CHAPTER ONE

WHAT IS GLOBAL ABOUT PRO BONO AND WHAT IS GLOBAL PRO BONO ABOUT?

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INTRODUCTION

The principle and practice of pro bono – volunteer legal services for the poor and other marginalized groups – is an increasingly important feature of justice systems around the world.[1] A quarter century ago, organized pro bono programs were a rarity in the United States and virtually nonexistent elsewhere.[2] Now, in contrast, pro bono has become widely diffused and institutionally central in a growing number of countries throughout the Global North and Global South. In a sign of pro bono's increasing international profile, PILnet (the Network for Public Interest Law), a key sponsor of the global pro bono movement, has hosted Pro Bono Forums across continents (ten in Europe and five in Asia), bringing together law firm pro bono coordinators, civil society partners, and representatives from more than fifty pro bono organizations in countries as diverse as Indonesia and Italy. In 2013, the Global Pro Bono Network was founded as a consortium of pro bono intermediaries and now includes 52 organizations in 34 countries. A 2016 survey of large-firm pro bono, covering 64,500 lawyers from 130 law firms in 75 countries, showed lawyers contributed 2.5 million pro bono hours over a 12-month period, with an annual average of 39.2 hours per lawyer. Once confined to the professional margins, pro bono now occupies a central position in the global access-to-justice movement.

Yet, as pro bono spreads, it develops in diverse ways that reveal different approaches and unique understandings of the role that volunteer services should play in promoting professionalism and equal

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justice. In countries where it has a strong presence, pro bono yields important positive outcomes for underserved individuals and nongovernmental organizations (NGOs) that advocate on their behalf. But pro bono also invites controversy – often attacked by proponents of state-based legal aid as a vehicle of neoliberal privatization and resisted by solo and small-firm lawyers as unfair competition. Our book seeks to deepen understanding of pro bono as a double-edged sword: a means of redistributing legal resources to those who desperately need them, but also a tool of professional legitimation that can reinforce profound inequalities in the legal system – thus reflecting a core paradox of contemporary professionalism. Covering the advance of pro bono in over twenty countries across five continents, this book provides a unique comparative data set permitting the first-ever analysis of pro bono's contested role as a tool of access to justice and a feature of legal professionalism around the world.

In so doing, the book spotlights important issues at the heart of sociolegal study of globalization and its impact on legal practice and professional identity.[3] Although public service has long been considered an essential feature of legal professionalism,[4] the central question this book explores is *why* professions in different parts of the world adopt specific ideas and institutions in support of pro bono – actualized by private lawyers providing free legal services to poor individuals and underrepresented groups. Our approach is to examine this question comparatively,[5] exploring how the interaction between local and global factors shapes pro bono in specific national contexts – a process we call *hybridization*. Our analysis yields important new insights on processes of transnational diffusion, in which a core set of ideas and practices are emulated by professional entrepreneurs building organized pro bono programs around the world, yet result in significant institutional and ideological variation across countries and practice sites. To better understand hybridization, this book focuses empirically on a range of factors shaping how pro bono is translated from global norm to local practice: the independence of the legal profession and its relation to national government, the scale of large law firms and the power of global corporate clients, the interaction between market-based and state-based systems for providing legal services to the poor, the influence of the small-firm bar and law schools on professional standards and practices, the role of global funders, and the local nature of legal need. Evaluating how these factors play out in different national contexts leads us to an important conclusion: there is no singular

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understanding of pro bono but rather a set of contested meanings and practices shaped by global and local legal actors vying to advance their own professional priorities and embed distinctive visions of professional service.[6]

It is a critical moment to assess the increasing importance of pro bono as a pillar of national justice systems.[7] Recent surveys have identified organized pro bono efforts in more than eighty countries – from established programs in Australia and the United Kingdom to upstart initiatives in the Czech Republic, Georgia, Haiti, Malta, and Uganda – and the list keeps growing.[8] As the contributions to this book demonstrate, contemporary pro bono norms and practices develop from multiple sources. The roots of pro bono grow from indigenous traditions of public service, nurtured by local professional associations, which provide legitimacy and resources. Yet the nature and scope of pro bono is also influenced by a multitude of global actors, which promote information exchange through conferences and websites while providing models that are promoted and imitated on the ground. Around the world, the movement to build pro bono programs is supported by funders like the Open Society Foundations (OSF) and thought leaders like the Cyrus R. Vance Center for International Justice and the Global Pro Bono Bar Association. Simultaneously, pro bono models are transmitted through globe-trotting law practice, corporate social responsibility (CSR) programs, and transnational NGO activism. As this book shows, these local and global forces interact in context-specific ways as domestic traditions of professional service become linked to cosmopolitan notions of pro bono, influenced in many cases by US models, but building on and responding to national professional structures. Through this process of hybridization, the result is less a unifying vision of "global pro bono" than a proliferation of multiple, diverse local pro bono systems shaped by professional stratification, preexisting investments in legal aid, and North-South colonial legacies. In our analysis of hybridization, a consistent theme is the struggle over the very meaning of pro bono, who does it, and who benefits from it – revealing distinctive patterns of conflict and cooperation among different segments of the bar. Why hybridization happens, what it looks like, and what consequences it has for the people who need legal services are our main inquiries.

To address these inquiries, we present leading-edge work from a global network of researchers who came together around a common interest in studying pro bono's institutionalization and impact. The framework and

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chapters coalesced around a series of encounters,[9] culminating in a November 2017 meeting at the UCLA School of Law, sponsored by the US National Science Foundation. Through these encounters, contributors developed original studies of pro bono in the following countries (in the order they appear in the book): the United States, Canada, Brazil, Argentina, Chile, Colombia, England and Wales, France, Portugal, Spain, Denmark, Australia, South Africa, Nigeria, India, Singapore, and China. One team also produced a study of pro bono in Europe writ large. This introduction aims to set the theoretical and methodological framework for these studies, synthesize their findings, and draw lessons for pro bono theory and practice.

Global Pro Bono: A Working Definition

Whereas the term "pro bono" did not appear in the professional lexicon of lawyers in many places around the world at the turn of the millennium, it has now achieved commonplace status in the countries in this book and beyond. As we have argued, however, the meaning of this term varies from country to country – and even within countries, the ideal of pro bono often diverges from its practice. To address this variation, we started from the premise that pro bono – as a central element of legal service provision and professional identity – is a terrain of struggle, not a set of stable ideas or practices.[10] In this vein, we invited our contributors to take issue with the concept itself – to contest its meaning as a core aim of our project.

Nevertheless, to standardize inquiry, we set forth a definition of pro bono as legal services provided for free or at significantly below-market rates to individuals who cannot afford to pay or organizations that advocate on their behalf. On the basis of this definition, we expected contributors to focus attention on voluntary service provided by private lawyers outside of paying client work to assist indigent clients in issue areas of important legal need, such as health, housing, social welfare, and civil rights. We also expected our definition to include free legal representation provided to large classes of marginalized or subordinated people, NGOs serving disadvantaged communities, and even private enterprises with a social mission. Although we were primarily interested in pro bono work by private lawyers planned in advance, we anticipated variation in the form and scope of pro bono service in relation to lawyers' practice sites. For instance, based on research in the United States and elsewhere, we expected lawyers in small firms or solo practice to perform pro bono service differently than

their large-firm counterparts: rather than planning to provide free services in advance, reducing fees retroactively for clients unable to pay.[11] Furthermore, we predicted that lawyers in government and NGO practice might also do pro bono, but rarely at the levels of (or in the same way as) their private sector counterparts.[12]

The "global" dimension of pro bono as used in this book is meant to illuminate two perspectives. One is comparative – investigating the origins, features, and impact of pro bono activity within individual nations, and then comparing those nations' similarities and differences. The second perspective is transnational – tracing the forces shaping the transmission of pro bono across nations. This perspective focuses primary attention on the role of transnational pro bono actors – foundations and other NGOs that sponsor international pro bono initiatives, as well as global law firms, which carry specific pro bono ideologies and practices into new markets. From this transnational point of view, we also see domestic lawyers working on behalf of clients or causes outside of their home country's borders,[13] although this type of cross-border pro bono is residual to the main body of data that appears in this book[14] – reflecting the ongoing importance of the nation-state as a site for law practice on behalf of those in need. Indeed, given the uniqueness of national legal cultures and institutions, and the geographically bounded nature of legal need, we hypothesize that the bulk of pro bono around the world will be undertaken within national jurisdictions, even if the pro bono model often counts on support and inspiration from foreign sources. However, as we note in conclusion, we suspect that current struggles against the spread of authoritarian populism within and beyond the countries covered in this book may provide more impetus to transnational efforts by progressive legal elites to protect the rule of law.

Theory and Method: The Study of Pro Bono within and across Countries

As a theoretical matter, we are interested in how professional norms of public service and access-to-justice traditions are converted into the concept of pro bono organized as free service to poor individuals and underrepresented groups; how that concept is codified in ethical rules and institutional support structures; and what pro bono looks like in terms of who provides it and who receives it. This process of conversion from general norm to specific practice – what we call hybridization – is mediated by the circulation of ideas in the global marketplace as well as

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the changing structure of national legal professions and their relationship to inequality.

Focusing on the process of hybridization raises critical questions about individual agency, political governance, and international power.[15] At the individual level are questions of motivation and activism. Who decides to promote pro bono, in what form, and why? There must be interest convergence between private firm lawyers who provide resources and advocates of the poor and other underserved groups in need of support. This convergence draws attention to the nature and purpose of public service and its relation to professional legitimation. At a structural level, the hybridization framework raises questions about the link between the legal profession and political governance more broadly, since pro bono resonates with a neoliberal vision of the state in which obligations to society, in the form of safety net and other redistributive programs, give way to deregulation that serves the private interests of corporations, whose success is equated with the public good. This book explores the degree to which government agencies and NGOs promoting pro bono – as a model of private charity set against state-based legal aid – are inspired by neoliberal philosophies that redefine the meaning of access to justice and the rule of law. Finally, to the extent that pro bono is viewed as an export of the Global North, it raises questions about power relations and US influence. Many pro bono entrepreneurs do, in fact, receive training at elite US law schools and obtain support from US-based foundations and NGOs. The pro bono programs of global law firms and corporate legal departments reach all over the world, spreading US-inspired pro bono concepts and organizational models. Yet influence is never entirely top down: as pro bono takes shape across different countries, it encounters alternative traditions of voluntary legal work, generating new exchanges and communities of practice in the Global South. It is this complex process of hybridization that we aim to illuminate.

Toward this end, our comparative project examines pro bono's development in seventeen individual countries plus Europe as a region. The countries in this book were selected for study based on criteria of geographic variation (we wanted to examine pro bono on all continents, with significant representation of countries in the Global South), organizational development (we wanted to look at countries that had achieved enough pro bono development to make investigation worthwhile), and institutional diversity (we wanted to compare countries with different types of legal systems and that had taken different

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approaches to organizing pro bono service). After reviewing publicly available sources of global pro bono organizations and speaking to experts in the field, we identified target countries with substantial pro bono programs and histories, and began recruiting researchers to execute country studies. In doing so, we were mindful of the need to mobilize researchers with appropriate country-specific expertise, which we did through existing scholarly networks and by holding open forums at conferences during the formative phase of the project. In the end, we succeeded in assembling research teams composed of leading scholars and practitioners, whose contributions cover a wide range of countries and provide an unprecedented data set of pro bono practices. With the team of researchers in place, we asked them to produce chapters organized around three central inquiries, which form the framework for the book and the foundation of our analysis in this opening chapter.

The book's first inquiry probes the *causes* of pro bono's emergence and development in the countries under review. What factors cause pro bono to be institutionalized – by which we mean to develop as a widely shared professional norm and set of common practices?[16] Who are the most important actors influencing pro bono domestically and globally? What stakes do they have in promoting or fighting against pro bono? What resources and networks of support do they mobilize? What accounts for their success or failure? This inquiry illuminates the process of hybridization by exploring how the scope, nature, and output of pro bono in individual countries are shaped by the interaction of local and global factors.[17] Local factors include the relative size and power of the large- and small-firm practice sectors; the scope and organization of state-funded legal aid; the existence and influence of legal NGOs engaged in cause-oriented advocacy; the breadth of government support structures for pro bono; the size and autonomy of the private bar; the nature of legal education; the existence of third-party monitors to collect and report pro bono data; and the presence of domestic pro bono entrepreneurs. Global factors include the influence of neoliberal values; the degree of penetration of transnational NGO intermediaries and global pro bono funders; the relationship between multinational corporations and transnational law firms; the interaction between CSR and pro bono culture; and the integration of technology. The resulting pro bono system in each country borrows aspects of global pro bono, while building on and adapting local institutions and traditions.

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Our second inquiry investigates the *consequences* of pro bono's institutionalization from two perspectives. From the first perspective, we aim to understand the basic structure of pro bono: its organization and ethical codification. Here, we ask: What tools and protocols are created to deliver pro bono services inside law firms and throughout the wider bar? How do these tools and protocols promote the efficiency and integrity of pro bono services? How is pro bono encoded in ethical rules, if at all? What are the roles that clearinghouses and other legal services organizations play? From a second perspective, we are interested in the distributional consequences of pro bono: Who provides and receives pro bono and in what form? Which types of legal matters are valued and which devalued as pro bono becomes more organized? What type of support comes from the large- and small-firm practice sectors? Which lawyers promote pro bono and which view it as a threat? What impact does the development of pro bono have on other legal resources, particularly state-based legal aid, and in this sense, how much can pro bono be said to support neoliberalism or reduce the economic insecurity it produces? How does pro bono respond to the legal needs of the poor, other underrepresented groups, and social movements? Has pro bono ultimately increased access to justice and by what measure?

Our final inquiry explores the global *contestation* over the meaning of pro bono, mapping variation in how pro bono is understood and implemented within and across national contexts. As this inquiry reveals, conflict over pro bono's role in domestic professions is the rule, not the exception, and this conflict erupts around consistent themes. Is pro bono a homegrown practice or a foreign transplant? Does it complement or substitute for the state's commitment to provide free legal aid? And should pro bono be considered a strictly legal service, mobilizing lawyers' special expertise, or should it encompass broader charitable service, which may be provided by lawyers in discharging their public duties?

Our method of analysis is to derive the most important factors shaping pro bono based on systematic review of the book's chapters and to map those factors in relation to the country-specific evidence of pro bono's development. This mapping allows us to look for similarities and differences across cases, thus illuminating patterns of hybridization in comparative context. Our main goal is to outline lessons learned about the causes and consequences of global pro bono, while setting forth the main lines of conflict over its meaning. Based on this analysis,

we offer explanations for the patterns we encounter, suggesting reasons for different approaches to pro bono across countries – and leading us to hypothesize about what the future of global pro bono might hold and how our research might help frame questions to guide its development.

From a theoretical perspective, one of our aims is to use our investigation of pro bono to deepen scholarship on the legal profession and its role in society at a moment when lawyers are increasingly participating in – and thus helping to constitute – a global arena of legal practices and institutions. Greater integration of previously closed economies and changes in philosophies and practices in economic development have posed new questions about legal globalization and lawyer professionalism not explored in the scholarly domain. What are the challenges and opportunities confronting lawyers in an era of globalization and how are they dealing with them? Are some kinds of legal practice gaining traction, while others are losing ground? Are legal practices and organizational forms from the Global North, especially the United States, being transplanted to the Global South, as much of the existing literature on globalization predicts? Although our book does not answer all these questions, we hope that the study of global pro bono offers insights into larger dynamics that shine greater light on these fundamental issues.

HYBRIDIZATION: CAUSES, CONSEQUENCES, AND CONTESTATION

This section synthesizes and organizes the book's main findings on pro bono's global development. We start from the premise that hybridization occurs when global pro bono values interact with country-specific conditions, producing distinctive varieties of pro bono in different national settings. This section provides a framework for understanding this variety, using evidence from individual cases to suggest broader dynamics and themes. Following our central lines of inquiry, we begin by identifying the causal factors that shape pro bono's hybridization, and then turn to evaluate pro bono's impact on access to justice and its contested meaning across countries.

Causes

What causes pro bono to institutionalize when and where it does, and what accounts for its distinctive format? As the chapters in this book

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show, the answer to this question is deeply contingent on the peculiar ways in which local and global factors interact in particular countries at specific moments in time. Here, our goal is to map the most significant factors, based on our reading of the record assembled in the country studies, and to highlight their impact by mobilizing relevant examples. In doing so, we proceed from the local to the global, not because we think the local is more important, but because pro bono as a global transplant must adapt to local structures and practices. We thus start by reviewing the domestic factors that have enabled or constrained pro bono's institutionalization, and then shift focus to highlight global factors flowing out of the spread of neoliberalism and the transnational pro bono movement. As this analysis reveals, there is no sealed boundary between the "local" and "global": many of the structures we identify as homegrown have in fact been deeply shaped by globalization, while global trends all emanate from local contexts. In this sense, the local–global division we offer is best understood as an analytical framework – providing bottom-up and town-down perspectives on hybridization – rather than demarcating separate domains of activity and influence.

Local Factors

Corporate Law Sector

In every country under review, we see that norms and practices of pro bono are historically embedded in the legal profession, and there are long-standing traditions of lawyers across private practice engaging in some "voluntary legal work."[18] It is in this sense that the roots of what we now think of as "pro bono" grow out of indigenous soil and that the concept of pro bono expresses locally derived ideals of what it means for lawyers to be part of a public profession. Since pro bono springs from the duty of private lawyers to give back to society, it is not surprising that the structure of the domestic private practice sector profoundly affects the development of pro bono. Because law practice around the world historically has been, and continues to be, primarily conducted by lawyers practicing in small units, the nature of pro bono bears the strong imprint of solo and small-firm lawyer volunteerism, which tends to be ad hoc and episodic. Moreover, as we will discuss, the structure of solo and small-firm practice – especially its reliance on individual clients and, in some places, its dependence on government funding – can mobilize lawyers in this sector against the arrival of globalized pro bono models associated with large corporate law firms, which pose a competitive threat.

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One of the most striking and consistent findings from our country studies is that the rise of contemporary pro bono correlates strongly with the growth of the domestic corporate law firm sector, which appears across cases as an essential precondition to pro bono in its institutionalized form. We treat the development of the corporate law sector as one of the local factors shaping pro bono in light of its relation to other forms of domestic private practice and because of variation in how open domestic legal professions are to the entry of foreign law firms. Nonetheless, it is obvious that the growth of the corporate law sector is a global phenomenon powered by the expansion of global markets and the need for sophisticated legal advice by transnational corporations seeking to exploit economic opportunities around the world.[19] At the domestic level, growth in the corporate law sector – in terms of the number of such firms and, more crucially, their size – produces opportunities for pro bono to take root: both because law firm growth creates the excess capacity needed to permit lawyers to spend time on pro bono outside of billable work and because growth connects domestic firms to the global corporate law sector, facilitating the transmission of pro bono values and practices. For large law firms seeking to model success, market services, and recruit talent, performing pro bono becomes an essential part of what it means to play on the global stage and gain legitimacy with corporate clients and elite lawyers alike. (For this reason, the country studies suggest that corporate firms watch what their counterparts in other countries do: for example, Canadian firms report monitoring US pro bono practices, while Danish firms have drawn inspiration from the United Kingdom.)

Accordingly, an important theme in the development of pro bono is the evolution of "Big Law" – although what counts as "big" varies significantly by context. In the United States, corporate law firm growth in the 1980s and 1990s created the megafirms in which pro bono activity increased in amount, while becoming more organized and efficient. A similar trend occurred in the United Kingdom, where large solicitor firms grew to compete with incoming US giants, which brought pro bono practices in the 1990s that influenced their UK counterparts to hire pro bono coordinators and create policies to demonstrate their commitment to socially meaningful practice. The Anglo-American behemoths then expanded into continental Europe in the 1990s and 2000s, accelerating after European Union (EU) law changed to lift intraunion restrictions on law firm mergers. In Australia, once liberalization permitted the entry of US and UK firms, the

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corporate law sector expanded rapidly in the 2000s and firms restructured according to the global law firm model, which accelerated preexisting pro bono trends. A similar trajectory occurred in Canada, where law firms in large urban areas experienced rapid growth in the 1990s, followed by an increase in organized pro bono programs and activity in those firms.

In the Global South, where the corporate law sector is not as developed or powerful, it nonetheless plays a significant role in incubating pro bono practice. The positive relationship between corporate law growth and pro bono institutionalization is evident in "emerging economies," including some of the so-called BRIC countries (Brazil, Russia, India, and China) covered in this book. In Brazil, for example, the transition to democracy opened up a period of market liberalization that transformed the economy, leading to rapid law firm growth to meet new corporate legal demand. From 1990 to 2010, law firms grew in number (more than doubling) and size, with many exceeding 100 lawyers for the first time,[20] creating the foundation for the importation of pro bono programs in large firms organized around the US model. In India, home to 1.3 million lawyers, less than 0.1 percent practice in large law firms, and the definition of "large" is quite different than in the United States and Europe – with only 19 firms of more than 100 lawyers. However, with the impending opening of the domestic profession to foreign law firms, there has been significant growth among elite firms, which have begun to preemptively change practices, adding pro bono programs in a competitive bid to signal professionalism and trustworthiness to clients, and attract top law school talent. Chinese pro bono also developed after the government eased restrictions on internal consolidation and foreign partnerships in the 1990s, following a top-down "rule by law" initiative to adapt Western institutional forms to the Chinese political system. This effort resulted in the creation of megafirms in Shanghai and Beijing, which incorporated pro bono ideas from foreign partners, while encouraging significant pro bono service from Chinese lawyers as a way to meet new government demands for social responsibility.

Conversely, the dearth of a substantial corporate law presence impedes pro bono's institutionalization, as suggested by the fact that in countries with small corporate legal sectors – like Nigeria, where most lawyers are solos (and foreign firms are excluded), and South Africa, where there are only seventeen firms with more than fifty partners – organized pro bono is underdeveloped. However, it would be a mistake

to presume that institutionalized pro bono follows inexorably from the growth of the corporate law sector. Indeed, research from South America suggests that public gestures of law firm commitment to pro bono are not always matched by the reality of service where there is limited support from the bar and national government, insufficient funding to facilitate client connections, and no external monitoring. In Argentina, Chile, and Colombia, despite the growth of corporate firms after liberalization and symbolic agreements by elite firm leaders to meet pro bono goals, the lack of financial incentives to do pro bono (like billable hour credit) and the absence of strong partnerships with client groups has led to weak pro bono, which has had little impact on overall access to justice. Neither has the reality of pro bono service by large law firms met the rhetoric of support in Brazil. While observers have attributed disappointing law firm pro bono performance there to restrictions imposed by the bar association limiting pro bono to NGO clients, even after those restrictions were struck down in 2015, law firm pro bono service to individual clients has continued to be low, and only two firms in São Paulo have taken serious steps to include needy individuals in their pro bono programs. As these experiences suggest, while the development of a strong corporate law sector may be a necessary condition for pro bono to institutionalize, it is by no means sufficient, and the extent of law firm pro bono participation depends heavily on internal leadership and incentives, as well as meaningful integration of the corporate law sector into the broader system of access to justice.

Legal Aid and NGO Sector

The trajectory of pro bono's development in a given country hinges on its relationship to government-sponsored legal aid and NGOs dedicated to serving poor clients and advancing social causes. We begin with the role of legal aid: state-funded programs providing legal services to low-income individuals (and, in some places, organizations that work on their behalf) in civil and (less frequently) criminal cases. A central finding from our country studies is that the structure and level of government investment in legal aid profoundly affects the breadth of professional support for pro bono, and the quantity and quality of pro bono service that lawyers deliver. In particular, because the structure of legal aid creates constituencies that mobilize for and against pro bono, it appears as a decisive factor influencing pro bono practice.

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The dynamic between pro bono and legal aid must be understood in the context of neoliberal restructuring that has made pro bono both more necessary and deeply controversial.[21] In Canada, Europe, and the United States, the retrenchment of government funding for legal aid has been followed by the expansion of pro bono as a volunteer response to the decline of the welfare state. In those places, lawyers concerned about access to justice have raised warnings about the degree to which building pro bono – although important in the abstract – undermines political support for a legal aid system under siege. Similarly, in Brazil, the movement to institutionalize pro bono that took shape in the early 2000s was resisted by lawyers seeking to open public defender's offices (Brazil's equivalent of legal aid) as mandated by the Constitution. Those lawyers feared that more pro bono would mean less government investment in public defender's offices, even though the demand for legal services in the country could not feasibly be addressed by them.

In understanding the relationship between pro bono and legal aid, an essential element is whether legal aid is structured via staffed offices with full-time lawyers, paid for by the state (as in the United States), or whether legal aid is administered through a "judicare" model, in which private lawyers accept legal aid cases and are directly compensated by the state for their work. Many countries have a mixed system with some elements of both models. A crucial feature of the professional landscape in countries with a judicare model – Canada, the United Kingdom and other Western European countries (Denmark, France, Portugal, and Spain), Argentina, Brazil, Chile, and Colombia – is that a large portion of the private bar depends on state payments as a core part of their practice. In Western Europe, these lawyers constitute the "Social Bar" and rely on legal aid for their livelihood (in France and the Netherlands, nearly 50 percent of lawyers work on legal aid cases). As the country studies demonstrate, Social Bar lawyers systematically oppose pro bono (especially from large firms) as "unfair competition" since it directs free services to people who would otherwise seek assistance through the legal aid scheme (thereby reducing Social Bar lawyer income). Those countries with a robust judicare system report the most conflict between solo and small-firm lawyers, dependent on legal aid payments, and promoters of pro bono. In this book, country studies of Canada, Brazil, the United Kingdom, France, Spain, and Portugal all document the existence of "turf wars" between pro bono lawyers and those solo and small-firm lawyers providing legal aid.

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The intensity of these turf wars depends on other features of the legal aid system. One key determinant is the amount of government subsidy for private lawyers performing judicare services and hence the degree to which lawyers in the private sector depend on legal aid to earn a living. In some countries, like India, the stipend is so paltry – described as "poverty wages" – that most lawyers do not organize their practice around state funding and hence local bar resistance to pro bono appears to be less significant. In China, which has a mixed system in which there are 6,600 lawyers staffing legal aid programs, the government has actively encouraged private lawyers to supplement staffed-office work through judicare; however, the stipend is so low that most lawyers view judicare service as a form of pro bono. Another important factor affecting the pro bono–legal aid relationship is the type of case covered by the legal aid system. For instance, in South Africa, 90 percent of legal aid cases are criminal cases, creating wide space for civil pro bono. Similarly, in Canada, legal aid is organized around criminal services, permitting pro bono promoters to strike a "compromise" by focusing on civil services – a theme we will return to later in this chapter.

In contrast to the conflict around judicare, in countries with robust NGO legal sectors (encompassing legal aid and public interest law) there tends to be a more symbiotic relationship with the pro bono system since NGOs depend on private firm personnel and financial resources. In the United States, which has staffed-office legal aid (which includes a significant portion of organizations not funded by the government) and robust public interest law, there is a strong pro bono culture promoted by legal NGOs dependent on law firm largesse. Similarly, in Australia, fully staffed community legal centers (outside of the legal aid scheme) funded by a mix of state and philanthropic sources have welcomed pro bono support and advocated for its expansion. A distinct symbiosis occurs in countries with a substantial number of public interest law NGOs, which generate the bulk of their resources from philanthropy and private bar support. In South Africa, public interest law groups established under apartheid skillfully mobilized pro bono support and, as they have expanded to play vanguard roles enforcing constitutional rights in the post-apartheid era, have been important supporters of pro bono's development. In Nigeria, military-era NGOs that defended citizens against state abuse, like the Civil Liberties Organization, converted after democratization to partner with private sector lawyers to build democratic institutions and represent clients in truth commissions. As these cases suggest, pro bono is most

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welcome in contexts in which well-developed NGOs gain advantage by leveraging private legal resources.

Government

As the discussion of legal aid illustrates, government policy can raise challenges for pro bono. But it can also serve as a spur. Indeed, our country studies provide a range of examples of how government often plays a supportive role in helping to build pro bono programs and stimulate private lawyer volunteerism. We see two primary mechanisms of government influence. First, government may channel pro bono into specific types of practice by issuing guidelines defining its scope and nudging lawyers to expand free legal service. An example of this occurred in the United Kingdom, where the attorney general issued a key 2002 protocol that defined pro bono as legal advice and representation of poor individuals and organizations that work on their behalf – thereby reclaiming pro bono from the more general "public service" logic of law firm social responsibility and marking an important turning point in the movement to direct solicitor legal resources to underserved communities. Second, government may increase pro bono activity by conditioning publicly conferred benefits on a demonstrated commitment – at either the individual or law firm level – to pro bono service. This is the case in Australia, where government contracting rules require firms doing business with the state to demonstrate their pro bono service. These rules have motivated firms with substantial government work to increase pro bono activity. In a similar vein, India's Ministry of Law and Justice promulgated a 2017 Pro Bono Legal Services Initiative exhorting private lawyers to undertake pro bono and making clear that pro bono service would be considered for government appointments, while India's Supreme Court (borrowing from Nigeria) requires demonstrated pro bono for admission to the elite status of senior advocate.

In other places, however, government rules have had a more ambiguous impact on pro bono. Although pro bono advocates in countries with constitutional provisions guaranteeing the right to counsel (Brazil, Western European nations, South Africa, and India) have sought to mobilize those provisions to support greater investment in pro bono programs, they are frequently met by opponents who insist the constitution requires increasing state funding for legal aid. Further, and in contrast to the UK protocol already discussed, there have been instances of policy making that appear to undermine the definition of

pro bono as an inherently legal service. This has occurred most prominently in South Africa. There, in 2014, the legislature passed the Legal Practice Act, which in the course of consolidating lawyers into a unified professional category, mandated that all lawyers perform "community service" – a vague term that seems to encompass nonlegal services and has therefore sparked debate about whether lawyers should be allowed to discharge their public duties through broad charitable work. In countries without an independent legal profession, government rules may simultaneously encourage pro bono service and dictate its content. Thus, in China, where the bar is an extension of and controlled by government, pro bono depends on the active support of the Chinese Communist Party – or, at least, the lack of overt opposition. As this book's study of China highlights, the government's promotion of pro bono has led to its expansion, particularly at the large-firm level, with pro bono directed toward nonaggressive cases in which lawyers assist individuals in routine matters that do not challenge party policy or power.

Organized Bar

In each country in our book, the organized bar plays a crucial role in shaping pro bono – either to promote or hinder it. Our country studies provide examples of how, in some places, bar associations have nudged pro bono forward through a variety of means: organizing clearinghouses (the UK Bar Pro Bono Unit, Denmark's Lawyers on Call), sponsoring conferences (the UK Law Society, Law Society of South Australia, and various Latin America bar associations), and even providing direct funding (the Victoria Law Foundation in Australia). At the most active end of the spectrum, we see bar associations designing full-fledged pro bono programs to supplement legal aid. This occurred in Singapore, where the Law Society established the Criminal Legal Aid Scheme in 1985 to fill the void created by the state's inaction on criminal legal aid.

In contrast, the organized bar, responsive to solo and small-firm lawyer interests, can mobilize fierce opposition to pro bono. This was the case in Brazil, where the São Paulo bar passed a rule restricting the provision of pro bono to NGO clients, thereby protecting solo and small-firm practitioners dependent on legal aid and "low bono" cases on behalf of individuals. This rule placed significant constraints on pro bono's development in Brazilian law firms until it was abrogated by the national bar – revealing how divisions within the bar itself,

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structured vertically with national and local arms, can profoundly affect the status of pro bono in domestic legal systems.

Law Schools

In the United States, law schools have played an important role inculcating pro bono culture in students, with a majority of schools instituting mandatory or voluntary pro bono requirements.[22] Outside the United States, however, law schools do not appear to serve this broad function and none of the country studies document similar law school–based pro bono programs. Law schools have nevertheless advanced the pro bono cause by incubating pro bono think tanks and instilling professional values. The most prominent example of the incubation model is the Australian Pro Bono Centre, housed in and funded by the Sydney Law School, where it has emerged as an important repository of pro bono best practices, produced significant research on pro bono activity in the bar, and performed a significant network-building function. On the pedagogical side, many of the country studies stress the supportive role that law school clinical education has played in promoting a professional service ethic, which provides the seedbed from which pro bono grows. This role appears most vividly in the French case, where Louis Assier-Andrieu and Jeremy Perelman describe the innovative Science Po Corporate Social Responsibility Pro Bono Clinic, in which senior law firm lawyers supervise students on pro bono CSR cases around the globe. As the authors suggest, this version of pro bono clinical education – like pro bono itself – is double-edged: training students in sophisticated human rights methods, while building the law firms' reputation among elite law students and expanding markets for CSR-related practice. Other chapters (on China, Nigeria, Singapore, South Africa, and Spain) point to the power of clinical education in deepening student appreciation for law's impact on underserved groups in ways that help strengthen pro bono culture.

Monitors

Outside of established legal institutions such as law schools and the bar, empirical research suggests that oversight by third-party monitors with the power to confer external benefits and impose sanctions can be effective in motivating pro bono activity.[23] Ordinal ranking systems, in which law firms provide pro bono data to a third party that collates that data and uses it to place firms in a hierarchy based on established

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criteria, have proven to be a powerful pro bono stimulant. The impact of rankings has been most visible in the American profession, where the 1994 launch of the *American Lawyer* (*AmLaw*) pro bono rankings of large firms (measured by average hours per lawyer) transformed pro bono practice by creating competition for positional status that led firms to hire pro bono coordinators, institute formal pro bono policies, and push lawyers to ramp up pro bono service.[24] Although no other country reports the same type of rankings-induced growth, our country studies provide some evidence that rankings have influenced pro bono culture in other nations. For instance, *AmLaw*'s 2014 decision to change its algorithm to count pro bono hours of foreign office lawyers in its ranking of US firms appears to correlate with the expansion of pro bono policies and practices in European affiliates. Similarly, the studies of Argentina, Brazil, Colombia, and Chile suggest that the *Latin Lawyer* magazine's extensive coverage of firm pro bono activity and recognition of significant pro bono achievements have been important drivers of pro bono engagement by elite South American law firms (even though the magazine does not conduct a formal ranking).

Beyond rankings, our country studies reveal other roles for monitors in creating public benchmarks designed to strengthen law firm pro bono commitment and motivate lawyer behavior. In Argentina, Brazil, Chile, and Colombia, pro bono clearinghouse leaders persuaded elite firms to sign the Declaration for the Americas (modeled on the US Pro Bono Institute's Law Firm Challenge), pledging to devote 20 pro bono hours per lawyer each year, and to report to and be held accountable by the clearinghouses, which publicize firm compliance. Similarly, in 2007, the Australian Pro Bono Centre announced a National Pro Bono Target, inviting firms to publicly commit to an annual goal of 35 hours per lawyer and to report performance back to the Centre. According to the Australia country study, the target has been widely adopted by large law firms and has had a positive impact on pro bono participation: for those Australian firms that have committed to meet the target, the average pro bono hours per lawyer in 2016–2017 was 34.8 (more than double than for nonsignatories).

Entrepreneurs

A key insight from our book is the importance of interest convergence between local entrepreneurs, typically legal elites with global experience (foreign law degrees or fellowships), and transnational actors in

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building domestic pro bono culture.[25] This convergence is notable in multiple country studies, which provide distinctive accounts of domestic entrepreneurialism. In Brazil, for example, it was a US-educated lawyer (now dean of one of the country's most important law schools, FGV Direito SP) who was funded by Ford and OSF to conduct a study mission in the United States and invited US pro bono leaders (including the director of Los Angeles's Public Counsel) back to Brazil to help launch the Instituto Pro Bono. In Spain, a meeting between law firm leaders and Vance Center representatives in 2007 is cited as the spark that ignited the movement to build the first-ever Spanish pro bono clearinghouse. Portugal's Pro Bono Association was started by one law firm partner and one associate (who later became an intern at Public Counsel) inspired by the international model of pro bono advanced by PILnet to build a domestic pro bono network. In Australia, the key entrepreneur was a South African–born leader of the Public Interest Advocacy Centre, Andrea Durbach, who migrated to Australia after representing Black defendants accused of killing a police officer during apartheid in one of the most notorious political trials in South African history. Her experience in South Africa as a public interest lawyer working closely with the private bar contrasted sharply with the lack of private bar engagement with public interest groups in Australia; after her colleague spent a year in the United States studying pro bono organizations, Durbach began doing outreach to large Australian firms to convince them to contribute more pro bono service, and the first Australian pro bono clearinghouse was created in 1992.

As these stories suggest, entrepreneurial energy is critical to converting pro bono ideals into operating systems, providing external benefits to those in need of access to justice, while also conferring professional benefits on the entrepreneurs themselves, whose profiles are elevated on the domestic stage by virtue of their connection to global elites who offer resources and status as part of the transplant process. It is in this sense that pro bono entrepreneurs have "mixed motives": doing well by doing good in helping to build a domestic pro bono field linked to the global pro bono movement. Once again, actions at the "local" level are deeply intertwined with "global" institutions, which provide resources and prestige – while sometimes reinforcing neocolonial dynamics that make them controversial. The study of Argentina, Chile, and Colombia directly analyzes the controversy surrounding the entrepreneur's role in a neocolonial context. There, elite academics – all US-trained (including the author, Daniel Bonilla) – formed the

vanguard spearheading a threefold process of transplanting pro bono. First, they defined a justice gap; second, they identified pro bono as a possible solution; and third, they brokered relationships with US actors, particularly leaders of the Vance Center, alongside other Global North NGOs and law firms, which provided pro bono policies and practices that formed the "mirror image" of those ultimately put into place. The study provides a cautionary tale: when pro bono is primarily a top-down project, advanced by elites without broad support from local bar representatives, NGOs, and client constituencies, it fails to take root and is only weakly institutionalized – with lip service paid by law firm leaders not matched by the contributions of lawyers on the ground.

Global Factors

Progressive Neoliberalism

As we have seen, in the process of pro bono's hybridization, there is no clear dividing line between the local and the global: domestic foundations of pro bono – from models of corporate law practice and legal aid, to the nature of government and bar policy, to the role of legal education and entrepreneurialism – are never hermetically sealed from external influence. Rather, local practices tend to develop in ways that reflect broader global trends and bear the imprint of powerful global actors. Here, we shift perspectives to directly spotlight those global trends and actors, beginning by tracing the impact of ideology, specifically, the rise of "progressive neoliberalism."[26]

With the fall of the Berlin Wall and the end of the Soviet Union, progressive neoliberalism emerged in the 1980s to offer a new and, many of its proponents believed, inevitable pathway for individual countries and the broader global order to develop. At its core, progressive neoliberalism involved an attempt to combine free trade with the promotion of fundamental human rights. As such, it entailed a contradiction that did not go unnoticed by its critics. To enable free trade, states had to lessen their role in the economy (via deregulation and privatization) and spending on social policy (via welfare reform). Such retreat of the state, in turn, put even the most basic human rights at risk. To manage this contradiction, advocates of progressive neoliberalism relied on a twin faith. First, they believed in a "trickle-down" model of economics, which predicted that the benefits from free trade would be more or less evenly distributed within and across countries.[27] Second, they believed that citizen engagement would fill, at least partially, the gaps left by the state's retreat in social

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policy. In particular, they imagined that NGOs and other civic groups would come in to support those in need.[28]

The case of the United States is paradigmatic and thus central to our understanding of how progressive neoliberalism has empowered pro bono in the contemporary era. As the US country study highlights, neoliberal austerity led directly to the institutionalization of American pro bono. Following the Reagan Revolution, severe cutbacks were imposed on legal aid funds, contributing to a massive "justice gap," in which millions of poor people were unable to access lawyers for their legal needs.[29] In response, government and bar leaders called upon private law firms to increase their commitment to provide free legal services to poor people and other disadvantaged groups through pro bono. The pro bono movement was encouraged by the American Bar Association (ABA), which made it an ethical aspiration for lawyers to devote at least 50 pro bono hours annually to poor clients or organizations that advocate on their behalf. The bar and key intermediary groups also fostered the growth of pro bono programs that provided training and evaluation, while matching pro bono supply and demand. These programs made pro bono a more solid and sustainable enterprise, while cementing the relationship between key stakeholders: large law firms, clients, legal aid offices, and public interest law organizations.[30] These transformations changed the landscape of both legal aid and private law practice in the United States, and by the late 2000s, a significant portion of civil legal services to the poor was provided pro bono by large law firms.[31]

Across countries with strong social welfare traditions, we notice that the global development of pro bono follows a similar script. Particularly in the Commonwealth (the United Kingdom, Australia, and Canada), continental Europe (Denmark, France, Portugal, and Spain), and South America (Argentina, Brazil, Chile, and Colombia), the first calls for pro bono coincided with fiscal crises and consequent attacks on the welfare state. These calls were met by the creation of structures designed to advance rule-of-law and access-to-justice principles by counteracting declining state support for legal aid with augmented pro bono from private lawyers. Furthermore, pro bono's growth in those countries relied on globalized organizational forms (propagated by transnational NGOs and foundations, as well as global firms and corporate clients making CSR pledges) and expert knowledge sources (entrepreneurial lawyers with foreign educational credentials and work experience). These global pro bono promoters embraced

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mobilization of professional charity as a foundational pillar of democratic governance – a principle heavily influenced by Third Way "new governance" approaches to neoliberalism developed in the North American context.[32]

As our hybridization framework makes clear, however, it would be wrong to think that the spread of pro bono as a feature of progressive neoliberalism has been an entirely top-down project and that countries represented in this book are simply conduits of models incubated in the United States. Foundational research on law and development and legal globalization shows that diffusion processes are inherently complex: relying on domestic actors who "buy into" foreign frameworks, while shaping them in response to local demands.[33] Variation across contexts is the norm for legal transplants. And the evidence presented in this book illustrates the deep challenges and resistance to US-style pro bono across jurisdictions where it is found today. Nevertheless, it would be equally wrong to deny the influence of the US pro bono model – both as an example to be emulated and a trap to be avoided – and its complicated relation to neoliberalism, which must be reckoned with as a motive force behind pro bono's diffusion in order to fully appreciate pro bono's emerging place in the global legal order.

Transnational NGOs

As the discussion of progressive neoliberalism suggests, pro bono has become a global export, part of the new law and development tool kit promoted by NGOs in the Global North, mostly from the United States. These transnational NGOs believe that pro bono provides an important way to strengthen the independence of the legal profession, access to justice, and therefore the rule of law in countries with liberal democratic traditions (now under threat from right-wing populism), emerging democracies, and even authoritarian states with weak legal institutions. A recurrent theme in the country studies is the power of these transnational actors to provide resources, global legitimacy to domestic legal elites, technical know-how, and networking opportunities. As we have noted in our discussion of entrepreneurs, pro bono does not spread on its own accord but requires enthusiastic backers who can demonstrate its claimed benefits, provide ready-made models and carefully articulated arguments in its favor, and offer access to global funders and prestige.

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In this regard, a few transnational NGOs stand out for their pioneering, though sometimes controversial, roles in building the global pro bono field. US-based groups, in particular, have been key promoters. In Latin America (and to a lesser extent in Europe), the Vance Center (based in New York City) has played a leading role in "pro bono promotion," framed within a broader rule of law agenda aimed at advancing "global justice by engaging lawyers across borders to support civil society."[34] Subsidized and governed by New York's leading law firms, a "cornerstone" of the Vance Center's work is "the promotion of pro bono practice in legal markets in which pro bono culture is unknown or in development."[35] After sponsoring a 2000 conference that galvanized the pro bono movement in Latin America, the center's primary contribution has been to export and implement the Pro Bono Declaration, and to curate the Pro Bono Network, composed of more than a dozen clearinghouses. The US Pro Bono Institute, known for its vanguard role in leading the American pro bono movement, has also been a leading global pro bono proselytizer, disseminating critical lessons from the US experience. In a telling example, the institute's leader, Esther Lardent, traveled to Australia in 2003 to present at the second annual national pro bono conference, considered a watershed moment in the birth of the contemporary pro bono movement in that country. As a sign of its influence, we see other countries (for example, Brazil and Spain) establishing their own "Pro Bono Institutes" in efforts to model success.

Groups outside the United States have also led transnational pro bono initiatives. With funding from OSF, PILnet opened an office in Hungary in 1997. The organization has been a leading pro bono promoter in Europe, spearheading the annual Pro Bono Forum that helped to build the field of European pro bono leaders, while supporting national efforts to create "sister clearinghouses" in Spain, Portugal, and other countries. As the European chapter in this book recounts, PILnet was critical during the 2000s in connecting public interest organizations to funders that supported development of pro bono programs, making links between organizations and law firms, and orienting European pro bono toward NGO representation to avoid conflict with the Social Bar. Its 2012 Madrid Forum, by bringing together leaders from the Madrid Bar Association and elite Spanish firms, is noted as a catalyst for pro bono development in Spain. Other international NGOs have played less sweeping but no less important roles. For instance, in Singapore, the Joint International Pro Bono

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Committee helped connect international community organizations to Singapore law firms, while the United Nations Development Program (UNDP) promoted pro bono in India as part of a broader package of civil justice reforms. The role of the UNDP, in particular, highlights the need for future inquiry into the role of supranational institutions in sponsoring pro bono as part of broader political reform missions.

Global Philanthropy

Although transnational knowledge is necessary to spread pro bono across borders, it is not sufficient: building networks that connect people and ideas, and establishing organized pro bono programs that coordinate supply and demand, require money. Accordingly, as we see across country studies, global philanthropic support for infrastructure is a crucial feature of pro bono's development. The question of how pro bono gets placed on the agenda of philanthropies with global reach and resources to remake civil society in their image is fundamental and largely left unexamined in the chapters ahead – thus inviting further research. And yet the role of major funding institutions appears systematically as a foundational cause of hybridization, even if their inner workings and motivations are hidden behind an opaque curtain of power.

In some instances, it is clear that pro bono promotion is consonant with philanthropic commitment to the politics of progressive neoliberalism, understood in terms of building liberal democracies in which free markets and robust civil society are conjoined. This has been the explicit agenda of OSF, which has left an indelible impact on the civil justice system in Europe, where it invested heavily in pro bono programs in the 2000s after withdrawing financial support from public interest law (which it also incubated after the demise of Soviet influence in Central and Eastern Europe). Other foundations have taken a more targeted approach, as demonstrated by the role of Taproot in Portugal, which has sought to connect lawyers from the burgeoning global in-house corporate legal sector to NGOs that could benefit from their expertise.

Our country studies provide additional examples of how global funders can spark but also destabilize pro bono development – on the one hand, providing seed funding that raises visibility and stimulates organizational growth, and on the other, investing insufficient resources (or withdrawing funding) in ways that undermine progress. In Africa, global funders are reported to have played a stimulus role:

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with international donors entering Nigeria after the 1999 democratic transition to support fledging pro bono programs, while the Atlantic Foundation gifted crucial resources to initiate ProBono.Org in South Africa. In contrast, the lack of sustained philanthropic commitment is cited as a key barrier to pro bono's institutionalization in Argentina, Chile, and Colombia. As this suggests, interventions by global philanthropy can be a decisive force catapulting pro bono forward or holding it back. Why these interventions occur, and how they fit into the broader political missions funders seek to advance, are central issues that require more systematic scholarly investigation.

Corporate Social Responsibility

Also decisive in influencing the rise and shape of pro bono at the large-firm level is the advent of CSR:[36] a set of contested principles designed to hold transnational corporations to account to local communities, typically through voluntary commitments requiring sustainable production, disclosure of social impact, and charitable giving. How the CSR obligations of corporate *clients* influence the amount and type of pro bono provided by corporate *lawyers* is a central theme in studies of countries with highly developed corporate legal sectors.[37] Although criticized as a public relations tool used to resist legal liability and hide global depredation,[38] CSR has caused transnational corporations to invest in measures to ensure compliance with negotiated standards throughout their supply chains – including legal counsel. As a result, law firms eager to attract and retain global corporate clients have touted their pro bono service as an expression of CSR. There is a twofold benefit to this CSR framing: corporate clients may count law firms as ethical service providers, meeting the *clients'* CSR supply chain standards, while the law firms *themselves*, to the extent that they are also viewed as global commercial entities, can demonstrate their social responsibility and thus independently satisfy CSR demands directly applied to them. In both cases, firm lawyers engage in pro bono as a way to "create value" for their firms, part of the broader "business case" for pro bono in which firms do well (drawing in corporate clients, and recruiting and retaining top legal talent), while also doing good.

The study of US pro bono takes on this issue most directly, showing how large corporate law firms have started to promote local charity and larger social efforts by lawyers under the banner of CSR. As the study highlights, much of what these firms count as CSR work has a legal component but is not traditional legal representation, such as

law-oriented educational programs for high school students. Beyond this, the US chapter traces how CSR motivates large firms to undertake "nonlegal community service activities" without any legal dimension whatsoever, for example, "scholarships, holiday parties, food banks, habitat for humanity," as well as green initiatives like recycling. The result, according to this study, is an increasing merger of professional and CSR "logics" for pro bono service, with 39 of the *AmLaw* 100 firms drawing on CSR frames in describing their pro bono work. This occurs as law firms attempt to gear their pro bono work to meet overlapping but not entirely coextensive professional and CSR standards. However, this strategy has potential trade-offs. In many cases, pro bono is no longer framed as a professional obligation but as a broader strategy to "improve communities," couched in the language of global citizenship, in which there is no intrinsic link between pro bono and legal expertise.

Other country studies document CSR's growing influence on pro bono practice. In Brazil, the emergence of CSR as a movement for stronger corporate accountability during the country's meteoric economic rise corresponds precisely with the development of the Instituto Pro Bono, and CSR is reported to be a driving force behind large-firm investment in pro bono – seen as a "tiebreaker" for corporations choosing among law firms. The study of Canadian firms also reveals how pro bono leaders there have sought to make the business case for pro bono to satisfy CSR requirements and attract clients. Similar trends are noted in the United Kingdom, France, and Portugal, while the Denmark chapter describes how firms there publish pro bono reports as part of CSR branding strategies. The European chapter argues that it is the drive to comply with CSR norms that has motivated European Big Law to engage in pro bono as a way to meet the expectations of corporate clients. In France, CSR is viewed as providing law firms a potential "competitive advantage" by allowing them to develop new areas of legal expertise relevant to fee-generating work and to attract new legal talent seeking to have a social impact beyond billing hours. As this suggests, the impact of these CSR trends is ambiguous. Overall, the CSR movement has clearly propelled large law firms competing for global business to make investments in pro bono policies and practices that help meet client CSR obligations. Yet how much of this is window dressing versus meaningful service is a contested question explored throughout the book. And, as the country studies suggest, by framing lawyers' public role in nonlegal terms, CSR potentially channels zero-sum volunteer energy out of meeting poor people's legal needs toward

broader community service projects, undermining lawyers' special duty to use law for the public good.

Technology

The global diffusion of knowledge and practices requires communication across vast dimensions of time and space. As we have seen, to promote an idea like pro bono, there is often no substitute for face-to-face encounters – foreign study, site visits, and conferences figure prominently in this book's account of the global pro bono movement, permitting promoters to convey nuanced analyses, inspire action, and build relationships essential to sustain the difficult work of developing structures. But it is also true that the speed and scope with which an idea spreads can be accelerated and enhanced by the strategic use of technology, which disrupts the status quo by easing barriers to communication and permitting one-click access to massive amounts of data and best-practice material. In this sense, technology is an *enabling* force – lacking intrinsic content but permitting transnational actors and domestic entrepreneurs to connect more easily and frequently, while also linking lawyers and clients inside countries and across borders.

From our country studies, we identify two key ways in which technology helps to promote the transnational diffusion and domestic institutionalization of pro bono. First, technology enables *remote technical assistance*: permitting domestic pro bono organizations to identify and reach out to global pro bono promoters with experience and ready-made models, allowing promoters to efficiently conduct cross-border data exchange and host web-based repositories of forms and other information, and facilitating ongoing technical support and troubleshooting. This type of technological exchange is apparent in the case of pro bono's development in Argentina, Chile, and Colombia, where remote connection has been essential, with the Vance Center using its technological capacity to coordinate cyber-networks and compliance among law firm signatories to the Declaration for the Americas.

Second, technology enables *remote case intermediation*: providing web-based matchmaking platforms through which NGOs can request legal assistance from pro bono lawyers who establish profiles listing their credentials, expertise, and interests. Some of these platforms are transnational by design: iProbono, which aims to strengthen civil society "by providing wraparound legal support" and facilitating the

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representation of marginalized people, connects NGOs throughout South Asia (including India, Bangladesh, Sri Lanka, and Nepal) with lawyers in the region and in the United Kingdom. These lawyers engage in work such as providing transactional assistance to social enterprises and litigating for welfare benefits. TrustLaw Connect, created by legal publishing giant Thomson Reuters Foundation, similarly matches "high-impact NGOs working to create social and environmental change" (in India and elsewhere) with "the best law firms and corporate legal teams" around the globe. There are fledging country-specific versions of these platforms in Spain (probonos.net) and South Africa (ProBono.Org). While these cyber-intermediaries reduce transaction costs and thus make it easier for lawyers interested in pro bono to find cases that match their expertise and timing, there are important open questions about their organization and impact. How much do these sites curate pro bono matters in ways that privilege certain types of work (such as social enterprise) over others in order to cater to lawyer expertise and address restrictions on cross-border practice? How much vetting of pro bono lawyers is done and how much do site staff engage in monitoring and quality control in relation to managing volunteer work? Finally, is there any evidence that lawyers use sites to build connections and brands in order to create markets for fee-generating work? As these emergent technologies evolve, answering these questions will allow us to better evaluate the trade-offs of their role in advancing global access to justice.

Consequences

As we have argued, pro bono's hybridization involves the evolution of lawyer volunteerism from ad hoc charity to organized practice. In this evolution, local and global forces come together at the national and subnational level to produce a range of consequences that can be identified and evaluated. Drawing upon our country studies, in this section we look at the consequences of hybridization from two perspectives. First, we highlight how hybridization affects the *infrastructure* of pro bono service: through the creation of pro bono policies in law firms, pro bono rules designed by the bar, and pro bono intermediaries established in civil society. Second, we explore consequences in relation to the *distribution* of pro bono service: how many lawyers engage in pro bono, which sectors of the bar are most active, what types of clients receive support, and which legal matters are privileged. As the chapters of this book reveal, the nature and scope of these consequences differ dramatically by country – reflecting the unique ways in

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which the local and global factors canvassed above coalesce in specific contexts – ultimately producing a variegated map of who provides and who receives access to justice.

Infrastructure

Examining the development of pro bono infrastructure draws attention to the fact that successful institutionalization requires systemic change in professional practice, which simultaneously asserts pro bono as a normative priority and creates organizational vehicles for its execution. In this sense, infrastructure development is a consequence of the hybridization processes we have traced – a consequence that itself creates the conditions of possibility for pro bono's further growth. Here, we look at infrastructure development as an outcome of hybridization visible in policy codification – within firms and the bar more broadly – and organizational formation – creating spaces that consolidate resources, build leadership, and link lawyers and clients.

Law Firm Policies

Law firm policies on how to define and credit pro bono, as well as how to organize and distribute it, are important indicators of pro bono commitment – although the devil is always in the details. General exhortations to do pro bono mean little unless supported by firm leadership and staff, and backed by billable hour credit, which law firms in most countries still do not provide. Nevertheless, there is significant evidence that law firms have begun to formalize policies for vetting, allocating, and evaluating pro bono matters through the creation of committees, intake protocols, conflicts checking, and reporting systems. For proponents of pro bono, these are positive signs that law firms are taking seriously their service duty: establishing systems within bureaucratic firm structures to coordinate across practice groups and branch offices, while putting pro bono on a formal footing that elevates it as a legitimate goal worthy of lawyer time and resources. For skeptics, law firm policies can operate like smoke and mirrors: presenting an image of pro bono commitment that burnishes the profession's reputation, while obscuring the reality of inadequate implementation. Both of these visions are on display in the country studies and reflect the different degree to which pro bono, as a legal transplant, becomes institutionalized in professional culture.

On one side, the country-level data demonstrate pro bono's pervasive (albeit inconsistent) institutional development within large law

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firms. In addition to the United States, large firms in Asia, Australia, Canada, Europe, and South America report having formalized intake and conflicts policies, uniform standards of representation, and reporting systems. This internal law firm infrastructure is often explicitly based on the US model, which is disseminated directly by US firms and promoted as a suite of best practices by US intermediaries – although there is wide variation and important exceptions. For instance, among a small number of Singapore firms that require pro bono, none have formal policies, while law firm reporting requirements in China come from state mandates.

In one clear trend, firms across the globe are mimicking US practice by establishing pro bono committees and hiring coordinators to manage pro bono intake, assign cases to appropriate lawyers, track output, and report performance to relevant oversight bodies. The UK and European chapters detail the growth of pro bono coordinators in UK firms, spurred by the rise of CSR (which requires personnel devoted to compliance) and the increasing presence in London of law offices connected to the US corporate legal sector (which already embrace the coordinator role). Other European country studies show similar trends. Globally networked firms in France, mostly Parisian branches of Anglo-American firms, have hired dedicated pro bono officers, who organize and publicize lawyer pro bono activity. In Spain, elite firms supported by the Vance Center began organizing pro bono programs on the US model in the mid-2000s, accelerating their pace after the 2012 European Pro Bono Forum; Portuguese firms have set up pro bono committees headed by lawyers with power, who check conflicts, conduct intake, and seek publicity; while top Danish firms have also hired pro bono coordinators to perform such tasks. Similar developments can be seen in Australia, where it is reported that most firms had pro bono coordinators (and permitted lawyers to get billable credit for pro bono work) by the mid-2000s, and in Argentina, Chile, and Colombia, where the majority of large firms organized pro bono around a standard US-inspired tripartite format, overseen by a pro bono committee, partner, and coordinator. In other Global South countries, structure is still evolving, with some ambitious programs – for instance, Webber Wentzel and Cliffe Dekker Hofmeyr in South Africa both have dedicated pro bono practice groups with full-time lawyers providing service to individuals, NGOs, and government bodies on public interest and human rights matters – matched by ongoing informality and fledging organization.

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On the other side, it is also clear that investment in pro bono infrastructure at law firms does not necessarily yield a consistent access-to-justice return. This case is made most forcefully in the chapter on Argentina, Chile, and Colombia, where it is argued that upgrading law firm pro bono programs has not led to significant pro bono output, primarily due to the lack of genuine incentives like billable hour credit, producing what sociologists call institutional decoupling: when the creation of formal rules does not match actual practice.[39] This happens when rules are meant to signal legitimacy to important actors in the external environment, rather than serving the interests of less powerful groups that are claimed to be beneficiaries. As the chapter shows, in Argentina, Chile, and Colombia, poor clients' interests are often ignored in the pro bono system because they are not significant stakeholders in its design and implementation. In this account, when firms hire dedicated pro bono personnel, such personnel serve a role unrelated to service provision: demonstrating civic virtue to clients and competitors, and thereby branding firms in ways that bolster reputation and promote bottom lines (although the chapter makes clear that firm branding is not part of a deliberate public relations strategy, as it is in other countries). This perspective cautions against equating law firm policies – by themselves – with the successful institutionalization of pro bono practice.

Bar Rules

As with law firm policies, ethical rules promulgated by domestic bar associations present a chicken-and-egg problem: Do such rules *lead* pro bono institutionalization (and thereby act more in a causal role) or do they *lag* behind (suggesting they are a consequence of processes pushed forward by other forces)? The evidence presented in this book is insufficient to answer this question, but it does show a lack of systematic correlation between codified pro bono rules and institutional development. Indeed, only a handful of country studies in this book identify local professional rules encouraging pro bono (the United States, Canada, India, South Africa, and China stand out) and their content is mixed. In the United States, the ABA first codified a voluntary pro bono standard in 1983 (amended to add a fifty-hour aspirational target in 1993), which preceded pro bono's institutionalization, and no doubt nudged it forward, although the most significant increase in pro bono at the large-firm level is commonly attributed to the advent of *AmLaw* rankings.

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In other countries, ethical codification occurs at later points in pro bono's development. The Canadian Bar Association passed a resolution in favor of a voluntary fifty-hour standard in 1998, at the precise moment of significant organizational activity in support of pro bono in law firms and the wider bar. In India, bar rules have required lawyers to provide "free legal assistance to the indigent and oppressed" since 1975, but substantial institutional development did not begin until the 2017 Pro Bono Legal Services Initiative, launched by the Ministry of Justice, formally defined pro bono as a goal to be pursued by the legal profession and attached benefits (preference in government hiring) to its performance. The South African study reports that the country's ethical codification grew from the bottom up in 2003, with a mandatory pro bono rule set forth by the Cape Law Society that spread to other regions and was eventually adopted by the national Law Society. In contrast, the Chinese rule came from the top down, set in 2004 by the national bar, which directed local bar associations to promote lawyer public interest activities. In each of these cases, codification of ethical rules explicitly adopting pro bono goals appears to occur as part of a package of professional and political reforms designed to strengthen lawyer service, suggesting that codification is more an expression of institutional change than its cause.

Civil Society Intermediaries

In the countries examined in this book, we see the emergence of civil society organizations that promote pro bono as a central feature of institutional development – a marker of professional legitimacy that provides a vehicle for facilitating pro bono's further advance. These intermediaries are established with critical financial and leadership support from the domestic corporate law sector, typically working in tandem with philanthropic foundations and transnational NGOs that provide models and tools. These intermediaries play multiple roles, but in most cases focus on bridging client need and law firm supply (for this reason, they are also referred to as clearinghouses since they serve to clear the market for pro bono service). In this role, intermediaries operate to reduce transaction costs: encouraging law firms to participate in pro bono work by curating cases to meet firm lawyer expertise and taste, making it "easy" for busy corporate lawyers to take time out for pro bono work. Intermediaries also perform other backup services to facilitate representation. These include conducting trainings, troubleshooting cases with difficult clients (and lawyers), providing background

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research, and otherwise ensuring that lawyers and clients stay connected and follow through. In addition, intermediary leaders perform wider pro bono advocacy: pitching pro bono to law firm representatives (and sometimes leaders from other sectors, like small firms, government agencies, and in-house departments), conferring awards for outstanding service, and engaging in public relations and outreach that solidify pro bono within legal culture. Some intermediaries featured in this book are also seen conducting surveys and other research on access to justice, collaborating with law school clinics, serving as conduits for international exchange, and generally acting as thought leaders.

The proliferation of intermediaries highlights not only their symbolic and material importance as catalysts of pro bono, but also the powerful machinery of legal transplant behind their spread.[40] As mentioned above, the US Pro Bono Institute – although itself focused more on advocacy than case facilitation – has served as an inspiration for and (in many cases) a partner in the creation of clearinghouses around the globe. Aside from the state-based public interest law clearinghouses (PILCHs) in Australia – the first of which was started in 1992 after a study of the US scene – nearly all of the clearinghouses profiled in the country studies borrowed heavily from the US model promoted by the Pro Bono Institute and its partner organizations (as well as the Vance Center). These include Argentina (Pro Bono Commission, 2000), Chile (Pro Bono Foundation, 2000), Brazil (Instituto Pro Bono, 2001), Colombia (Pro Bono Foundation, 2009), Portugal (Pro Bono Association, 2014), France (Paris Bar Endowment Fund, 2015), India (ProBono India, 2016), and Spain (Fundación Pro Bono España, 2018). Although differing in size and scope, the central remit of each group is to build networks across the law firm and legal aid/NGO sectors, which requires speaking to different audiences about the multifaceted benefits of pro bono service: to firms about the social and psychic rewards of giving back and the potential financial return on enhanced professional reputation; to legal aid groups and NGOs on the value of augmented personnel resources and the attendant financial support that often flows with it; and to the broader public about the significance of client lives changed and social problems solved. In having these conversations and building bridges between private sector lawyers and public interest clients, there are serious questions about how clearinghouse leaders assess the state of legal need, select worthy cases, and identify

partners to which pro bono resources are channeled. Commentators have noted that skillful intermediation requires that clearinghouses direct pro bono resources to legal need – rather than adapting need to private lawyer preferences simply to increase pro bono participation, which distorts access to justice rather than widening its path.[41] It is for this reason that we hear many of the authors in this book calling for close collaboration between clearinghouse leaders and other access-to-justice stakeholders in designing the overall system of legal services delivery and defining the specific role that pro bono should play.

Distribution

Distributional analysis focuses on who does pro bono, how much pro bono they do, and for which clients – what Andrew Boon and Avis Whyte refer to in their chapter as the "volumes and nature of work." Here, we assemble evidence and identify patterns of pro bono supply and demand: highlighting what our country studies teach about which lawyers are most likely to perform pro bono service, and what types of clients are most likely to benefit as a result.

Lawyers: Who Does Pro Bono?

There are two dimensions along which to evaluate the supply of pro bono service: the first tracks the degree to which pro bono is done by lawyers across different practice settings – the *stratification* dimension – and the second tracks the degree to which it is done by lawyers within the same kinds of firms – the *hierarchy* dimension.

In terms of stratification, there are a few central takeaways. Overall, across practice sites, it is safe to say that pro bono remains a marginal feature of professional practice around the world. Even in a country like the United States, with a highly developed and well-financed pro bono infrastructure, approximately half of lawyers report doing no pro bono at all.[42] Although many of this book's chapters find growing awareness of pro bono among lawyers (see, in particular, Denmark and Spain), as a matter of practice, pro bono remains the exception rather than the rule. Unsurprisingly, where pro bono activity does occur, it is concentrated in the private legal sector: lawyers in government practice and other areas of public service (including legal aid and education) are systematically less likely to engage in pro bono work. Further, within the private legal sector, in-house lawyers do less pro bono than outside counsel. Among private practice lawyers, it is clear that those in settings at the smaller end of the scale – solo and

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small-firm lawyers – tend to be the highest pro bono performers on average and tend to perform pro bono of a particular type: making ad hoc decisions to provide free representation or write down legal fees for those unable to pay.

Precisely because of domestic traditions of this sort of informal volunteerism, we see solo and small-firm lawyers in many countries where data is available taking a lead position in the distribution of pro bono service. For instance, in the province of Ontario – where the authors of the Canadian chapter collected survey data – less than 50 percent of the largest-firm lawyers reported pro bono work (performing the fewest hours per year on average), while 73 percent of solos engaged in pro bono (performing 88 hours of service on average), and nearly two-thirds of small-firm lawyers did pro bono. The importance of solo and small-firm pro bono is generally linked to the overall dominance of that form of practice (particularly in countries with very small large-firm sectors) and, in some places, its connection to legal aid. In the latter vein, the studies of China, Nigeria, and Portugal all report that solo practitioners, who struggle to earn a living and thus have little capacity for pure pro bono, tend to engage in pro bono work in connection with state-run legal aid programs – accepting meager state stipends as a form of what they understand to be pro bono service (for example, nearly one-fifth of Chinese pro bono cases in 2017 were legal aid cases designated by local governments).

For countries seeking to expand pro bono service in a more organized fashion, a crucial challenge is mobilizing support from larger law firms with excess capacity to provide pro bono and the prestige to lead further growth. Thus, we see that in countries with more developed pro bono systems, large-firm pro bono contributions are relatively high. In Australia, for example, where pro bono is considered "robust" – with a 2016 overall pro bono participation rate among firms of 50 or more lawyers of 57 percent (for an annual total of more than 400,000 pro bono hours) – the largest firms (over 450 lawyers) recorded the highest average pro bono hours per lawyer (40). Other countries, with dramatically diverse professions, report significant rates of large-firm pro bono participation: in France, elite Parisian firms perform the most pro bono service, as do the Big Five firms in South Africa, which have highly organized and high-performing pro bono programs. In contrast, where pro bono culture is weak, large firms underperform. This is true in Brazil, where only one firm in São Paulo has adopted an individual representation pro bono policy; in Argentina, Chile, and Colombia, where

there is a lack of commitment by partners and a reluctance by law firms to invest in training and conflicts checking, correlating with a very low overall number of large-firm pro bono cases conducted through clearinghouses (fewer than 350 per year); and in Spain, which has some of the lowest overall pro bono numbers (11 annual hours per lawyer on average) in Europe.

In the United States, where the large-firm sector has been a leading force in pro bono's growth, the distribution of pro bono service follows a U-shaped pattern, with lawyers in the largest and smallest practice sites performing the most pro bono service on average. A 2016 survey by the ABA found that, overall, US lawyers performed an average of 37 hours of pro bono work per year; the annual average for solo lawyers was 45 hours, while for lawyers in big firms (300 or more) it was 73.[43] The US pattern reflects the broader problem of a "missing middle" – the relative paucity of pro bono in midsize law firms. This pattern is also apparent in France, where pro bono is "merely tolerated" and "ad hoc" in midsize firms, and in South Africa, which reports a pro bono "gap" in firms of ten to twenty lawyers.

One other interesting yet underappreciated aspect of pro bono service is how it varies between differently qualified lawyers – solicitors and barristers – in dual-license professional systems. Although the data in this book is largely limited to the studies of England and Wales and South Africa, they do suggest potential differences in participation rates and styles of pro bono activity, which flow from distinctive professional privileges and areas of expertise (with solicitors generally engaged in counseling and transactional work and barristers focused on advocacy). In England and Wales, solicitor pro bono participation has grown to about 40 percent (resulting in roughly 50 hours per year on average for those who do pro bono); although there is no comparable data on barrister pro bono, there is increasing barrister participation in pro bono programs, with a focus on criminal, personal injury, and international pro bono work. In South Africa (where the division was between advocates and attorneys until recent professional unification), although advocates were required to commit 20 hours per year to pro bono, the definition was so broad that many met the goal by counting work they already did, while attorneys often avoided pro bono in high-demand areas (such as family law and housing) on the ground that they lacked the relevant expertise.

In terms of the hierarchy dimension of pro bono – who is most responsible for distributing free services *within* firms – our country

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studies identify potential patterns worthy of further examination. One relates to the quantity and quality of pro bono participation by lawyers of different status, from senior partner to junior associate, in the law firm pyramid structure. All we can say at this point is that country-specific evidence points in different directions. Although the Canadian chapter finds that pro bono service correlates with lawyer decision-making power, suggesting that senior partners are most likely to engage in pro bono, in other countries, it appears that pro bono responsibility flows down to less experienced lawyers – who have little power to reject cases and see potential professional benefits (training and contacts) in pro bono work. The latter situation characterizes pro bono work in the United States, where law firm associates carry a disproportionate share, as well as in Portugal and South Africa. In contrast, in Argentina, Chile, and Colombia, it is reported that the pro bono burden falls most heavily on junior partners – those in the middle of the hierarchy, who are "victims" of the pro bono system, unable to refuse assignments by senior partners (who do very little pro bono), and not expected (like associates) to be singularly focused on billing hours. While younger English barristers appear more likely to engage in pro bono work, the proportion of partners in solicitor firms doing pro bono has rapidly expanded owing to the growth of pro bono infrastructure (and there is similar evidence of increasing partner participation in Spain). More research is needed into what explains differences in pro bono participation by status – particularly why in some places partners do more – and what the impact is on clients in countries where pro bono is primarily executed by less experienced lawyers often with little supervision.

The limited demographic data on pro bono presented in this book – how pro bono participation is affected by lawyers' race, gender, age, and other identity-based factors – are also suggestive of patterns that point toward future avenues of inquiry. Although the empirical evidence from Canada does not show that pro bono participation *rates* are affected by race or gender, lawyers who identify as persons of color and women are more likely to devote their pro bono time to particular *types* of pro bono work (community service) than their white male counterparts. As suggested above, age appears to be an important factor in pro bono participation, although the relationship is complex. In the United States, although law firms rely on junior lawyers to shoulder the pro bono burden, ABA data indicate that professionwide, older lawyers (aged 55–75) do more pro bono on average than their younger

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counterparts[44] – a pattern that suggests greater opportunity for economically secure senior US lawyers to give back as they transition to retirement. Pro bono by solo and small-firm lawyers in France is conducted primarily by semiretired lawyers, on one end of the age spectrum, and younger (often female lawyers), on the other.

An additional arena of demographic disparity is in pro bono leadership. In South America, although leaders of pro bono committees (typically equity partners) are uniformly men, pro bono coordinators (non-equity-track lawyers) are disproportionately female – a theme that reverberates in Portugal, where women are more visible in pro bono coordinator positions. The feminization of pro bono leadership within the law firm hierarchy raises serious questions about whether female lawyers opt into pro bono positions out of a stronger commitment to service or to achieve better work-family balance, or whether female overrepresentation in pro bono programs reflects discrimination against women excluded from more traditional power positions inside law firms.

Clients: Who Receives Pro Bono?

On the demand side of the distribution equation, the question is which types of clients are most likely to receive pro bono service and how the triage priorities of pro bono programs compare with other delivery systems. Pro bono lawyers do not simply respond to legal need. Instead, in a context in which demand overwhelms supply and thus allocative choices must be made, pro bono lawyers necessarily channel resources to some types of clients and causes over others based on multiple factors, including existing relationships with community groups, commercial client pressure, individual normative preferences, conflicts between lawyers in different segments of the bar, and claims of appropriate expertise. Out of the interplay of these factors, despite the absence of strict rules dictating how pro bono resources are to be deployed, we can begin to discern distributional patterns organized around two major areas of representational divergence: whether pro bono lawyers concentrate their efforts on *individual versus NGO clients*, and whether they focus on *civil versus criminal representation*. Although more work needs to be done investigating the reasons for these patterns, our conclusion is that they are largely driven by the degree of cooperation or conflict among lawyers in large-firm pro bono programs, legal aid and public interest law groups, and solo and small-firm practice – resulting in what we call *institutional compromises* around the

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distribution of free legal services across these domains as a way to manage turf wars. The precise nature of compromise in different contexts is also influenced by the relationship between pro bono case content and lawyer expertise, which varies across the corporate and individual service hemispheres of the bar.

Within this framework, as it turns out, the countries where pro bono is most targeted toward low-income individual clients in civil cases – the United States and Australia – are also the most anomalous. This is because of the unique relationship in these countries between the corporate law sector and legal aid, which developed (in different degrees) on a staffed-office model, in which full-time lawyers provide free assistance through NGOs, which ultimately have come to heavily depend upon pro bono support (although not without early controversy and ongoing tension). In the United States, as discussed earlier, it was the financial instability of government-subsidized legal aid in the wake of neoliberal austerity that cemented a pro bono partnership between corporate lawyers and legal aid in support of civil legal services. In the absence of significant judicare – and thus active opposition by solo and small-firm lawyers – this partnership evolved to profoundly shape the nature of US pro bono work. According to the ABA, four-fifths of pro bono service in 2016 went to individuals.[45] Demonstrating the interconnection with legal aid, family law (the most important area of legal aid practice) was by far the most popular area of pro bono service.[46] Similarly, the lack of judicare in Australia, coupled with the rise of an independent community legal center sector, created opportunities for a close partnership unencumbered by jurisdictional conflict over individual representation.

In both countries, channeling pro bono service – particularly from large-firm lawyers – into individual representation of low-income clients has meant redefining what it means for pro bono lawyers to have requisite expertise. Because large-firm lawyers steeped in areas like antitrust or intellectual property have little substantive knowledge to contribute to the modal pro bono case, those lawyers are instead valued for their specific procedural (being good at litigation) or general problem-solving skills, and are given backup substantive support by full-time experts in legal aid organizations. (Legal aid leaders are willing to make investments in backup support, in part, because they believe that financial donations from firms follow the pro bono participation of their lawyers.) This situation contrasts sharply with that in a country like India, where large-firm pro bono lawyers, citing expertise grounds,

focus primarily on transactional legal services to NGOs, leaving individual service work to solo practitioners in a pro bono delivery system divided between the corporate and individual representation spheres. As this suggests, expertise is a contested concept that can be mobilized as a rationale to support quite different pro bono arrangements.

Indeed, targeting large-firm pro bono to NGO clients is the most prevalent distributional pattern in the countries studied in this book – a result flowing from the comparative expertise of corporate lawyers and also, more significantly, the institutional compromise between Big Law and the Social Bar. Specifically, in all countries where NGOs are the primary recipients of large-firm pro bono service – in addition to India, all the countries canvassed in Europe and South America – the defining feature is the existence of a mobilized constituency of Social Bar lawyers (solo and small-firm practitioners funded by the state to perform legal aid) resisting pro bono for low-income individuals as a form of turf protection (since pro bono for those clients creates the potential for less legal aid). As a result of institutional compromise, low-income individual client representation remains the domain of Social Bar lawyers, while large firms commit to directing their pro bono activity – in the form of transactional legal support, the preparation of research reports, legal training and advice, and other nonlitigation services – toward NGOs (and, to a lesser degree, social enterprises).

This compromise is evident throughout Europe, where Edwin Rekosh and Lamin Khadar report that nearly 85 percent of big firm pro bono goes to NGOs and social enterprises. As their chapter on Europe argues, this result is partly a product of Big Law expertise – European corporate lawyers, skilled in navigating regulatory compliance, are able to assist NGOs seeking to engage in complex policy processes – but the result also follows from explicit agreements by Big Law to avoid low-income client representation as a concession to national bar associations concerned about protecting Social Bar lawyers. This concession avoids conflict with the Social Bar while still allowing large national law firms to use pro bono as a marketing tool to attract clients and talent in the face of competition by US and other global firms. The studies of individual European countries buttress this finding. In France, although large-firm lawyers provide free consultations to individuals through access-to-justice intermediaries, they devote significant resources to the full-scale representation of NGOs. In Portugal and Spain, firms prefer to concentrate pro bono on NGOs and social enterprises, while in Demark, law firms tailor pro bono

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toward organizations at the expense of individuals (who, as in India, depend on pro bono lawyers from solo practice and small law offices). Again, this NGO orientation, fueled by turf wars, is reinforced by claims of relative expertise. For example, the structure of UK solicitor firms – which focus on corporate law – and the nature of their foreign office development on the European continent – which relies on lawyers engaged in global transactional work (with many not licensed to litigate in local jurisdictions) – render UK-firm lawyer expertise more compatible with representing NGOs and social enterprises on governance issues, conducting legal research, and building public–private partnerships.

The South American chapters tell a similar institutional compromise story. In Brazil, solo lawyers successfully lobbied the São Paulo bar to block pro bono to individual clients. It took a long and intense campaign by the pro bono movement to overturn this limitation, but ongoing turf wars with solo and small-firm lawyers, who wish to keep large firms out of individual representation, and with the public defender's office, which seeks to protect its jurisdiction over legal aid, have continued to make individual pro bono too costly for most firms to undertake. In Argentina, Chile, and Colombia, it is reported that, of the tiny number of large-firm pro bono cases, almost none involve litigation (which is too expensive) and of those characterized as in the public interest, most involve corporate-style advising for NGOs.

The second prominent type of institutional compromise emerging from our country studies – also driven by the relation between pro bono and legal aid – is organized around a civil–criminal case divide. Thus, in Canada, where (unlike most other jurisdictions) legal aid is concentrated on criminal cases, pro bono lawyers avoid criminal representation in favor of meeting civil legal needs in areas such as disability, civil rights, housing, and labor. In this regard, Canada joins the United States and Australia as countries in which pro bono is directed to individual representation in civil cases – although it arrives at this position via a distinct route. Moreover, while surveyed Canadian lawyers overall devote the largest share of their pro bono hours to low-income individual clients, there is a large–small firm split, with large-firm lawyers much less likely to devote their pro bono hours to helping the poor (directing roughly 10 percent of pro bono to low-income clients) than their small-firm counterparts (who devote close to one-third of pro bono to low-income clients). In this sense, Canadian large-firm lawyers share tendencies with their colleagues in Europe and

South America, in that they are more likely to devote pro bono time to transactional work for NGOs. A civil–criminal pro bono service division also exists in Singapore, although it is the mirror image of that in Canada. Specifically, because of widespread *civil* legal aid coverage, and the paucity of state-financed representation for indigent *criminal* defendants (who have been largely excluded from legal aid, outside of capital cases), pro bono lawyers focus on criminal representation (with a smaller portion also representing individuals with civil problems who do not meet legal aid cutoffs).

Finally, from a distributional perspective, it is important to highlight the robust relationship between pro bono and public interest law across a diverse range of countries. Unlike legal aid, which is centered on ordinary dispute resolution, public interest law seeks legal reform through courts and thus requires litigation resources and skill. In the United States, where public interest law organizations emerged around the same time as state-funded legal aid, they formed an alliance with elite firms eager to demonstrate civic virtue (and whose leaders often shared the substantive values of public interest law organizations),[47] permitting public interest groups to leverage firm money and pro bono resources for reform-oriented legal challenges. This alliance has largely persisted, as the US chapter underscores, and forms the basis for significant large-firm pro bono support for civil rights, environmental justice, women's rights, and other public interest litigation cases. There is an irony here insofar as public interest law organizations, which aspire to more radical change, come to rely on pro bono, which is a resource constrained by the inherently conservative (in the sense of supporting the status quo) orientation of corporate law firms. As political culture becomes more polarized, we might expect some law firm leaders to espouse more right-wing political views and thus to mobilize their firms' pro bono resources to support right-wing political causes.

In other countries with strong traditions of public interest law – particularly Australia, India, and South Africa – we see similar pro bono support for public interest law groups in need of sustained resources, although in India and South Africa, such support comes primarily from solo and small-firm lawyers aligned with social movements. An analogous pattern is visible in Nigeria, where human rights challenges to the military dictatorship relied on pro bono support from small-firm lawyers that translated into ongoing partnerships between such firms and public interest groups after democratization. As mentioned, China is an outlier because the profession is dominated by the state, channeling most pro

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bono into state-run legal aid programs. However, even there, because of long-standing struggles over human rights, we see some private lawyers – those in the "challenger" mode – providing pro bono service for litigants protesting state abuses of power to build the rule of law and extend liberal values.

Contestation

We have, thus far, synthesized evidence from our country studies to explore the first two elements of the tripartite framework around which this book is organized: probing the relationship between pro bono's *causes* and *consequences*. We have argued that, although the diffusion of pro bono is driven by globalized ideas and transnational networks, local institutions and actors profoundly shape the process by which the public character of lawyering and preexisting traditions of access to justice are transformed into "pro bono" – understood as the systematic provision of free legal services by private lawyers as an ethical duty. In making this argument, we have used the concept of hybridization as a way to illustrate how the alchemy of global and local factors in specific countries produces wide variation – but also discernible patterns – in terms of pro bono's organizational footprint and distributional output. In this section, we extend the discussion by turning to the third element of our analytical framework: exploring "global pro bono" as a terrain of inevitable and ongoing *contestation*. As we suggest, the conflicts over pro bono visible in this book are not simply about how to define its basic meaning (although that is one dimension), but more deeply reflect fundamental tensions around professional autonomy, the role of the state in redressing inequality, the duty of lawyers to promote justice, and the degree to which law is a profession or a business. Our precise aim here is to elevate the key pro bono debates around which these tensions manifest: erupting over claims of foreign intervention, interference with legal aid, lawyers backsliding in their commitment to access to justice, and law firms deploying pro bono toward profit-seeking ends.

Indigenous Tradition or Foreign Transplant?

A foundational debate cutting across the chapters of this book revolves around pro bono's origins and professional autonomy: Where does the idea of pro bono come from and who gets to decide its practical content and meaning? Although at first glance the question seems innocuous enough, embedded within it is an implicit concern about US hegemony

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and whether US-centric models are force-fed to countries in exchange for wider benefits of global integration – a concern resonant with overtones of neocolonialism, exacerbated when the line of pro bono's transmission crosses the Global North–Global South divide. For this reason, we find a resistance to strong claims of US (or more general "global") influence on the development of pro bono – the concept of pro bono as a foreign transplant – and instead see accounts that stress the domestic roots of pro bono as an indigenous tradition. In one example that captures this resistance, the chapter on Nigeria, while acknowledging the importance of the country's quest for global recognition in adopting its Pro Bono Declaration (patterned on those in South America), argues that the Declaration should be understood as an expression of an indigenous professional principle in support of legal aid for the disadvantaged.

Although our evidence is too spotty to draw strong conclusions, it is reasonable to presume that the intensity of the conflict over pro bono as a global transplant is inversely related to the depth of its domestic institutionalization. As we have seen, pro bono is most likely to become deeply embedded in domestic legal culture when it seamlessly builds upon traditional service norms and harmonizes with existing access-to-justice institutions. Putting the United States to one side (since the origins of institutionalized pro bono were internal to its system and hence there was never any conflict over foreign transplant), countries in this book with the strongest pro bono systems appear to be those in which internal constituencies use global templates and resources, but ultimately submerge pro bono's foreignness, instead leveraging the normative force of domestic professional service and assimilating pro bono to national values. Following this model, we see pro bono in Australia claiming a distinctive cultural position Down Under, developing from a partnership between the community legal center and large-firm sectors, with each viewing pro bono as a valuable asset: community legal centers seeking resource support, and firms seeking legitimacy in the profession and with clients, particularly those playing in the global arena and fixated on CSR.

In contrast, top-down pro bono projects disconnected from the lived realities of receiving communities, especially when undertaken across the North-South divide, appear unlikely to result in substantial institutionalization.[48] Particularly where the legal aid and public interest law sectors are not willing partners, it is difficult for indigenous promoters to frame pro bono in relation to domestic access-to-justice

traditions, forcing them to fight against the image of pro bono as an unwelcome transplant that undermines domestic institutions. As the South American experience reveals, this fight plays out in a postcolonial context, where efforts at North–South transmission of pro bono trigger deeply felt suspicion toward US power – a suspicion that is mobilized against pro bono and limits the extent to which it becomes culturally embedded. In the end, who is able to control the narrative of pro bono's origin story – and whether that story is assigned local or transnational roots – helps to explain the degree of pro bono's professional assimilation.

Complement or Substitute?

In nearly every country studied in this book, a significant debate exists about the extent to which pro bono "complements" or "substitutes" for legal aid. Opponents of pro bono – both those who believe that the state owes a duty to its citizens to ensure access to justice and Social Bar lawyers with a self-interest in the state-funded system – make the argument that pro bono is a substitute that undermines the government's social welfare role. In so doing, they point to a variety of evidence ranging from explicit statements by government officials in support of pro bono as part of neoliberal austerity programs to the coincident timing of pro bono's rise and legal aid's decline. Promoters of pro bono, in contrast, make the argument in favor of complementarity – arguing that pro bono should only be used to fill gaps in the state system and that legal aid leaders should have the primary role in defining what gaps exist and how to best address them. Promoters also stress that pro bono lawyers in the corporate bar should be a leading voice defending state-based legal aid and advocating for its expansion. However, even in countries where efforts at complementarity are strong and sincere, there is an undercurrent of concern that the best-intentioned and well-designed pro bono systems can be used as a pretext for retrenchment on government commitment to legal aid.

The language of complementarity – and the underlying sensitivity about the perception of pro bono as private charity undercutting public support for the poor – is a thread that runs throughout the chapters. It is perhaps most prominent in the Australian context, where pro bono leaders have been vocal in making the case for the "best use" of pro bono to fill gaps in the existing access-to-justice system. More generally, we see the rhetoric of complementarity prominent in those countries where turf wars around legal aid have produced institutional

compromise. These include Canada, where large law firms take on NGO clients and avoid criminal law cases to "complement" legal aid; France, where progressive large firms, also focused on NGO representation, have positioned their pro bono as a "complement" to state-funded judicare, dispensed to individual low-income clients under the program of *aide juridictionnelle*; Portugal and Spain, where the "complement" language is used to support pro bono clearinghouses that steer clear of state-funded legal aid services to individuals; and Singapore, where pro bono support for noncapital criminal cases "complements" the legal aid civil justice focus.

These movements to promote complementarity raise important questions that warrant further inquiry. Most significantly, they force consideration of the extent to which complementarity reflects a robust effort at thoughtful institutional design or a rhetorical strategy to mitigate interjurisdictional conflict. In this latter regard, it seems possible that well-intentioned advocates of complementarity may unwittingly authorize neoliberal agendas even as they forcefully advocate against them. Evidence for this possibility comes from the United Kingdom, where it is reported that the mantra of pro bono as "an adjunct to, not a substitute for, a proper system of publicly funded legal services" was proclaimed most loudly at the precise moment that legal aid was being significantly slashed. At the very least, the UK experience provides a cautionary tale of complementarity: revealing that the rise of pro bono, no matter how skillfully managed, creates space for powerful proponents of substitution to curtail legal aid despite best efforts to protect its legacy.

Legal or Public Service?

Another fundamental debate spanning diverse countries across the geography of global pro bono turns on the degree to which pro bono is defined as a quintessentially "legal" service or more broadly in terms of "public" service, understood in terms of nonlegal volunteerism and community engagement. This debate is far from academic. Indeed, it goes to the core of why lawyers are expected to "do good" in the first instance: a special duty to balance the scales of justice derived from the fact that lawyers have a monopoly over the provision of legal services, which makes them essential gatekeepers to the legal system. That duty (especially when paired with the ideal of complementarity discussed previously) militates in favor of a conception of pro bono targeted to those with legal needs excluded from the private legal marketplace on

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account of lack of resources. It is when lawyers are seen deviating from legal pro bono by providing nonlegal public service (and seeking professional credit for doing so) that critics rise up to ask: What good is a lawyer's duty to do good if it does not advance access to justice?

As we have seen, the tension between pro bono as a legal or public service has become more acute due to the interplay between large-firm pro bono and CSR – with firms at times seeking a double dividend by counting broad volunteer work in both categories. There are examples of this trend in places as distinct as the United States, where some law firms package pro bono under abstract CSR-informed social commitments (such as promoting "community," "inclusion," and "sustainability"), and Portugal, where it is reported that lawyers pursuing CSR credit engage in activities like planting trees, clearing forests, and painting walls (and calling all that pro bono). Such charitable activities, of course, are admirable. But they do not advance legal justice and thus squander lawyers' unique expertise by misallocating volunteer time to activities that could be undertaken by others. CSR is not the only influence, however, pulling pro bono away from its legal roots. In South Africa, the passage of national legislation unifying the profession and requiring broad "community service" for all lawyers has unleashed concern about the fate of legally oriented pro bono; while in China, the political sensitivity of rights activism – and the professional control exerted over lawyers by the Chinese Communist Party – has led most private lawyers to define pro bono broadly to include civic engagement, volunteer service for the public good, and Party activities.

In considering responses to the legal-public service dilemma, one can presume that lawyers, like all professionals, would prefer flexibility to define their own standards of conduct rather than having to act according to strict regulatory mandates. Furthermore, one can presume that flexibility would be exercised in favor of taking action that aligns with the interests of private lawyers' most important constituents: paying clients. In light of this reality, the research in this book teaches that financial incentives for lawyers to move away from legally oriented pro bono may be checked by countervailing pressure. In particular, in order to counteract such pro bono "drift," it is critical to have other institutional actors in place with power in the system – able to assert stricter pro bono definitions and empowered with oversight authority to enforce them. There are important models of such

actors throughout the chapters that follow. In the United States, a trio of powerful professional and private groups has asserted a narrow definition of pro bono: the ABA, which promulgated the rule defining pro bono as "legal services without fee or expectation of fee to persons of limited means" or organizations "designed primarily to address the needs of persons of limited means"; the Pro Bono Institute, whose Law Firm Pro Bono Challenge holds signatory firms to the ABA standard; and the *American Lawyer* magazine, which also measures the amount of strictly legal services to individuals or organizations to rank large-firm pro bono activity. In the United Kingdom, as discussed, the 2002 attorney general protocol defining pro bono in legal terms rescued pro bono from being watered down by Big Law's pursuit of CSR. Similarly, the Australian Pro Bono Centre's survey of large firms uses a definition of pro bono confined to legal activities, while the Pro Bono Declaration for the Americas adopts the US standard by defining pro bono services as "those provided without a fee, or expectation of a fee, principally to benefit poor or underprivileged persons or communities or the organizations that assist them." Enforcement of these legally oriented standards occurs through public reporting mechanisms that enable the "naming and shaming" of firms that do not meet them.

Good for Society or Good for Business?

A final debate revolves around whether pro bono is aimed at improving society – a vehicle for lawyers to discharge their duty to serve the public good – or whether it is aimed at enhancing law firms' bottom lines. Is pro bono the expression of altruism – or lawyer "generosity" in Louis Assier-Andrieu and Jeremy Perleman's terms? Or is it a market strategy to recruit talent and clients by large-firm lawyers, who appropriate the halo of professional legitimacy as public servants while aggressively representing powerful companies intent upon using law as a tool of economic control? Or is it – can it be – both?

This debate flows inevitably from the vanguard role of large law firms in building pro bono systems and expresses deeper anxiety about whether lawyers form an elevated profession (fulfilling the "lawyer-statesman" ideal[49]) or are simply an economic guild intent on protecting and expanding the market for legal business.[50] This anxiety is perfectly captured in the paradoxical "business case for pro bono," which figures prominently in the public pronouncements and private discussions of pro bono leaders in countries where pro bono culture

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depends on institutionalization in Big Law. According to this business case, pro bono presents law firms with an opportunity for a "double bottom-line" return: good for society but also good for profits, insofar as it burnishes law firms' reputation with corporate clients eager to present a positive social image, while serving as a critical factor in the cutthroat competition to attract and retain lawyers who desire something more out of law practice than billing hours. Pro bono leaders in the United States pioneered the business case as a way to "sell" pro bono to law firms reluctant to incur the opportunity and infrastructure costs of building pro bono programs. As the US chapter highlights, the marketing function of pro bono is prominently displayed on flashy websites touting the transformative contributions of firm lawyers, which are geared toward an audience of aspiring associates and corporate CSR compliance officers. Indeed, as pro bono spreads globally, it is clear that CSR has become an increasingly important factor pushing firms to embrace the business case. In this regard, the Denmark chapter emphasizes that the merger of CSR and pro bono programs there has focused firms on linking "earnings, recruitment, branding and charity" as "interknitted elements" viewed through a "win-win perspective," in which firms draw in new clients and junior lawyers through legal voluntary work. Beyond CSR, we see law firms in some countries searching for more concrete ways to monetize pro bono. This comes through perhaps most vividly in the chapter on Portugal, where it is reported that some law firms pursue pro bono clients in Portuguese-speaking countries in Africa in order to strengthen ties between Portuguese firms and local elites – thereby mining new business opportunities.

Yet there are significant risks in touting the business case too loudly. Crass connection between law firm pro bono – with its aspiration to transcend commercialism to serve the public good – and market strategy feeds cynicism about the motives of those behind the pro bono movement, undercutting arguments in favor of complementarity and rankling supporters of legal aid, who view law firm self-interest in pro bono as further evidence of the perils of privatization. Moreover, to the degree that law firms evaluate their pro bono in relation to economic return, one would suspect their calculus to misallocate pro bono resources away from meeting genuine legal need toward achieving what is best for firm image and bringing the most satisfaction to firm lawyers. In this way, assimilating pro bono practice to market values threatens to undermine the very legitimacy of

professionalism – rendering pro bono yet another tool of legal inequality rather than a vehicle to redress it.

PATTERNS OF PRO BONO DEVELOPMENT

In this section, we step back from our analytical framework – causes, consequences, and contestation – to make general observations about why pro bono appears to be more developed in some places than in others. These observations flow from our comparative approach, which focuses attention on questions of similarity and difference. Looking across the countries profiled in this book, what can be said about distinctive patterns of pro bono development? What are the most important factors – such as jurisdictional conflict between elite and nonelite private lawyers – that contribute to those patterns? Why, in some countries, do we see weak institutionalization or circumscribed domains of pro bono development, while in others there is a stronger commitment to pro bono as a professional value and broader distribution of pro bono service? In assessing institutionalization, timing is obviously important – countries with longer histories of organizing around pro bono have more developed norms and practices. Resources and the scale and diversity of private law practice are also significant. Here, we attempt to move beyond these basic factors to array the countries studied in this book along a spectrum of institutionalization and to offer some thoughts about why pro bono culture and practice appear more robust in different locations. We stress at the outset that there are an enormous number of important variables and the complexity of legal systems defies easy categorization. However, we offer the following overview as an invitation to further research.

As this chapter has highlighted, there are two key findings from our research that shape our analysis of pro bono patterns. First, the development of a substantial Big Law sector (even if not "big" by US standards) is an essential precondition to the institutionalization of pro bono. Only with large-firm resources and leadership does pro bono gain widespread legitimacy – tied to the elite profile of large firms striving to demonstrate their social utility and thus justify their status and power. In the absence of a large-firm sector with an incentive to perform professional service and the bureaucratic structure to allocate such service in an efficient manner, pro bono remains concentrated at the level of small-scale practice and generally ad hoc.

Our second critical finding is that the role pro bono plays within a country's access-to-justice system depends heavily on the nature of

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the existing legal aid and public interest law sectors. As suggested in our discussion of distributional consequences, pro bono culture appears to be most deeply embedded in countries in which legal aid is organized around staffed offices (not judicare) and/or when there is a significant non-state-based system for providing legal services to the poor and supporting public interest legal work – all of which depend on private philanthropic resources. In these settings, pro bono is a crucial supplement to underfunded legal aid and public interest law, and does not raise the specter of "unfair competition" with solo and small-firm lawyers who depend on government subsidies to perform legal aid. In some countries with a judicare model, pro bono has not encountered significant bar resistance because either the cutoff threshold for legal aid eligibility is so low or stipends are so paltry that local lawyers are not dependent on them (this appears to be the case in Singapore and China, for example). In contrast, in judicare countries throughout Europe and South America, a division of labor has developed based on institutional compromise.

On the basis of these core findings, we outline three general categories of institutional development. Again, we stress that these categories are ideal types that simplify reality and thus necessarily obscure complexity for the purposes of elementary comparison. Yet we believe that this comparison is helpful to illuminate important structural dynamics that shape pro bono and its relationship to broader economic and political arrangements.

The first category is one of *strong institutionalization*, characterized by the following features: high rates of pro bono participation across private practice settings (particularly at the large-firm and solo/small-firm practice levels); explicit and strong ethical incorporation of pro bono in bar rules; thought leadership and organizational formalization at the elite law firm level; strong and broad-based clearinghouses; support from the legal aid and public interest law sectors; and wide distribution of pro bono services across client categories (individual, NGO, and law reform). Here we put the United States and Australia – both highly developed countries in which neoliberalism has taken firm root. The keys to pro bono in these countries include, as we have highlighted, the strength and organization of the corporate bar and the minimization of conflict between legal aid and pro bono. In both countries, there are strong public interest law organizations, which invite law firm support for law reform litigation, which does not arouse opposition of private lawyers (though it can aggravate government

targets). An additional factor in both countries is the crucial role of intermediaries (the US Pro Bono Institute and Australian PILCHs) that connect law firms and legal service providers, as well as outside monitoring agents (*AmLaw* and the Australian Pro Bono Centre), which report on pro bono activity and motivate compliance with aspirational standards by creating race-to-the-top competitions. The experiences of these two countries underscore the need for interest convergence between the public and private hemispheres of the profession to generate and sustain support for pro bono. In the United States and Australia, there is buy-in from elite firms (due to pressure from clients and the bar), buy-in from local NGOs (due to dependence on firms for financial and voluntary resources), and buy-in from governmental and philanthropic agencies committed to leveraging private involvement for the public good. In short, broad-based internal constituencies (corporate law firms, legal aid and public interest law groups, bar leaders, and government officials) have mobilized in favor of pro bono and encountered weak internal resistance.

The second category, which is the most common and spans the broadest range, we characterize as *mixed institutionalization*. Here, we see variable rates of pro bono participation across and within practice sites (with large firms underperforming relative to other sectors, often relying heavily on junior lawyers without strong participation by partners); inconsistent ethical codification, which often lags behind other indicia of institutional development; a disjuncture between the form and function of large-firm pro bono, with levels of service not matching formal organizational and rhetorical support; fledgling or otherwise limited-capacity intermediaries; resistance to pro bono led by solo and small-firm lawyers in the Social Bar and legal aid; and compartmentalized patterns of client service resulting from institutional compromise. It is quite difficult to confidently "locate" countries in this category, given the limits of our data set and because the category itself so broad – and thus we do so with circumspection. In the Global North, we include countries with substantial large-firm sectors, strong social welfare traditions, and moderate pro bono infrastructure: Canada, Denmark, England and Wales, and France. As discussed, in these countries, we see the diffusion of formal organizational policies at the large-firm level and general buy-in from large-firm leadership. This occurs within a framework of divided institutional responsibilities, in which pro bono lawyers in large firms take on cases that do not interfere with the legal aid system and Social Bar: representing NGOs as clients (in Western Europe) and avoiding

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criminal cases (in Canada). From the Global South, we include India and South Africa – democratic countries with strong constitutional rights, deep traditions of public interest law, developing intermediaries, and "emerging economies" with small but symbolically important large-firm sectors (opening to the entry of foreign law firms) that have played leadership roles around pro bono. We also include the two more authoritarian countries – China and Singapore – which have a substantial large-firm sector, strong bar and governmental leadership (with coordination between the two), and complex legal aid systems that shape distinctive types of institutional compromises around pro bono (with pro bono in China oriented toward government-sanctioned volunteerism and in Singapore toward criminal cases).

In the third category are countries with *weak institutionalization*. Here, we see relatively low pro bono participation across sectors, with anemic large-firm participation and typical patterns of ad hoc pro bono in solo and small-firm practice; the absence of ethical codification or weakly articulated ethical standards; timid leadership from the large-firm sector (which is relatively small) and limited firm investments in pro bono programs, which are often marginalized by assigning less powerful lawyers to be in charge; resistance to pro bono by legal aid and small-scale practitioners, and weak public interest law; no or low-capacity clearinghouses; and disorganized patterns of client representation. The countries in this category are also quite diverse and have pro bono systems shaped by distinct factors, including timing, lack of large-firm commitment and resources, and internal resistance to pro-bono-as-transplant. The latter factor appears most important in the South American countries (Argentina, Brazil, Chile, and Colombia), where Daniel Bonilla Maldonado and Fabio de Sa e Silva conclude that pro bono has been a failed legal transplant due to the lack of professional and grassroots buy-in, resistance by small-scale practitioners, and the disinclination of large-firm lawyers (despite public commitments to pro bono) to invest heavily in a strategy that has no clear economic payoff in the domestic market. Similar patterns of top-down pro bono incorporation met by internal resistance characterize the experiences so far in Spain and Portugal, which also have fledgling pro bono clearinghouses. Because of this, one might predict that the trajectory of pro bono in these two countries, over time, would align more closely with their European counterparts. Pro bono in Nigeria, at this early stage, is held back by the structure of the private bar, still dominated by solo

and small-firm practice, as well as by paltry initial investments in pro bono systems – although, looking into the future of a country engaged in neoliberal reform as a condition of entry into the ranks of emerging economic powerhouses, one would expect the arc of pro bono development to trend sharply upward.

THE FUTURE OF GLOBAL PRO BONO

We conclude our introduction by considering the future trajectory of global pro bono – in all its diverse and conflictual forms. Futurology is inherently speculative – and therefore imprecise – but one can try to draw inferences based on current trends. As this book goes to press, however, confidence in our ability to predict any future, much less the future of pro bono, has been shaken to its core by a global pandemic that has crippled the economy and laid bare the massive deficiencies of neoliberal systems, particularly that of the United States, where decades of neoliberal restructuring left tens of millions without work and nowhere to turn for basic needs and security. This unprecedented crisis, combined with the eruption of worldwide protests in support of racial justice, has wiped away settled principles, and motivated calls for fundamental system redesign. Although the scale of the crisis has produced significant pro bono mobilization (to the extent that lawyers can play roles helping people access medical and economic benefits, maintain housing, and fight police abuse), it has also dramatically refocused attention on the critical role of government aid. Therefore, we begin by acknowledging that our attempts to extrapolate future trends based on the precrisis evidence presented in this book may ultimately land in a world transformed beyond recognition. With that in mind, we proceed forward nonetheless, offering a set of final reflections on the prospective role of illiberalism and transnationalism in any future global pro bono order.

Because the hybridization framework we have presented places development models at the center of pro bono's global diffusion, it seems plausible that pro bono's global future will be inextricably linked to the future of progressive neoliberalism itself – a future that appeared uncertain even before COVID-19. At one level, precrisis corporate capitalism demonstrated remarkable resilience. Although the beginning of the new millennium brought serious challenges to the established global order, jolted by financial crisis and confronted by sustained efforts to build viable alternatives,[51] capitalism appeared to

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emerge stronger than ever (although, as mentioned, the pandemic has shaken capitalism as the economic dislocation wrought by COVID-19 has surpassed that of the Great Recession by several orders of magnitude). If neoliberalism continues to hold sway, managing to reconsolidate on postcrisis ground, one could imagine that pro bono becomes more strongly assimilated to law firm commercial goals, undermining its value as a public good. This could, for example, cause the business dimension of pro bono work to eclipse the ethical and professional dimensions of it, or elevate generalized public service above specifically legal service.

Yet countervailing trends raise serious questions about the viability of progressive neoliberalism and hence its impact on the shape of pro bono to come. Future research should consider that the resilience and ultimate strength of the neoliberal project may not be able to rely on the prior alliance of deregulation and an egalitarian "politics of recognition." On the contrary, we have witnessed a powerful new linkage between capitalism and political illiberalism, from Trump and Brexit in the Global North to Bolsonaro in the Global South. Here, it is interesting to note that, although global pro bono is most visible in our volume as a liberal democratic project, it does have roots in more authoritarian regimes, like China, to the extent that the law firm sector there is globalized and pro bono has proven to be instrumental in the unique Chinese "rule by law" model. On the other hand, the advent of right-wing populism in the United States has stimulated an upsurge in pro bono around certain issues, like Trump's ban on Muslim immigration, which provoked a significant law firm pro bono mobilization at airports across the United States. Where this will ultimately lead pro bono – toward resurgence to defend the rule of law under threat or retreat in the face of capitalism unleashed – is a question with critical stakes going forward.

A related question involves the relevance and fate of transnational advocacy for human rights and social justice – the counterhegemonic global response to illiberalism witnessed in the outpouring of worldwide support for the Black Lives Matter movement. If lawyers are to play a significant role in countering illiberal forces and policies around the world, this will likely require some degree of cross-national collaboration. For example, public interest litigation in the EU could be a source of hope for countries like Hungary or Poland, whose democratic decline is dramatic.[52] In raising the potential benefits of transnational legal collaboration, however, we are aware that in some

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countries experiencing the expansion of pro bono, there has been significant local pushback against foreign influence and fears of foreign imposition. How can we balance the emphasis on the local with the need to avoid the trap of resurgent nationalism, one of the cards often played by authoritarian populists to attain and keep power? As Scott Cummings and Louise Trubek have noted in the context of public interest law,

> The delicacy of this cross-border engagement should not impede efforts by lawyers from the North and South to collaboratively advocate for social justice. Going forward, it is . . . crucial that lawyers across the North-South divide continue to frankly confront the history and current reality of US power, while also attempting to move beyond distrust in order to open up the possibility for transformative alliances across borders.[53]

Perhaps in the tensions around the meaning of global capitalism and the nature of global activism lie the most fertile ground for the development of global pro bono practice and scholarship in the years to come. Is pro bono going to become a terrain for the accommodation of an ultraliberal economic order, for the contestation of an illiberal political order, or both – if that is, at all, possible? Will this take place primarily within or across countries? More broadly, how might the patterns we identify in this book contribute to better-informed policy conversations about the role of pro bono, not just at the periphery but at the center of the legal profession? And how might legal professions do a better job balancing competing interests in designing an effective system for enhancing access to justice around the world? This book does not answer these questions, but we hope readers will find them valuable for their research and practice going forward.

OVERVIEW OF THE BOOK

This book is organized geographically. Part One begins with the Americas, starting with the evolution of pro bono in the Global North (the United States and Canada) and then turning to studies from the Global South (Brazil, Argentina, Chile, and Colombia). The US study is first, not because we believe that the American experience is the paradigm, but because the forces of institutionalization began there earliest; it is home to many of the most significant law firm and NGO pro bono promoters; it is the most studied country; and many of its ideas and structures have, in fact, been copied – and criticized – by

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those in other countries in which pro bono has evolved. The US case therefore operates as an inescapable focal point: as an example to be either emulated or distinguished.

In Chapter 2, John Bliss and Steven Boutcher examine the US experience, drawing on interviews with pro bono coordinators and a content analysis of pro bono statements from leading law firms to demonstrate conflicting professional and CSR rationales for American pro bono. As background, they trace the emergence of voluntary pro bono as a way of legitimizing professionalism, while highlighting the stratification of pro bono participation across different sectors of the bar. Their core focus is on the institutionalization of pro bono in large law firms and, in particular, the ways that emerging CSR trends have affected the conduct and presentation of pro bono. In terms of CSR, Bliss and Boutcher outline its broader conception of public service and document how firms have adopted different strategies for synchronizing pro bono and CSR, with some merging and others trying to differentiate the two. Their study reveals that big firms, operating under different monitoring frameworks, have to speak to different audiences. Although firms may try to speak with one voice, the different demands of pro bono and CSR constituencies often make that impossible. In conclusion, the authors suggest that the logic of CSR may pull pro bono away from its professional roots, grounded in legal service to the poor, and toward more diffuse business-oriented conceptions of charity – raising fundamental questions about what it means for law to be a public profession.

In Chapter 3, Robert Granfield and Fiona Kay examine the evolution of Canadian pro bono, tracing the rise of state-funded legal aid through the 1970s and the neoliberal "common sense revolution" that led to its decline – sparking greater investment in pro bono. In their account, pro bono development occurred through the leadership of the Canadian Bar Association and the support of emerging clearinghouses, which powered the rise of pro bono to a privileged position in the profession, with volunteer lawyers providing services in corporate and "people-oriented" law, such as family and employment. The authors stress that the proximity of Canadian urban centers to the United States has promoted incorporation of US models, since large-firm leaders in places like Toronto and Montreal monitor their US counterparts and adopt US policies and practices, often after having participated in US exchanges and trainings. Further, they observe that CSR has played a significant role in advancing pro bono, causing Canadian firms to engage in pro bono to attract large corporate clients, which can

list firms as CSR-compliant providers in their supply chains. However, Granfield and Kay also note important distinctions between the US and Canadian models of pro bono. Most significantly, because of resistance by solo and small-firm lawyers who rely on legal aid funding to subsidize their practice, Canadian pro bono leaders have pledged to "complement" and not "replace" legal aid through a compromise strategy in which law firms avoid criminal representation, which is the bread and butter of the legal aid bar. The result is a bifurcated system in which legal aid lawyers provide criminal services while civil legal services are dispensed through pro bono. And within the pro bono system there is another division, with big firms focusing on transactional services to NGOs due to expertise and conflicts, while small-scale practitioners provide individual services. Overall, pro bono culture is relatively well-embedded in the Canadian profession, with law firms adopting consistent policies and lawyers in places with clearinghouses, like Ontario, reporting high pro bono participation rates, although pro bono remains stratified, with solos doing the most hours and large-firm lawyers doing the least.

Shifting to the Global South reveals similar processes of hybridization but also, in some cases, greater resistance to pro bono framed as a legal transplant. The case of Brazilian pro bono, presented in Chapter 4 by Fabio de Sa e Silva, charts a distinctive course that, like the Canadian case, raises the problem of "turf wars" between elite law firms and small-scale practitioners whose livelihood depends in part on government-subsidized legal aid. Sa e Silva focuses on the São Paulo bar, which in 2001 placed regulatory limits on pro bono work, excluding direct services to individuals. As he describes, the creation of pro bono in Brazil unfolded in large part as an elite project, in which US-trained lawyers established the Instituto Pro Bono in São Paulo in 2000. This project was supported by the emerging corporate law sector, which was turning to pro bono as a way to engage with the growing CSR movement and become a trustworthy partner for global corporate clients. Yet this project ran headlong into the reality of bar politics. The advent of pro bono mobilized the opposition of judicare lawyers – threatened by what they viewed as Big Law's undue invasion of their market niche – who won the São Paulo bar resolution limiting pro bono service to NGOs only. As the chapter recounts, although the national bar ultimately passed a rule permitting direct pro bono service to individuals, it has not been widely implemented by large firms, which are unwilling to incur the costs of training lawyers to develop expertise

and do not want continued conflict with the local bar. To the extent that firms have made limited changes to their pro bono programs to serve needy individuals, this is largely due to the facilitation provided by intermediaries like Instituto Pro Bono and the idealism of some firm lawyers.

In Chapter 5, Daniel Bonilla Maldonado provides a critical analysis of pro bono in Argentina, Chile, and Colombia, describing an analogous process of flawed legal transplant, while also highlighting new dynamics. In Bonilla's account, pro bono in these countries has been an elite project: promoted by US-trained local academics who conceived of pro bono as a way to respond to the justice gap and coordinated with US law firm lawyers (seeking access to South American markets) and the Vance Center (together, the "Mandarins"), who helped draft the Pro Bono Declaration for the Americas and establish key clearinghouses. As a result, the framework of pro bono in Argentina, Chile, and Colombia does not reflect local culture, but rather copies the New York–centric approach advocated by the Vance Center, which promoted structures built around pro bono coordinators and formal policies. Under this framework, solo and small-firm lawyers, who dominate the legal market, are not incorporated into the pro bono system. The lack of institutionalization is also highlighted by the fact that firms have taken on a small number of cases with no mechanism for tracking and evaluation. Bonilla suggests that although pro bono entrepreneurs have changed legal culture, they have not had an impact on access to justice due to a lack of commitment by law firm partners, the absence of accountability systems (like rankings), and a dearth of significant professional and financial incentives to do pro bono (like billable credit). This has meant that pro bono in these countries is primarily conducted by junior lawyers under pressure to help firms comply with Declaration standards. The resulting landscape of large-firm pro bono focuses on corporate-style advising for NGOs that leverages law firm lawyer expertise.

Part Two shifts to pro bono in Europe, where its development also tracks professional and welfare state politics. This part begins, in Chapter 6, with an analysis of the spread of pro bono throughout Europe presented by Edwin Rekosh and Lamin Khadar. As in the United States and Canada, neoliberal austerity undermined the strength of legal aid beginning in the 1980s – a period that also saw the explosion of large-law-firm growth, both in number and size. However, the path of European pro bono has been different than in

the United States for several reasons. In Western Europe, legal aid follows a judicare model, which has empowered the Social Bar; although austerity has led to its decline in many places, it remains strong in countries such as France and the Netherlands, where nearly half of all lawyers are engaged in legal aid work. In Central and Eastern Europe, legal aid developed after 2000 – promoted by OSF as a way to provide individual legal services and build nascent civil justice systems. As a result, Big Law pro bono throughout Europe has focused on NGO representation so as not to offend the entrenched Social Bar in Western Europe or the nascent legal aid systems in Central and Eastern Europe. The chapter also analyzes the role of transnational firms and NGOs in spreading pro bono. It notes how UK firms, competing with US counterparts, built pro bono programs that spread to the continent through law firm mergers, while US firms increased their European branch office pro bono activity after *AmLaw* rankings began tracking it in 2014. On the NGO side, PILnet played a strong role in the 2000s orienting Big Law pro bono toward NGO representation to steer clear of unfair competition claims by the Social Bar. Law firms themselves embraced NGO representation as a way of building on existing expertise and avoiding problems of local licensing for lawyers in foreign offices engaged in corporate work – thereby reinforcing European pro bono's emphasis on transactional lawyering and helping civil society actors navigate the complex EU process for law reform.

Andrew Boon and Avis Whyte, in Chapter 7, dig deeper into the UK experience with pro bono. Following the general trajectory of welfare state peak and decline, they locate pro bono's foundations in the creation of Poor Persons Committees, staffed by solicitors performing volunteer work on family law matters in the early twentieth century. After the 1949 legal aid legislation and the advent of social welfare as a distinct field of law, legal aid was provided through a judicare system. When austerity came in the 1980s, payment reductions to legal aid lawyers caused many solicitors to exit poverty law practice, although governmental costs still mounted because of the lack of funding caps for individual cases. The Labour Party, promoting Third Way politics, turned to pro bono to increase access to lawyers while reducing the costs of legal aid. Bar councils and law societies took up the challenge, creating pro bono referral units in the 1990s, at the same time that large solicitor firms began adopting CSR policies and building pro bono programs to compete in the global marketplace. These trends intertwined to expand pro bono culture. Referral units grew in size and

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importance, buttressed by the 2010 creation of the National Pro Bono Centre, which consolidated leadership. In this context, Boon and Whyte conclude that a 2002 attorney general protocol defining pro bono as advice to or representation of individuals or groups unable to afford legal services helped to solidify pro bono as a professional norm, leading to an increase in the proportion of UK lawyers performing pro bono.

Chapter 8 analyzes pro bono in France. There, Louis Assier-Andrieu and Jeremy Perelman argue that, from one perspective, pro bono has followed a typical US-inspired hybridization story. Legal aid, operated through cash payments to private lawyers, is massive in scale (involving 25,000 lawyers handling nearly 1 million cases per year), but also under neoliberal pressure. In response, the bar has organized pro bono intermediaries to coordinate pro bono service from private lawyers. Yet, as the authors report, lawyer pro bono participation varies significantly across practice sites. While large corporate law firms have developed pro bono programs, typically focused on free consultations to NGOs, in midsize firms, pro bono is tolerated but not well-supported, while solo and small-firm lawyers (who generally consider themselves cause lawyers) provide little pro bono. Following the hybridization framework, the chapter traces the influence of transnational NGOs, namely PILnet, in providing leadership (through the European Pro Bono Forum). It also analyzes the growth and impact of clearinghouses, such as the Paris Bar Endowment Fund; NGOs designed to connect lawyers to transnational human rights cases; and law school clinics, like the CSR Pro Bono Clinic at Science Po, which cultivates pro bono commitment, while exploring CSR as a way for firms to develop expertise and enhance "human capital loyalty" to attract new clients and talent. In this dynamic context, Assier-Andrieu and Perelman suggest that French pro bono has developed as a "complement" to legal aid and other models of access to justice, primarily owing to the strong national commitment to judicare. However, the authors resist identifying French pro bono as discontinuous with earlier traditions. To the contrary, they suggest that French pro bono is the current expression of a fundamental component of legal professionalism, which they term lawyers' "generosity," and argue that such generosity must continue to drive pro bono for the profession to carry out its democratic function.

In Chapter 9, Leire Larracoechea San Sebastián, Michelle Ha, and Todd Crider analyze Spain. Like other Western European countries, Spain's access-to-justice system was initially built on the foundation of

a constitutionally guaranteed right to counsel and strong legal aid. However, beginning in the 1980s, legal aid suffered significant cuts, up to 40 percent in some regions after the Great Recession. Against the backdrop of fiscal constraint, the authors focus on clearinghouses as key actors in promoting pro bono to fill in service gaps and engage the private sector in fighting poverty. With Spanish lawyers among the worst pro bono performers in Europe, the key question the authors explore is how to strengthen pro bono in relation to the profession's traditional role as a protector of rights. To do so, they chart pro bono's tentative early growth, noting how it was shaped through a partnership of domestic entrepreneurs and leaders of the global pro bono movement. To spur greater private sector volunteerism after the new millennium, local law firm leaders, with guidance from US and European NGOs, began establishing pro bono programs. The top law firm, Cuatrecasas, launched a formal pro bono program in 2007 after a trip by its lawyers to New York coordinated by the Vance Center and the New York City Bar Association. As other firms followed, a "Group of Seven" organized around the idea of forming a clearinghouse to facilitate collaborative pro bono activity. At the same time, local bars and law schools launched initiatives promoting professional service. Pro bono's Spanish profile was raised by PILnet's decision to hold the 2012 European Pro Bono Forum in Madrid, followed by the creation of a web-based intermediary, probonos.net. As a result, the authors report that the average number of pro bono hours among Spanish lawyers doubled between 2015 and 2016. Planning for a pro bono clearinghouse accelerated when Vance Center representatives visited Spanish pro bono leaders in 2016, set up a working group, and developed a strategic plan for "pro bono assistance as a complement to state-funded agencies." Despite the fact that this process culminated in the creation of Fundación Pro Bono España, the authors argue that pro bono in Spain remains immature due to resistance by state-funded legal aid lawyers critical of large-firm pro bono competition, which has caused large firms to steer clear of individual cases in favor of NGO representation and strategic litigation on behalf of vulnerable groups like migrant youth.

In Chapter 10, Susana Santos provides an analysis of Portuguese pro bono. Like Spain, Portugal's Constitution grants the right to legal aid for all citizens, EU residents, and asylum seekers. Legal aid is funded by the state under a judicare model, but austerity combined with the rise of CSR in law firms motivated socially minded lawyers to start the Pro Bono Association in 2014 with the goal of bringing the practice of

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global pro bono (championed by PILnet) to Portugal. The association is a social solidarity organization that connects NGOs, law students, and individual lawyers. Despite its successful launch, its acceptance and growth have been stymied by a familiar combination of resistance from legal aid lawyers and distrust from corporate lawyers wary of the relevance of their expertise. As a result, Portuguese large-firm pro bono follows the European model of targeting NGOs, while ad hoc pro bono practice by small-scale lawyers continues to be an ongoing feature of the Portuguese scene.

Chapter 11 rounds out the European picture by turning north to Denmark, another stalwart social welfare state, with a judicare system under siege after austerity. Annette Olesen and Ole Hammerslev differentiate legal voluntary work, which all lawyers do, and pro bono, introduced in large law firms in the 2000s, after liberalization unleashed firm growth through mergers. The Danish large-firm pro bono movement builds on prior foundations of voluntary and university-supported legal work in the 1960s and 1970s, particularly the Lawyers on Call system, which provided basic legal advice by volunteers. However, voluntary programs were of limited importance throughout the twentieth century, as state legal aid remained the dominant system for providing free legal services to the poor. This began to change in the new millennium. In 2007, new federal restrictions precluded people with insurance from accessing legal aid and eliminated entire areas of legal aid eligibility (like administrative cases against the state), while public expenditure on legal aid was cut dramatically. In response, the government has actively encouraged pro bono as a new public-private partnership. The result, as the authors show, is a growing pro bono culture. A content analysis of legal periodicals reveals that pro bono became prominent in the early 2000s in Danish law firms, which drew inspiration from the US-UK model. As firms hired coordinators to track pro bono and make it efficient, pro bono levels increased. And yet significant challenges remain. Partly because of the influence of CSR, the meaning of pro bono is contested, as large firms mobilize different conceptions of pro bono as a strategy for branding and client recruitment, while directing representation to NGOs as a concession to local resistance by small-scale practitioners to individual client pro bono service.

Part Three focuses on Australia, the subject of Chapter 12. Australia's experience has been shaped by its dual system of legal

service delivery: composed of legal aid commissions, the largest sector funded by the state, and community legal centers, grassroots organizations with a more radical ethos. The authors of this study, Fiona McLeay and Lucy Adams, argue that the Australian pro bono movement emerged to "supplement" (not compete with) these organizations, which were to remain the primary sources of legal services for poor and underserved groups. As elsewhere, the movement was built on the liberalization of the law firm sector, transformed between 2000 and 2010, when giant firms from the United States and United Kingdom entered Australia, spurring mergers and growth. Australian firms, many with traditions of public service, took advantage of the expanding network of PILCHs, first launched in New South Wales on the US model and quickly spreading to other states. In what would become a key feature differentiating Australian pro bono from its European counterparts, PILCHs were run by partnerships of community legal centers (in need of private sector resources) and law firm lawyers, forging a close collaboration, even while legal aid lawyers continued to view pro bono as a threat. The pro bono partnership was strengthened in the early 2000s by the creation of the Australian Pro Bono Centre, which has played a crucial role organizing conferences and codifying a definition of pro bono targeting representation to low-income individuals and groups that advocate on their behalf. That definition has been used to measure compliance with the National Pro Bono Target, which has spurred increased pro bono service and channeled that service into the legal representation of poor clients. The authors argue that the primary role of pro bono in Australia is to promote its "best use" as a complement to existing programs – not to displace the role of government. Toward this end, pro bono leaders have backed legal needs surveys and tried to gear pro bono toward gaps in service. The authors also highlight pro bono's secondary effects on social change through volunteer lawyer support of law reform, and its tertiary effects through building careers in pro bono and social justice.

Part Four moves the analysis to Africa. In Chapter 13, Thabang Pooe, Alice Brown, and Jonathan Klaaren place the development of pro bono in the context of South Africa's struggle against the apartheid regime and its legacy. The chapter demonstrates how pro bono builds upon South Africa's long and rich history of providing free legal advice to the Black population, dating back to early community-based service providers and the 1937 establishment of a Legal Aid Bureau in Johannesburg. These organizations counted on critical support from

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lawyers working pro bono, especially in criminal cases against Black activists. In the 1970s and 1980s, South Africa became the target of legal development initiatives by US foundations, which provided funds for legal clinics, public interest organizations, and Street Law Programs, all of which significantly expanded the infrastructure for pro bono provision. The chapter argues, nonetheless, that the post-apartheid constitutional order was the primary driver of pro bono in the country. The 1996 South African Constitution established a robust Bill of Rights, including provisions for access to justice, leading the government to create the Legal Aid South Africa program, which funded a combination of justice centers and satellite offices to provide legal services to indigent clients and engage in impact litigation. This state-based effort was buttressed by bar initiatives to promote pro bono, resulting in the codification of pro bono rules. In response, the Big Five law firms, as well as smaller firms, have adopted policies in support of pro bono, which vary in format and scope. Pro bono has also been strengthened by the 2006 creation of ProBono.Org, which is an important, though still fledgling, intermediary. Notwithstanding these many accomplishments, pro bono service quality varies, junior lawyers carry a disproportionate load, attorneys are usually not available in the most destitute areas, and clients litigating against corporations have been unable to use pro bono services provided by big firms because of conflicts of interest. A critical challenge to South African pro bono comes from the 2014 Legal Practice Act, which in unifying the profession, mandates pro bono framed as "community service." This has raised concerns that pro bono will be channeled into nonlegal work, draining resources from legal services for those who need it the most.

In Chapter 14, Jayanth Krishnan and Kunle Ajagbe offer an account from Nigeria, a country in which the bulk of the profession historically has consisted of solo practitioners without significant resources to serve clients pro bono. Nonetheless, the authors excavate a pro bono tradition and show how contemporary pro bono builds on a history of volunteer work that has been shaped by the country's experience with authoritarianism and civil society resistance. In 1976, when Nigeria was under military rule, Chimezie Ikeazor, known as the "father of legal aid," led a movement to pass the Legal Aid Act, which provided free legal services to the poor through state-funded lawyers, who relied on pro bono support from the private bar. However, private lawyers were wary of challenging the military

government and legal aid was consistently underfunded, which undermined its effectiveness and rendered pro bono work atomistic and ad hoc. After a brief interruption, the return of military rule was a catalyst for greater engagement of private lawyers in pro bono work. In 1987, the Civil Liberties Organization (CLO) was established and, in coordination with private lawyers working pro bono, acted in support of those tormented by the military regime – engaging in heroic (though ultimately unsuccessful) work for the Ogoni nine. Between 1987 and 2000, nearly two dozen groups similar to the CLO were established relying on pro bono lawyers. After Nigeria democratized in 1999, these groups pivoted toward efforts to bring justice to the victims of the military regime by petitioning to commute life sentences of detainees and pursuing claims of human rights abuse through the truth commission. The question now is whether the legacy of CLO-inspired pro bono work can be mobilized to build pro bono culture through the organized bar and in connection with the small but significant corporate law sector. The authors trace important steps forward: in 2009, the Nigerian Bar Association issued a Pro Bono Declaration, while the state requires pro bono service in order for lawyers to be elevated to senior advocate. In the authors' view, these pro bono developments, and others like them, represent Nigeria's own version of pro bono hybridization: refashioning a time-honored principle of professional volunteerism in the context of Nigeria's rapid global integration.

Part Five arrives at Asia. In Chapter 15, Arpita Gupta reports on India, where the state is at the center of the legal services system. Article 39A of the Indian Constitution grants citizens a right to legal aid, dispensed at various geographic levels and within the courts. Yet the government has fallen far short in meeting its promises. While this represents a pro bono opportunity for the private bar, there are significant challenges, not the least of which is the high level of professional stratification: with a small number of large firms and most earnings concentrated in a handful of senior advocates. Nonetheless, the severity of the justice gap has motivated pro bono action, which builds upon the Indian profession's duty to serve those "genuinely in need of a lawyer." Pro bono development has been enabled, in part, by economic liberalization and the growing (but still small) number of large domestic firms, along with the impending entry of foreign firms, bringing to India the trends of CSR and the large-firm pro bono model. Domestic and global actors have also

coalesced around the pro bono cause. Inside the country, the Society of Indian Law Firms, representing the most globally connected firms, has launched a pro bono initiative, while academics have spearheaded the creation of ProBono India, a clearinghouse in Gujarat. These efforts have been buttressed by the India-focused work of global intermediaries such as iProbono, TrustLaw Connect, and the Lex Mundi Pro Bono Foundation. Yet the most important push for pro bono comes from the Indian state, seeking to shore up the faltering legal aid system. In 2017, the Ministry of Law and Justice, in partnership with the UNDP, launched a Pro Bono Legal Services Initiative, urging private lawyers to provide a fuller range of pro bono services – including litigation – and stating that such pro bono work would be considered for lawyers to be "appointed to appropriate positions." The Supreme Court followed suit and, borrowing from Nigeria, made pro bono a requirement for achieving the status of senior advocate. These initiatives have influenced the nature and scope of India's evolving pro bono landscape. Whereas solo lawyers tend to work in close collaboration with rights-based organizations to undertake public interest litigation, large-firm lawyers typically engage in transactional pro bono for NGOs and social enterprises, while also doing various kinds of nonlegal work. In a theme echoed throughout the book, Gupta notes that large-firm pro bono in India is increasingly tied to CSR, leading some large Indian law firms to perform "proxy pro bono" – the donation of funds to legal aid and legal rights organizations – in lieu of actual service.

In Chapter 16, Helena Whalen-Bridge and Robert Granfield report on Singapore, a common-law country where the historical development of pro bono has been shaped once again by the evolution of legal aid policy. Although the authors acknowledge the influence of the US model on the discursive rise of "pro bono," they argue that pro bono's actual development in Singapore owes little to direct foreign intervention. Foreign firm participation in areas such as criminal and family law is negligible in the country (due to a high degree of market protectionism), and global NGOs and intermediaries play a limited role in fostering pro bono practice. Instead, the chapter portrays how changing approaches to criminal and civil legal aid have influenced the rise of pro bono. A major impetus was the 1995 amendment to the national Legal Aid and Advice Act, which removed the never-implemented provisions on noncapital criminal representation from the ambit of legal aid, channeling noncapital cases into the pro bono system – organized

primarily through the volunteer-run Criminal Legal Aid Scheme (CLAS). Although the government recently announced it would provide support for indigent defendants in noncapital cases – launching an "enhanced" version of CLAS – the legal aid system overall is structured around a public–private division of labor. In the criminal domain, the bulk of noncapital cases are undertaken by CLAS volunteer lawyers, while capital cases continue to be handled by the state-run system. On the civil side, indigent persons who meet the eligibility requirements of the Legal Aid Bureau receive assistance from legal aid staff, while those who do not (but still cannot afford to pay) seek advice from legal clinics, primarily the Law Society–run Community Legal Clinics, before turning to Law Society Pro Bono Services. For many reasons (including concerns about branding), the attitude of firms toward pro bono has become more positive, and a growing number of firms have agreed to take on CLAS cases and staff legal clinics, while a smaller number either require their lawyers to do pro bono or adopt low bono schemes such as fixed fees. In this way, pro bono culture in Singapore continues to deepen.

In Chapter 17, Jin Dong and Qian Cheng examine pro bono in China, a country in which law practice has been transformed by the advent of the state's "rule by law" program in the 1990s. Professional growth has uplifted pro bono work, while also challenging its meaning. At one level, Chinese pro bono appears to follow global scripts: large law firms advertise their pro bono work on websites and produce reports; law schools have adopted a US-based clinical legal education model that promotes service; and foreign intermediaries and NGOs, like PILnet, have provided training and recognition. However, local politics have dramatically shaped Chinese pro bono, which has been officially promoted as a way to shore up the inadequate state-run legal aid system while allowing the Chinese Communist Party to define and control the terms of professional service. Toward this end, the government-controlled All Chinese Lawyer Association has required that local bars encourage "public interest" service, while producing reports on the "social responsibility" of Chinese lawyers. As the authors show, these efforts have stimulated the revival of "private public interest lawyers," who operate through two modes of practice: "safe" and "challenger." The safe mode focuses on state-run legal assistance, training, civic engagement, and community service activities, all of which are constrained by the power of the Chinese state and designed to generate a good image for the professionals involved. The challenger mode

focuses on cases relating to important social issues and defies state power by asserting human rights. The challenger mode is thus more in tune with political liberalism and attempts to promote the rule of law. While China's structure may make it an outlier, its experience provides important evidence that pro bono's global development is not bound to produce inevitable convergence of practices and meanings. Rather, domestic political authority leads to unique hybrid forms and adapts the meaning of pro bono to local ends.

NOTES

1. Deborah L. Rhode, Pro Bono in Principle and in Practice (2005).
2. Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. Rev. 1 (2004); *see also* Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession (Robert Granfield & Lynn Mather eds., 2009).
3. *See*, *e.g.*, Yves Dezalay & Bryant Garth, Asian Legal Revivals: Lawyers in the Shadow of Empire (2010).
4. Stuart A. Scheingold & Austin Sarat, Something to Believe In: Politics, Professionalism, and Cause Lawyering (2004).
5. Mauro Cappelletti & Bryant G. Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 Buffalo L. Rev. 181 (1978).
6. *See* Robert Granfield & Lynn Mather, *Pro Bono, the Public Good, and the Legal Profession: An Introduction*, *in* Private Lawyers and the Public Interest, *supra* note 2, at 1.
7. Cummings, *supra* note 2; Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 Law & Soc'y Rev. 79 (2007).
8. Latham & Watkins, A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions (prepared for the Pro Bono Institute, 2016).
9. This project owes a debt to and builds upon important dialogues in other spaces. It grew out of conversations with Robert Granfield, whose volume (with Lynn Mather) on US pro bono is a critical model and whose work on Canada and Singapore was the original impetus for a comparative project. Conversations continued to flourish through the Global Pro Bono Conference held at Harvard Law School on April 18, 2014, supported by the Harvard Law School Center on the Legal Profession. The Center also supported the Globalization, Lawyers, and Emerging Economies (GLEE) Project, spearheaded by David Wilkins and David Trubek, who convened scholars from India, China, and Brazil

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to explore the changing role of the corporate legal sector in those countries and who made pro bono one of the central aspects to be examined comparatively. The editors and some of the authors in this volume have been part of these conversations and enormously benefited from them.

10. Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Collective and Workplace Contexts*, *in* LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 1 (Robert L. Nelson & David M. Trubek eds., 1992).
11. CARROLL SERON, THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS (1996).
12. In the United States, government lawyers report far fewer hours on average than private practice lawyers. In contrast, legal aid and public interest lawyers report extremely high levels of pro bono, although we suspect that this is seamlessly connected to their regular work. *See* RONIT DINOVITZER ET AL., AFTER THE JD III: THIRD RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 39 (2017).
13. Transnational pro bono includes legal work by a domestic lawyer on behalf of an individual, organization, or governmental entity located outside of the lawyer's home jurisdiction on the full range of pro bono issues (such as access to justice, human rights, and economic development). It also includes representation by a lawyer of a domestic client in an international forum, like a regional human rights body. *See* Sara Andrews & Lisa Dewey, *Pro Bono Goes Global*, STAN. SOC. INNOVATION REV. (2016); Maya Steinitz, *Internationalized Pro Bono and a New Global Role for Lawyers in the 21st Century: Lessons from Nation-Building in Southern Sudan*, 12 YALE HUM. RTS. & DEV. L.J. (2009); *see also* Darhiana Mateo, *Pro Bono Goes Global: A Look at Lawyers Without Borders*, BUS. L. TODAY, Jan.-Feb. 2006, at 35.
14. But see, for example, public interest litigation in the European Union, as well as evidence of cross-border work in this book from India and Nigeria.
15. Fabio de Sa e Silva, *Doing Well and Doing Good in an Emerging Economy: The Social Construction of Pro Bono among Corporate Lawyers and Law Firms in São Paulo, in* THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY 210 (Luciana G. Cunha, Daniela M. Gabbay, José G. Ghirardi, David M. Trubek & David B. Wilkins eds., 2017).
16. *See* Cummings, *supra* note 2. On institutionalization, see generally Paul J. DiMaggio & Walter W. Powell, *Introduction, in* THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS 1 (Walter W. Powell & Paul J. DiMaggio eds., 1991).
17. YVES DEZALAY & BRYANT G. GARTH, THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES (2002).

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18. *See* Annette Olesen & Ole Hammerslev, Chapter 11 in this volume.
19. THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 15; THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY (David B. Wilkins, Vikramaditya S. Khanna & David M. Trubek eds., 2017).
20. Luciana Gross Cunha et al., *Globalization, Lawyers, and Emerging Economies: The Case of Brazil*, *in* THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION, *supra* note 15, at 1.
21. The influence of neoliberalism can be seen even in countries without a significant welfare state tradition, like Nigeria, where US agents played a significant role in transplanting features of US law and legal practice that resonated with neoliberal aims and helped build the foundation for contemporary pro bono development. *See* Jayanth K. Krishnan, *Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957–1977*, 52 AM. J. LEGAL HIST. 261 (2012).
22. Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. LEGAL EDUC. 413, 436–37 (2003).
23. Sandefur, *supra* note 7.
24. Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357 (2010).
25. Yves Dezalay & Bryant G. Garth, *Corporate Law Firms, NGOs, and Issues of Legitimacy for a Global Legal Order*, 60 FORDHAM L. REV. 2309 (2012).
26. Nancy Fraser, *From Progressive Neoliberalism to Trump – and Beyond*, 1 AMERICAN AFFAIRS (2017), https://americanaffairsjournal.org/2017/11/progressive-neoliberalism-trump-beyond/ (last visited July 29, 2020). Fraser conceptualizes progressive neoliberalism as combining a finance-centered political economy and a progressive politics of recognition. For debate about the meaning of progressive neoliberalism, see Johanna Brenner & Nancy Fraser, *What Is Progressive Neoliberalism?: A Debate*, 64 DISSENT 130 (2017).
27. For a critical history of the trickle-down concept and its use in development theory and practice, see H. W. Arndt, *The "Trickle-Down" Myth*, 32 ECON. DEV. & CULTURAL CHANGE 1 (1983).
28. Rebecca L. Sandefur, *Lawyers' Pro Bono Service and Market-Reliant Legal Aid*, *in* PRIVATE LAWYERS AND THE PUBLIC INTEREST, *supra* note 2, at 95.
29. Scott L. Cummings & Ingrid V. Eagly, *After Public Interest Law*, 100 NW. U. L. REV. 1251 (2006).
30. For a survey of the benefits of privatization, see DAVID OSBORNE & TED GAEBLER, REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR (1992). For critical assessments of privatization, see Bryan Evans, Ted Richmond & John Shields, *Structuring Neoliberal Governance: The Nonprofit Sector, Emerging New Modes of Control and*

the Marketisation of Service Delivery, 24 POL'Y & SOC'Y 73 (2005); and William Walters, *Some Critical Notes on Governance*, 73 STUD. IN POL. ECON. 27 (2004).

31. *See* Scott L. Cummings, *The Pursuit of Legal Rights – and Beyond*, 59 UCLA L. REV. 506 (2012).
32. The notable exception to the association of pro bono and democratic governance is China, which, very tellingly nonetheless, developed its institutions of "rule by law," including its pro bono industry, as a national response to progressive neoliberalism. *See* Jin Dong & Qian Cheng, Chapter 17 in this volume.
33. *See generally* DEZALAY & GARTH, *supra* note 17; THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL (David M. Trubek & Alvaro Santos eds., 2006).
34. *Who We Are & Pro Bono Promotion*, CYRUS R. VANCE CENTER FOR INTERNATIONAL JUSTICE, www.vancecenter.org (last visited Apr. 16, 2020).
35. *Id.*
36. Steven A. Boutcher, *Private Law Firms in the Public Interest: The Organizational and Institutional Determinants of Pro Bono Participation, 1994–2005*, 42 LAW & SOC. INQUIRY 543 (2017).
37. For a discussion of how lawyers emulate corporate client giving, see Richard L. Abel, *The Paradoxes of Pro Bono*, 78 FORDHAM L. REV. 2443, 2446 (2010).
38. Ronen Shamir, *Socially Responsible Private Regulation: World-Culture or World-Capitalism?*, 45 LAW & SOC'Y REV. 313 (2011); *see also* Ronen Shamir, *Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility*, 38 LAW & SOC'Y REV. 635 (2004).
39. *See* John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC. 340 (1977).
40. Although many clearinghouses follow a similar global template, not all are legal transplants. For example, the South African Society for Labour Law has established a Pro Bono Project that coordinates pro bono services from specialist legal practitioners for low-income clients in labor courts in Johannesburg, Durban, Cape Town, and Port Elizabeth.
41. Atinuke Adediran, *Solving the Pro Bono Mismatch*, 91 U. COLO. L. REV. 1035 (2020).
42. AM. BAR ASS'N, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 7 (2018).
43. *Id.* at 7, 33. The *American Lawyer* reported that, in 2016, US-based lawyers in *AmLaw* 200 firms averaged nearly 57 hours of pro bono per year. AM. LAW., PRO BONO RANKINGS (2017).
44. AM. BAR ASS'N, *supra* note 42, at 29.
45. *Id.* at 7–9 (noting that nearly one-third of lawyers reported providing pro bono service to "an ethnic minority," and one-quarter to a single parent).
46. *Id.* at 14.

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47. *See* SCHEINGOLD & SARAT, *supra* note 4.
48. *See*, *e.g.*, ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW (1974).
49. ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993).
50. RICHARD L. ABEL, AMERICAN LAWYERS (1989).
51. *See*, *e.g.*, LAW AND THE NEW DEVELOPMENTAL STATE: THE BRAZILIAN EXPERIENCE IN LATIN AMERICAN CONTEXT (David M. Trubek et al. eds., 2013).
52. *See* Edwin Rekosh & Lamin Khadar, Chapter 6 in this volume.
53. Scott L. Cummings & Louise G. Trubek, *Globalizing Public Interest Law*, 13 UCLA J. INT'L L. & FOR. AFF. 1 (2008).

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