Reframing Rural Private Practice Work

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Hannah Haksgaard, Rural Practice as Public Interest Work, 71 **Maine L. Rev.** 209 (2019).

The splendors of rural America outnumber the stalks of wheat that spill down the Great Plains, the time-worn, sleepy peaks of Appalachia, the saguaro cacti whose sunbaked resolve outlasts generations of western settlers. Indeed, approximately 97 percent of U.S. land is within rural counties, capturing wonders throughout this nation's countryside. But while a large swatch of America preserves the pastoral, one aspect is noticeably absent from this bucolic ideal: lawyers.

In *Rural Practice as Public Interest Work*, Hannah Haksgaard first establishes that there is a profound lack of rural lawyers, especially when compared to the "glut of lawyers in urban areas." (P. 213.) Such a dearth exacerbates rural residents' inability to access justice and to satisfy crucial legal needs. Essentially, Haksgaard asserts, there is a need for *every* type of attorney in rural areas: prosecutors, public defenders, immigration attorneys, divorce lawyers, bankruptcy lawyers, trusts and estate lawyers, and many more.

In order to combat this shortage of attorneys, Haksgaard suggests we change our conception of public interest lawyering. In particular, Haksgaard challenges us to think about rural legal practice as a form of public interest service rather than mere private practice work because rural attorneys engage in "mixed practice" work, serving part-time as prosecutors or court-appointed defense counsel in addition to their roles in private practice. Haksgaard further posits that institutions should provide incentives to encourage recent law school graduates to move to and serve rural communities as public interest lawyers in this "mixed practice" capacity. In so doing, Haksgaard pushes against the assumption that private practice work is homogenous, especially when such work takes place in rural locales.

An ABA publication defines "public interest" as providing services for historically underrepresented persons in the legal system, which necessarily includes those living in remote areas who are oft-secluded from legal resources. Thus, Haksgaard makes a compelling and straightforward argument: rural private lawyers serve historically underrepresented persons and therefore should fall under the public interest attorney umbrella.

Being considered a public interest lawyer is not merely a symbolic moniker. It carries important implications, which directly affect eligibility for loan forgiveness programs. As it stands, the federal government's Public Service Loan Forgiveness Program (PSLF) does not allow any private practice attorneys to participate, regardless of geography. [1] Haksgaard posits three arguments for why excluding rural lawyers from PSLF is a mistake. First and most obviously, the PSLF exclusion disincentivizes lawyers from serving rural communities.

Second, and as mentioned above, many rural private practice attorneys engage in "mixed practice" by performing the same functions traditional public interest lawyers perform, including situations in which private practice attorneys take on a part-time basis criminal cases as either prosecutors or public defenders. To be sure, Haksgaard advocates for PLSF to cover *all* rural attorneys, regardless of whether they engage in this mixed practice work. Afterall, Haksgaard reasons, many of the folks rural lawyers serve are routinely considered disadvantaged and underprivileged.

Third, Haksgaard compellingly shows that the PSLF's current loan forgiveness line-drawing doesn't make sense, as rural private practice attorneys serve the same interests but often earn *lower* salaries than government or traditional public interest lawyers. Indeed, at least in some parts of the U.S., rural private practice attorneys earn approximately 45 percent of the national mean salary urban private practice attorneys earn, as reported by the National Association for Law Placement in 2018. Haksgaard makes a common-sense argument that the PSLF's definition is currently under-inclusive and should be expanded to incorporate rural private practice into its definition of "public interest," as it would incentivize the growth of rural lawyers, as well as justly compensate these lawyers for the public interest work they so often perform.

Haksgaard then moves into a less tangible implication for expanding our definition of "public interest." She cites a 2018 survey conducted by the Association of American Law Schools, which reports that aspiring law students' primary motivation for attending law school is a sense of service and desire to help others. (P. 223.) She uses several, self-branded "public interest" law schools such as the University of the District of Columbia to illustrate how institutions that characterize themselves as "public-interest focused" can attract individuals eager to serve underserved populations, and how this logic can easily extend to describe rural private practice. Thus, Haksgaard asserts, labeling rural private practice as a form of public interest work would better represent the nature of rural legal work and excite and draw more students to serve rural communities.

Further, in order to promote access to justice in rural communities, law schools can do more than expand access to the PSLF and help to recharacterize rural legal work as public interest work; they can facilitate programs that are designed to specifically support students interested in opening rural private practices. Constituting my favorite point, Haksgaard focuses on Drake Law School as an exciting example of such assistance, as it recently launched a Rural Access to Justice Initiative. This new initiative encourages and supports law students who wish to practice in rural Iowa by offering donated or discounted office space to set up a solo practice, alumni mentoring, assistance in obtaining initial clients and a start-up stipend in exchange for dedicated pro bono hours.

Finally, Haksgaard calls for Congress to subsidize rural attorneys. Specifically, Haksgaard advocates for governmental assistance through programs such as "judicare," or through a system in which a court compensates lawyers who perform civil services traditionally reserved for legal aid attorneys in locales that do not have access to such services. After all, Haksgaard says, these attorneys often perform varied work in addition to their private practice work, sometimes the same kind of work government-funded legal aid lawyers perform. Relatedly, Haksgaard points out that attorneys *do* receive government compensation when they participate in certain types of cases, such as court-appointed criminal cases. However, the earnings from these types of cases are often so low that some attorneys end up losing money working on them and forgo participating in court appointments altogether. Thus, in places without nonprofits or legal aid offices, rural residents are hurt by a lack of lawyers able to assist them in seeking justice, an inability fostered by governmental neglect. To address these gaps, Haksgaard argues for increased governmental assistance, or at the very least, increased compensation that would better reflect the integral work that so many rural attorneys perform.

Haksgaard's article is attractive for its relatively straightforward solutions to a persistent problem. By tweaking how we think about legal practice in rural America, we may be able to stimulate legal growth in underserved areas. Even if increased funding seems untenable, providing specialized information on how law students can operate successfully in rural locales and revising law school culture to be less stigmatizing and more inclusive of rural practice as public interest may be an important step in addressing the dearth of rural lawyers. Haksgaard's points are appealingly common-sensical, bringing to light the fact that, instead of merely worrying about the rural, we could be doing so much more to support it.

1. 34 C.F.R. §685.219(b) (2014) (defining public interest).

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