THE GROWTH OF PRO BONO IN EUROPE
USING THE POWER OF LAW FOR THE PUBLIC INTEREST

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EXECUTIVE SUMMARY

A modern pro bono movement is beginning to emerge in Europe. Although the tradition of pro bono practice stretches as far back as ancient and medieval Europe, modern pro bono practice has been developed anew, especially since the 1990s, by NGOs, foundations, and private lawyers. The emergence of modern pro bono practice in Europe was aided by the growth and internationalization of US and UK law firms committed to the institutionalization of pro bono in all of their offices, which has also coincided with a decline in legal aid in Europe. This report documents the long history of pro bono in Europe, with a special emphasis on developments in the past 10 years, which have witnessed significant activity toward building a culture of and the infrastructure for pro bono practice in Europe. Some of the field’s central debates and dilemmas, especially for its future, are captured here as a part of that review.

PRELUDE TO PRO BONO

For as long as there have been lawyers in Europe, there have been free legal services for the poor. The tradition of pro bono practice (the free provision of legal services by individual lawyers and the legal profession) has deep roots in Europe, beginning in ancient and medieval Europe, when legal aid was considered a charitable duty provided through the Church or by private lawyers. In the 18th and 19th century, the legal professions of Europe embarked on some remarkably ambitious initiatives to tackle the challenge of unmet legal need, and by the 20th century, state-sponsored legal aid systems became the norm in Europe. From that point on, legal aid was no longer conceived of as the honorable duty of the profession but rather the obligation of the state.

RE-EMERGENCE OF PRO BONO

However, since the 1990s, organized pro bono practice has made a return in Europe. The emergence of mega, multinational firms in the United States and London created the conditions out of which a new, increasingly institutionalized and increasingly globalized model of legal volunteering emerged: large firm–organized pro bono practice. That trend has encountered a number of challenges. For one, the creation of state-sponsored legal aid systems in the 20th century had dampened the pro bono ethos in the European legal profession. In addition, there were few European NGOs present that could connect law firms with individuals and civil society actors in need of free legal services. Also, European NGOs mainly did not embrace legal strategies consistently and were not used to working with lawyers. All of this has made it difficult to build a pro bono culture in Europe.

TOWARD A CULTURE OF PRO BONO

Over the past ten years, a culture of pro bono has begun to take root, thanks to a cadre of NGOs, foundations, and pro bono lawyers. Among others, PILnet has played a central role in this development. PILnet first launched the Central and Eastern European Pro Bono Initiative in 2005 and then its first clearinghouse in Hungary in 2006 (followed by one in Russia in 2007), which quickly took on human rights, deportation, and anti-discrimination projects. Firms who got involved in early projects included Dechert, DLA Piper, Sidley Austin, Sullivan & Cromwell, and O’Melveny & Myers. PILnet and its partners then launched a series of successful “pro bono roundtables,” which connected lawyers at a local level in Europe to discuss and strategize how to meaningfully institutionalize and deploy pro bono within their own communities. The European Pro Bono Forum was also launched during this period, providing a setting in which the development of local pro bono could be connected with the international movement; learning and sharing their growing body of expertise. These initiatives created the foundations for, and in many cases kick-started, the establishment of a series of domestic clearinghouses across Europe. In sum, the activity during the past 10 years established significant infrastructure and began to leave the imprint of a culture of pro bono in Europe.
CURRENT CONDITIONS OF PRO BONO IN EUROPE

The European pro bono movement is still in an emergent phase and cannot be said to be fully “institutionalized,” as it is in the United States. Over the past three years, pro bono work has been carried out at a rate of about 14 hours per fee earner on average, which is significantly lower than in the United States, for example. The United Kingdom and Belgium (or more accurately, London and Brussels, as recorded pro bono is still very much a capital city, and international law firm, phenomenon) lead the way in pro bono, where average hours are much higher. Such law firms mainly depend on clearinghouses for their European pro bono practices, and most clearinghouses in Europe exclusively cater to NGO clients (with a few exceptions in Romania, Ireland, and Slovakia). Correspondingly, pro bono clients in Europe are usually NGOs, not individuals. Certain indicators reveal a degree of institutionalization of pro bono, including some pro bono policies at firms, but pro bono is still not an institutionalized practice at most major continental European law offices.

DEBATES AND DILEMMAS

Research for this report revealed a number of debates and dilemmas in the European pro bono landscape. One of the hottest topics is whether pro bono is best placed at the service of NGO clients or individual clients. At present, law firm pro bono in Europe is primarily provided for NGO clients, mainly because strong state-sponsored legal aid in Europe historically served individuals. However, there are some compelling reasons why law firms should be doing more for individuals in Europe. For example, in several European countries, state-sponsored legal aid is in decline. Moreover, individual legal assistance can improve lives for the many new migrants in Europe. At the same time, the case for supporting NGOs seeking social change is that they are more likely to effect systemic reforms or broader impacts.

Another debate concerns the question of whether it is best to take an “access to justice/legal aid”-oriented approach or an “expertise”-oriented approach to pro bono. Proponents of the former approach believe that commercial lawyers should up-skill in specific areas of law, such as asylum law or welfare law, to supplement depleted frontline service providers of legal aid. Proponents of the latter argue that commercial lawyers should deploy their deep expertise in fields such as tax, trade, investment, and regulation to promote a more equitable and sustainable use of law globally.

This report also documents a dilemma surrounding legal research, which is one of the most common forms of pro bono work across Europe. Legal research has been useful to NGO clients, but there may be a need to address some concerns that (1) legal research output is not always reliable; and (2) legal research is often difficult to tie to identifiable social justice impact.

This report also reveals that many believe firms’ conflict of interest policies are concerning. Many firms avoid certain pro bono work because of potential commercial conflicts, particularly where NGOs are engaged in fields of advocacy that encroach upon the terrain of traditional commercial clients, such as environmental justice, consumer protection, or financial and economic justice. Some firms, however, are taking a progressive approach and finding creative ways to get around such conflicts.

Another concern is NGO skepticism about law firm commitment to pro bono projects. While many NGOs were satisfied with the pro bono services of firms, many also registered the concern that law firms did not always treat NGO clients with the same degree of commitment as they would fee-paying clients, despite claims that they do. That concern goes to the heart of a major critique of pro bono — that law firms engage in pro bono work more to benefit themselves than to serve the interests of their pro bono clients.

A promising finding of this report is the overwhelming consensus around the idea that law firms can and should collaborate more in the context of pro bono. There is wide support for the idea that law firms should collaborate to tackle systematic challenges such as the decline of state legal aid or the migrant crisis, and there are encouraging signs that law firms are taking steps in this direction. Though it is less developed, there is also promise in the idea that law firms may engage their support staff in skilled volunteering for the NGO community in Europe with the support of a host of organizations primed to do this.
THE FUTURE OF PRO BONO IN EUROPE

Expanding Pro Bono in Europe. There are few full-time pro bono lawyers in Europe at present. To develop pro bono in Europe, one approach is to increase the number of full-time pro bono coordinators, professionalizing the role, as in the United States. Another approach is to develop the secondary specialization pro bono model, a model emerging in London. Yet another possible direction involves “democratizing” the pro bono role, allowing each lawyer to define social justice and pro bono practice in their own terms, taking personal responsibility for the identification and selection of clients and projects (presumably within a supportive institutional environment).

The Pro Bono Professional–NGO Relationship. It was found that NGOs often prefer a direct relationship with a handful of lawyers who know and understand their work. NGOs find it particularly frustrating when pro bono managers or clearinghouse staff appear to be screening or interviewing them, looking for a particular kind of client or project. In sum, there is some confusion surrounding the exact nature of the role of the pro bono professional, and the expectations of NGOs and firms sometimes differ.

Culture Building and Institutionalization. Many clearinghouses have incorporated into their mission the broader goal of promoting pro bono culture within the legal profession and seeking the institutionalization of pro bono. They have faced many challenges in this respect, from resistance to the idea of volunteerism (with many Europeans believing that it is incumbent on the state to remedy social ills), resistance to the culture of talking about “doing good” (many Europeans believe that charitable work should be done but not talked about publicly), and resistance to the perception that pro bono is an Anglo-American imposition.

Expanding Outside Capitals. It is clear that organized pro bono in Europe is still predominantly a practice of large international firms and, consequently, a capital city phenomenon. There is an awareness of the need to move beyond capitals and a willingness (often already concretely manifesting) to engage small and national firms.

The Thought Leadership Role of Clearinghouses and Pro Bono Organizations. A number of clearinghouses across Europe are beginning to take real initiative by questioning the received wisdom of what purpose clearinghouses should serve and what pro bono means as a form of progressive legal activism. This is likely the real future of the European clearinghouse movement. The international clearinghouses and pro bono organizations such as PILnet, TrustLaw, International Senior Lawyers Project, Pro Bono Institute, A4ID, and the Vance Center are all beginning, in different ways, to embrace a thought leadership role in relation to pro bono. With its incoming president, PILnet may play a particular role in getting firms involved in work that might have traditionally been off limits due to perceived “commercial conflicts,” work that has the power to radically alter how law works for those without money and power in society.