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The Importance of Inculcating the ‘Pro Bono Ethos’ in Law Students,  
and the Opportunities to Do It Better

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# THE IMPORTANCE OF INCULCATING THE ‘PRO BONO ETHOS’ IN LAW STUDENTS, AND THE OPPORTUNITIES TO DO IT BETTER

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JOHN CORKER\*

## I INTRODUCTION

This article argues why it is vital to inculcate law students with a pro bono ethos on their journey through law school to becoming a lawyer,<sup>1</sup> and suggests ways that we might do this better both during a student’s legal education and practical legal training (‘PLT’) in Australia.

What is meant in this article by ‘inculcating the pro bono ethos’ is producing law students that emerge as lawyers with an abiding commitment to access to justice (at least in its narrow meaning<sup>2</sup>) (particularly for low income, marginalised or disadvantaged individuals), the public good and community service, and for this to be evident in a lawyer’s everyday work. It should simply be part of being a lawyer.

In the US this has been expressed as ‘integrating the lawyer’s role as a public citizen, a commitment to practising law in the public spirit, and professionalism’.<sup>3</sup>

Law school is likely to be the first place that students become aware of the professional obligations of a lawyer. It is said that the essence of professionalism is ethics, altruism and public service.<sup>4</sup> It is this ‘service

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<sup>1</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 7 February 2000) 308; National Pro Bono Task Force, *Report of the National Pro Bono Taskforce to the Commonwealth Attorney-General* (14 June 2001) 30; Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017) ch 2 (‘Australia Clinical Legal Education: Best Practice’). In the US, see Association of American Law Schools Commission on Pro Bono and Public Service Opportunities, *Learning to Serve* (Association of American Law Schools, 1999) (‘*Learning to Serve*’) where 95 per cent of deans responding to the AALS Commission survey agreed that it is an important goal of law schools to instill in students a sense of obligation to perform pro bono service.

<sup>2</sup> See Definitions below.

<sup>3</sup> Eli Wald and Russell G Pearce, ‘Making Good Lawyers’ (2011) 9 *University of St Thomas Law Journal* 403.

<sup>4</sup> Gino Dal Pont, *Lawyers’ Professional Responsibility* (Law Book Co, 6<sup>th</sup> ed, 2016) [1.30].

ideal' that underpins the pro bono ethos and the associated ethical obligation recognised by lawyers to provide pro bono legal services.

It is suggested that the pro bono ethos should be able to be found in any law graduate, whether their chosen career be in private practice, government, corporate, or the community sector. As a law graduate, their career destination is still likely to be a professional one.

It is also suggested that this objective is particularly important right now whilst there is evidence that professionalism is more than ever under threat and that its survival in the law, as much as anywhere, seems increasingly fragile.<sup>5</sup> Fear has been expressed for some time that 'the ascendancy of economics, competition and technology, unrestrained, will snuff out what is left of the nobility of the legal calling and the idealism of those who are attracted to its service'.<sup>6</sup>

As the former Chief Justice of the Supreme Court of New South Wales, James Spigelman, said, it is professionalism that distinguishes the practice of law from being a mere business.

Many aspects of the law constitute a business or a job, but the practice of the law is not *only* a business or a job. Every lawyer has obligations to the court, the public and to the profession, which obligations may override the direct financial self-interest of the lawyer ... For the legal system values of justice, truth and fairness should prevail over money.<sup>7</sup>

According to George Beaton, the author of two books on the legal services industry in Australia:

ethical considerations and obligations lead to and maintain trust on the parts of those served and are the essence of professionalism. There is no definition of professionalism — even a rough outline of professionalism's characteristics — that does not include a central component of ethics and altruism.<sup>8</sup>

The Legal Services Commissioner in New South Wales ('NSW'), John McKenzie, reminds us that 'the historical role of a lawyer is one of a servant to the public' and contends that 'it is the public service claim that became essential to the purpose of the profession and the real justification for its existence'.<sup>9</sup>

Similar arguments are found in the leading US case of *Shapero*<sup>10</sup> where O'Connor J, joined by Rehnquist CJ and Scalia J, said:

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<sup>5</sup> See, for example, the behaviour of a former criminal defence barrister (Lawyer X) being examined in the Royal Commission into the management of police informants in Victoria in Royal Commission into the Management of Police Informants, 'Establishment of the Royal Commission into the Management of Police Informants', *About us* (Web Page, 22 June 2020) <<https://www.rcmpi.vic.gov.au/the-commission>>.

<sup>6</sup> Michael Kirby, 'Legal Professional Ethics in Times of Change' (1998) 72 *Australian Law Reform Commission Reform Journal* 5..

<sup>7</sup> Tim D Castle (ed), *Speeches of a Chief Justice: James Spigelman 1998–2008* (CS2N Publishing, 2008) 131.

<sup>8</sup> George Beaton, 'Why professionalism is still relevant' (Report, January 2010).

<sup>9</sup> John McKenzie, 'Legal Ethics – What Are They Today?' (Discussion Paper, 16 February 2017).

<sup>10</sup> *Shapero v Kentucky Bar Association*, 486 US 466 (1988).

the special privileges incident to membership of the profession are said to be a means to a goal that transcends the accumulation of wealth. That goal is public service, which in the legal profession can take a variety of familiar forms. This view of the legal profession need not be rooted in romanticism or self-serving sanctimony, though of course it can be. Rather, special ethical standards for lawyers are properly understood as an appropriate means of restraining lawyers in the exercise of the unique power that they inevitably wield in a political system like ours.<sup>11</sup>

However, these views, like the legal profession itself, are not static. They are not accepted by all who enter the profession of law and thus must form an essential part of a full legal education.

As former Justice Michael Kirby reminds us, the responsibility of maintaining these values falls on the lawyers of today and tomorrow, the latter being the law students of today:

whether [the basic ideal of the legal profession, as one of faithful service beyond pure economic self-interest] will survive or not is up to the lawyers of today.

We should examine the sources of our deepest concerns and then do what we can, whilst moving with the times, to revive and reinforce the best of the old professional ideals, to teach them rigorously and insistently to new recruits and to enforce them strictly where there is default.<sup>12</sup>

After considering existing approaches and experience in the US, UK, and Canada, this article argues that to better inculcate the pro bono ethos in law students the opportunities for Australian law schools are to:

1. Adopt or further develop a culture within the law school that champions and embodies the school's commitment to producing graduates that are embedded with the importance of the value of a lawyer's duty to the public good and community service (particularly for low income, marginalised or disadvantaged individuals).
2. See the task of helping all students to develop a pro bono ethos as a continuum from the beginning to the end of the course of study for a law degree.
3. Recognise that some of the factors that influence a student to have a pro bono ethos may be external to legal education such as those that stem from their upbringing or a significant experience with injustice and so seek to provide positive, relevant and diverse experiences for students, rather than seeking to limit the type and range of opportunities.
4. As a complement to clinical legal education programs, promote and support pro bono student programs to be equally worthy of support as part of a contemporary legal education. These should provide law students in their first year of study with exposure to volunteering and volunteer work.

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<sup>11</sup> Ibid 8.

<sup>12</sup> Kirby (n 6).

5. Provide greater experiential learning opportunities for the greatest possible number of students particularly as part of ethics teaching. These should be provided in a social justice context where the values of justice in an ethical framework can be discussed.
6. Highlight ethics, altruism and public service to students as key values of the legal profession and provide a greater formal emphasis in undergraduate courses about a lawyer's professional commitment to the public good, access to justice and community service.
7. Promote the achievement of these values by students through a system of recognition of student activities rather than solely through academic reward.
8. Encourage the development of professionalism in a law student as 'relational professionalism' thus developing these attributes and providing experiential learning opportunities in the context of a law student's relationships with their own community and colleagues.
9. Implement and support a range of activities where students are involved with lawyers in the context of the solicitor/client relationship including with not-for-profit clients.
10. Invest in and properly resource the activities and infrastructure necessary to build projects, programs, and clinics to support students to experience activities that embed the values of justice in an ethical framework as an essential part of the educational framework, particularly clinical legal education and student pro bono programs.

The opportunities for the legal profession through its peak body, The Law Council of Australia, are to include a statement of a solicitor's duty to the public good and community service in key policy documents and in particular in the *Australian Solicitors Conduct Rules*.

And the opportunities for the policy and regulatory framework surrounding Practical Legal Training and admission to practice are to make explicit a lawyer's duty to the public good and require a person seeking admission to have undertaken a certain number of hours of law-related community service work supported by an amendment to the *Legal Profession Uniform Admission Rules 2015* to make completing 'the pro bono legal element of PLT' a prerequisite to the issue of a compliance certificate necessary for admission to practice.

## II DEFINITIONS

What one means by a 'pro bono ethos' depends in turn on how one defines underlying and associated concepts such as 'access to justice', 'pro bono work', 'pro bono legal work', 'student pro bono', 'community service work', 'clinical legal education', and 'public interest'. Various definitions exist.

As Les McCrimmon stated in 2003:

the educational objectives of a law course designed to promote a pro bono ethos must rest on a definition. The scope of the definition will have an impact on the teaching and learning methods that can be used to achieve those objectives. If the methodology adopted is a clinical placement,

defining public interest in terms of assistance targeted to the poor will impact on the range of suitable placement sites.<sup>13</sup>

For the purposes of this article, I have adopted the following definitions in an attempt to provide clarity since the meaning of some of these terms is contested or can carry a different meaning according to context.

'Access to justice' can have a broad or narrow meaning. In its narrow use it is primarily concerned with the extent to which people understand the law, are able to get legal advice and representation, and are able to make or defend a claim. In its broad use, it has a meaning even beyond the law with an emphasis on justice, including social justice. Both meanings have a role to play when examining this issue.

'Social Justice' involves finding the optimum balance between our joint responsibilities as a society and our responsibilities as individuals to contribute to a just society. Many different ideas exist as to where that optimum balance lies.<sup>14</sup>

'Pro bono work', is used simply to denote work for the public good, a literal translation of the Latin phrase, *pro bono publico*, from where the modern concept of 'pro bono' originates. It may be legal or law-related work but not necessarily. It includes community service work.

'Pro bono legal work' is a term that emerges from the legal profession itself. The Law Council of Australia ('LCA') stated in 1992:

Pro bono [legal] work is defined to include situations where:

1. A lawyer, without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where:
  - i. a client has no other access to the courts and the legal system; and/or
  - ii. the client's case raises a wider issue of public interest; or
2. The lawyer is involved in free community legal education and/or law reform; or
3. The lawyer is involved in the giving of free legal advice and/or representation to charitable and community organisations.<sup>15</sup>

The Australian Pro Bono Centre ('APBC') defined 'pro bono legal work' in a more prescriptive way when it introduced the National Pro Bono Target ('Target') in 2006,<sup>16</sup> which has been successful in reinforcing the professional responsibility of Target signatory lawyers

<sup>13</sup> Les A McCrimmon, 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' (2003-4) 14(1) *Legal Education Review* 53, 55.

<sup>14</sup> *National Pro Bono Resource Centre*, 'What is Social Justice?' (Occasional Paper 1, October 2011) 5.

<sup>15</sup> Australian Pro Bono Centre, 'Other Definitions of Pro Bono', *Information on Pro Bono* (Web Page) <<https://www.probonocentre.org.au/information-on-pro-bono/definition/other-definitions/>>.

<sup>16</sup> The Target is contained in a statement of principles about how pro bono legal work should be undertaken. It is an aspirational target of at least 35 hours pro bono legal work per lawyer per annum. In 2019, approximately 12,000 Australian lawyers were signatories to the Target either individually or through their law firm: See Australian Pro Bono Centre, 'What is Pro Bono?', *Information on Pro Bono* (Web Page) <<https://www.probonocentre.org.au/information-on-pro-bono/definition/>>.

to do pro bono legal work, and to clarify, plan, measure and evaluate pro bono programs in law firms.<sup>17</sup> These definitions complement each other and both are relevant to the discussion in this article.

The accompanying Guidance Notes<sup>18</sup> clarify that a lawyer can include a law graduate not yet admitted to the practice of law but does not include a law student or paralegal.

In the above definitions, and in the key American Bar Association ('ABA') definition of 'Voluntary Pro Bono Publico Service',<sup>19</sup> the important and common feature is that, for work to be pro bono legal work, it must be undertaken by a lawyer.

So what then is 'student pro bono' or a 'student pro bono program'?

In 2004, Tracey Booth, when distinguishing student pro bono from clinical legal education, said:

student pro bono programs are voluntary and primarily concerned with service to the community and fostering a public service ethos in participating law students. ... the focus is public service.<sup>20</sup>

I have adopted a slightly varied definition of 'student pro bono' for this article as used by the Australian Pro Bono Centre in 2004 when introducing the Pro Bono Students Australia program as follows:

'Student pro bono' is where students, without fee, expectation of reward, or academic credit provide or assist in the provision of services that will provide or enhance access to justice for low income and disadvantaged people or for not-for-profit organisations that work on behalf of members of the community who are disadvantaged or marginalised, or that work for the public good.<sup>21</sup>

I have added the words 'expectation of' before the word 'reward' to better reflect the idea that the altruistic motive of the individual in agreeing to take on the work is a key distinguishing characteristic of pro bono work<sup>22</sup>.

Other definitions of student pro bono may allow work for academic credit, and a broader range of law-related work, to count as discussed below.

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<sup>17</sup> Australian Pro Bono Centre, 'National Pro Bono Aspirational Target: The Target at Ten Years' (Public Discussion Paper, Australian Pro Bono Centre, October 2017) 11.

<sup>18</sup> Australian Pro Bono Centre, 'National Pro Bono Target Guidance Notes', *Information on Pro Bono* (Web Page) Guidance Note 4 <<https://www.probonocentre.org.au/provide-pro-bono/target/guidance-notes/>>.

<sup>19</sup> See American Bar Association, *Model Rules of Professional Conduct* (August 2017) Rule 6.1.

<sup>20</sup> Tracey Booth, 'Student Pro Bono: Developing a Public Service Ethos in the Contemporary Australian Law School' (2004) 29(6) *Alternative Law Journal* 280.

<sup>21</sup> John Corker, 'How Does Pro Bono Students Australia (PBSA) Fit with Clinical Legal Education in Australia' (Conference Paper, Australian Clinical Legal Education Conference, International Journal of Clinical Legal Education Conference, 13-15 July 2005) 5.

<sup>22</sup> See similar observation by Lindsey Stephenson-Graf, *Clinical Programs, Social Justice and Transformation through Student Learning*, *Alternative Law Journal* Issue 3, (2019) at <https://doi.org/10.1177/1037969X18823563>

The definition of clinical legal education has been and remains contested.<sup>23</sup> ‘Clinical legal education’ (‘CLE’) is used here to refer to law school experiential learning that places students in the role of lawyers representing clients with legal questions or problems.<sup>24</sup> It is normally intensive, one-on-one or small group in nature and relies on structured reflection to enable students to analyse the learning and insights they gain from the courses.<sup>25</sup>

Australia has a strong and sophisticated CLE movement that has developed in a social justice context and so has a dual focus on legal education and community service.<sup>26</sup>

‘Community service work’ is used in this article to mean voluntary work done for free in order to give back to the community. It is assumed to include law-related work unless otherwise specified.

### III THE AUSTRALIAN REGULATORY FRAMEWORK

Para 2.3.3 of the *Standards for Australian Law Schools* (the ‘Australian Standards’) states:

the curriculum seeks to develop knowledge and understanding of ... the principles of ethical conduct and the role and responsibility of lawyers, including, for example, their pro bono obligations.<sup>27</sup>

These self-regulatory standards stand in stark contrast to the American Bar Association’s *Standards and Rules of Procedure for Approval of Law Schools*<sup>28</sup> for their lack of specificity of how this might be achieved. Also, there is no positive statement in the Australian Standards about the value of experiential learning. Nevertheless, the Australian Standards do confirm that the curriculum should seek to develop an understanding of a lawyer’s pro bono obligations as part of the role and responsibility of being a lawyer.

‘Ethics and Professional Responsibility’ is one of the required ‘Priestly 11’ subjects and so must be taught. It is also one of the 13 PLT competencies for entry-level lawyers.<sup>29</sup>

It is useful to compare the approaches to these two requirements under the *Legal Profession Uniform Admission Rules 2015* (‘The Rules’). In completing the requirements to obtain an undergraduate law degree, Rule 5 prescribes that:

the specified academic qualifications prerequisite is successfully completing a tertiary academic course in Australia ... which ... is accredited by the [relevant state Legal Admissions] Board ... and, the

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<sup>23</sup> *Australian Clinical Legal Education: Best Practice* (n 1) ch 3.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> It has become more complex and sophisticated over time, growing from its roots working with community legal centres in the 1970s and 1980s: *Ibid* ch 5.

<sup>27</sup> Christopher Roper, *Standards for Australian Law Schools: Final Report* (Council of Australian Law Deans, March 2008) [2.3.3].

<sup>28</sup> American Bar Association, *2020-2021 Standards and Rules of Procedure for Approval of Law Schools* (Standards, 24 August 2020).

<sup>29</sup> *Legal Profession Uniform Admission Rules 2015* (NSW) sch 2 cl 3.

Board determines *will provide for a student to acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee after consulting each of the Boards.*<sup>30</sup>

The ‘academic areas of knowledge’ include ‘Ethics and Professional Responsibility’, which are said to be either:

Professional and personal *conduct* in respect of a practitioner’s duty:

- (a) to the law,
- (b) to the Courts,
- (c) to clients, including a basic knowledge of the principles relating to the holding of money on trust, and
- (d) to fellow practitioners,

or

Topics of such breadth and depth as to satisfy the following guidelines:

The topics should include *knowledge of* the various pertinent *rules* concerning a practitioner’s duty to the law, the Courts, clients and fellow practitioners, and a basic knowledge of the principles relating to the holding of money on trust.<sup>31</sup>

What is notably absent is any specific mention of a duty to the community or the public. It could be said that the duty to facilitate access to justice would likely be included as part of the professional and personal conduct in relation to the law, the courts and the clients but there is no mention of a broader ‘service ideal’.

The Australian Learning and Teaching Council’s (‘ALTC’) *Good Practice Guide* for law teachers on the teaching of ethics and professional responsibility to law students, does indicate that graduates of the Bachelor of Laws should demonstrate:

- (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community.<sup>32</sup>

It would be good to see this explicitly stated in Rule 5.

Looking at the rules for PLT competencies, what is envisaged is a lot clearer as ‘the community’ is specifically mentioned:

An entry-level lawyer should act ethically and demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, *the community* and other lawyers.<sup>33</sup>

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<sup>30</sup> Ibid sch 2 cl 5 (emphasis added).

<sup>31</sup> Law Admissions Consultative Committee, *Uniform Principles for Assessing Qualifications of Overseas Applicants for Admission to the Australian Legal Profession* (Report, August 2015, revised August 2017) 16 (emphasis added).

<sup>32</sup> Maxine Evers, Leanne Houston and Paul Redmond, *Good Practice Guide (Bachelor of Laws): Ethics and Professional Responsibility (Threshold Learning Outcome 2)* (Australian Learning and Teaching Council, 2011) 14 (‘ALTC Good Practice Guide’).

<sup>33</sup> *Legal Profession Uniform Admission Rules 2015* (NSW) (emphasis added).

Also, 'being aware of the importance of pro bono contributions' is one of the nine elements of this competency.<sup>34</sup> The performance criteria associated with this element are that the entry-level lawyer has:

- recognised the importance of pro bono contributions to legal practice.
- identified various means whereby lawyers may provide pro bono contributions.
- where necessary, used resources provided by professional or community organisations to facilitate pro bono contributions; and
- identified when a client with insufficient resources may be entitled to legal aid, or assistance from professional or community organisations.<sup>35</sup>

This is an important statement of what is required of a practising lawyer, but the focus is on the pro bono contribution of a lawyer as a practical matter rather than any broader ethical duty of community service.

Arguably this is appropriate in a vocational course. However, when the only competency under the domain of 'values' is 'ethics and professional responsibility' and none of the other eight elements of 'act[ing] ethically and demonstrat[ing] professional responsibility' address the broader values issue, there seems to be an opportunity to include recognition of a lawyer's commitment to the public good, access to justice, and community service as additional criteria in Schedule 2 of The Rules.<sup>36</sup>

Another element of acting ethically set down in Schedule 2 of the Rules is complying with Professional Conduct Rules, a further place where one might expect mention of a lawyer's duty to community service and the public good.

In a 2018 review of these rules<sup>37</sup> it was said that:

The Rules reflect ethical principles developed and settled over many years in consideration of the professional, fiduciary and other duties of solicitors and the common law.

and ...

the Rules can be regarded as an exercise of self-regulation: firstly, by the profession as a whole, as statements of agreed ethical standards of the profession; and secondly, by each member of the profession, as a professional commitment to abide by those ethical standards.

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<sup>34</sup> Ibid sch 2 cl 18, element 9.

<sup>35</sup> Ibid.

<sup>36</sup> The other eight elements address acting ethically, knowing when to raise ethical problems with others, discharging the legal duties and obligations of legal practitioners, complying with professional conduct rules, complying with fiduciary duties, avoiding conflicts of interest, acting courteously, and complying with rules relating to the charging of fees: Ibid sch 2 cl 18.

<sup>37</sup> See, eg, the agreed set of professional conduct rules for all solicitors in Australia: Law Council of Australia, *Review of the Solicitors' Conduct Rules* (Consultation Discussion Paper, 1 February 2018) paras 12-18.

The Rules are said to be providing a framework of principles:

not [to] attempt to prescribe in detail how solicitors should act in their day-to-day personal lives and professional practices [but] Instead ... intended to guide and assist solicitors to act ethically and in accordance with the principles of professional conduct established by the profession and the common law.

It is therefore perhaps surprising that within this broad framework of the *Australian Solicitors Conduct Rules* there is no statement of commitment by lawyers to work for the public good.

#### IV FORMATION OF A STUDENT'S PROFESSIONAL IDENTITY AND THE TEACHING OF ETHICS

The development of a law student's professional identity throughout their undergraduate course of study and through PLT provides a key opportunity to inculcate the pro bono ethos. What approach a law school takes to this task will be vital to the outcome.

It has been suggested that law schools are already implicitly yet actively engaged in the formation of students' professional identities. It is said that, historically, law schools have been instilling a very particular brand of professional identity, forming students into autonomously self-interested lawyers<sup>38</sup> and, in many law schools, autonomous self-interest is the dominant culture that informs curriculum design, teaching styles, the values of law professors, the organisation of law faculties, and, in turn, the treatment of law students.<sup>39</sup>

However, it has also been argued that whilst some future lawyers may choose autonomous self-interest as their guiding professional ideology, the least law schools should do is offer compelling alternatives.<sup>40</sup> And without doubt some Australian law schools actively do so.<sup>41</sup>

##### *A Ethics Teaching*

Professionalism, perhaps more than knowing a narrow set of ethical rules, is what requires a commitment to the public good, access to justice and community service. However, having a strong ethical framework is a necessary part of being of a fully formed professional. The two are intrinsically woven together.

It is acknowledged that there are challenges with the direct teaching of ethics in that both students and teachers may find the curriculum a disappointment,<sup>42</sup> such that student apathy, resistance, and sometimes

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<sup>38</sup> Wald and Pearce (n 3).

<sup>39</sup> Ibid.

<sup>40</sup> Wald and Pearce (n 3) 433.

<sup>41</sup> These include UNSW, Monash University, Griffith University, LaTrobe University and University of Queensland.

<sup>42</sup> David Luban and Michael Millemann, 'Good Judgment: Ethics Teaching in Dark Times' (1995) 9 *Georgetown Journal of Legal Ethics* 64.

even hostility is encountered.<sup>43</sup> To that extent, new models of teaching ethics may be difficult to implement in the law schools.<sup>44</sup> However it is suggested that a stronger focus on the pro bono ethos through experiential learning, as a part of the educational necessity to teach ethics and professional responsibility, will meet some of these challenges. There is support for this view in Australia.

Evers, Houston and Redmond, in reviewing the relevant literature in 2011 in order to prepare a guide for academics who teach ethics and professional responsibility,<sup>45</sup> discussed the importance of students developing an ability to exercise and reflect upon the professional responsibilities of lawyers in promoting justice and service to the community. In that respect they found:

The most powerful outcome of the research literature concerns the possibly stifling effect of academic legal education upon student justice orientation and the *restorative influence of direct experience with real clients especially in personal plight legal contexts*. These contacts may, but need not, be in law school clinics but may take a variety of external or not-for-credit forms. *It is the direct contact with clients that most contributes to the maintenance and growth of the personal commitment to the promotion of justice and community service orientation in later professional work.*<sup>46</sup>

### *B A Whole of Curriculum Approach*

The authors also made clear that:

The substantial body of research concludes that ethics should be weaved throughout the degree, described as the 'pervasive method' (that involves the introduction and integration of ethics into each area and aspect of the curriculum); that is a 'whole of curriculum' approach.<sup>47</sup>

and went on to strongly support this approach:

By infusing ethics throughout the curriculum, the pervasive method responds directly to the call for joining professionalism with legal analysis *from the beginning of students' legal education*. Further, 'ethics is not just an appendage to law, it is at the very heart of the matter, and must become part and parcel of the entire program'. The primary rationale for addressing ethical issues throughout the curriculum is that they arise throughout the curriculum. Ethics must be a continuing presence.<sup>48</sup>

Evers, Houston and Redmond specifically suggested that:

... in order to successfully implement into the curriculum, ethics should be taught as a first-year introductory subject; via the pervasive method and as a final year discrete capstone subject.<sup>49</sup>

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<sup>43</sup> Michael Robertson, 'Providing Ethics Learning Opportunities throughout the Legal Curriculum' (2009) 12 *Legal Ethics* 59.

<sup>44</sup> *Ibid.*

<sup>45</sup> *ALTC Good Practice Guide* (n 31).

<sup>46</sup> *Ibid* 14 (emphasis added).

<sup>47</sup> *Ibid* 4-5.

<sup>48</sup> *Ibid* 4 (emphasis added).

<sup>49</sup> *Ibid.*

There is also strong support from leaders in the US about the importance of starting the process of professional formation and embedding the value of public service at the outset of a law student's education.

As former Chief Judge Lippman said:

If pro bono is a core value of our profession, and it is — and if we aspire for all practicing attorneys to devote a meaningful portion of their time to public service, and they should — these ideals ought to be instilled from the start, when one first aspires to be a member of the profession.<sup>50</sup>

And as Deborah Rhode warns:

As a threshold matter, the capacities of even the best designed programs should not be overstated. By the time individuals launch a legal career, it is too late to alter certain personal traits and experiences that influence public service motivations. Such factors include a willingness to empathize, a sense of civic or group responsibility, and early positive exposure to volunteers and volunteer work. If these formative influences are lacking, pro bono programs may hold little appeal.<sup>51</sup>

Wald and Pearce<sup>52</sup> argue that a first-year, first-semester course should serve as the beginning of a professionalism track that will allow students to deepen their understanding of their professional identity and to integrate it into the other coursework and experiences they encounter at law school, and that 'thinking like a lawyer' be a central inquiry of all three years of law school. The second- and third-year curriculum, in addition to skills instruction, should include consistent explicit treatment of the meaning of professionalism, and a greater immersion in public law topics, which will easily lend themselves to consideration of lawyers' inevitable connection to the public good.<sup>53</sup>

### *C Relational Professionalism*

It is said that that professional values are, 'relational', that is they implicate relationships with clients, colleagues, and community.<sup>54</sup> Relational self-interest then links a person as a lawyer with the rest of their lives. Law students are no different. They have a community of contacts and a background of experiences that have informed their personal values and may (or may not) underpin an intrinsic civic commitment.

It is said that a 'good' law school is one that develops a student's character or professionalism: that develops a mix of their better values, skills and attitudes to make them a (morally) good lawyer.<sup>55</sup> It is argued therefore that an opportunity exists for law schools to encourage students to embrace these when developing and forming their professional self.

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<sup>50</sup> Lippmann (n 98) 3–4.

<sup>51</sup> Rhode (n 132) 70-1.

<sup>52</sup> Ibid 436.

<sup>53</sup> Wald and Pearce (n 3) 436.

<sup>54</sup> Ibid 434.

<sup>55</sup> Adrian Evans, *The Good Lawyer* (Cambridge University Press, 2014) 11.

Law schools should encourage students to draw on their personal values (informed by background, community, and experience) as a resource in their work, which should allow them to better understand legal clients as complex human beings or entities with missions and purposes.

In the US it is argued that for students steeped in a culture of autonomous self-interest, the current approach of appealing to abstract commitments, such as honesty, loyalty, civility, and pro bono, may have some, but minimal, persuasive effect.<sup>56</sup> So an effective legal education must go further.

This model of 'relational professionalism', can be an antidote to the dominant paradigm of autonomous self-interest, because the relational model contextualises life as a future lawyer with other important aspects of a student's life. And for some, if not many, it is in these aspects and relationships that their inspiration to 'do good' originates. There are a lot of pressures on students as they proceed through law school and the challenge must be to educate through initiatives that embed the key concepts in a way that is meaningful to students.

A law school's approach to relational professional values is important because leadership and persistence are required to support students to become comfortable with this view of themselves as working for the public good. It is argued that law schools and their faculties should model community leadership, can take steps to become hubs of professional relationships, and can foster and demonstrate to their students a commitment to the community (local, regional, and national) by requiring or encouraging their faculties to perform pro bono services broadly construed.<sup>57</sup>

## V THE EXISTING APPROACHES

As far back as 2000, the Australian Law Reform Commission, in its review of the federal civil justice system, recommended that,

in order to enhance appreciation of ethical standards and professional responsibility, law students should be encouraged and provided opportunity to undertake pro bono work as part of their academic or practical legal training requirements.<sup>58</sup>

And in 2001 the National Pro Bono Task Force noted:

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.<sup>59</sup>

But things have progressed considerably since that time. This part briefly discusses the key existing programs and initiatives in Australian law schools where students are exposed to ideas and experiences that are likely to inculcate the pro bono ethos and impart the key values

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<sup>56</sup> Wald and Pearce (n 3) 434.

<sup>57</sup> Ibid 439.

<sup>58</sup> Australian Law Reform Commission (n 1) [38].

<sup>59</sup> National Pro Bono Taskforce (n 1) 31.

involved. Mention is made of shortcomings, and examples of best practice are highlighted so as to identify opportunities for seeking to have as many law students as possible emerge from their legal training with the pro bono ethos firmly evident in their professional character.

### *A Clinical Legal Education (CLE)*

As McCrimmon warned in 2003,

simply exposing students to the needs of the poor and disadvantaged is not sufficient. It is essential that the negative impact of unstructured exposure, such as reinforcing negative attitudes and beliefs, be minimised.<sup>60</sup>

This sentiment, and considerable work towards establishing best practice, has underpinned the successful growth of the ‘clinical legal education movement’ in Australia. Essential elements of ‘clinic’ are now seen as effective supervision, constructive feedback and ongoing student reflection, all aiming to provide greater student insight into fundamental concepts of law such as justice, social justice and the rule of law.<sup>61</sup>

CLE is now argued to be not just an option within wider legal education, but a necessity to deliver the best of legal education.<sup>62</sup> CLE programs were offered in 26 out of 28 Australian law schools in 2019.<sup>63</sup> However, it is generally only available to students in the later years of their undergraduate degree and the places for students in the programs are limited. The opportunity is to expose all law students to the concepts and values of justice, rule of law, access to justice, social justice, community service and pro bono legal work, in theory and in practice from the outset of their course of study.

It is said that CLE can be easily distinguished from the vocational training provided in PLT (addressed below) in Australia because:

the emphasis in clinical legal education on meeting the diverse and complex needs (legal, emotional, systemic and therapeutic) of real clients, either individuals or organisations, places it well beyond the vocational focus of Practical Legal Training and Work Integrated Learning, which can limit themselves to a ‘how to’ approach to practising law. Clinical legal education ... is intended to develop a critical and analytical consciousness of law.<sup>64</sup>

### *B Student Pro Bono Programs*

Student pro bono programs are available to students in the earlier years of their undergraduate degree courses. Their primary focus is providing service to the community. However, they only exist in a few

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<sup>60</sup> McCrimmon (n 13).

<sup>61</sup> *Australian Clinical Legal Education: Best Practice* (n 1).

<sup>62</sup> *Ibid* 4.

<sup>63</sup> See UNSW Law, *Kingsford Legal Centre Clinical Legal Education Guide: Your guide to CLE Courses Offered by Australian Universities in 2019/20* (Guide, 2019).

<sup>64</sup> *Australian Clinical Legal Education: Best Practice* (n 1) ch 3.

Australian law schools. The opportunity is for all law schools to have such programs.

The Pro Bono Students Australia program<sup>65</sup> (based on the successful Pro Bono Students Canada program) launched at Western Sydney University ('WSU') in 2004 had limited take-up by other universities although at WSU it did lead to the law school establishing a clinical legal education program.<sup>66</sup> I suggest that the reasons for low take-up include the strength of the CLE movement in Australia, the lack of administrative support for these programs in law faculties, and the difficulty of getting students involved when there are so many other competing options that may offer academic reward (or paid employment).

Two inspiring examples of what is possible can be found at the University of Queensland ('UQ') and the University of Technology Sydney ('UTS').

#### *UQ Pro Bono Centre*

The UQ Pro Bono Centre<sup>67</sup> is a dedicated and unique centre within an Australian law school that provides 'pro bono opportunities' for its students, provided they have completed at least one-year full-time law study before being eligible to apply for these opportunities. This student pro bono program seeks to 'inspire its students to graduate with a lifelong professional commitment to pro bono legal service'.<sup>68</sup>

The Centre's website indicates that about 500 students are registered on its pro bono roster which equates to about 30 per cent of the law student population.<sup>69</sup> The roster formalises student public interest volunteer work at community legal centres, community organisations, the courts and other legal settings.

The Centre has successfully involved its students in a diversity of projects and in 2016, the Centre was the winner of an Australian Award for Teaching.<sup>70</sup>

UQ makes clear that pro bono activities undertaken by students do not attract academic credit (unlike the diverse range of clinical legal education subjects available to later year students at UQ) because as stated on the website, 'pro bono, by definition, is work for no reward'.<sup>71</sup>

Whilst this may not be entirely consistent with the profession-wide definitions<sup>72</sup> of 'pro bono legal service' (as they include 'work for

<sup>65</sup> For more detail see Corker (n 21).

<sup>66</sup> And to establish the Parramatta Justice Clinic. See Western Sydney University, 'Parramatta Community Justice Clinic', *Western Sydney University* (Web Page) <[https://www.westernsydney.edu.au/sol/school\\_of\\_law/parramatta\\_community\\_justice\\_clinic](https://www.westernsydney.edu.au/sol/school_of_law/parramatta_community_justice_clinic)>.

<sup>67</sup> See University of Queensland, 'About the UQ Pro Bono Centre', *UQ Pro Bono Centre* (Web Page) <<https://law.uq.edu.au/pro-bono/about-uq-pro-bono-centre>>.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> University of Queensland TC Beirne School of Law, 'UQ Pro Bono Centre receives Australian Award for University Teaching' (Media Release, 12 December 2016).

<sup>71</sup> See University of Queensland (n 67).

<sup>72</sup> See the Law Council of Australia and Australian Pro Bono Centre definitions in Part II above.

reduced fee’ or ‘substantially reduced fee’), the idea of ‘no reward’ exemplifies the core value of *pro bono publico* which is providing community service without any expectation of reward.

### *UTS Brennan Leadership Program*

The second example is the UTS Brennan Justice and Leadership Program.<sup>73</sup> This is a joint initiative between the UTS Law Faculty and the UTS Law Students’ Society started in 2011. It shares a similar philosophy to that of the UQ Pro Bono Centre in that its objectives are to ‘seek to develop each student’s capacity for personal and professional leadership through service to the community’. However, it approaches the task in a different way.

Unlike UQ and most clinical legal education programs (usually only available in final years of study),<sup>74</sup> it encourages students from across *all* years of study to opt in to the two components of the program: ‘Reflections on Justice’ and ‘Leadership through Service’.

‘Reflections on Justice’ is designed to stimulate an intellectual engagement with the idea of justice to continue across a student’s studies of law and beyond and generate a group conversation about justice among students. To complete the program and qualify for the Brennan Justice and Leadership Award, student participants must accrue a hundred Reflection Points. Points are obtained by attendance at specific lectures and participation in discussion groups designed to act as a debrief function for students to share their experiences and foster a greater community mindset amongst the cohort.

The ‘Leadership through Service’ element requires a student to undertake voluntary roles with a service and leadership element, which can be done in either a legal or non-legal context. ‘Leadership through Service’ hours must be undertaken according to a pro-rata allocation determined on criteria set out in the Brennan Program Handbook.<sup>75</sup>

One of the secrets of the success of this program is that it provides a unique form of recognition for the student. The Reflection Points and the Brennan Justice and Leadership Award appear permanently on the student’s academic university transcript, reinforcing the idea that these concepts should be part of a professional identity throughout the lawyer’s career and so providing a ‘take-away’ element likely to be valuable to the student when seeking employment.

This ‘mere recognition’ can perhaps be distinguished from the reward, for example provided by academic credit, thus providing a structured activity that still reinforces the important voluntary nature of *pro bono* work.

The program allows first- and second-year students to gain credit in community service which allows students to participate from the earliest stages of their law degree and permits involvement from those who may encounter difficulty in securing a law-related placement due

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<sup>73</sup> UTS Law and UTS Law Students’ Society, *Brennan Justice and Leadership Program: Program Handbook* (Handbook, Autumn 2014).

<sup>74</sup> See Kingsford Legal Centre (n 63).

<sup>75</sup> UTS Law and UTS Law Students’ Society (n 73).

to inadequate experience or legal study. This approach also recognises that there is a diverse range of career paths for law graduates, some which are not necessarily in the legal industry, and acknowledges that fostering a pro bono ethos is important, irrespective of the function in which it manifests.

### C *Students Volunteering at Community Legal Centres (‘CLCs’)*

Many law students volunteer at community legal centres during the period of their law studies. They might do this as part of a CLE or student pro bono program, or as part of the experiential learning requirements of a PLT program. However, many simply volunteer as a matter of individual choice. This is an important way in which law students get exposure to community services (often in their community) that are dedicated to improving the lives of disadvantaged and marginalised individuals, with students often involved directly with lawyers providing legal services to clients.

This is a long-held tradition.<sup>76</sup> Of the 181 community legal centres in Australia as at February 2019,<sup>77</sup> 82 out of 110 centres surveyed (75 per cent) indicated having undergraduate law student volunteers and 59 of these centres indicated having law-graduate PLT student volunteers in the 2016–17 year.<sup>78</sup> In fact, the undergraduate law students provided the largest number of volunteer hours by far of any volunteer group and over a third of the total volunteer hours for the year.<sup>79</sup>

Students also volunteer at Aboriginal and Torres Strait Islander Legal Services or Family Violence Prevention Legal Services where they are likely to be coming into direct contact with clients and be part of a legal team acting for a client.

The opportunity is to increase this level of volunteerism and encourage students to become involved as early as possible in their course of study.

### D *Component of Ethics Courses*

The inclusion of legal ethics into law curricula in Australia is of relatively recent origin.<sup>80</sup> The way in which ethics is taught varies.<sup>81</sup>

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<sup>76</sup> See Community Legal Centres Australia, ‘Volunteer’, *Ensuring a thriving community legal sector* (Web Page) <<https://clcs.org.au/volunteer>>.

<sup>77</sup> National Association of Community Legal Centres, Submission to Federal Budget 2019-2020 (February 2019).

<sup>78</sup> National Association of Community Legal Centres, *National Census of Community Legal Centres: 2017 National Report* (Report, October 2018).

<sup>79</sup> 5,429 volunteer hours out of a total of 15,291 hours: Ibid 41.

<sup>80</sup> In 2000, legal ethics was still not taught in every Australian law school. See Gonzalo Villalta Puig, ‘Legal Ethics in Australian Law Schools’ (2008) 42(1) *The Law Teacher* 29.

<sup>81</sup> Marlene J Le Brun, ‘Enhancing Student Learning of Legal Ethics and Professional Responsibility in Australian Law Schools by Improving Our Teaching’ (2001) 12(1–2) *Legal Education Review* 269, 277.

However, it is taught now in all law schools as ‘ethics and professional responsibility’ is one of the required ‘Priestley 11’ subjects.<sup>82</sup>

A key criticism of the way ethics has been taught is that this has been done with an ethics-as-law approach rather than with an ethics-as-judgement approach.<sup>83</sup> A further criticism is that it has been taught as a discrete final year subject.<sup>84</sup>

Some Australian law schools have responded to the requirement to teach ethics through an increased focus on experiential learning for their students. This followed the findings of the influential 2007 US Carnegie Foundation report, *Educating Lawyers, Preparation for the Profession of Law*,<sup>85</sup> that identified some ‘missing educational pieces’ for law students, being ‘apprenticeship of ‘professional identity and values’, ‘apprenticeship of practice and skills’, and ‘professional formation’.

There is an overlap between the teaching of ethics and CLE programs. A clinic in a social justice setting, such as a community legal centre, offers a rich opportunity for the study of legal ethics, professional responsibility and models of lawyering.<sup>86</sup>

A student experiencing an ethical dilemma in a supported environment can bring their own judgement and morality to bear on the ethical question at hand, and so may develop resilience to ethical challenges that will be vital later on in order to become a successful legal professional.

It is also argued that clinics provide the opportunity for students to reflect on the standard conception of a lawyer as a value-neutral, partisan and adversarial advocate for their client, and to actively consider other ethical approaches to lawyering, such as responsible lawyering, moral activist lawyering, and an ethic of care.<sup>87</sup> This all informs an understanding of what access to justice in the broad sense means.

For example, UNSW incorporates a clinical component within the mandatory ethics course, enabling all law degree students to interview clients and then reflect on the role of lawyers and the capacity of law as a vehicle to achieve justice.<sup>88</sup>

The opportunity exists for many law schools to include or increase experiential learning opportunities for students in a social justice context as a component of its ethics teaching.

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<sup>82</sup> Victorian Legal Admissions Board, ‘Academic’, *Qualifications and Training* (Web Page, 12 August 2020) <<https://www.lawadmissions.vic.gov.au/qualifications-and-training/academic>>.

<sup>83</sup> Kingsford Legal Centre (n 63).

<sup>84</sup> See Emeritus Professor Adrian Evans et al, Submission No 23 to Royal Commission into the Management of Police Informants, *Victorian Royal Commission into the Management of Police Informants* (5 March 2019).

<sup>85</sup> William M Sullivan et al, *Educating Lawyers Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching in the US, 2007).

<sup>86</sup> *Australian Clinical Legal Education: Best Practice* (n 1).

<sup>87</sup> Christine Parker and Adrian Evans, *Inside Lawyers’ Ethics* (Cambridge University Press, 2<sup>nd</sup> ed, 2014) ch 2.

<sup>88</sup> Anna Cody, ‘What Does Legal Ethics Teaching Gain, If Anything, from Including a Clinical Component?’ (2015) 22(1) *International Journal of Clinical Legal Education* 1.

### *E Component of PLT Requirements*

Once a student has completed an approved academic course, which includes all the 11 Priestley subjects, he or she must complete practical legal training<sup>89</sup> before being eligible to be admitted to practise as a lawyer. The emphasis is now vocational.

The requirement may be satisfied by successfully completing either:

1. a practical legal training course conducted by a practical legal training provider accredited by the Board, or
2. supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides for the trainee to satisfy the requirements of the Rules.<sup>90</sup>

An approved practical legal training course or program must adhere to the *Competency Standards for Entry Level Lawyers* ('Competency Standards'). These were developed by the Australasian Professional Legal Education Council ('APLEC') and the Law Admissions Consultative Committee ('LACC').<sup>91</sup> The Competency Standards cover three key domains: skills, practice areas, and values. Each domain includes subjects that the APLEC and LACC have agreed constitute essential knowledge for all lawyers. Under the Competency Standards there is a work experience requirement for all students in order to complete their PLT. It varies depending on the nature of the PLT undertaken but, for example, in NSW under the *Legal Profession Uniform Admission Rules 2015* (NSW),<sup>92</sup> a student is required to complete at least 15 days of work experience in order to comply. This is a minimum, with the standard work experience requirement generally being 75 days.<sup>93</sup>

Most PLT providers will allow a proportion of this work experience to be undertaken volunteering at a CLC, on a placement to a Legal Aid organisation or assisting a barrister in chambers.<sup>94</sup> For some students

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<sup>89</sup> *Victorian Legal Admissions Board*, 'Practical Legal Training Course', *Qualifications and Training* (Web Page, 12 August 2020) <<https://www.lawadmissions.vic.gov.au/qualifications-and-training/practical-legal-training-course>>.

<sup>90</sup> *Ibid.*

<sup>91</sup> Katherine Lau, 'A Comprehensive Guide to Practical Legal Training (PLT)', *GradAustralia* (Web Page) <<https://gradaustralia.com.au/law/a-law-students-guide-to-practical-legal-training-PLT>>.

<sup>92</sup> Requirement found at Clause 5 of Schedule 2. The rules seek to adapt the *PLT Competency Standards for Entry-level Lawyers* published by the Law Admissions Consultative Committee, which came into effect on 1 January 2015: see Law Admissions Consultative Committee, *Practical Legal Training – Competency Standards for Entry-Level Lawyers* (Standards, 1 January 2015). See also *Legal Profession Uniform Admission Rules 2015* (NSW) r 6 referring to sch 2 'Practical legal training competencies for entry-level lawyers'.

<sup>93</sup> See The College of Law, 'About', *Work Experience* (Web Page) <<https://www.collaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs/work-experience>>.

<sup>94</sup> *Ibid.*

this may be their first opportunity to apply their skills to a real-life legal problem.

It is suggested that it should be a simple matter to require a proportion of the work experience to be ‘community service experience’, to be known as the ‘pro bono legal element of PLT’.

This small change could be conceptually very significant noting that formal recognition of this element in the national *PLT Competency Standards for Entry Level Lawyers* would further enshrine this important ethical value in vocational legal practice training. The opportunity is also for the Legal Services Council to amend the *Legal Profession Uniform Admission Rules 2015*, to make completion of the pro bono legal element of PLT a prerequisite to the issue of a compliance certificate.

## VI THE US, CANADA AND UK EXPERIENCES

### A The USA

The US, unlike Australia, Canada or the UK, has in place a regulatory framework whereby the American Bar Association (‘ABA’) has power to set standards and procedural rules for law schools.

Accordingly, Standard 303(b) of the ‘*ABA Standards and Rules of Procedure for Approval of Law Schools 2018-2019*’ states:

A law school shall provide substantial opportunities to students for:

- (1) law clinics or field placement(s); and
- (2) student participation in **pro bono** legal services, including law-related public service activities.<sup>95</sup>

On its website, the ABA states that in the law school setting:

pro bono generally refers to student provision of voluntary, law-related services to people of limited means or to community-based non-profit organizations, for which the student does not receive academic credit or pay.<sup>96</sup>

It follows that student pro bono programs, found extensively in the US, are focussed on providing their students with law-related community service work without academic credit. However, most of these courses are mandatory to ensure compliance by the law school with ABA Standard 303(b) above.

In the 2018 fall semester, 84 law schools reported that 16,502 law students in the class of 2018 contributed almost 3.5 million hours in

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<sup>95</sup> American Bar Association, *Standards and Rules of Procedure for Approval of Law Schools 2018-2019* (Standards, 2018).

<sup>96</sup> See American Bar Association Standing Committee on Pro Bono and Public Service, ‘A Guide and Explanation to Pro Bono Services: Pro Bono’, *American Bar Association* (Web Page, 26 July 2018) <[https://www.americanbar.org/groups/legal\\_education/resources/pro\\_bono/](https://www.americanbar.org/groups/legal_education/resources/pro_bono/)>.

legal services as part of their legal education, an average of about 211 hours per student.<sup>97</sup>

Of particular interest is the 50 hours 'pro bono service' requirement for law graduates to be admitted to the New York State Bar, which was introduced in May 2012 by the former Chief Judge of the State of New York, Jonathan Lippman, and the associated Pro Bono Scholars program where students agree to devote the entire final semester of their third year to full-time pro bono service under the supervision of a legal service provider, law firm, or corporation, in partnership with their law school.

Even though this has not spread to other US states, this groundbreaking initiative is of particular interest because it represents a determined and unique approach, implemented at the last point in time before a law graduate becomes a practising lawyer. Whilst it was driven by a motive to confront an 'access to justice crisis' to deliver legal services to the poor, it also challenges students to adopt a lifelong pro bono ethos in their professional life.

As former Chief Judge Lippman said when announcing the 50-hour rule:

my remarks today will focus on a most pressing responsibility for all of us: instilling and fostering a culture of service in the men and women who enter our profession as lawyers each year. It is the legal profession's commitment to equal justice and to the practice of law as a higher calling that has made service to others an intrinsic part of our legal culture.

The new protocols that I will announce today for admission to the bar in New York, will challenge every law student to answer very basic questions that are fundamental to the very fibre of the legal profession: How will you choose to benefit your fellow man and your community with your new skills? Will you use your legal acumen to foster equal justice in our state? Do you recognize that being a lawyer requires an understanding that access to justice must be available to all New Yorkers regardless of their station in life? From the start, these responsibilities of the profession must be a part of every lawyer's DNA — to support the values of justice, equality and the rule of law that make this state and this country great.<sup>98</sup>

And when introducing the Pro Bono Scholars Program, he said:

The overarching goal for the Pro Bono Scholars Program is to instil in future members of the New York bar the value of public service to the poor and to provide them with the opportunity to acquire valuable legal skills that will prepare them for the practice of law.<sup>99</sup>

With these announcements there was much debate about whether it was appropriate to make community service mandatory and the nature of the work that could fall within the 'pro bono service' requirement. It was perhaps inevitable that a broad definition of 'pro bono service' was

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<sup>97</sup> Association of American Law Students, 'AALS 2018 Law Student Pro Bono Hours Survey', (Web Page) <<https://www.aals.org/aals-newsroom/aals-2018-law-student-pro-bono-hours-survey/>>.

<sup>98</sup> Jonathan Lippman, 'Law Day 2012' (Speech, Albany, 1 May 2012) 1.

<sup>99</sup> Ibid.

adopted in order to maximise the opportunities for graduates seeking admission to fulfil the requirement.

For this pre-admission requirement, work qualifies as ‘pro bono service’ if it is law-related and supervised by an attorney, judge, or law school faculty or instructor. It can include pro bono work undertaken abroad, or through an internship in various settings including at state, local, or federal government agencies, or with legislative bodies. The applicant is also allowed to receive funding or academic credit for qualifying pro bono work and still satisfy the requirement.<sup>100</sup>

The ABA Standing Committee on Pro Bono and Public Service commented, in its white paper looking at the pros and cons of the requirement, that ‘pro bono service’ allowed an extraordinarily broad swath of work to count as ‘pro bono’ for purposes of fulfilling this requirement and asked the question, ‘Is “pro bono”, then, the right term to describe what is a broader, law-related service requirement?’<sup>101</sup>

It was criticised for being so wide that it allowed for the possibility of incorporating work that did not directly seek to instil the spirit of public service or even bridge the access to justice gap.<sup>102</sup> For example, it was noted that a student could serve as a legal intern for the Department of Motor Vehicles, issuing tickets and fines to poor people as opposed to providing them with services, and still satisfy the pro bono requirement.<sup>103</sup>

Whilst this definition of pro bono service is extremely wide, like other definitions discussed in this article they are created in a context where the key motivation is to improve access to justice for the indigent, and to foster and develop the pro bono ethos in those involved. It is suggested therefore that these fringe arguments about what counts or doesn’t are not particularly important in this context.

The key differences between the US and Australia are the power of the US lawyers’ professional body (the ABA) to set rules for law schools, and their rule that law schools must provide substantial opportunities to students for law clinics or field placement(s), and for student participation in pro bono legal services. This rule has made the provision of these opportunities mandatory in most law schools. No such power exists in Australia.

Another key difference is the ability of the US judiciary to set conditions on rules of admission, a power that in Australia has passed to the Legal Services Council<sup>104</sup> under the Uniform Law with it being

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<sup>100</sup> NYU Law, ‘New York State Bar Pro Bono Requirement’, *Public Interest Law Center* (Web Page) <<https://www.law.nyu.edu/publicinterestlawcenter/forstudents/nys-bar-pro-bono-requirement>>.

<sup>101</sup> ABA Standing Committee on Pro Bono and Public Service, *New York’s 50-hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons* (White Paper, October 2013) 1.

<sup>102</sup> Justin Hansford, ‘Lippman’s Law: Debating the Fifty-Hour Pro Bono Requirement for Bar Admission’ (2016) 41(4) *Fordham Urban Law Journal* 1141, 1162.

<sup>103</sup> *Australian Clinical Legal Education: Best Practice* (n 1) 1163.

<sup>104</sup> To see how this came about, see Law Admissions Consultative Committee, *Background Paper on Admission Requirements* (Paper, 21 October 2010) 4.

the LSC's responsibility to prepare a 'certificate of compliance' upon which the court relies to grant admission<sup>105</sup>.

### *B Canada*

There is a wide range of clinical and experiential education initiatives in law schools across Canada dating back to the 'first wave' of clinics in the 1970's. Despite significant challenges, it was said in 2018 that, 'no longer regarded by most as a legal education outlier, clinical and experiential learning has come out of the curricular shadows and taken a prominent place in most law schools in Canada.'<sup>106</sup>

Key challenges have been identified as funding, staffing, governance, scope of service, the difficulties of curricular integration, and a lack of a shared understanding of the nature and roles of experiential pedagogies in supporting student learning,<sup>107</sup> these being many of the same challenges faced by CLE in Australia.

A clinical placement is not mandatory at any common law school in Canada, although the University of Manitoba, the University of Calgary and Osgoode Hall have mandatory 'experiential programming', a broad phrase which simply means that learners engage in an experience and have an opportunity to reflect and think about that experience.

Of particular note as a successful initiative in Canada is Pro Bono Students Canada ('PBSC'), a national pro bono organisation founded in 1996 at the University of Toronto.<sup>108</sup> It has grown to become a national network of law schools, law students, organisations and lawyers, all working together to provide free legal information to underrepresented communities in Canada to increase access to justice and to improve community resources. Despite law students who participate in this national volunteer network not receiving academic credit for their involvement, the program has been popular with chapters now operating in 22 of the 24 law schools across Canada.<sup>109</sup> One of the three explicit goals of the program is to promote the value of pro bono service among the next generation of lawyers.<sup>110</sup> Importantly, each chapter is supported by a local on-site supervisor, selected by the faculty, whose engagement with the program is critical to its success. Also, PBSC's local chapters are run by law students.<sup>111</sup>

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<sup>105</sup> *The Legal Profession Uniform Law Application Act 2014* (NSW) (VIC).

<sup>106</sup> Gemma Smyth, Samantha Hale and Neil Gold, 'Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives' (2018) 95(1) *Canadian Bar Review* 151.

<sup>107</sup> *Ibid* 159.

<sup>108</sup> University of Toronto Faculty of Law, 'Pro Bono Students Canada (PBSC)', (Web Page) <<https://www.law.utoronto.ca/programs-centres/programs/pbsc-pro-bono-students-canada>>.

<sup>109</sup> Council of Canadian Law Deans, 'Canadian Law Schools', (Web Page) <<https://cclcd-cdfdc.ca/law-schools/>>.

<sup>110</sup> *Ibid*.

<sup>111</sup> See Pro Bono Students Canada, 'Our Chapters', (Web Page) <<https://www.probonostudents.ca/ourchapters>>.

‘Pro bono services’ in this context are defined quite narrowly and traditionally, being legal services provided without fee or expectation of a fee to:

- persons of limited means who cannot otherwise afford them
- cases that raise a broad issue of public or community concern that might not otherwise be pursued
- not-for-profit organizations or community groups involved in representing disadvantaged or marginalized people

Pro bono services include legal advice, courtroom advocacy, drafting of legal opinions and documents, legal research, mediation, negotiation, law reform, community legal education and other legal services. Pro bono services generally do not include non-legal volunteer activities, professional development activities, client development or maintenance activities, or continuing legal education.<sup>112</sup>

How and why the PBSC program is successful without providing academic credit for students is not clear. It provides a shining example of student pro bono amongst a range of other experiential learning opportunities available to Canadian law students.<sup>113</sup> A similar program called Pro Bono Students Australia was launched in Australia in 2004 at the then University of Western Sydney<sup>114</sup> but despite students from other Australian universities trying to launch similar programs at their University it has not had significant take-up.

### *C United Kingdom*

A handful of law school clinics, where students could undertake pro bono work, started in the UK in the 1970s and 1980s but the main growth in these clinics started around the year 2000. The Solicitors Pro Bono Group (now operating as LawWorks) was formed in 1997 and in 2000 reported that only 37 per cent of university law schools reported some form of pro bono activity.<sup>115</sup> By 2014, a key survey undertaken by LawWorks<sup>116</sup> indicated that 96 per cent of responding organisations (81 per cent of all law schools) were involved in pro bono and/or clinical activity.

In 2014, the Chairman of LawWorks, Paul Newdick QC remarked, it is heartening to see that student pro bono has now become the norm rather than the exception at UK universities.<sup>117</sup>

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<sup>112</sup> Pro Bono Students Canada, ‘What Is Pro Bono?’, (Web Page) <<https://www.probonostudents.ca/whatisprobono>>.

<sup>113</sup> See Douglas D. Ferguson, ‘The State of Experiential Education in Canadian Law Schools’ (2013-2014) 37(1) *Manitoba Law Journal* 465, 466-467 for further details of clinics.

<sup>114</sup> See details in Corker (n 21).

<sup>115</sup> The Solicitors Pro Bono Group survey in 2000 contacted 81 institutions; 73 responded. Of these, 41% reported pro bono activity. The 37% figure assumes non-responders did not have any pro bono activity. See Carney (n 115) 6.

<sup>116</sup> Damian Carney and ors, *The LawWorks Law School Pro Bono and Clinic Report 2014* (Report, 2014).

<sup>117</sup> *Ibid* 3.

The 2014 survey defined [student] 'pro bono work' broadly, ie as an activity organised and/or delivered by a law school that provides a legal service to an individual, group or organisation without charge. Clinic was also defined broadly, as a structure that delivers pro bono work that is organised by a law school, law firm or advice agency.

Much of the 'pro bono work' undertaken by UK law students is done in a clinic setting (at an in-house legal advice centre or in a 'Street Law' clinic). Ninety per cent of those responding to the survey indicated that this work is being done in return for academic credit and so might be called 'clinical legal education' rather than 'student pro bono' under the definitions adopted in this article. The remaining 10 per cent of respondents indicated that they award students with certificates of participation and/or provide personal references.

Like the US, the definitions adopted reflect an emphasis on the amount of legal service provision to the indigent by law students (perhaps due to the focus on the concern about cuts to legal aid funding in the UK) rather than one whose primary aim is to inculcate the pro bono ethos in students. But this is not to say that these programs are less successful than those in other countries in producing lawyers with a strong commitment to access to justice.

In fact, the 2014 survey does indicate that the reason most cited by a law school for providing pro bono work opportunities for its students was the educational value (94 per cent) followed by social justice and employability<sup>118</sup> (75 per cent). Other possible motivations suggested by the question were recruitment, engagement, retention, university mission, student demand, and staff interest.

To become a solicitor in the UK, students need to obtain either a Bachelor of Law Degree (LLB) or an Undergraduate Degree in another area followed by a one-year Graduate Diploma in Law (GDL). After this, they must complete a Legal Practice Course (LPC). This usually takes one year or two years of part-time study and involves a mix of compulsory subjects and a choice of specialised electives. Once students have completed the LPC, a solicitor will take a two-year training contract at a law office before becoming fully qualified.<sup>119</sup>

Only certain university law schools are authorised to provide the LPC<sup>120</sup> completion of which takes a student a considerably longer time to complete (generally two years) than the Practical Legal Training course in Australia. This has permitted and perhaps encouraged the development of pro bono programs within the LPC as these courses are focussed strongly on vocational training where students are working

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<sup>118</sup> See Cantatore, Francina (2015) "Boosting Law Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects," *Legal Education Review*: Vol. 25 : Iss. 1 , Article 7. Available at: <https://epublications.bond.edu.au/ler/vol25/iss1/7>.

<sup>119</sup> See QLTs School, 'How to Become a Lawyer in the UK', *Legal Profession / The Solicitor* (Web Page, 23 October 2018) <[https://www.qlts.com/blog/profession/how-to-become-a-lawyer-in-the-uk](https://www qlts.com/blog/profession/how-to-become-a-lawyer-in-the-uk)>.

<sup>120</sup> The Solicitors Regulation Authority provides a list of authorised providers. See Solicitors Regulation Authority, 'Legal Practice Course (LPC) providers', *Students* (Web Page) <<https://www.sra.org.uk/students/courses/lpc-course-providers>>.

directly with members of the profession. For example, the BPP Pro Bono Centre was established in 2004 at all BPP University Law School study centres, with a dedicated Pro Bono Manager at each location.<sup>121</sup> It provides a wide range of free legal advice and support services to the public delivered by volunteer BPP University Law School students, under the guidance of qualified lawyers.

Despite, and perhaps because of the comparatively limited time that it takes to complete PLT in Australia, the opportunity exists for PLT to actively manage pro bono opportunities for its students in a more committed way than it does currently where they can work directly with members of the profession in a social justice context.

## VII WHAT ARE THE FACTORS THAT INVOKE COMMITMENT?

This part looks at the evidence of whether the above initiatives actually improve the chances of a student emerging from their law study with a pro bono ethos, and seeks to identify some factors that work, or don't work. Unfortunately, there are limited studies but at least in Australia, there is evidence that supports a causal relationship. The limited Canadian data from the PBSC program also seems to indicate a clear positive effect with students in the program indicating a remarkable 85 per cent of student volunteers reporting that they plan on offering pro bono services upon graduation.<sup>122</sup>

The US data is more equivocal but seems to identify some of the factors that provide students with a rewarding and meaningful experience and an ongoing civic commitment.

In 2007, a longitudinal study exploring the relationships between the values and ethical behaviour of early career lawyers was conducted at Monash University.<sup>123</sup> The study examined changes in ethical decision-making based on 11 hypothetical scenarios, one of which was whether a new lawyer at a commercial firm should take on an interesting pro bono case when the firm had no pro bono culture and the senior partner wanted the new lawyer to increase his billable hours for the firm. The study comprised an Australian cohort of final year law students and tracked them through their first two years of post-admission employment.

The results suggested that those lawyers who had an involvement in clinical practice during their law degree were more inclined to participate in pro bono legal activity in their post-admission phase. However, as the study noted,<sup>124</sup> the results should be viewed with some caution as CLE in Australia is an optional element of a law degree and

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<sup>121</sup> See BPP University Law School, 'About BPP Pro Bono Centre', *About* (Web Page) <<http://probono.bppuniversity.ac.uk/about/>>.

<sup>122</sup> Pro Bono Students Canada, 'Impact', (Web Page) <<https://www.probonostudents.ca/impact>>.

<sup>123</sup> Adrian Evans and Josephine Palermo, 'Lawyers and Ethics in Practice: The Impact of Clinical and Ethics Curricula on Lawyers' Ethical Decision-Making' (Legal Studies Research Paper No 2007/13, Monash University Faculty of Law, 25 February 2007) 12.

<sup>124</sup> *Ibid* 24.

the differences may be a reflection of the characteristics of those students who volunteer to participate in the clinical placement, rather than a consequence of participation in the placement itself. The study also noted the need for more research that utilises controlled 'pre-post' test designs to ascertain the efficacy of clinical placement as an effective intervention towards the development of professional ethical conduct.<sup>125</sup>

The Kingsford Legal Centre ('KLC') at UNSW conducted a survey of its alumni in 2007,<sup>126</sup> which indicated that 46 per cent of respondents had done some pro bono work since leaving KLC and many commented that the KLC experience made them more aware of the plight of disadvantaged people and the importance of access to the law for the disadvantaged and marginalised.<sup>127</sup>

In the US, where student pro bono programs are mandatory, a major study asked approximately 2000 former students from three law schools between 2004 and 2007 a series of open-ended questions about the impact that pro bono programs had on their professional lives.<sup>128</sup> The study found 'there are no significant differences in the number of hours devoted to pro bono work between attorneys who were required to do pro bono in law school and those who were not',<sup>129</sup> although the study did find that 'nearly seventy percent of these attorneys endorse the view that their law school pro bono experiences taught them something about people who were different from themselves'.<sup>130</sup>

Another US study in 2009 (with data from a nationally representative survey of early-career attorneys in the US), also found surprisingly little empirical evidence about the relationship between clinical legal education and the practical and professional development of law students.<sup>131</sup> Whilst they found no evidence of a relationship between clinical training experiences and new lawyers' pro bono service, and no consistent evidence of a relationship between clinical training experiences and new lawyers' civic participation, they did find a strong relationship between clinical training and career choice 'for those young attorneys who recall that they came into law hoping to improve society or help individuals'. They noted, that for this group of new lawyers, clinical training may have been an important factor in sustaining or accelerating their original civic commitments.

I note also Deborah Rhode's study in at least six US law schools in 2005 that included two schools with no student pro bono programs and

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<sup>125</sup> Ibid.

<sup>126</sup> See the answers to Question 5 in the survey: Kingsford Legal Centre, *Survey of Kingsford Legal Centre Alumni 2007* (Web Page, 2007) 11–13 <[http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/KLC\\_alumni\\_survey\\_2007.pdf](http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/KLC_alumni_survey_2007.pdf)>.

<sup>127</sup> See the answers to Question 6: Ibid 13–16.

<sup>128</sup> Robert Granfield, 'Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs' (2007) 54(5) *Buffalo Law Review* 1355.

<sup>129</sup> Ibid 1384.

<sup>130</sup> Ibid 1378.

<sup>131</sup> Rebecca Sandefur and Jeffrey Selbin, 'The Clinic Effect' (2009) 16 *Clinical Law Review* 57.

two with well-supported programs.<sup>132</sup> Of those who responded that law school had a positive effect concerning a shift in attitudes about pro bono or public interest work, only a fifth (22 per cent) indicated that positive law school experiences had encouraged involvement with pro bono service. About the same percentage (19 per cent) reported that negative law school experiences had dampened their interest in pro bono service.<sup>133</sup> I do note that most student pro bono programs in the US studies were mandatory programs, a factor that may help explain these figures.

### A *Mandatory or Voluntary*

There are moral and practical objections to mandatory programs. It is argued that reward for pro bono service is an anathema.<sup>134</sup> But it is also argued that mandatory programs are the strongest possible way to convey the message that public service is a professional responsibility. Voluntary pro bono programs have distinctive benefits such as reinforcement of individual altruistic commitment.<sup>135</sup> Pro bono is an altruistic activity that unleashes the power of volunteerism, the key to which is a willingness to take on the challenge. Unfortunately, these programs have become increasingly unattractive to students without providing an appealing incentive to join. Rhode's study on this issue did not support a preference for either mandatory or voluntary programs.<sup>136</sup> Rather she says, that whatever approach is chosen, it should attempt to *provide positive public interest experiences and ensure that they are available to the maximum number of students*.<sup>137</sup> Moreover, the value of pro bono service needs to be *reflected and reinforced through the law school experience in both curricular coverage and resource priorities*.

### B *Recognition Rather than Reward*

An elegant solution to many of these dilemmas is to be found in Australia in the UTS Brennan Justice and Leadership Program.<sup>138</sup> Rather than reward, recognition is provided in the form of 'reflection points' and an award for those who obtain 50 or more points during their degree studies. The difference between reward and recognition may be a fine one but it is an important distinction. Like marks awarded for subjects, the reflection points form part of a student's academic record without being connected to any particular subject of study. They are acquired throughout the years of study for the degree and at the end reflect that student's commitment to justice and leadership. This

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<sup>132</sup> Deborah L Rhode, *Pro Bono in Principle and in Practice: Public Service and the Professions* (Stanford University Press, 2005) ch 7, 154–65.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Learning to Serve* (n 1) 10.

<sup>135</sup> Rhode (n 130) 54.

<sup>136</sup> *Ibid* 165.

<sup>137</sup> *Ibid.*

<sup>138</sup> UTS Law and UTS Law Students' Society (n 72).

approach could easily be adopted by other law schools in programs they might develop that seek to develop a student's pro bono ethos (even across a mix of mandatory, voluntary, for-academic credit, not-for-academic credit offerings). I also note that Monash is offering a clinical experience to all students that desire it thus emphasising skills flexibility and employability (recognising that not all their students want to practise law).

Unfortunately for the 50-hour pre-admission requirement in New York, there is little empirical evidence of its effect thus far, although plenty of opinion. For example, Justin Hansford says:

Judge Lippman's cause is a worthy one. His leadership on issues of access to justice may eventually become one of the most significant and inspiring developments in the law that we have seen in many decades. However, with Lippman's law, change will only happen through rigorous exploration of professional ideals, targeted, focused experiences in law practice directly related to public service values like economic justice, racial justice, and voting rights, and thorough data gathering, supervision, and training.<sup>139</sup>

This comment again reinforces the idea that a key factor in the level of commitment to be found in a new lawyer may be that *individual's perception of the compelling, or otherwise, nature of the social and legal need to hand*, for example, their perception of the importance of racial justice or equal voting rights in the US, or the plight of asylum seekers or homeless persons, both of which have been strong drivers for the growth of pro bono legal work in Australia.<sup>140</sup>

There are many individual law student testimonies about the importance and effect of a law student's participation in clinic or pro bono activities.<sup>141</sup> Some of these include very positive statements as to the long-term effect of the experience, such as:

this opportunity solidified the importance of pro bono work in my future legal practice

the law is just a tool and ultimately the goal should be to find ways to use it to serve your community

pro bono work has since become a fundamental aspect of my life and the Pro Bono Program has allowed me to embrace it

my involvement in pro bono has allowed me to actually use the law to make a concrete difference in the lives of clients and issues I care about

because of my pro bono projects in law school, I am certain that I will always incorporate a form of pro bono in my life.

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<sup>139</sup> Hansford (n 102) 1188.

<sup>140</sup> See Australian Pro Bono Centre's media releases on Target Reporting 2017 and 2018: 'Celebrating 2.86 Million Hours Of Pro Bono Legal Work' (Media Release, Australian Pro Bono Centre, 27 September 2017); 'National Pro Bono Target Remains at 35 Hours Per Lawyer Per Annum But Now Includes Work for Social Enterprises: Changes to Apply from 1 July 2018' (Media Release, Australian Pro Bono Centre, 27 June 2018).

<sup>141</sup> See, eg, University of Virginia School of Law, 'What I Learned From Pro Bono', (Web Page) <<https://www.law.virginia.edu/pro-bono/the-experience>>.

The fact that I enjoyed my experience so much helped solidify my decision to pursue a career as a public defender, which is something I did not necessarily expect to happen in just two short weeks.<sup>142</sup>

Others talk of ‘a meaningful or rewarding experience’ that, in context, seems connected to that student’s career direction. As Sandefur and Selbin note:

Clinical training’s impact is mediated by the nature of the clinic experience itself, the context of the overall law school experience and forces external to legal education that powerfully shape lawyers’ attitudes and behaviour.<sup>143</sup>

One of those forces external to legal education is the person’s intrinsic level of civic commitment. This may be spawned by a person’s upbringing, an experience with injustice, perhaps a personal and poignant exposure to a disadvantaged or marginalised person or community, or the satisfaction of achieving a favourable outcome for such a person through the use of the law.<sup>144</sup> It may also vary from time to time throughout a lawyer’s career. There are many examples of lawyers responding to unmet legal need by providing pro bono legal services to help a particular community with which they empathise or in response to instances of palpable injustice, disaster or crisis.<sup>145</sup>

A short summary might be that the factors that seem to ‘work’ in having a lasting effect on students to inculcate a pro bono ethos are intrinsically connected to the approach taken by the law school where they study. Key factors include curricula coverage, the school’s commitment to producing graduates with the value of public service embedded, the degree of effectiveness of its communication to students that lawyers have a fundamental and abiding commitment to further access to justice (particularly for low income, marginalised or

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<sup>142</sup> Ibid.

<sup>143</sup> Rebecca Sandefur and Jeffrey Selbin, ‘The Clinic Effect’ (2009) 16 *Clinical Law Review* 57, 105.

<sup>144</sup> Personal satisfaction is often the most cited reason by lawyers for doing pro bono work: UQ Pro Bono Centre, *What Does Pro Bono Publico Mean to Lawyers? A Report on the Findings of the Pro Bono Values Project* (Report, 2016) 10–14. See annual performance reports of the National Pro Bono Target: Australian Pro Bono Centre, ‘National Pro Bono Target’, (Web Page) <<https://www.probonocentre.org.au/provide-pro-bono/target/>>.

<sup>145</sup> See, eg, the New York City Bar’s response to 9/11: Association of the Bar of the City of New York Fund Inc, NALP Foundation for Law Career Research and Education, Louis Stein Center for Law and Ethics, Fordham University School of Law, *Public Service in Times of Crisis: A Report and Retrospective on the Legal Community’s Response to the Events of September 11, 2001* (Report, 2004). In Australia, see pro bono response to the plight of asylum seekers, Bushfire Legal Help in Victoria, and the responses in Queensland to floods and cyclones: ‘The Refugee Assistance Project’ (Joint Statement, NSW Young Lawyers and the Refugee Advice And Casework Service, 19 August 2016); Victoria Legal Aid, *Legal Assistance and Community Recovery after the 2009 Victorian Bushfires: The Bushfire Legal Help Response* (Report, 2010); Cameron Dick (Attorney-General), Queensland Government, ‘Free Legal Services on Offer to Flood Victims’ (Media Statement, 21 January 2011). See also National Pro Bono Resource Centre, *Emergency Preparedness and Disaster Planning for the Legal Profession in Australia* (Report, Law Council of Australia, 2011).

disadvantaged individuals), the public good and community service, and adequately resourcing programs to provide public interest experiences that are meaningful to students (which may involve individual tailoring of opportunities). These factors require an appropriate and supporting law school culture.

## VIII DISCUSSION AND CONCLUSION

What causes a lawyer to develop a pro bono ethos whilst undertaking legal education and vocational training is complex. However, if ethics, altruism and public service are to remain key values of the legal profession it is vital to understand how this occurs and how it can be furthered. If the objective is to produce lawyers with an abiding commitment to the public good, access to justice and community service, we must recognise that some of the influential factors may be external to legal education such as those that stem from a person's upbringing or a significant experience themselves with injustice. There is evidence that these external and intrinsic factors can be enhanced, sustained or augmented by positive educational experiences,<sup>146</sup> as professional formation occurs. The benefits are not only to the fabric of the legal profession but if the pro bono ethos is strong among law students/ future lawyers, then essential social stability and cohesion (i.e. reduced corruption/ reduced wealth inequality/higher ethical standards and behaviour), are also likely to be strengthened.

There is a need to see all of the elements of an appropriate educational experience as part of a continuum, starting at the outset of the study of law right through to the time that the student graduates or is admitted to practice whichever is the last stage for that student. There is a need for more longitudinal research to explore in depth the effect on students of various experiences. This research should utilise before-and-after measurement methods that seek to control results for intrinsic factors.

In the undergraduate degree, curricula should involve in the first year an introductory exposure to developing a professional identity and an ethical framework, thereafter a strong offering of public law subjects highlighting the ethical and access to justice (in the broader sense) issues, and a capstone subject in the final year of the degree that reinforces, expands and encourages students to express the values of their professional formation. Issues such as the importance of pro bono contribution by a practising lawyer more naturally should be emphasised at times in the course when professional and vocational responsibilities are being taught, more likely towards the end of the degree.

As CLE is generally available only to later-year students dedicated student pro bono programs from the first year may help provide opportunities for students in their early years to experience their forthcoming role as a lawyer providing community service. These

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<sup>146</sup> Sandefur and Selbin (n 143).

programs might be more successfully developed than they have been to date if a recognition, rather than reward, approach was taken, and coordination of these programs is properly resourced. Importantly they need to be seen as distinct from, but complementary to, clinical legal education programs and equally worthy of support as part of a contemporary legal education. Greater investment by law schools in clinical legal education and student pro bono programs is a natural part of the leadership required to advance the pro bono ethos objective.

And leadership is key to fulfilling this objective. For example, in the US it has been the leadership of New York former Chief Judge Jonathon Lippman who has advanced the debate about the importance of lawyer's community service obligations and inspired change. He has repeatedly stressed that:

It is the legal profession's commitment to equal justice and to the practice of law as a higher calling that has made service to others an intrinsic part of our legal culture.<sup>147</sup>

He challenges every law student to answer basic questions that are fundamental to the very fibre of the legal profession:

How will you choose to benefit your fellow man and your community with your new skills? Will you use your legal acumen to foster equal justice in our state? Do you recognize that being a lawyer requires an understanding that access to justice must be available to all ... regardless of their station in life?<sup>148</sup>

A point that reinforces the need to inculcate the pro bono ethos throughout the course of study is the fact that there will be an increasing number of law graduates who will not practise law in the traditional context but rather find employment in the government, corporate or community sectors. The objective should be to influence their behaviour for the public good in their chosen career as all their career destinations are likely to be in a professional context.

#### *A Student Motivation*

For a student to choose to participate there has to be a strong value proposition, particularly if it is a law school elective subject or a not-for-credit opportunity. This is becoming increasingly so as students seek to balance multiple commitments, and 'face-to-face contact time' between students and teachers or trainers/supervisors is being reduced through more sophisticated online offerings, and law school's drive for greater efficiency. What might be meaningful for one student may not be for another. Thus, a diversity of opportunities that engender the pro bono ethos must be available to students.

There is a need for more activities that involve students in direct contact with clients (primarily through CLE but also in 'not-for-credit' forms) as we know this motivates students. 'Real clients' will include

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<sup>147</sup> Lippmann (n 98).

<sup>148</sup> Ibid.

organisations as well as individuals, particularly some of the not-for-profit community and public interest organisations.

The challenge and the solution to many of the above issues is that the offerings must involve real 'access to justice' projects, be well coordinated and supported with a high likelihood of providing a positive and meaningful experience for the student. This is not easy as there are a limited number of community legal centres all struggling themselves to maintain efficient operations. Some law schools already financially support community legal centres and have done for a long time but there is a need for greater investment, more law schools to be involved and for schools to build projects, programs and clinics themselves. Best practice would suggest that this be done in partnership with a community legal centre.

Projects that are more connected to the communities from which students come, and in which they live, may be more attractive to students. The ethical framework, culture, background and state of mind of students will all be relevant matters needing examination when planning programs, models and strategies. For example, an attractive project might involve students in a role connected to public interest litigation on a contemporary social issue such as environmentalism, the climate emergency, juvenile justice, a criminal law innocence project, modern slavery, homelessness or the plight of asylum seekers or simply a local public interest issue. As far as possible, they must be positive, relevant and diverse experiences for students that don't seek to limit the type and range of opportunities. This should be reflected by the commitment and resource support of the law school in organising or creating the opportunities. This is a vital part of the leadership required by the law school to inculcate these values in their students.

Once it is accepted that a primary policy objective is community service and experience, the type of experiential opportunities can be quite broad, particularly within a student pro bono program.

### *B For the Profession*

As discussed above the *Australian Solicitors Conduct Rules* as published by the Law Council of Australia do not contain any mention of a solicitor's duty to the public good or community service. This would seem to present an opportunity for the profession through its peak body to show some leadership on this issue and seems an obvious place to express this duty.

### *C For PLT and the Rules of Admission to Practice*

And lastly, there is an opportunity for the regulatory framework for PLT providers in Australia that requires the teaching of ethics and professional responsibility to be strengthened. The requirement of PLT providers is to ensure that an entry-level lawyer demonstrates professional responsibility in all dealings with clients, the courts, and the community.

PLT provides the bridge between academia and what is required in practice. It is therefore appropriate that the acquisition of a number of competencies is mandatory. It is also appropriate that, as far as possible, the competencies to be acquired should be gained in a legal practice context, and that the emphasis is on learning by doing. It is also right that there be a strong focus on the competency of professionalism and ethics. This is because the ethical framework required to be developed is entirely about decisions that have to be made in the course of legal practice which commences upon admission to practice.

However, it is suggested that there lies a simple opportunity within the Australian framework for pre-admission to emphasise the importance of the pro bono ethos and the practice of law as a higher calling. With a student already required to complete at least 15 days of work experience, and the standard work experience requirement generally being 75 days,<sup>149</sup> it should be a simple matter to require a proportion of the work experience to be ‘community service experience’, to be called the ‘pro bono legal element of PLT’ so as to endorse the idea of a lawyer for the public good. Already many PLT students undertake part of their work experience at a community legal centre under the supervision of the principal solicitor at that centre.

This small change would be conceptually significant as formal recognition of this element in the national PLT *Competency Standards for Entry Level Lawyers* would further enshrine this important ethical value in vocational legal practice training. Education about the way the pro bono sector operates in Australia is already part of the curriculum of most, if not all, PLT providers.<sup>150</sup> So although this would be small change, the idea of formalising a community service experience in this context would demonstrate leadership by existing PLT providers.

It could also, and is suggested should, be formalised later by the Legal Services Council through amendment to the *Legal Profession Uniform Admission Rules 2015*, so that completing the pro bono legal element of PLT would be a prerequisite to the issue of a compliance certificate. It is also suggested that the PLT competencies should specify a lawyer’s commitment to access to justice, the public good and community service.

Beaton reminds us why none of these ‘opportunities’ are trifling matters by saying:

as long as professionals and professions hold on to this essence of professionalism [ethics and altruism] - even, and especially, in an age of globalisation - they will survive and flourish, and professionalism will fulfil its role in serving humanity.<sup>151</sup>

Anything less is unacceptable.

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<sup>149</sup> The College of Law, ‘About’, *Work Experience* (Web Page) <<https://www.collaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs/work-experience>>.

<sup>150</sup> See National Pro Bono Resource Centre, *Pro Bono in Australia: An Introduction for Practical Legal Training Students* (Report, 25 November 2009).

<sup>151</sup> Beaton (n 8).