STUDENT PRO BONO AND ITS ROLE IN CONTEMPORARY AUSTRALIAN LAW SCHOOLS

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The value of law schools offering a range of experiential learning opportunities to students has long been recognised both officially and professionally. Over the past decade, clinical legal education (‘CLE’) has emerged as a common feature of modern Australian law school curricula, with at least twenty five Australian law schools now offering clinical placements as part of the Bachelor of Laws (‘LLB’) curriculum.1 CLE is no longer the sole province of ‘second wave’ universities but is now a feature of LLB curricula in all of the Go8 universities and many regional law schools. The finalisation of the Best Practices in Clinical Legal Education2 in 2012 reinforced the value and importance of CLE as part of the LLB curriculum. Australia’s enthusiasm for CLE is part of a broader, global recognition of the value and importance of experiential learning opportunities during the study of law, and the importance of promoting justice through legal education.3

However, Australian law schools have generally been less receptive to providing institutional support for students to participate in non-clinic-based pro bono legal work. Historically, many CLE programs emerged from pro bono initiatives,4 however despite this connection and a shared ethos of lawyering ‘for the public good’ there are important distinctions between CLE and student pro bono activities that warrant consideration.

The dearth of law school pro bono programs in Australia

In 2001, the National Pro Bono Taskforce of Australia stated that ‘very few Australian law schools have a considered or coherent policy in relation to developing a pro bono ethos in law students — although there are many scattered courses and programs’.5 Although there was a flurry of interest and activity in the early 2000s,6 encouraged by the establishment of Pro Bono Students Australia (‘PBSA’) at the University of Western Sydney as a pilot site, this has not been sustained in recent times.7 Recent initiatives such as the Brennan Justice and Leadership Program at the UTS Faculty of Law do, however, indicate some refreshing progress.8

Australia’s haphazard law school engagement with student pro bono legal work is in contrast to countries like Canada, Singapore and the US, where many law schools run pro bono programs alongside, and in addition to, CLE and other law courses. A range of factors influence the style and reach of these pro bono programs, including the existing landscape of government-funded legal aid services and community legal organisations, varying levels of student leadership and input and, in some regions, mandated student pro bono hours as a precondition to admission to practice.9 Initiatives such as Pro Bono Students Canada, the Pro Bono Centre at Singapore Management University, Pro Bono Students New York and the Pro Bono Centre at the London School of Economics10 demonstrate the diversity of structured law school pro bono programs.

Similar but distinct: CLE and pro bono

Numerous statements within teaching and learning scholarship in Australia conflate CLE and student pro bono activities. For example, Giddings notes that even high profile commentators such as the retired High Court Justice Michael Kirby have merged pro bono and CLE.11 One feature of modern CLE that sets it apart from student pro bono is its curricular status. Examples of extra-curricular legal clinics such as the student CLE clinic run by the University of Strathclyde in Scotland12 do exist, however CLE programs in Australia are typically part of the LLB curriculum. Unlike CLE, student pro bono legal work is not a formal part of the curriculum and it does not attract academic credit. Student pro bono legal work is co-curricular, performed in a voluntary capacity and for no tangible reward. Another hallmark distinction between CLE and pro bono is the necessary requirement for close supervision and formal assessment for CLE. Close supervision may be necessary for some student pro bono activities, but it largely depends on the nature of the task, and in many cases supervision may simply be as a touchstone or to provide general oversight of students’ work. The major differences between formal CLE and student pro bono activities can therefore be distilled as follows:

<table>
<thead>
<tr>
<th>Clinical Legal Education</th>
<th>Pro bono</th>
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<tbody>
<tr>
<td>For academic credit</td>
<td>Voluntary, co-curricular</td>
</tr>
<tr>
<td>Emphasis on close and effective supervision</td>
<td>Supervision is required, however it is not paramount</td>
</tr>
<tr>
<td>Assessment</td>
<td>No assessment</td>
</tr>
<tr>
<td>Usually run for a full semester</td>
<td>Highly flexible timeframes: short-term, medium-term, long-term, University vacation periods also utilised.</td>
</tr>
<tr>
<td>Formal reflective practice</td>
<td>Incidental reflective practice</td>
</tr>
<tr>
<td>Overall emphasis on student learning</td>
<td>Overall emphasis on public service</td>
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4. Ibid 68.
CLE is said to be a specific example of service learning as it ‘integrates meaningful community service with instruction and reflection to enrich learning experiences, teach civic responsibility and strengthen communities.’ Lovat and Clement’s recent examination of studies on service learning as holistic values pedagogy, demonstrates the benefits of this approach as it develops an increased sense of social responsibility and civic engagement reflected in student behaviour and attitudes. Although student pro bono activities do not necessitate the same degree of supervision or a requirement for formal reflection, the authors suggest that they can nonetheless be construed as a form of service learning because they place law students in relationships of service to their communities. As Tracey Booth notes, student pro bono activities are fundamentally different to clinics as such programs are ‘voluntary and primarily concerned with service to the community and fostering a public service ethos in participating law student. . . . the focus is public service.’ The Best Practices in CLE Guide describes the distinction:

- CLE is distinct from pro bono and student-run volunteer programs. Such placements have limited educational objectives compared to CLE, do not generally seek to develop students’ normative awareness and do not set out to strengthen wider legal education and law reform curricula, although both can awaken and sustain graduates’ civic consciousness once they are in practice. While the Guide correctly identifies that CLE and pro bono activities are different, the authors dispute the suggestion that student pro bono fails to strengthen wider legal education and law reform curricula, or that it does not seek to develop students’ normative awareness. Rather we suggest that a carefully designed student pro bono program can deliver significant benefits to law schools and their students as it can:
  - serve as the ‘glue’ that binds student learning between formal legal courses. This helps to foster curriculum integration and attainment of the Threshold Learning Outcomes (‘TLOs’);
  - address student equity and diversity considerations through collaborative group work and flexible design;
  - develop students’ ethical framework and awareness of access to justice issues; and
  - satisfy the mission of law schools to meaningfully engage with the profession and the broader community.

Drawing on a case study from the University of Queensland Pro Bono Centre, this article will now critique some of the benefits to students and their law schools from embracing pro bono activities.

Example of a pro bono project: Manning St Project

Since its establishment in 2009, the Pro Bono Centre (‘Centre’) at the University of Queensland has facilitated a diverse array of pro bono activities for students in their third year and above. One of these activities is called the Manning Street Project. Other activities include short-term legal research tasks undertaken for barristers or solicitors on pro bono casework, community legal education activities, and legal intake roles within CLCs or other non-profit organisations.

The Manning St Project is an innovative pro bono partnership between the Centre and Caxton Legal Centre (‘Caxton’), a large generalist Community Legal Centre (‘CLC’) in Brisbane. It is a clinic-style pro bono activity whereby law students participate in a law reform or policy research project in small groups (two to four students) over the course of an academic semester. A catalyst for the development of this particular partnership between the Centre and Caxton was a growing need for the community legal sector to initiate, and respond to, proposed changes in the law. Being the largest generalist CLC in Queensland, Caxton has sufficient physical space to accommodate a group of 12 to 14 students at a time. It provides the physical location for students to work on projects requested by other CLCs and non-profit groups in Queensland. The Centre provides project oversight, with a Centre staff member attending Caxton to support the work of the students and to facilitate dialogue between the students and the CLC requesting the work. Students have worked on a diverse array of topics throughout the Manning St Project, including; law reform issues relating to prisoners; public space law; guardianship law; coronial inquiries; access to justice for seniors and for people with disabilities; and environmental law reform. Some of the completed work has resulted in legal fact sheets, issues papers or student-authored scholarly publications.

The Manning St Project differs from a CLE placement in a number of ways. First, students do not receive any academic credit for their involvement. Consequently there is no formal assessment; students are not required to keep a reflective journal or other similar piece of writing. Second, it is a smaller time commitment, with students only expected to give four hours of their time per week. Students are reminded to prioritise their academic studies and to treat their pro bono legal work as a complement to their formal study commitments. Third, as the work is policy-focused, there is usually no client contact — although student groups sometimes have industry contact as part of their research. Finally, the level of supervision is less intensive compared to a CLE placement. General project guidance is provided by Centre staff, however the students are encouraged to work autonomously throughout the semester.

The Manning St Project is a structured learning environment providing the opportunity for students to present a progress seminar at the halfway point of their research. Students are inducted at the start of the semester and are provided with a written manual that outlines various aspects of the Manning St Project, including the research process and where to seek help if the research is becoming difficult or unworkable. From the outset, students are reminded that they should work collaboratively and actively manage their time as a group.
Unlike CLE, student pro bono legal work is not a formal part of the curriculum and it does not attract academic credit.

The following section examines some of the key benefits and potential challenges to law schools seeking to involve law students in pro bono legal work, illustrated with data excerpted from student evaluations from the Manning St Project. 19

Benefits to increasing student participation in pro bono activities
In 2016, the Centre analysed the Manning St Project student feedback forms from 2012 to 2015. A total of 64 student responses from that three-year period were analysed. Key thematic benefits to law schools, and concomitantly to individual law students, from actively embracing pro bono activities were extrapolated. The authors have added their own critique to further inform this analysis.

Address student equity and diversity
Pro bono activities are highly flexible and do not require a regular weekly commitment unlike many legal clinics. This is important in the context of student equity. Purposefully designing a range of episodic opportunities allows students who have work and family commitments to participate in short-term or flexible pro bono tasks, such as legal research. Pro bono activities can also take place during university vacation periods when students are available to participate without the pressures and time commitments of the academic semester. In relation to the Manning St Project — which requires a lesser weekly commitment than CLE — students commented:

This type of commitment really appealed to me as it was only 4 hours [per week]. The commitment required does not materially detriment other commitments or university when time is balanced well by students.

The 4 hour per week commitment is manageable — even with a full time study load and part time work. It is particularly great that the time is set aside with time allocated at Caxton. There are many benefits for this type of commitment for a student: research and analytical skills are put into real use; initiative and autonomy is required to drive the project; you see and appreciate the operation and impact of the law in real life contexts in ways that are not possible in classes being taught or in tutorials doing problems.

Collaborative group work through pro bono activities like the Manning St Project can also have a moderating effect on the competitive and individualistic law school environment known to contribute to poor mental health in law students. 20 Students who are intrinsically motivated to work for ‘the greater good’ often report that they enjoy group work with like-minded peers. This is illustrated by Manning St Project evaluations:

I think our group collaborated well, worked quite efficiently with one another and I felt we got along very well. We had no difficulties dividing and allocating work tasks amongst ourselves, setting and meeting our deadlines every week, and [UQPBC supervisor’s] assistance in terms of helping us with our resources helped a lot. It was very professional, goal-oriented, and overall a very positive experience.

I found group research to be quite a fulfilling experience. I particularly appreciated when the group discussed and shared thoughts, feelings and insights… particularly in the early stages of the project and there was a real sense of collaboration and efficient, focused teamwork.

Engagement with the legal profession and the broader community
Structured student pro bono legal work can help law schools respond to the needs of the legal profession. This flows into the strategic goals of many university law schools to engage with their professional community. Manning St Project student evaluations articulate this point:

I view this type of work as extremely beneficial for students, as it allows us to be involved in an area of work that we might not have otherwise had the opportunity to engage in… It is also beneficial for the partner organisations which require this work to be done but, without student pro bono involvement, do not have the resources to facilitate the research. I think pro bono involvement is a great way to complement our formal law studies.

A further benefit to a law school over time is the growth of a collegiate culture that supports student pro bono activities. Many academic staff at UQ supervise student pro bono projects, and this provides the opportunity for academics to also make a valued contribution to pro bono legal service. This builds engagement between academic staff, students and the broader legal community.

Curriculum integration and attainment of TLOs
The TLOs developed for the Bachelor of Laws in 2010 ‘represent what a Bachelor of Laws graduate is expected to know, understand and be able to do as a result of learning’. 21 There are six TLOs 22 and the descriptions provided indicate that many of them align with the identified features of student pro bono work. In his commentary on TLO3 (thinking skills), Nick James cautions against creating a mixed message to law students by separating the concern for social justice from the more traditional approach to legal reasoning. James posits that a more nuanced
approach to the development of legal reasoning skills, right from the commencement of legal studies, would avoid sending such a dualistic and conflicting message to students. Structured pro bono activities that operate alongside the degree, which complement curriculum offerings and which provide a ‘law in action’ opportunity immediately following or even during a student’s immersion in a particular course, can have precisely this effect. In this way, carefully designed pro bono activities that are offered to law students at an appropriate time during their degree can facilitate curriculum integration and attainment of the TLOs to which all law schools are now required to have regard. One student involved in the Manning St Project referred to the effect of pro bono legal work in rounding out her skillset:

I could write an essay on how being involved in pro bono projects has added to my skillset, increased my knowledge of the law and surrounding policy, widened my career prospects and brought meaning to a degree that can feel overly technical and alienated from everyday society.

Develop students’ ethical framework and awareness of access to justice issues

Law school is as much a professional socialisation experience as it is a place to learn black letter law. A fundamental part of that socialisation is the integration of professional values and ethics, as well as the instillation of an ethos about a lawyer’s duty to the public. As legal educators we have a responsibility to uphold the service ideals of the legal profession in an attempt to avoid producing graduates who fail to contemplate their role as facilitators of access to justice. Students in the Manning St Project regularly commented on the development of their normative awareness:

Pro bono encourages students to involve themselves in the community and gain a passion for issues that may not necessarily affect them – it’s an eye opening experience that provides well-rounded depth.

I see all benefits in a pro bono commitment. It raises awareness of impediments to access to justice. It is possible to meet people with specific qualities such as selflessness and passion and also gives an opportunity of legal experience.

Efficient use of resources

Pro bono activities are significantly cheaper for law schools as they generally do not require the same level of legal supervision required by CLE. There are fewer resource costs for academic and administrative support, although some resourcing to support internal coordination is arguably necessary and this requires budgetary prioritisation. Booth’s six features of a successful student pro bono program include its institutionalisation within the law school and visible support and encouragement from staff. The UQ Law School has created a hybrid position for a lawyer with links to the community legal sector to run the Centre, as well as allocating resources for administrative support.

Potential drawbacks to student pro bono activities

Involvement in the Manning St Project and other pro bono activities at UQ is optional. Students who participate generally demonstrate high levels of engagement and intrinsic motivation to undertake the work. However, from time-to-time there are students who underperform and do not contribute equally to a group research project. We have found that one way to deal with this issue is to encourage students to ‘peer critique’ one another in the final evaluation. Project oversight by Centre staff at Manning St Project also makes it less likely for an underperforming student to go unnoticed and, on a few occasions, a private conversation between the student and Centre staff member has allowed that student to speak confidentially about their reasons for underperformance.

We have found the more common situation to be students who over-commit themselves by taking on too much pro bono legal work during a semester. In an era of students wanting to be all things to all people, student wellbeing is an issue about which all law schools must remain vigilant. The Fair Work Ombudsman’s recent interest in unpaid internships reinforce the need to actively monitor levels of student pro bono legal work. The Centre addresses this issue through a procedure on wellbeing and by always stating that pro bono activities should complement and not detract from students’ ordinary classroom activities. Pro bono activities are also shared across the cohort in order to prevent overly keen students from taking on too much, as well as to give as many students as possible an opportunity to participate. As legal educators we have a duty to facilitate our students’ exposure to a wide range of rewarding activities, but also to ensure that they strike a balance between gaining useful experience and maintaining a healthy workload.

Conclusion

There is certainly a place in Australian law schools for law student pro bono programs alongside clinical legal education and the broader LLB curriculum. But such a program must be implemented carefully, with quality control and student wellbeing always at the forefront of design. A skilfully designed pro bono program can deliver considerable benefits to law schools that can foster curriculum integration, facilitate the development of professional ethics and practical legal skills, provide law students with opportunities to appreciate the importance of access to justice and satisfy the mission of law schools to meaningfully engage with the profession and the broader community.

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