

For the public good: Pro bono and the legal profession in Australia

*Edited by Christopher Arup & Kathy Lester,
Federation Press 2001*



Pro bono legal work, like motherhood, is rarely the subject of critical comment. Unlike motherhood, however, it has rarely been the subject of any significant examination within Australia. It has

not had the benefit – or otherwise – of some Bettina Arndt to stimulate and enrage debate by pieces in the *Herald*. Into this quietude stepped the organisers of the First National Pro Bono Law Conference, held in Canberra in 2000. The book reviewed here contains some of the contributions from that forum. It is a somewhat odd collection, good in parts, but which appears undecided as to whether it is a practitioner's discussion, an academic critique, or a programme for action.

Reflecting this ambivalence, some of the contributions occupy unhappy ground between normative argument and exhortation. The first contribution, by Stephen Parker, seeks to provide some answers to the question of why lawyers should do pro bono legal work. He enumerates practical, tactical and ethical reasons for undertaking pro bono work, but these are not examined in depth. This reviewer found the enumerated reasons sometimes more irritating than persuasive. For example, to assert that '[w]e have fallen into the mindset that lawyers are part of the private sphere' requires a degree of definition and supporting argument that is not provided in the paper. Similarly, Fiona McLeay, in a brief commentary piece, provides four suggestions as to how lawyers might respond to the 'changing professional paradigm', such as that firms 'should begin seriously to engage in the dialogue about corporate citizenship'. Again, the counter-question arises: yes, but why?

Some interesting material does emerge from the report by Lisa Webley of a pro bono survey of young solicitors in England and Wales, carried out in 1998. The (small) study reported that 38 per cent of the solicitors had undertaken some pro bono work, and that the pro bono work of their

firms was undertaken primarily by the more junior solicitors. The range of work varied, but 'poverty' law issues (debt, employment, housing, welfare) featured most prominently, even for solicitors in large commercial firms. Both points raise questions about the competence of the advice being provided, and about the possible mismatch between the skills level and knowledge of those providing the advice.

On the other hand, that it is junior solicitors who undertake much of the pro bono work in law firms should not necessarily provoke condemnation. In this age of contracting out it is not surprising that partners of law firms might seek to satiate their social conscience, or assist their sleep, by delegation of pro bono work. If this means that significant pro bono work is carried on, and so long as adequate levels of supervision are maintained, then it is still to the good. Such delegation is not a luxury open to the Bar, of course.

Webley also notes that the survey suggested that city commercial firms were better at recognising pro bono work than smaller firms. Again, this may not be so surprising when it is understood that one of the motivations for large firms undertaking pro bono work is to ameliorate the alienation that a significant minority of practitioners feel when using their legal skills predominantly for the benefit of large corporations.

Some hint of a broader social perspective on pro bono legal work does emerge from the piece by Rob McQueen. He suggests, for instance, that recent public pressure in the US and Australia to increase pro bono service levels is aimed at the 'top end of town', is a 'prescriptive tax' which governments seek to place on larger corporate firms, and that this reflects 'a repositioning of the state vis-a-vis the profession'. Unfortunately, such provocative notions are not developed as they might have been in this paper, and are a little overwhelmed by unnecessary blasts of social theory.

An historical perspective is provided by Don Robertson in an academic article exploring the intertwined development of the legal profession and pro bono legal work. He argues that the provision of pro bono legal services is tied to Judao-Christian values, that it dates back many centuries, and that the provision of such services has often been mandated by governmental authorities. These points

contrast with the strong modern resistance to suggestions of compulsory service which David Weisbrot reports later in the book.

A brief but interesting history of another kind is provided by Mary Anne Noone, who discusses the development of community legal centres in Australia. She notes that such centres were anathema to standard legal practice because 'they were "free", informal and irreverent, and they talked explicitly about injustice and change'. She also records that they were the target of some hostility from the mainstream legal profession as they emerged in the 1970s. Noone makes the interesting argument that community legal centres grew out of a New Left political sensibility quite different from the pro bono legal tradition reported on by Robertson. This may be so, although the movement might perhaps be viewed instead as a particular manifestation of familiar impulses to do justice.

Another theme of the book is a discussion of practical issues that arise when undertaking pro bono legal work. There is a useful discussion by Elisabeth Wentworth on how commercial conflicts can impact on the area. There is a short piece by the partner of a large firm, John Emerson, reflecting on his experiences. The book would have benefited from the inclusion of more such reflections, from a range of perspectives. There is no similar discussion by members of different types of firms, nor from any member of the Bar.

The final contribution is a report by a pro bono task force, which was convened by the federal Attorney-General after the Canberra conference. It contains some useful ideas and promising suggestions, such as the development of a 'best practice handbook' relating to pro bono legal work. It is to be hoped that the agenda set out is pursued.

As can be seen, therefore, there is some interesting material in this work. But it is unlikely to persuade you to undertake pro bono work if you are not already converted. It cannot be said that it is a necessary guide for practitioners who undertake pro bono work. And although some contributors make interesting academic points, it does not appear to have been intended to be an academic work.

Reviewed by Jeremy Kirk