

The third strand of the law school's mission: capacity building, community service and outreach

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Introduction

The idea that law schools in Australia have responsibilities other than teaching and research is not new. Nor is it particularly controversial. Here, third strand activities are commonly identified as 'community service' or more recently as 'community engagement'. The Council of Australian Law Deans' Draft Standards (adopted in principle in 2008) require law schools to define their mission to 'encompass[] teaching, research *and community engagement*'; the mission must also 'encompass[] a commitment to the rule of law, and the promotion of the highest standards of ethical conduct and professional responsibility', potentially a commitment that influences more than the law school's teaching and research mission. The Standards do not define 'community engagement', however, or set any standards for it.¹ This leaves individual Law Schools a welcome flexibility in defining their own community engagement mission. This paper sketches some of the influences that might shape these missions and some of the challenges in implementing them.

Why engage the community?

A number of factors might influence the recognition of community engagement as part of the mission of the law school. They include:

- Institutional imperatives
- Ethical imperatives
- Practical imperatives

Institutional imperatives

Law schools are often (and, in Australia today, are all) embedded in larger universities and subject to the imperatives of the institution as a whole. At the University of Melbourne, 'community engagement' is a clear institutional imperative, albeit under a different name. The University conceptualises third strand activities as 'knowledge transfer' which is 'an equal priorit[y] for the University' with research and teaching. Knowledge transfer, research and teaching together form a 'triple helix': 'a tightly-wrapped spiral of distinct but related activities that together define the institution's character'. Knowledge transfer is now defined as

'the two-way flow and uptake of ideas between the University of Melbourne and the broader community. It ... :

1. Creates intellectual capital in ways that mutually benefit the University and its external partners.
2. Is linked to the University's teaching and research activities.

¹ The Standards generally avoid setting outcome or achievement measures and focus on inputs.

3. Responds to global, social, economic, environmental and cultural issues.’

This definition is capable of accommodating the wide range of community engagement activities in which Australian law schools commonly engage: for example, running clinics and internship programmes; contributing to public discourse through public lectures, op-eds and blogging; advising governments and non-profit organisations on legal policy; contributing to the formation of legal policy through submissions and advice. The definition does place greater emphasis, however, on the *two-way* flow of ideas and *mutually* beneficial intellectual capital than academics might perceive if they still conceptualise their third strand activities as ‘community *service*’ rather than as ‘community *engagement*’.²

Ethical imperatives

The ethical imperatives to engage in third strand activities are not always distinct from the institutional imperatives. The university can (sometimes at least) be motivated by ethical imperatives that resonate with the law school’s own ethical imperatives. In Melbourne’s case, the University’s ethical vision for knowledge transfer derives from its status as a ‘public spirited institution’:

‘To be effective, knowledge transfer activities should both shape and shadow the University’s research and teaching priorities, and be informed by active social and economic engagement. As a public-spirited university, Melbourne will serve local and international communities best by selective engagement, where it has distinctive contributions to make, and when the benefits are compelling.’

It would be particularly interesting (but beyond the scope of this short paper) to unpick two sets of distinctions: first, the distinction between the ethical imperatives that support the community service model of third strand activities and those that support the community engagement model; and secondly, the distinction between the ethical imperatives that support law school third strand activities and those that support the *pro bono* obligation on the legal profession. (The academic and professional obligations are plainly not coterminous. In a tradition that emphasizes the dual functions of legal education as academic and professional preparation, legal academics and practicing lawyers have overlapping but different functions in the legal system and overlapping but different *expertise*.)

Practical imperatives

Whatever the ethical imperatives are, they are not always distinct from practical imperatives. A public-spirited institution may be public-spirited because such a stance enhances its public standing and therefore the likelihood of ongoing public funding; or because students (who must be attracted and retained) have ethical or practical reasons for wanting to engage in third strand activities. The legal academic blogger contributes not only to public intellectual discourse but potentially also to their own academic profile and reputation and that of their school.

How to engage the community?

² The actual language of ‘knowledge *transfer*’ rather undermines the commitment to two-way exchange.

The decision on how best to engage the community is also influenced by institutional, ethical and practical imperatives. In Australia, funding for research projects that involve external end-user partners (Australian Research Council Linkage Grants) provides an incentive for engagement with the end-user community (including government, private and non-profit sector partners). Student demand, the availability of physical infrastructure, existing staff expertise and ethical judgements about priorities may all influence the decision whether to run a student legal clinic or instead to support student internships. The institutional, ethical and practical imperatives lead to challenges in prioritising, individualising and assessing a law school's community engagement.

Prioritising

At Melbourne, a University taxonomy lists (without prioritising) eight purposes of knowledge transfer activities:

1. To foster partnerships to advance research
2. To foster partnerships that enhance teaching and learning
3. To enhance students' readiness for professional life
4. To raise aspirations for tertiary study
5. To produce cultural engagements
6. To develop the standing and practices of the profession
7. To develop better policy and governance
8. To commercialise our intellectual capital
9. To attract additional funding, e.g., Sponsorships, donation & benefaction
- ...
10. To foster intellectual discourse and knowledge dissemination
11. To meet our responsibility for the greater public good
12. To improve our reputation and public standing

To put it charitably, the purposes reflect a complex and overlapping mix of ethical and practical imperatives. The taxonomy does little to assist in reconciling those imperatives. Of course, a law school could eschew planning and prioritizing and accept whatever orderly (or disorderly) pattern of engagement emerged. However, as the CALD Standards recognise, there is value in identifying a community engagement mission – if only to ensure that resources are deployed most effectively.

Individualising

Missions are generally defined at the institutional level but realised by the coordinated activities of individuals. Requiring a community engagement mission implicitly brings third strand activities into the domain of activities that are managed and measured. However, individual participation in community engagement is unlikely to be sustained by institutional diktat or by crude attempts to embed community engagement in performance expectations for staff. Rather, the law school collegium should have the opportunity (through its committees and consultation processes) to help shape its own engagement mission and priorities, with the assistance of a leadership that can communicate the institutional and practical imperatives.

Community *service* is a familiar strand in law school tenure and promotion criteria, usually

requiring a threshold standard be met to support an application premised on excellence in research and/or teaching. More recently, some universities have moved to holistic assessment of applications, requiring applicants to apportion their claim between four strands (research, teaching, institutional service and community engagements).³ This provides a one context for individualising an institutional commitment to community engagement. However, whatever the power of self-interest, it provides a collateral (and often remote) motivation for community engagement. It does not arise out of and speak to community engagement activities themselves. Again, the individual members of the collegiums must be involved with law school leadership in shaping the institutional mission and how it is individualised.

Measuring

The managerialist urge to value only what can be measured (and to measure what one wants to value) extends to community engagement. For some kinds of community engagement, metrics are not hard to find: dollar value of research partnerships; numbers of cultural performances held; dollar value of commercial exploitation of research. Metrics can be conceived for some of the kinds of community engagement that law schools engage in: numbers of op-eds published; numbers of parliamentary submissions; numbers of students in internships with public-spirited organisations; numbers of clients assisted by a legal clinic. But these metrics are largely incommensurable between categories. They provide a rough mechanism for comparison with other institutions but are insensitive to different institutional priorities. They provide a mechanism for longitudinal tracking but likely lead to expectations of growth in volume rather than in the more elusive quality or impact. In truth, they are as problematic as the journal ranking, citation and impact measures that plague research in the sciences and that law schools have had only limited success in fighting off. If we are to measure third strand activities, particularly of the kind that law schools are apt to engage in, there is no escape from the challenge of developing feasible and robust qualitative measures.

³ Maximum weightings for service and community engagement ensure that the primary commitment to research and teaching is not undermined.