



## CENTRE-PERIPHERY TENSIONS IN LEGAL THEORY AND PRACTICE: CAN LAW AND LAWYERS RESIST URBAN IMPERIALISM?

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*This paper questions some basic assumptions of legal theory, education and practice from the perspective of rural, remote and regional (RRR) legal communities beyond the metropolis. Legal ideologies and values fundamental to the legitimacy of the modern state, such as the Rule of Law, are embedded in most law curricula and reinforced at every stage of the educational continuum, and commonly assert that law, legal rights and access to courts of law apply equally regardless of physical location or social status. Despite this, indigenous and other excluded groups living in peripheral communities frequently experience law differently from their urban counterparts, as do legal professionals living and working outside the city.*

*The key issue examined concerns how centre-periphery tension should best be managed in the future regulation of law and lawyers. What kind of policies and strategies may genuinely assist social inclusion and to what extent should law and legal practice accommodate diversity? How and to what extent should lawyers and para-legals represent the interests of communities rather than private individuals in RRR areas of Australia? What kind of training and technological support do they require? The paper aims to set out some choices that confront policymakers while drawing upon international experience that may offer some guidance.*

### Introduction

This article<sup>1</sup> questions some basic assumptions of legal theory, education and practice from the perspective of RRR (rural, remote and regional) legal communities beyond the metropolis. Legal ideologies and values fundamental to the legitimacy of the modern state, such as the rule of law, are embedded in most law curricula and reinforced at every stage of the educational continuum, and commonly assert that law, legal rights and access to courts of law apply equally regardless of physical location or social status. Despite this, indigenous and other excluded groups living in peripheral communities frequently experience law differently from their urban counterparts, as do legal professionals living and working outside the city. Law, at least in its practical application, is subject to the 'friction of distance'<sup>2</sup> and dependent on institutional support, while the impact of legal norms - including those governing professional conduct - may also vary according to 'local legal cultures' and the nature of client communities being served. Adversarial ethics, another basic premise of the legal process, may no longer capture accurately how lawyers actually practice in rural and remote settings; but what does?

The key issue I wish to examine concerns how centre-periphery tension should best be managed in the future regulation of law and lawyers. Will centripetal or centrifugal forces prevail and how should these best be balanced, particularly, within a federal constitution? In the past *dirigiste* policies originating in centralised courts and parliaments, even at state level, were blind to the distinctive and diverse needs of RRR communities, though, increasingly, policymakers operating at the centre are becoming more aware of, if not flexible and responsive to, the needs of diverse communities that comprise modern Australian society. The very concepts of a 'supreme court' or of 'parliamentary sovereignty' seem to imply political as well as legal dominance of highly centralised legal institutions over spaces outside the city. Nevertheless, the

<sup>1</sup> This is a revised and slightly expanded version of a keynote address presented to the 2nd *National Rural & Regional Law & Justice Conference* organised by UNE/Deakin Schools of Law, 18-20 May 2012, Aanuka Beach Resort, Coffs Harbour, NSW, Australia. I gratefully acknowledge support of the conference organisers and, for research assistance, Dr Dani Milos of Flinders Law School. I also thank my Flinders colleagues Dean Carson and Iain Hay, and Jeff Giddings of Griffiths Law School, for helpful comments and suggestions on an earlier draft. All errors remain my responsibility.

<sup>2</sup> Mark Blacksell, Kim Economides and Charles Watkins, *Justice Outside the City* (Longman, 1991) 16.



rural dimension to legal service provision currently appears to be attracting the attention of policy-makers based in urban capitals. In particular, recent work of the Law Council of Australia has highlighted unmet legal needs in remote, regional and rural Australia, but the problem of rural deprivation has also been officially recognised in the UK and New Zealand where new policies such as 'rural-proofing' have been introduced as a counterweight to historic urban bias.<sup>3</sup> Whether these policies will prove to be effective, or seen as mere tokenism is, in the absence of independent academic research, difficult to determine but at least the issue has now gained some visibility.

Looking to the future, what kind of policies and strategies may genuinely assist social inclusion and to what extent should law and legal practice accommodate diversity? How, and to what extent, should lawyers and para-legals represent the interests of communities rather than private individuals in RRR Australia? What kind of training and technological support do they require?<sup>4</sup> This article aims to set out some choices that confront policymakers while drawing upon international experience that may offer some practical guidance. But before doing this I wish to raise some basic questions regarding legal theory, legal education and the kind of legal practice these typically serve and reproduce. In my view there is a strong inherent bias present amongst most legal theorists, educators and practitioners toward (over-) representing the interests of students, clients and citizens based in cities while those living outside city boundaries experience, if not exclusion, varying degrees of discrimination. This article represents a modest attempt not only to redress this imbalance in legal policy, it also seeks to challenge the conceptual frameworks typically used by lawyers when defining legal need and, further down the line, resolving legal problems. My broad aim is to displace urban bias in both law creation and law reform in order to give voice to views that are rooted in diverse rural communities by highlighting the potential of legal education to open up new legal specialisms relevant to meeting the legal needs of rural society.

## Law's urban empire: blindspots in legal theory, education and practice

### Where is 'The Rule of Law'?

Traditional Dicyean conceptions of the rule of law assume formal equality and equal access to the courts amongst citizens.<sup>5</sup> Residence, social status and ethnic origin are ignored or seen as irrelevant to the citizen's right of access to the courts. However, from a practical standpoint, if institutional supports (that is, courts and lawyers) are absent from local communities, it becomes very difficult, if not impossible, for local inhabitants to invoke or enforce their legal and civic rights.

Most legal theory - particularly public law theory - focuses on power, which tends to be located at the centre in major cities that house government and multi-national corporations.<sup>6</sup> Westminster-style government and corporate entities congregate in major capitals and inevitably adopt urban perspectives and values. Regional or local government and economic behaviour are secondary and usually subordinated to decision-making that takes place at the centre in the metropolis. Academic writing in the fields of politics and economics naturally reflects such biases and the same is true of most legal scholarship, which is directed at explaining and analysing written texts (statutes and court decisions) that originate in urban

<sup>3</sup> See, eg, Law Council of Australia, Recruitment and Retention Working Group, *Recruitment and Retention of Legal Practitioners to Rural, Regional and Remote Areas Strategy* (September 2009) <<http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file%20uuid=6C3EC57C-1E4F-17FA-D225-445270E49D9A&siteName=ca>>; Local Government Improvement and Development, *Rural Proofing* <<http://www.idea.gov.uk/idk/core/page.do?pagelD=300459>>; East of England Development Agency, *Rural Proofing* <<http://www.eeda.org.uk/rural-proofing.asp>>; Ministry of Agriculture and Forestry (NZ), *Rural Proof Your Policy: A Best Practice Guide for Policy Advisers* (2010) <<http://www.maf.govt.nz/news-resources/publications.aspx?title=Rural%20Proof%20Your%20Policy:%20A%20best%20practice%20guide%20for%20policy%20advisers>>. See also Kim Economides 'Legal Services and Rural Deprivation' (1981) 15 *Bracton Law Journal* 61.

<sup>4</sup> Several papers in the 2nd *National Rural and Regional Law and Justice Conference* address these very questions. Eg, John Scott and Elaine Barclay's paper explores the effectiveness of community policing in Aboriginal communities and its ability to assist social inclusion. Helen McGowan's paper highlights the complexity of ethical legal practice in small rural communities, and Suzie Forell explores the requirement of training and technological support for lawyers in rural communities.

<sup>5</sup> A V Dicey, *Introduction to the Study of the Law of the Constitution* (Elibron Classics, 10th ed, 1959).

<sup>6</sup> Traditional public law was almost obsessed with Westminster-style government but since the 1980s a more critical approach has emerged within public law that examines sites of power outside government and the regulatory challenges that these present. Ian Harden and Norman Lewis, *The Noble Lie: The British Constitution and the Rule of Law* (Hutchinson, 1988); Patrick Birkinshaw, Ian Harden and Norman Lewis, *Government by Moonlight: The Hybrid Parts of the State* (Routledge, 1990).



legislatures or superior courts;<sup>7</sup> local justice is in every sense peripheral, but especially for the jurist. Local courts apply and enforce rules that originate in the city to facts that arise in local communities. While anthropologists and legal sociologists may recognise alternative modes of legal behaviour and professional conduct - and may demonstrate the existence of 'local legal cultures' and 'legal pluralism' in rural and remote communities<sup>8</sup> - these are of no great interest to the best legal minds preoccupied as they are with the development of legal principles and standards. Legal elites typically devote intellectual energy to improving the coherence, consistency and rationality of national legal rules by analysing their conformity to 'higher' (but never 'lower') law, 'higher' being defined with reference to principles evolving at the regional or international level, or to some conception of morality. If local practice deviates from norms established at the centre, this is usually seen as a failure that needs to be corrected, or at best quirky or irrelevant. The rule of law implies the rule of *central* law over *peripheral* law; the former dominates the latter, which is usually silent but, if heard, will be subordinated to the former. There is nothing new about this and the centralisation of justice was a pattern established very early on and dates back to the beginnings of the English common law.<sup>9</sup>

### Where is law taught?

But not only do legal rules originate at the centre, traditionally they have also been taught from there as well. Law schools, particularly elite law schools, tend to be located in major provincial, if not capital, cities<sup>10</sup> (in Europe - historically - Bologna, Oxford and London; in Australia, law schools are also in large and capital cities - Canberra, Sydney, Melbourne, Adelaide, though some are present in smaller provincial towns and cities - like Armidale (UNE) and Toowoomba (USQ)). In many places throughout the world law teachers originally taught part-time and their main source of income was derived from legal practice. It is not unknown, even today, for leading law teachers to maintain contact with legal practice in order to supplement their academic incomes.

With the advent of full-time law teachers, campus universities and the technology of distance and simulated learning, the grip of the city over the location and teaching methods of law schools has gradually loosened; but it remains the case that legal education is a commodity that evolves within an urban environment with law libraries often housed in urban centres serving both law students and legal practitioners, and in areas with significant populations.

In recent years the catchment area of law schools may have extended to the global stage and, consequently, the provenance of law students may have become increasingly diverse in that they originate from a wide range of different communities; on the other hand, the increasing cost of legal education and declining grants has forced many poorer students to take out loans and remain in their local communities in order to study from home. Private law schools seem to be expanding to meet local demand while elite law schools set their sights on recruiting wealthy overseas students and using scholarships to maintain access for bright students from poorer backgrounds.

### Where is law practiced?

Law is, of course, practiced in RRR areas but usually quite differently to how it is practiced in the city, and it is not terribly visible or significant when looked at from the city. Lawyers and courts gravitate toward the city for obvious reasons; this is where clients and experts are, and it is also where legal resources and greater financial rewards are located, often in abundance.<sup>11</sup> The trends toward international and global practice, along with changes in the regulation of legal services, re-draw both jurisdictional and disciplinary

<sup>7</sup> See, eg, Tomasz Zarycki, 'An Interdisciplinary Model of Center-Periphery Relations: A Theoretical Proposition' (2007) *Regional and Local Studies* 110; Rudolf Klein, 'The Eternal Triangle: Sixty Years of the Centre-Periphery Relationship in the National Health Service' (2010) 44(3) *Social Policy and Administration* 285.

<sup>8</sup> See, eg, Thomas W Church Jn, 'The "Old and the New" Conventional Wisdom of Court Delay' (1982) 7(3) *The Justice System Journal* 395; Thomas W Church Jn, 'Examining Local Legal Culture' (1986) 3 *American Bar Foundation Research Journal* 449; Sally Engle Merry, 'Legal Pluralism' (1988) 22(5) *Law & Society Review* 869.

<sup>9</sup> S F C Milsom, *Historical Foundations of the Common Law* (Butterworths, 1981) 11-36.

<sup>10</sup> Richard Johnstone and Sumitra Vignaendra, 'Learning Outcomes and Curriculum Development in Law' (January 2003) *Australian Universities Teaching Committee* <[http://www.cald.asn.au/docs/AUTC\\_2003\\_Johnstone-Vignaendra.pdf](http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf)>.

<sup>11</sup> This is also the case in other disciplines, such as healthcare, where rural and remote communities are considered the most in need of efficient healthcare, but practitioners tend to gravitate towards practicing in the urban area. See N W Wilson, I D Couper, E De Vries, S Reid, T Fish and B J Marais, 'Critical Review of Interventions to Redress the Inequitable Distribution of Healthcare Professionals to Rural and Remote Areas' (2009) 9 *Rural and Remote Health* 1060



boundaries in a way that facilitates cross-border and large-scale litigation based on class actions that bring together parties from several countries. Legal problems that arise in the fields of the environment and human rights increasingly require multi-national and multi-disciplinary approaches and levels of legal expertise that can only be produced and found in the city (yet their impacts frequently are felt in rural communities). These new forms of legal practice and delivery have important implications for rural communities. These same communities hold economic implications for urban legal practice: are they a significant new market worth serving? 'Tesco' law and alternative business structures made possible by recent regulatory reform open up important threats and opportunities for rural communities, points I raised in my paper at Warnambool.<sup>12</sup>

Rural practice challenges traditional adversarial models of lawyering both in terms of structure and style. If rural lawyers are thin on the ground they may be subjected to conflicts because of their limited supply; a point they may share with some highly specialised mega-firms offering bespoke services that seek to construct Chinese walls to circumvent being conflicted. And notions of zealous advocacy may be diluted in rural settings as rural communities with on-going relationships threaten - if not control - professional standards and independence.<sup>13</sup> My point is that professional norms - as with many other legal norms - are influenced both by local cultures and physical distance yet our theory overlooks or ignores these realities. What do we expect of rural lawyers in these situations? What guidance is offered? To answer these questions we need to better understand the complexities of law in the periphery and from the standpoint of rural not just urban society. We also need analytical tools that borrow from other disciplines since legal theory is so urban-centric and assumes the 'Westminster style' of government prevails.

## Local legal cultures: law in the periphery

### Legal pluralism and rural justice: peeling the onion

'Where is the Law?' is a rhetorical question posed by a victim during the brutal male rape scene in the film *Deliverance* and one that first inspired my interest in spatial perspectives on law 40 years ago.<sup>14</sup> Montesquieu and Wigmore were amongst the first jurists to recognise the impact of physical climate and landscape on law but it is only relatively recently that we have begun to notice how legal behaviour might have something to learn from both physical and human geography.<sup>15</sup> Other disciplines have also been helpful in highlighting contrasts between urban and rural law. Anthropological, economic as well as spatial perspectives on law and legal practice in remote and rural communities have exposed significant variations in how local legal cultures and physical distance in fact determine the nature and scope of legal service delivery when compared with urban law. But there will also be major differences between rural and remote communities. Some communities may experience extreme economic deprivation whilst others may be relatively affluent. Indigenous cultures may be dominant in some communities, with distinctive norms for handling disputes that have evolved in response to local conditions that successfully resist or ignore official norms, while in others dispute resolution is clearly subordinated to legal norms that originate from the centre and are imposed regardless of geographical isolation. Attitudes from the centre can also vary: some courts and governments may be more tolerant of diversity within a country's regions whilst others may insist on uniformity and these attitudes can also change over time within a jurisdiction. For example, in Australia there have, in the past, been local differences between the legal professions in different states - such as regarding the requirement for practitioners to follow some kind of continuing professional development - but, looking to the future, such differences look set to become far less pronounced or even eliminated with the project to create a national profession with uniform standards.

<sup>12</sup> Kim Economides, 'Strategies for Meeting Rural Legal Needs: Lessons from Local, Regional and International Experience' (2011) 16(1) *Deakin Law Review* 47.

<sup>13</sup> Donald Landon, *Country Lawyers: The Impact of Context on Professional Practice* (Praeger, 1990); Mark Blacksell, Kim Economides, Charles Watkins, 'Country Solicitors: Their Professional Role in Rural Britain' (1987) 25 *Sociologia Ruralis* 181; Kim Economides and Mark Blacksell, 'Access to Justice in Rural Britain: Final Report' (1987) 16(4) *Anglo-American Law Review* 353; and see also papers based on the doctoral work by Caroline Hart and Helen McGowan in 2nd *National Rural and Regional Law and Justice Conference*.

<sup>14</sup> *Deliverance* (Directed by John Boorman, Warner Bros, 1972). The film is based on the novel by James Dickey, *Deliverance* (Houghton Mifflin, 1970).

<sup>15</sup> Kim Economides, Mark Blacksell and Charles Watkins, 'The Spatial Analysis of Legal Systems: Towards a Geography of Law?' (1986) 13(2) *Journal of Law and Society* 161.



Whatever may be the formal position governing the regulation of the legal profession and legal services, it is clear that local conditions will continue to exert some influence on how law is practiced and delivered, and that these conditions remain crucial when it comes to explaining the latent and actual demand for legal services. In short, the penetration of centralised legal norms - judgments as well as primary and secondary legislation - varies considerably.

This is interesting both from the standpoints of the official, formal legal system and the local legal culture in a given community. From the standpoint of official law, it exposes a recondite fiction: equality before the law and the ideology of the rule of law only really exists in a formal sense; the reality is that official norms are highly dependent on institutional support mechanisms that may be either totally absent or ineffective in particular communities. We therefore need to update our constitutional theory and come up with a more accurate explanation that can better explain the reality of diverse legal conduct displayed by both suppliers and consumers of legal services. From the standpoint of peripheral communities we need a far more nuanced theory. The theory should support diverse social justice aspirations and minimal national standards and simultaneously create appropriate expectations about what rights are attainable and enforceable. The theory should also create appropriate expectations about the extent to which centralised law and legal services can actually be delivered locally and how these are to co-exist alongside indigenous and local norms that constitute a community's local legal culture. In other words, we need a more comprehensive account of legality that can sustain contradictions and tensions between centre-periphery relations. I would argue that this is needed in both unitary and federal states but it is perhaps a more pressing need in the latter. However, most unitary states in the modern world need to operate in some kind of regional if not global context and therefore even these must begin to think about a more layered approach to handling legal norms that challenges traditional conceptions of the rule of law that assume a strong nation state.

### Distance learning for law students and rural inhabitants

The increase in the numbers of those entering law school has not always been matched by a corresponding increase in resources, resulting in adverse staff-student ratios or an imbalance in the social and ethnic composition of the law student population. In order to cope with this expansion in numbers, new teaching methods have evolved whereby students participate in more independent, active learning and law teachers are under continual pressure to explore the potential of computer-assisted learning (CAL). Distance-learning in legal education remains uncommon, though is not unknown and in some jurisdictions - in particular Australia - there has been serious investment which could have wide repercussions, not only for citizens' access to legal education but also for citizen access to legal services more generally. The use of simulated learning environments, particularly at the vocational stage, is also spreading and these new forms of pedagogy hold considerable potential when it comes to introducing future lawyers to the risks and realities of legal practice. They also raise the interesting question of who, or what, is a lawyer? Progress with the notion of 'Community legal education' could be accelerated with ever-increasing access to the internet and the development of expert systems in law which threaten the power base of the legal profession and its exclusive control over legal knowledge and expertise. It is clear that already technology is changing who is a law student, how they function and where they are geographically based. It does not seem at all fanciful to imagine that virtual law schools are far off given that virtual law libraries have already arrived.

A combination of the removal of legal aid with increasing use of technology that grants access to legal knowledge or expertise means that we are likely to see an increase in the numbers of litigants-in-person.<sup>16</sup> With the increasing capacity of technology to upgrade legal competence and overcome the barrier of physical distance, we need to understand that counting whatever counts as a 'lawyer', particularly when legal work is multi-disciplinary and takes place in alternative business structures, is already problematic - and likely to become more so if significant areas of 'legal work' continue to be outsourced to para-legals, non-lawyers and lay people.<sup>17</sup>

<sup>16</sup> Bridgette Toy-Cronin and Kim Economides, 'Justice Forum: Litigants in Person v Legal Representation?' (2012) 176 *NZ Lawyer* 16.

<sup>17</sup> See Merran Lawler, Jeff Giddings and Michael Robertson, 'Opportunities and Limitations in the Provision of Self-help Legal Resources to Citizens in Need' (2012) 30(1) *Windsor Yearbook of Access to Justice* 185.





## RRR Communities: Is there a paucity of lawyers and courts?

I wish now to raise a question that logically follows the abandonment of the traditional rule of law theory and tries to respond to the empirical evidence that we have about what some people - whether lawyers or rural inhabitants - may expect when it comes to legal service delivery in RRR communities: is there really a problem if lawyers and courts are in short supply? The language of 'advice deserts' or 'gaps' in legal service provision typically assumes there are 'unmet legal needs' that have to be tackled in order to satisfy both the legitimisation needs of the state and the litigation needs of citizens. If law is unobtainable to certain sectors then both the state and its citizens are put at risk and, so the argument goes, we begin to slide down the slippery slope to anarchy as people begin to take the law into their own hands. This cannot be tolerated or ignored. Even if it is true that the gaps cannot be filled, something must be done to demonstrate that formal equality is not a total sham.

The cheap solution is to fall back on the rhetoric of rights but is there another answer to the question, particularly if we dare to abandon some of the baggage connected with the rule of law and (formal) equality before the courts. If the rule of law is theoretically linked not to formal courts but to a variety of dispute resolution mechanisms that include grievance-handling machinery outside the courts, might we take a different view of lawyer and court 'shortages'? Provided other solutions (that are fair and just) are in place, does it matter if traditional courts and lawyers are absent?

From the standpoint of RRR communities, we need to recognise that some lawyers and citizens may be seeking refuge from the metropolis and that, for them, the absence of urban lawyers and courts is not only a benefit, it is one reason why they are in the RRR community in the first place; they prefer to live under light professional or social regulation in order to escape the pressures of urban society. Some Australian rural indigenous communities prefer to employ their own traditional, customary dispute resolution practices, in which case access to courts and lawyers will not be of great benefit to them.<sup>18</sup> One-third of the Northern Territory's population, for example, is indigenous and many communities operate without the non-indigenous legal system or policing of any kind.<sup>19</sup> Introducing centralised law into these communities may undermine native dispute resolution systems and decrease their physical access to justice. What might work better in these communities is the support of therapeutic jurisprudential models that recognise customary norms and involve indigenous communities in the formal legal process. For example, indigenous sentencing courts or 'solution-focused courts' have been established in almost all Australian jurisdictions, providing a more meaningful justice system for indigenous defendants and addressing the deeper causes of indigenous offending.<sup>20</sup>

## Centre-periphery legal relations: toward a constructive relationship

In order to advance centre-periphery relations - and build on strategies I advocated at Warrnambool that involved community legal services - we need to re-think how rural society and its law connect with the centre. In what follows, I briefly sketch out some ideas and agendas and invite reaction and discussion about which are priorities.

<sup>18</sup> See, eg, Mark Harris, 'From Australian Courts to Aboriginal Courts in Australia - Bridging the Gap?' (2004) 16(1) *Current Issues in Criminal Justice* 26; National Alternative Dispute Resolution Advisory Council, *Indigenous Dispute Resolution and Conflict Management* (January 2006); See also the representation of Aboriginal peoples in Canada where the notion of Aboriginal self-government has been developed in light of the policy recommendations found in the report of the Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (2000) <<http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb9924-e.htm>>.

<sup>19</sup> Tom Calma, 'The Integration of Customary Law into the Australian Legal System' (2007) 25(1) *Law in Context* 74. See also Desmond Manderson, 'Not Yet: Aboriginal People and the Deferral of the Rule of Law' (2008) 29/30 *ARENA Journal* 219; David Pimentel, 'Can Indigenous Justice Survive? Legal Pluralism and the Rule of Law' (2010) 32(2) *Harvard International Review* 32.

<sup>20</sup> Michael King, 'Judging, Judicial Values and Judicial Conduct in Problem Solving Courts, Indigenous Sentencing Courts and Mainstream Courts' (2010) 19(3) *Journal of Judicial Administration* 133. See also Elena Marchetti and Kathleen Daly 'Indigenous Sentencing Courts: Towards a Theoretical and Jurisprudential Model' (2007) 29(3) *Sydney Law Review* 415.



## Subsidiarity: a guiding principle in a federal state?

*Subsidiarity*<sup>21</sup> has been used in a European context to facilitate a more layered approach that devolves taking decision-making to the most appropriate level within a hierarchy of norms. Is it relevant to the Australian federation?

In *Justice Outside the City*<sup>22</sup> we advocated Rural Legal Services Committees to facilitate two-way traffic in policy development. On the one hand, minimal national standards were to be interpreted at the regional (sub-national) level and decisions about implementation to be left as far as possible to local decision-making. On the other hand, the regional committees could not only monitor compliance with national/international norms, they would also provide feedback to the centre about gaps in provision and other problematic aspects of legal service delivery. The challenge is to plan services so that minimum standards are met while allowing sufficient flexibility so that local differences can be accommodated.

## Public legal education in RRR Communities

Using technology and existing infrastructure and, where possible, local community groups, there is a need to educate the public about rights and their enforcement.<sup>23</sup> The challenge is how best to manage expectations but, again, policy-makers need to both inform and listen to rural communities and, especially, those with indigenous cultures that are outside the mainstream. Social inclusion and respecting diversity should be guiding principles.<sup>24</sup> Proactive services are important but it is important to be aware of being imposing and intrusive, and of the danger of creating dependency.<sup>25</sup> Giving communities choices is important: one size does not fit all, particularly in rural society.

## Rural legal services: a national strategy

The recent launch of the 'Rural Regional Law and Justice Alliance' is a major step toward recognising and tackling legal need outside the metropolis. The Alliance was established in response to the inequities experienced by rural and regional communities identified in the Warrnambool conference. Its principal purpose is *to achieve justice and equity in the provision of legal system services and outcomes for all rural Australians*. It aims to do this by engaging with the communities and collaborating with other groups in order to strengthen the focus on rural justice and disseminate information and knowledge regarding rural law and justice issues. The Alliance will be able to pool resources and experiences and has the potential to develop new ideas and principles to guide future development. Most importantly, it will be in a position to organise resistance to what I call 'urban imperialism' by developing new perspectives and finding solutions to what are, in fact, quite ancient problems. In my view we need to focus on both traditional and public legal education (demand for legal services) as well as who - or maybe in the future what - is supplying those services. The keyword will, I suspect, be 'outreach' of the kind that creatively combines both legal and educational agendas.

<sup>21</sup> According to the *Oxford English Dictionary* (Oxford University Press, 2012), the term 'subsidiarity' in English follows the 'German usage Subsidiarität (1809 or earlier in legal use; 1931 in the context of Catholic social doctrine, in §80 of Rundschreiben über die gesellschaftliche Ordnung, the German version of Pope Pius XI's encyclical *Quadragesimo Anno* (1931))'. More distantly, it is derived from the Latin verb *subsidio* (to aid or help), and the related noun *subsidium* (aid or assistance).

<sup>22</sup> Blacksell, Economides and Watkins, above n 2.

<sup>23</sup> See also the use of photography to alter popular conceptions/images of justice: Kim Economides and Zoë Economides, 'Eyes on Law: Making Legal Research, Law and Justice Visible' in H Westgeest et al (eds), *Making Research Visible to the World* (Canon, 2010) 86.

<sup>24</sup> Street law is such an initiative aimed at empowering communities to use the law to their benefit. See, eg, Brian Simpson, *Taking Street Law to Regional and Rural Towns* (University of New England, 2010). For an example of such an initiative, see Jeff Giddings and Zoe Ratus, 'Integrating and Sequencing Clinical Insights and Experiences Across the Law Curriculum' (Paper presented at National teaching Fellowship Dialogue Forum, Brisbane, 28029 June 2010).

<sup>25</sup> D M Trubek and M Galanter, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States' (1974) *Wisconsin Law Review* 1062; J H Merryman, 'Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement' (1977) 25 *American Journal of Comparative Law* 457. See also K Economides, 'The Role of the Law Professor in Development' (Public Lecture delivered at School of Law, University of The Gambia, 27 January 2010) (on file with author).



## Conclusion

This article has highlighted the spatial dimension to legal practice while also noting an untapped potential of legal education, both within law schools and of the wider public, in altering future supply and demand of legal service provision in rural areas. Knowledge and experience of rural service provision in areas outside law, for example health, is likely to be highly instructive to future developments.<sup>26</sup> One key lesson that needs to be more widely understood is that the WHERE is at least as important as the who, what, how and why in determining the nature of law, and access to justice more generally. Remote, rural and regional contexts are fundamentally different to metropolitan ones, and this affects what is considered important in terms of interactions with the law and, consequently, what is expected of the law. Furthermore, 'remote' is different to 'rural', which in turn differs from 'regional' - and it might be further argued that metropolitan legal systems not only deal poorly with the RRRs as a group, but also with the diversity of conditions and experience that exist within each of the R's. Engaging 'non-metro' perspectives in the law requires deeper consideration of questions such as: who are legal actors?; how are legal institutions actually accessed? (for example via technology for distance access)<sup>27</sup>; and, a question almost totally ignored until now: how legal professionals are educated about - and sensitised to - spatial context? In this regard one notes with interest the pioneering work of a consortium of Australian law schools on the law curriculum, as it specifically relates to rural communities. The establishment of the 'Rural and Regional Legal Education Network' (RRLEN), a community of practice that connects law students, legal educators, legal professionals and regional and rural communities, holds real potential to better prepare future lawyers and legal professionals for work in RRR communities.<sup>28</sup> It may be that, in time, we shall also see practical legal training prepare legal practitioners for work in rural general practice, but as a specific specialism, something that already happens in medicine.

<sup>26</sup> Flinders University has created links with rural and remote communities and integrated clinical curriculum based in rural general practice in order to address rural medical workforce maldistribution. This has successfully moved the education and practice of healthcare from the central to the peripheral and serves as an excellent example of the ability of legal education and practice to be extended to rural and remote areas of Australia. See Paul Worley et al, 'The Parallel Rural Community Curriculum: An Integrated Clinical Curriculum Based in Rural General Practice' (2000) 34(7) *Medical Education* 558; ID Couper and Paul Worley, 'Evaluation of the Parallel Rural Community Curriculum at Flinders University, South Australia: Lessons Learnt from Africa' (2010) 2(2) *African Journal of Health Professionals Education* 14; and Daniel M Avery et al, 'Admission Factors Predicting Family Medicine Specialty Choice: A Literature Review and Exploratory Study Among Students in the Rural Medical Scholars Program' (2012) 28(2) *The Journal of Rural Health* 128.

<sup>27</sup> See further D Carson and J Cleary, 'Virtual Realities: How Remote Dwelling Populations Become More Remote Over Time Despite Technological Improvements' (2010) 2(5) *Sustainability* 1282.

<sup>28</sup> See <<http://www.rrlen.net.au/>>

