of Australia, *Rural, Regional and Remote Areas Lawyers Survey* (Law Council of Australia, 2009) <<http://www.lawcouncil.asn.au/.lawcouncil/index.php/library/submissions/10-divisions/99-rural-regional-and-remote-areas-lawyers>>.

years.³ While the precise extent of the decline is difficult to assess, and the causes of recruitment and retention issues for lawyers in rural and regional areas are nuanced and can vary from region to region,⁴ it is clear that concern about attraction and retention is a national one.⁵ A national survey conducted in 2009 by the peak national representative body of the Australian legal profession, the Law Council of Australia, revealed that 43 per cent of law firm principals in rural, regional and remote areas believed they had insufficient staff to service their existing clientele. In addition, the survey identified difficulties in filling vacancies and forecasted that the retirement of experienced law firm staff over the coming years would further exacerbate this problem, as 42 per cent of the current practitioners surveyed indicated they would retire within five to ten years.⁶ Moreover, 30 per cent of the younger lawyers surveyed indicated that they intended to remain in rural, regional or remote practice for only around two years before exploring employment options in larger centres.⁷

While it is impossible to prescribe an optimal number of lawyers per capita, the recruitment and retention issues facing the rural and regional legal profession may, at a minimum, challenge the adequacy of legal services in these areas.⁸ Legal practitioners in rural and regional areas undertake a considerable amount of legal aid, pro bono work and voluntary community work, and a decrease in the availability of these services will potentially restrict access to justice in these areas.⁹ The significance of the problem has recently been recognised by the Productivity Commission in its draft report, *Access to Justice Arrangements*, which reported on constraining costs in the federal civil dispute resolution system. The Commission confirmed that there was general agreement ‘that Australians should not be denied an opportunity to seek justice ...

³ Urbis Keys Young, ‘2011 Profile of the Solicitors of NSW’ (The Law Society of New South Wales, February 2012); S Forell, M Cain, and A Gray, *Recruitment and Retention of Lawyers in Regional, Rural and Remote New South Wales* (Law and Justice Foundation of NSW, 2010) <<http://www.lawfoundation.net.au/report/rrr>>; Trish Mundy, ‘Attracting and Retaining Lawyers: A Problem for Rural, Regional and Remote Communities’ (2009) 34(1) *Alternative Law Journal* 32.

⁴ Forell, Cain, and Gray, *ibid.*

⁵ Law Institute of Victoria and the Law Council of Australia, above n 2.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Simon Rice, ‘Access to a Lawyer in Rural Australia: Thoughts on the Evidence We Need’ (2011) 16(1) *Deakin Law Review* 13; Law Institute of Victoria and the Law Council of Australia, above n 2; Senate Legal and Constitutional Affairs References Committee, *Access to Justice* (The Senate, December 2009); Mundy, above n 2.

⁹ Law Institute of Victoria and the Law Council of Australia, above n 2; Mundy, above n 2.

because of where they live.’¹⁰ Nonetheless, it found that access to justice was of particular concern to rural and regionally remote communities because, if ‘left to the market, legal services may not be provided in some areas, such as rural, remote or low income locations, or to groups who have special needs’.¹¹ Submissions to the Commission from the legal assistance sector in particular cited the declining average tenure of the sector’s lawyers working in these areas.¹² At the very least, the declining proportions and reductions in tenure have the potential to reduce the number of lawyers and the proportion of senior practitioners in these areas ‘to a level which negates choice, and which invites conflicts of interest’.¹³

These concerns prompted the authors, a team of academics from six Australian universities, to work together on an Office for Learning and Teaching funded project, ‘Rethinking law curriculum: Developing strategies to prepare law graduates for practice in rural and regional Australia.’¹⁴ The prime objective of the project was to investigate the role of tertiary education in improving the recruitment and retention of lawyers in rural and regional areas. Evidence from other disciplines illustrates that the undergraduate curriculum may be activated for this purpose as a part of the solution to employment concerns in rural and regional professions. In particular, research from the field of teacher education demonstrates the potential for the theoretical component of the undergraduate curriculum to integrate ‘place’¹⁵ by introducing students to the rural and regional professional employment context, and developing skills to work and live in this

¹⁰ Productivity Commission, *Access to Justice Arrangements – Draft Report* (Commonwealth of Australia, April 2014) 611.

¹¹ Ibid 135.

¹² Ibid 651.

¹³ Rice, above n 8, 24; L Kyle, R Coverdale, and T Powers, ‘Conflict of Interest in Victorian Rural and Regional Legal Practice’ (Centre for Rural Regional Law and Justice, March 2014) <<http://www.deakin.edu.au/buslaw/law/crrlj/docs/conflict-of-interest-in-victorian-rural-and-regional-legal-practice.pdf>> 27-28.

¹⁴ A Kennedy et al, *Rethinking Law Curriculum: Developing Strategies to Prepare Law Graduates for Practice in Rural and Regional Australia* (2011) <<http://www.olt.gov.au/project-rethinking-law-curriculum-developing-strategies-prepare-law-graduates-practice-rural-and-reg>>.

¹⁵ DA Gruenewald, ‘The Best of Both Worlds: A Critical Pedagogy of Place’ (2003) 32 *Educational Researcher* 3 (‘Gruenewald (2003a)’); DA Gruenewald, ‘Foundations of Place: A Multidisciplinary Framework for Place-conscious Education’ (2003) 40(3) *American Educational Research Journal* 619 (‘Gruenewald (2003b)’).

distinct environment.¹⁶ As the typical law school curriculum is focused on substantive legal content¹⁷ and is usually taught from a metro-centric standpoint,¹⁸ the project team sought to develop a curriculum package which embedded a place-conscious perspective to sensitise students to the realities of the rural and regional legal practice context, and to improve their capacity to undertake a rural or regional professional career.

This paper details the team's work on this project and its efforts to design and develop 'place-conscious' learning resources.¹⁹ It begins with an analysis of the rural and regional legal practice context and the opportunities and challenges which shape the experiences of lawyers in these areas to demonstrate the significance of rural and regional as 'place'. The discussion then turns to the concept of 'place-conscious' education, and explores the guidance offered by other disciplines where the notion of place has informed the development of rurally and regionally inclusive undergraduate curricula. Finally, the 'Rethinking Law Curriculum' project is outlined, and the potential for its learning package to improve student preparedness for legal work in rural and regional areas is assessed.

This project – and accordingly, this paper – uses the terms 'rural' and 'regional' to refer to areas located outside of Australia's capital cities and major metropolitan centres, excluding remote locations. In particular, it has adopted the Australian Standard Geographical Classification System Remoteness Areas (ASGC-RA) as a means of classifying 'degrees of rurality'.²⁰ The ASGC-RA categorises areas based on five population size classes: 'Major Cities', 'Inner Regional', 'Outer Regional', 'Remote

¹⁶ S White et al, 'Teacher Education for Rural Communities: A Focus on "Incentives"' in T Aspland (ed), *ATEA 2008: Teacher Educators at Work: What Works and Where is the Evidence? Proceedings of the 2008 Australian Teacher Education Association Conference* (Australian Teacher Education Association, 2008); G Lock et al, 'Researching Rural-regional (Teacher) Education in Australia' (2009) 19(2) *Education in Rural Australia* 35; J Reid et al, 'Regenerating Rural Social Space? Teacher Education for Rural-regional Sustainability' (2010) 54(3) *Australian Journal of Education* 262; SJ White, and J Kline, 'Developing a Rural Teacher Education Curriculum Package' (2012) 33(2) *Rural Educator: A Journal for Rural and Small School Issues* 36.

¹⁷ Gary Davis, *Report to Council of Australian Law Deans on International Conference on the Future of Legal Education* (April 2008) <www.cald.asn.au/docs/FutureOfLegEdConfRptSummy.doc>.

¹⁸ Kim Economides, 'Centre-periphery Tensions in Legal Theory and Practice: Can Law and Lawyers Resist Urban Imperialism?' (2012) 1(2) *International Journal of Rural Law and Policy* <<http://epress.lib.uts.edu.au/journals/index.php/ijrlp/article/view/3126>>; Mundy, above n 2.

¹⁹ It was not within the project team's remit to implement the learning materials, though since completion three team members have incorporated the resources within their School's curricula. Discussion of implementation of the learning resources will be discussed elsewhere after further analysis and reflection.

²⁰ Institute for Regional and Rural Research, *Defining the Focus on 'Rural' and 'Regional' Research* (University of Ballarat, 2004), 38.

Centres' and 'Very Remote Centres'.²¹ In the context of this paper, reference to 'rural and regional' denotes only the ASGC-RA concepts of 'Inner Regional' and 'Outer Regional' areas of Australia. The project team decided to exclude considerations relating to remote communities, as it was felt that the sociological, economic and geographic characteristics of remote communities were quite distinct from rural and regional areas, and thus require separate treatment.

II THE RURAL AND REGIONAL LEGAL PRACTICE CONTEXT

Each rural and regional area is unique, and each has its own social, cultural and economic contexts, making it difficult to construct a universal definition of what rural and regional legal practice means.

The issues facing lawyers working and living in these communities also hold a unique character, and experiences can differ greatly depending upon "upstream" factors which arise far away from the areas affected, as well as regionally specific, sector- and service-specific factors'.²² The generalisation of these factors across communities is therefore somewhat problematic, as recruitment and retention issues can be 'nuanced and vary from region to region'.²³ Nonetheless, the available literature indicates that there are similar opportunities and challenges associated with rural and regional legal practice, enabling discussion of some commonalities.

Recent accounts of rural and regional legal practice note that the ability to engage in rewarding work and to acquire a broad range of professional skills and responsibility at an early career stage is a clear benefit.²⁴ The distance from metropolitan areas results in a lower cost of living, and fosters opportunities for a

²¹ Ibid, 2. See Australian Government, Department of Health and Ageing, *Accessibility Remoteness Index of Australia (ARIA) Review* (University of Adelaide, 2011) <[http://www.health.gov.au/internet/main/publishing.nsf/Content/3F3B711F01C5C887CA25790000156D4F/\\$File/ARIA-Review-Report-19-05-2011.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/3F3B711F01C5C887CA25790000156D4F/$File/ARIA-Review-Report-19-05-2011.pdf)>.

²² L. O'Brien, R. Muddagouni, and J. Harrison, 'A Feasibility Study for Law Graduate Legal Practice Experience with Community Legal Centres in Regional, Rural and Remote Australia' (Paper presented at the National Rural/Regional Law and Justice Conference, Warrnambool, Victoria, 19-21 November 2010), 3.

²³ Forrell, Cain and Gray, above n 3, vii.

²⁴ Jeff Giddings, Barbara Hook, and Jennifer Nielsen, 'Legal Services in Rural Communities: Issues for Clients and Lawyers' (2001) 26(2) *Alternative Law Journal* 57; J Dalton, *A Country Lawyer* (Strategic Book Publishing, 2009); G Kilbourne, *Country Lawyer: A Collection of Cases, Comments, and Characters* (Xlibris Corporation, 2011); K McFarlane, 'Attracting Graduates to Regional and Rural Australia: A Personal Experience' (Paper presented at the National Rural/ Regional Law and Justice Conference, Warrnambool, Victoria, 19-21 November 2010).

greater work-life balance,²⁵ while smaller population levels can encourage a connection to a 'community'.²⁶

However, while there may be 'significant opportunities for relatively inexperienced lawyers [to] assume major practice responsibilities at a relatively early stage of their careers',²⁷ in some reported instances this has involved undertaking quite difficult work, sometimes with limited supervision.²⁸ For more senior practitioners, particularly those in sole practice, high levels of stress and burnout have been reported due to an inability to take leave from work due to a lack of relief staff.²⁹

A major challenge associated with rural and regional legal practice is the increased visibility of practitioners within a community as compared with metropolitan areas. It may be difficult to establish personal and professional boundaries, and different expectations may be placed upon the individual as a high-profile member of the community. As Giddings, Hook and Nielsen note:

Being 'the lawyer' in a small rural town makes you the model citizen overnight – it is not uncommon for people to collect on your verandah on Saturday mornings (early!!!) to get advice on drink driving charges, stop you in the street to talk about their daughter's family law case, interrupt your favourite movie so you can help them draft consent orders in a child contact dispute, and expect that you will provide countless volunteer hours towards any and all community groups in the area.³⁰

Ultimately, the nature of such interactions may require 'considerable emotional investment',³¹ and may even reduce the practitioner's privacy or generate ethical concerns, particularly around client confidentiality. For female practitioners, the challenges are distinct again, as they may be required to manage expectations surrounding 'their gendered *invisibility* on the one hand and their *visibility* on the other',³² in order to 'fit in' within a community.

²⁵ McFarlane, *ibid.*

²⁶ Giddings, Hook and Nielsen, above n 24; Trish Mundy, *Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review* (Northern Rivers Community Legal Centre, 2008).

²⁷ Giddings, Hook and Nielsen, above n 24, 60.

²⁸ Forell, Cain and Gray, above n 3.

²⁹ Caroline Hart, 'Sustainable Regional Legal Practice: The Importance of Alliances and the Use of Innovative Information Technology by Legal Practices in Regional, Rural and Remote Queensland' (2011) 16(1) *Deakin Law Review*, 225; Mundy, above n 26.

³⁰ Giddings, Hook and Nielsen, above n 24.

³¹ D D Landon, 'Clients, Colleagues, and Community: The Shaping of Zealous Advocacy in Country Law Practice' (1985) 81 *American Bar Foundation Research Journal* 81, 86.

³² Trish Mundy, 'Insights into Gender, "Rurality" and the Legal Practice Experience' (2011) 16(2) *Deakin Law Review* 429, 458 (original emphasis).

Distance may be another challenge faced by rural and regional practitioners, especially where this is exacerbated by high travel or access costs. Rural and regional practitioners 'are likely to be required to travel further and more often',³³ for anything from attending circuit court to participating in professional development activities. As a result, practitioners can feel isolated professionally³⁴ and also personally if they are in an area with limited social outlets or recreational facilities. Feelings of isolation may be compounded and the risk of ethical or moral difficulties amplified where complementary professional services are lacking in a particular area, especially if the practitioner is required to work outside the bounds of accepted practice.³⁵

It is clear that the community in which legal practice takes place plays a large part in shaping the experience of the practitioner. In his analysis of rural lawyers in the United States, sociologist Donald Landon remarked that 'the structuring of a law career has less to do with the commonalities of legal training or the presumed internal solidarity of the profession, and much more to do with the characteristics of the community in which professional practice takes root'.³⁶ Lawyers in rural and regional areas must therefore be cognisant of the 'particular needs and concerns of clients in their community in order to practice effectively'.³⁷

Discussion of such contextual realities is 'absent' from the typical law curriculum,³⁸ and there is little focus on equipping students with the full range of skills they require to work and live in a rural or regional community. Most law schools focus upon the delivery of substantive content that is aligned with external professional bodies' admission requirements.³⁹ Galloway argues that the focus on content, or facts, over context in legal education 'limits students' experience of the law as a holistic mechanism'.⁴⁰ It is possible that the failure to attune future lawyers properly to the context in which they will work and live may cultivate an 'unwillingness' to enter or remain in work within a challenging environment.⁴¹

In addition to being 'absent' from the curriculum, rural and regional practice is also 'other' within most law students'

³³ Giddings, Hook and Nielsen, above n 24, 61.

³⁴ Richard Coverdale, 'Postcode Justice: Rural and Regional Disadvantage in the Administration of the Law' (2011) 16(1) *Deakin Law Review* 156.

³⁵ Paul Martin, Jacqueline Williams, and Amanda Kennedy, 'Professional Networks and Rural Services Poverty' (2011) 16(1) *Deakin Law Review* 57.

³⁶ Landon, above n 31, 94.

³⁷ Giddings, Hook and Nielsen, above n 24, 57.

³⁸ Mundy, above n 2, 10.

³⁹ Davis, above n 17.

⁴⁰ K Galloway, 'Refreshed in the Tropics: Developing Curriculum Using a Thematic Lens' (2011) 4(1-2) *Journal of the Australasian Law Teachers Association* 119, 123.

⁴¹ Rice, above n 8, 24.

‘imagined experience’ of being a lawyer.⁴² This ‘imagined experience’ is typically informed by enduring images of rural and regional lawyers conceptualised ‘in a paternalistic role which emphasizes status in the community rather than the pursuit of profit or legal expertise’.⁴³ While paying regard to their significant role in the community, typically, legal and popular culture has assessed rural and regional lawyers’ capacities and skills less than favourably:

The country practitioner is certainly no great lawyer; if he [sic] were he would be of less value to the community. It is not merely brains that earn a competent living in the country; it is rather a humanity grafted to a will to help people in their troubles without regard to reward.⁴⁴

Despite contrary evidence that demonstrates the broad range of legal skills required by the rural and regional lawyer, this imagery endures. As one young lawyer has observed, metropolitan practice is typically the ‘most commonly marketed avenue presented to [students] at university and any other options have an unnecessary and unspoken stigma attached ... there is a common misconception that anything other than a corporate role in a top tier city firm is not considered real legal work’.⁴⁵

The initial problem opened by the challenges and opportunities presented by rural and regional legal practice is how undergraduate legal education can play a role in improving the dwindling proportion of lawyers choosing to practice in rural and regional areas. Though scant on this particular issue, the literature does indicate that any effort to this effect requires a dual focus: first, to initially draw student attention to rural and regional legal practice as a viable and rewarding career option, and secondly, to equip them with the skills needed to practice law in rural and regional environments. Evidence from other disciplines suggests that the creation of a rurally-and-regionally inclusive curriculum, centred upon building consciousness of place, can achieve these goals.

III THE PEDAGOGY OF ‘PLACE’

Education research has long discussed the benefits of place-conscious pedagogies for rural and regional schools and communities.⁴⁶ But what exactly is ‘place’? As Gruenewald succinctly states, ‘places’ are:

⁴² Mundy, above n 2, 10.

⁴³ Economides, above n 18, 116.

⁴⁴ Hardman, 1961, cited in Economides, above n 18, 116.

⁴⁵ McFarlane, above n 24, 2.

⁴⁶ P Theobald, *Teaching the Commons: Place, Pride, and the Renewal of Community* (Westview Press, 1997); T Haas and P Nachtigal, *Place Value* (ERIC Press, 1998); Gruenewald (2003a) and Gruenewald (2003b), above n

centres of experience, places teach us about how the world works and how our lives fit into the spaces we occupy. Further, places make us: As occupants of particular places with particular attributes, our identity and our possibilities are shaped.⁴⁷

Places are comprised of multiple elements, including perceptual, cultural, ecological, and political dimensions; paradoxically, while ‘place’ may be constructed anywhere, our mindfulness of it diminishes as we become absorbed and occupied in the habits of space and time.⁴⁸

Theobald suggests that there is great value in using the surrounding community as a ‘lens for disciplinary engagement’⁴⁹ to reconnect students’ lived experience with pedagogy. Gruenewald ventures further, arguing that a combination of critical and place-based pedagogies enables ‘the education of citizens... [to] have some direct bearing on the wellbeing of the social and ecological places people actually inhabit’, challenging ‘the assumptions, practices, and outcomes taken for granted in dominant culture’.⁵⁰

Gruenewald explains that consciousness of places in education extends ‘our notions of pedagogy and accountability outward’ so that ‘pedagogy becomes more relevant to the lived experience of students and teachers, and accountability is reconceptualised so that places matter to educators, students, and citizens in tangible ways’.⁵¹ The aim of ‘place-conscious education’, then, is to work to counter the isolation of the ‘placeless institution of schooling’ from the ‘living world outside’.⁵² It aims to do so by enlisting students and their teachers ‘firsthand’ in the experience of ‘local life and in the political process of understanding and shaping what happens there’.⁵³

Its value is that it helps to overcome a tendency apparent in some of the legal literature to understand the ‘rural’ and ‘regional’ as a necessarily geographic concept, and one that ‘must’ sit in conflict with the concept of the ‘international’. Thrift observes this tension, but highlights that ‘space’ and ‘place’ involves much more complex meaning:

What is interesting is the way in which human society is gradually gaining the same kind of capacity as whales: we are increasingly beings who can live with distant others as if they were close to.

15; K Budge, ‘Rural Leaders, Rural Places: Problem, Privilege, and Possibility’ (2006) 21(13) *Journal of Research in Rural Education* <<http://jrre.psu.edu/articles/21-13.pdf>>.

⁴⁷ Gruenewald (2003b), above n 15, 621.

⁴⁸ Ibid.

⁴⁹ Theobald, above n 46, 137.

⁵⁰ Gruenewald (2003a), above n 15, 3.

⁵¹ Gruenewald (2003b), above n 15, 621.

⁵² Ibid.

⁵³ Ibid.

The spaces in which humans can be together have progressively increased in scale as new forms of materials, which are also new forms of spacing, have allowed new forms of social relation to exist. Human reach is greater and becoming continuous at scales that were formerly the subject of stuttering or, at best, periodic contact. But only, it has to be hastily added, in certain registers and in certain zones. In large parts of the world, it may be possible to use a mobile phone to call for help – but no one will come.⁵⁴

However, the ‘urban-centric bias’ of legal education in Australia implicitly denies the rural and regional as a legitimate place of legal practice, and serves to entrench rural and regional practice firmly as the ‘other’.⁵⁵

Yet, as Johnstone has written, the influence of ‘different traditions’ upon the field of legal education has offered a clear challenge but is also one of the factors that has improved this tradition in Australia in recent decades. Of these traditions, he takes particular note of social constructivism, as proposed by Paul Ramsden, explaining that it:

begins from the postmodern position that knowledge and understanding are built up by students from their individual experiences of the world and their interpretations of that experience. To learn effectively students therefore need opportunities to learn about law in ‘real settings’, to develop a personal interpretation of these learning experiences, and to collaboratively negotiate meaning. Relational student learning research envisages ‘learning as a change in the way we conceptualise the world around us’[.]⁵⁶

Following these insights, the choice of the ‘pedagogy of place’ seemed ideal to the project team, in that it offered a pedagogical foundation that was able to appreciate ‘place’ as a nuanced and complex concept, while enabling the project team to build opportunities for law students to learn about law in ‘real settings’ and by which they could change the way they conceptualise ‘rural space’ by shifting from the static of ‘the imagined’ to the diversity and vibrancy of ‘the real’.

A Using Place-Consciousness to Craft Rurally and Regionally Inclusive Curricula

Research from medical, health and teacher education indicates the potential for universities to actively engage their curricula to expose students to and prepare them for employment in rural and regional ‘places’. The medical profession has examined the use of

⁵⁴ Nigel Thrift, ‘Space’ (2006) 23 *Theory Culture Society* 139, 143.

⁵⁵ Mundy, above n 2; O’Brien, Harrison and Muddagouni, above n 25.

⁵⁶ Richard Johnstone, ‘Whole-of-Curriculum Design in Law’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis-Nexis, 2011) 1, 4.

innovative assessment approaches to build skills relevant to the challenges of rural and regional practice,⁵⁷ and in other health-related professions, the use of elective rural skills subjects to complement theoretical knowledge has been explored to better equip students for practice in isolated or otherwise challenging environments.⁵⁸ Nurse educators in the United States of America have developed a 'rural nursing theory', which holds that as the health care needs of clients in rural areas differs to those of urban patients, theories of patient care will differ; as such, educational programs preparing students to work in rural areas must expose students to rural health theory.⁵⁹ Rural health theory introduces students in the classroom to such concepts as 'isolation and distance, lack of anonymity of the health care provider, the issues of insider-outsider status, and the health beliefs of rural residents' before the commencement of their clinical practice.⁶⁰

Within education research, there has been an active movement to embed place consciousness in the teacher education curriculum, connecting students via meaningful learning activities to their communities, to people and to broader culture.⁶¹ Lock et al⁶² and Reid et al⁶³ propose that an awareness of place can be achieved by equipping students with the skills to appreciate the 'rural social space' of a community. Rural social space represents the interrelationship of three key factors that are connected in both practice and place — economy, geography and demography.⁶⁴ As Reid et al explain, social space is provided and produced by the practice of place so that the interactions and interrelationships of the three key factors produce ways in which rural social space 'can be rethought and represented in ways that do not produce symbolic

⁵⁷ EJ Bell et al, "'Lost in Translation'?: Developing Assessment Criteria that Value Rural Practice' (2005) 5(3) *Rural Remote Health* 420.

⁵⁸ N Lannin and S Longland, 'Critical Shortage of Occupational Therapists in Rural Australia: Changing our Long Held Beliefs Provides a Solution' (2003) 50 *Australian Occupational Therapy Journal* 184.

⁵⁹ HJ Lee and CA Winters, 'Testing Rural Nursing Theory: Perceptions and Needs of Service Providers' (2004) 4(1) *Online Journal of Rural Nursing and Health Care* 51; HJ Lee & CA Winters (eds), *Rural Nursing: Concepts, Theory, and Practice* (Springer Publishing Company, 2nd ed, 2006); KA Long and C Weinert, 'Rural Nursing: Developing the Theory Base' in HJ Lee and CA Winters (eds), *Rural Nursing: Concepts, Theory, and Practice* (Springer, 2nd ed, 2006) 3; M Conger and K Plager, 'Advanced Nursing Practice in Rural Areas: Connectedness Versus Disconnectedness' (2008) 8(1) *Online Journal of Rural Nursing and Health Care* 24.

⁶⁰ Conger and Plager, *ibid*, 35.

⁶¹ S White, 'Place Consciousness? Sustaining Rural Schooling through Place-Consciousness in Teacher Education' (2008) 23(7) *Journal of Research in Rural Education* 6.

⁶² Lock et al, *above n 16*.

⁶³ Reid et al, *above n 16*.

⁶⁴ *Ibid* 269.

deficit and cultural cringe'.⁶⁵ Embedding a 'rigorous analysis of the relations between the structures of social space and those of physical space' within the curriculum enables an opportunity to move beyond the 'misleading appearances'⁶⁶ of typical rural and regional stereotypes:

The fear of the "Outback", the myth of the loneliness of rural living, of the slow-talking, slow-witted redneck, of snakes and dirt roads and dust – the fear of the "wide brown land" beyond the mountains – is real in the Australian consciousness. Australians safe in the comfort of the city have learnt to wake in fright through our songs and stories, our movies and media accounts. These paint pictures of drought and decline, of the failure of rural schools to achieve educational outcomes comparable to those of city schools, of Aboriginal students failing to thrive in the schools we have provided, and of low achievement, poor attendance, inadequate subject offerings, and Indigenous communities ravaged by alcoholism and abuse. Yet, as we argue here, these are representations. They are not "truth", and they are most certainly not the whole truth.⁶⁷

However, for a number of reasons, the literature from these other disciplines offered a finite form of guidance, in that none of it detailed the curriculum devised in each discipline – save, as recounted above, in the form of a sketched outline and general references to topics like 'rural health theory', skills to enable students to appreciate 'rural social space' and so on. More particularly though, as any resources developed would be part of a legal curriculum, the project team's approach to development needed to remain faithful to the overarching objective that a law degree teaches law graduates what they are 'expected to know, understand and be able to do as a result of their learning'.⁶⁸

Thus, drawing guidance from the experiences in other disciplines to frame its approach, the project team determined that a rural and regionally-inclusive law curriculum held the potential to 'sensitise'⁶⁹ students to and prepare them for the realities of legal practice in rural and regional areas, and better interest them in and prepare them for diverse career pathways.

IV THE 'RETHINKING LAW CURRICULUM' PROJECT

The 'Rethinking Law Curriculum' project was borne out of the recognition that there was a role for universities to play in better

⁶⁵ Ibid.

⁶⁶ P Bourdieu, 'Site Effects' in P Bourdieu et al, *The Weight of the World: Social Suffering in Contemporary Society* (Polity Press, 1999) 123, 123.

⁶⁷ White et al, above n 16, 3.

⁶⁸ Johnstone, above n 59, 12.

⁶⁹ Jeff Giddings and Jody Thomas 'Law and Older People: Teaching the Law as it Relates to Older People' (2002) 27(2) *Alternative Law Journal* 78.

attuning students to and preparing them for employment in rural and regional legal careers.⁷⁰ Yet an immediate challenge to the project team was the lack of directly relevant literature to help define the detail of the curriculum package. However, one of the great strengths of the project team was its expertise on legal practice and justice issues in rural and regional communities. Indeed, most of the team members were or had been involved in research into rural and regional issues, and/or had direct legal practice experience in rural and regional places.

It was agreed that, rather than attempting to comprehensively cover individual areas of practice from a rural or regional perspective, this aim could more effectively be achieved by 'sensitising' students to place through exposing them to the rural and regional practice context. The package was conceptualised as a single teaching session course of twelve weeks duration, and was designed as an adaptable learning resource and set of assessment tasks that could be taught as a stand-alone unit on rural and regional legal practice, or embedded as components within existing units. It was decided that the curriculum package would be made available as an open educational resource for other universities to utilise,⁷¹ in a format and form that would be easily customisable by the end user, providing greater opportunities to foster student awareness of the rural and regional legal practice context, and to develop the necessary skills to manage challenges and opportunities arising. As discussed below, the package is complemented by the 'Rural and Regional Legal Education Network', an online space that enables connections and a community of practice⁷² between law students, legal educators and the legal profession, as well as other stakeholders.

Building both from the literature base and the experience of its members, the project team identified key themes relevant to the experience of rural and regional lawyers which would serve to shape the curriculum content because it enabled the team to 'prioritise what students ought to know, understand and be able to do' as a consequence of their engagement.⁷³ At the heart of this was situating the lawyer and their legal knowledge within the

⁷⁰ See generally, Claire Macken, 'Law Student Engagement: The Curricular and Co-Curricular Experience' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis-Nexis, Australia, 2011) 311.

⁷¹ The curriculum package is available online at <<http://www.rrlen.net.au>>.

⁷² This term is used here in the sense defined by Etienne Wenger: 'Communities of practice are groups of people who share a concern or a passion for something they do and learn how to do it better as they interact regularly': Mark K Smith, 'Jean Lave, Etienne Wenger and Communities of Practice' (2003, 2009) <<http://infed.org/mobi/jean-lave-etienne-wenger-and-communities-of-practice/>>.

⁷³ Mary Heath, 'Assessment Strategies' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis-Nexis, 2011) 269, 274.

community in which they live and work. For rural and regional lawyers, these themes include: the need to be aware of the diversity within and between rural and regional communities, and how this shapes the legal and personal needs of clients situated within them; the fact that the rural or regional setting can impact upon expectations of the lawyer's role; that rural and regional environments often gave rise to unique ethical issues, particularly in situations where the lawyer became more visible within the community; that certain skills were critical in rural and regional practice, including a broad range of communication skills, as well as independence and self-management; and finally, that the rural and regional lawyer's role was often accompanied by an entrepreneurial role, as well as opportunities for innovation.

From these themes, four overarching learning outcomes were developed:

1. Define and describe the diverse legal practice contexts distinctive to rural and regional communities.
2. Identify ethically sound strategies to respond to rural and regional legal practice.
3. Demonstrate an awareness of the rural and regional legal career opportunities and identify strategies to live and work in a rural context.
4. Formulate and identify commercial and managerial skills required for an innovative and dynamic rural and regional legal practice.

These learning outcomes formed the 'organising principles' that informed the shape and design of all aspects of the curriculum package,⁷⁴ as is reflected in the descriptions provided below for each of the eight modules designed for the unit.

A Creating the Curriculum Package

Eight separate modules were developed to provide students with opportunities to achieve these learning outcomes. The project team worked in small groups based on their expertise to develop more detailed learning outcomes, write comprehensive lecture notes, select additional readings and resources, and to devise learning activities and appropriate assessment items. Upon completion, each module was circulated to the team for additional review and feedback, and then the package as a whole was workshopped at a team meeting. Further refinements were incorporated into the modules, before being collated and reviewed by an educational developer. Critical to the success of this project was the commitment of each team member to this collaborative

⁷⁴ Ibid 279.

curriculum writing process. This was facilitated by the development of a template for the curriculum modules, which provided a structure for writing that ensured consistency and prevented individuals from veering off course.

A reference group comprised of practitioners, academics (both from law and other disciplines) and peak industry representatives then reviewed the curriculum package, providing further feedback.

The completed curriculum package contains the following modules:

Module 1 - The Rural Context for Legal Practice: In this module students are introduced to the model of ‘rural social space’ to better enable them to understand rural and regional communities. The uniqueness of the rural and regional context, and how this impacts upon the nature of legal practice in these areas, is explored in depth. The importance of relationships – professional and social – in the rural and regional context is also discussed.

Module 2 - The Rural and Regional Lawyer: This module delves further into the concept of the lawyer in rural and regional areas, encouraging students to challenge the rhetoric surrounding the rural and regional lawyer’s role, and to consider more recent evidence of the ‘lived experience’ of the rural and regional legal professional.

Module 3 - Rural and Regional Practice: In this module, the focus on the rural and regional lawyer is expanded, and students are invited to consider some of the opportunities and challenges of legal practice in rural and regional areas. Skills which are either unique to rural or regional practice, or which are employed differently in such environments, are introduced.

Module 4 - Rural Client Care: This module builds student awareness that clients within rural and regional communities have diverse legal needs, which may be impacted upon by a range of social and economic factors. The influence of this upon both the professional knowledge and interpersonal skills required is explored, including the significance of ‘social space’ in rural communities, and an introduction to cultural competence.

Module 5 - Ethics and the Rural and Regional Lawyer: In this module, students are introduced to the distinct ethical dimensions of legal practice in rural and regional areas, as well as more common ethical issues to which the rural and regional context gives a distinct flavour. Attention is given not only to the professional rules governing lawyer conduct, but also to the influence of an individual’s moral habits and inclinations within their legal practice, and how living and working in a rural and regional community may affect this. The inclusion of the ethics component echoes Robertson’s call that law schools

take up multiple opportunities to engage students in learning about legal ethics.⁷⁵ In fact, its inclusion within the curriculum offers a rich learning opportunity by putting these issues in a very specific context that opens examination of the ‘universal’ quality of professional conduct rules as well as broadening the dimensions of the ethical and moral challenges of legal practice.

Module 6 - Innovation and Entrepreneurship in Rural and Regional Legal Practice: Practice in rural and regional environments has been described as ‘entrepreneurial’ in contrast to the ‘institutional’ structure of urban practice. Understanding that rural and regional legal practice is a ‘business’ is critical, and this module introduces students to some of the key business management skills required. Opportunities for innovation are also explored, particularly with respect to information technology, and the creation of networks.

Module 7 - Professional and Interpersonal Skills for Rural and Regional Legal Practice: This module equips students with a ‘rural skills lens’, through which they can begin to identify how professional and interpersonal skills for lawyers generally are given a distinct character in rural and regional settings. The importance of communication, collaboration and the ability to work independently are examined against the backdrop of rural and regional practice. Strategies for dealing with some of the particular challenges of rural and regional practice are also canvassed, including conflict management and negotiation, coping with stress and improving emotional intelligence.

Module 8 - Career Planning and Development in the Rural and Regional Legal Profession: This final module seeks to position rural and regional career trajectories as a viable pathway for students to consider. They are equipped with the tools to learn more about their own personalities, and what influences their career development. Students are encouraged to become more aware of ‘self’ and external opportunities.

These modules align with the four learning objectives specified above: learning objective 1 (define and describe the diverse legal practice contexts distinctive to rural and regional communities) aligns with Modules 1, 2 and 3; learning objective 2 (identify ethically sound strategies to respond to rural and regional legal practice) aligns specifically with Module 5; learning objective 3 (demonstrate an awareness of the rural and regional legal career

⁷⁵ Michael Robertson, ‘Embedding “Ethics” in Law Degrees’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis-Nexis, 2011) 99, 110-112.

opportunities and identify strategies to live and work in a rural context) lines up with Module 8; and learning objective 4 (formulate and identify commercial and managerial skills required for an innovative and dynamic rural and regional legal practice) is specifically aligned to Module 6. Modules 4 and 7 round out the development of both learning objectives 1 and 2, by applying the rural lens in order to illuminate the unique character of the skills and knowledge necessary to work with clients and other professionals in a rural and regional setting.

B *Threshold Learning Outcomes*

As it was anticipated that the curriculum package would be taught into Bachelor of Laws programs, the project team ensured that the development of the modules was consistent with the Threshold Learning Outcomes (TLOs) for the Bachelor of Laws, developed as an outcome of the 2010 Learning and Teaching Academic Standards (LTAS) project in law.⁷⁶ These six TLOs represent the body of knowledge a law graduate is expected to possess as a result of their learning:⁷⁷

TLO 1: Knowledge

Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:

- a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts;
- b) the broader contexts within which legal issues arise; and
- c) the principles and values of justice and of ethical practice in lawyers' roles.

TLO 2: Ethics and professional responsibility

Graduates of the Bachelor of Laws will demonstrate:

- a) an understanding of approaches to ethical decision making;
- b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts;
- c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community; and

⁷⁶ Sally Kift, Mark Israel and Rachel Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (ALTC, 2010) <<http://www.olt.gov.au/resources/1710?text=%22academic%20standards%22&solrsort=score%20desc>>.

⁷⁷ Ibid.

- d) a developing ability to exercise professional judgement.

TLO 3: Thinking skills

Graduates of the Bachelor of Laws will be able to:

- a) identify and articulate legal issues;
- b) apply legal reasoning and research to generate appropriate responses to legal issues;
- c) engage in critical analysis and make a reasoned choice amongst alternatives; and
- d) think creatively in approaching legal issues and generating appropriate responses.

TLO 4: Research skills

Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

TLO 5: Communication and collaboration

Graduates of the Bachelor of Laws will be able to:

- a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences; and
- b) collaborate effectively.

TLO 6: Self-management

Graduates of the Bachelor of Laws will be able to:

- a) learn and work independently; and
- b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

Though the package is designed to complement the entire law curriculum, of itself it provides significant coverage of the TLOs.

As noted, a deliberate choice was made to omit discussion of substantive areas of law from the curriculum package. Nonetheless, the package does address TLO 1 via rigorous examination of a number of the unique contextual environments within which substantive legal issues might arise. The principles and values of justice and of ethical practice are also reflected throughout the curriculum package, particularly in the module which gives specific coverage of ethical issues arising in rural and regional practice. The package incorporates content and activities that encourage reflection on the particular context of the role of lawyers in rural and regional communities, and how the rural and regional context can influence the legal issues that their clients face. This also aligns with the aims of TLO 2. Again, while traditional substantive legal problem solving is not included within the curriculum package, the aims of TLO 3 are achieved through developing skills that enable students to account for the influence

of context upon legal issues, and how this environment might also shape their response.

The policy context of rural and regional practice is discussed extensively throughout the curriculum package, and students are equipped with the skills to further research and evaluate relevant issues, as required by TLO 4. With respect to TLO 5, effective and appropriate communication skills for the rural and regional context are considered at multiple points in the materials, and the need to collaborate both within and across professions is emphasised. Finally, TLO 6 is achieved with specific guidance as to how students can progress their self-awareness, self-management and independent work skills, and how they can develop critical reflection as a tool to evaluate their own professional experience.

Ultimately, by foregrounding rural and regional as 'place' in the curriculum, the 'Rethinking Law Curriculum' project has been designed to engender a 'place-conscious' educational experience that prepares students for a 'local life' and enables them to understand the political and social processes that shape 'what happens there',⁷⁸ while at the same time ensuring relevance and connectedness to the general law curriculum.⁷⁹

C Supporting a Community of Practice

The final component of the Rethinking Law Curriculum package is the 'Rural and Regional Legal Education Network' ('RRLEN' <http://www.rrlen.net.au>), a website designed to support an ongoing community of practice⁸⁰ between legal educators, the legal profession, rural and regional communities and other stakeholders. The Curriculum package can be accessed from the RRLEN website, in either Word or Moodle format. To access the package, users must register to login to the site, which enables the project team to monitor access to the materials.

The RRLEN website and the curriculum materials have been promoted to Australian law schools and other stakeholders via a hard copy brochure, as well as being distributed digitally through the Council of Australian Law Deans, the LawAD Network, the Australian Law Teachers' Association, the Australasian Law Students' Society, the Law Council of Australia, state and territory based law societies, and regional law societies. The project is also currently being showcased via roadshow visits to law schools throughout the country.

As at 3 June 2014, the RRLEN has achieved more than 600 hits, with 403 users accessing the site. About a third of all users accessed the site on more than one occasion. The take-up rate of

⁷⁸ Gruenewald (2003b), above n 15, 621.

⁷⁹ J A Reid, et al, '*New Ground*' (AARE, 2008) 9.

⁸⁰ See n 75.

the materials has, however, been low. To date only, two schools have used the materials to offer a stand-alone elective unit to their LLB students: *LLB 350 Law, Lawyering and Legal Practice in Rural and Regional Communities* at the University of Wollongong and *LS389 Legal Practice in Rural and Regional Communities* at the University of New England. Southern Cross University has incorporated components of the learning resources into its externship placement programs. The University of Southern Queensland proposes to have a stand-alone unit available by 2015, and Southern Cross by 2016. Several other schools including James Cook University, Bond University, the University of Newcastle and Deakin University are considering how best to reflect the package within their curricula.⁸¹ It is significant that most of these institutions are based in rural or regional locations.

Given that there has been some significant activity on the RRLEN website, the slow take-up rate by Australian law schools might be explained by – as already noted – the tendency of law school curricula to focus on substantive legal content⁸² and to be taught from a metro-centric standpoint.⁸³ It is also a consequence of the competition for resources that is commonplace in the contemporary university and of the challenges associated with educating law students beyond their ‘imagined experience’ of being a lawyer,⁸⁴ and encouraging them to consider working within challenging practice environments such as those in rural and regional Australia.⁸⁵

V CONCLUSION

The decline of lawyers in rural and regional Australia has significant implications, as it will lead to reduced access to Legal Aid and legal services by communities that already face lower levels of social inclusion, particularly rural and remote Aboriginal communities. Moreover, practicing law in rural and regional areas *is* different and requires specific training.

Acknowledging that the difficulties attracting professional staff to rural and remote communities are ‘not unique to the legal assistance services sector’, the Productivity Commission noted that one approach to resolving these difficulties is to ‘focus on lawyer training opportunities for graduates from rural and remote areas.’⁸⁶ Strategies to create these types of opportunities are emerging, such

⁸¹ Based on responses received through the Australian Legal Education Associate Deans (LEAD) network, March-May 2014.

⁸² Davis, above n 17.

⁸³ Economides, above n 18; Mundy, above n 2.

⁸⁴ Mundy, above n 2, 10.

⁸⁵ Rice, above n 8, 24.

⁸⁶ Productivity Commission, above n 10, 651.

as the program coordinated by the National Association of Community Legal Centres to 'place graduate lawyers undertaking practical legal training with legal assistance services in regional, rural and remote areas'.⁸⁷ Likewise, the Law Council of Australia launched RRRLaw, a website that provides regional location profiles and details of development opportunities and jobs available in rural and regional communities, as part of the 'broader project on Recruitment and Retention of Lawyers in RRR Areas undertaken by the National Association of Community Legal Centres Inc.'⁸⁸ However, to date, the strategies implemented to combat the legal profession's declining proportion of rural and regional lawyers have operated solely at the graduate stage.⁸⁹ Intervention prior to graduation is necessary to overcome the 'misleading appearances'⁹⁰ of the rural social space and to highlight the career and personal benefits of rural and regional legal practice. As Mundy says:

Literature in the area of teacher and medical education has drawn an important link between rural inclusiveness of education and rural service...As such, it is timely and important that all law schools share in the task of promoting rural/regional practice as a potential career option and take up the challenge of rural inclusiveness by integrating a sense of 'place-consciousness' into the curriculum.⁹¹

This is the aim of the 'Rethinking the Law Curriculum Project' and the customisable suite of resources it offers to law schools so that they may better prepare their students for rural and regional legal practice. The project's simple and flexible curriculum package ensures that the administrative and structural challenges associated with developing new curricula are minimised. The modules are aligned with Threshold Learning Outcomes for the Bachelor of Laws, and provide educators with learning resources that are contemporary, and which have been reviewed by key stakeholders. By integrating the Rethinking Law Curriculum package into their offerings – whether or not as a stand-alone unit – law schools can challenge the 'metro-centric' focus of the initial phase of legal training⁹² and encourage students to envisage rural and regional legal practice as a long-term viable career option. It supports the implementation of learning opportunities on a matter

⁸⁷ Ibid, and see NACLC, 'Rural Regional Remote Law Practical Legal Training in Regional, Rural and Remote Australia' (2014) <<http://placements.naccl.org.au/>>.

⁸⁸ See <<http://rrrlaw.com.au/what-is-rrr-law/>>.

⁸⁹ Mundy, above n 29.

⁹⁰ Bourdieu, above n 69, 123.

⁹¹ Mundy above n 2, 10.

⁹² O'Brien, Muddagouni and Harrison, above n 25.

of increasing importance, what Professor David Weisbrot describes as what ‘contemporary lawyers need to be able to do’.⁹³

The deliverables of this project will contribute to institutional efforts to improve graduate preparedness for employment, particularly in rural and regional contexts.’

⁹³ Professor David Weisbrot AM, ‘Foreword: Towards a Legal Education of Which We can Be Proud’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (Lexis-Nexis, 2011) v, ix.