What legal education could or should do to expand such public service commitments is subject to increasing debate. While most lawyers acknowledge that access to legal assistance is a fundamental interest, they are divided over whether the profession has any special responsibility to improve that assistance and, if so, whether the responsibility should be mandatory. There are benefits from pro bono programs that critics fail to acknowledge, and those benefits extend to law students and teachers as well as lawyers. For example, these programs provide many participants with their only direct knowledge of how the system functions or fails to function for the have-nots. Pro bono work also offers lawyers and law students a range of practical benefits, such as training, trial experience, and professional contacts. Law school pro bono programs serve an equally significant purpose: they may encourage public service by practitioners.

A profession truly committed to equal justice under law has other responsibilities beyond public service and professionalism initiatives. Lawyers' pro bono contributions cannot realistically come close to meeting the nation's vast unmet legal needs. These unmet needs raise fundamental questions about the structure of legal education and the delivery of legal services. Too many students now graduate both over-prepared and under-prepared for key lawyering roles.

A related professional responsibility of professional schools is to ensure equal opportunity in access to legal education as well as to legal services. Over-reliance on quantifiable admission criteria, such as grades and test scores, has served to exclude a disproportionate number of minority candidates. To ensure adequate representation of students of colour, law schools need admission criteria that more adequately reflect the full range of talents required in legal practice. They also need more effective treatment of issues related to race, gender, ethnicity, and sexual orientation throughout the educational experience. In the core curricula of many law schools what little analysis occurs looks like an after-thought – a brief digression from the 'real' subject.

Until recently few of these professional responsibilities were understood as responsibilities, even in principle, let alone in practice. Professional ethics and diversity-related issues were notable largely for their absence. At many institutions, the number of students and faculty of colour did not even reach token levels. But recent progress should not mask the need for fundamental change.

**Faculty pro bono and the question of identity**

D Luban

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Law teachers and law schools have the same pro bono responsibilities as lawyers and law firms, where 'pro bono' means something more particular than community service of civic involvement. 'Pro bono' is free or reduced-rate legal work for those who cannot afford to pay for it. The pro bono thesis is that law teachers and law schools have pro bono responsibilities in this sense.

What are those responsibilities? Four issues stand out. First is the question whether the pro bono standard should be mandatory. Early drafts of the ABA's Model Rules of Professional Conduct imposed a mandatory requirement, but it was withdrawn in the face of withering opposition and replaced with a rule that is merely precatory. Many lawyers and scholars have argued over the years for mandatory pro bono. But mandatory proposals have always met with hostility and the prospects of mandatory pro bono are dim.

The second point of contention is how broadly the concept of pro bono should be understood. Many lawyers consider to be pro bono any reduced-cost law-related work, like service on bar committees, that discharges their responsibility. Donating legal expertise to any worthwhile cause or client is commendable, but it is hard to see why lawyers have a moral responsibility to provide free service to clients who could readily pay for it. The pro bono obligation is predicated on need.

Third is the question of how much pro bono is enough. Any number of hours chosen is arbitrary but to revert to a rule that specifies no minimum amount provides insufficient guidance and comes close to no obligation at all. Fifty hours per year, which amounts to an hour a week, seems like a feasible request.

Why should law teachers meet the obligation of pro bono work? Law teachers are, by and large, lawyers. To many, nothing about this is obvious. It is not obvious that academic lawyers are lawyers in the sense contemplated. Supporters of pro bono usually offer two reasons why lawyers should perform it: first pro bono service is a tradition of the bar; the second is that there is a tremendous need for pro bono. But appeals to tradition are never more than half-arguments. Legal need, at any rate, is genuine. But need also is only a half-argument because need by itself cannot impose obligation.

What makes lawyers unique is the law in itself. Lawyers, unlike pharmacists or grocers, earn their living by, in effect, vending the law, and in a democracy law is a product of the community, operating through the mechanism of the state. The state grants lawyers oligopoly privileges in the form of unauthorised practice rules and it does so in a less formal but more fundamental way as well. The point is to

ensure that the benefits of law are distributed fairly, and that requires that no members of the community be excluded from the law. Other professions are not trustees in this way, because the community is not the source of their stock in trade; the community's role in other economies is merely regulative.

What does the trusteeship theory imply about law teachers? Most law schools take seriously the goal of teaching students professionalism. In recent years law schools have aimed to make legal ethics teaching more pervasive, that is, to include it in all of the curriculum as well as the professional responsibility course. Yet how can law faculties teach professionalism successfully if our own approach to pro bono is that law teachers will not touch it with a ten-foot pole? If law teachers seem oblivious to the hypocrisy in encouraging students to do something that, in both thought and action, they regard as irrelevant to their own lives, it must be that at bottom they simply do not see themselves as lawyers. This attitude is a form of self-deception and false consciousness.

There are facts about law schools and their connections with law firms that justify the view that both belong to the same law economy, the same system of mal-distributed legal services, and consequently the same network of pro bono responsibilities. First, within the larger law economy, law schools exist primarily as conduits to practice. This includes all forms of practice, public as well as private, criminal as well as civil. Conceptually, law teaching and scholarship have no special ties to private practice. But our role in the distribution of legal services is determined by the job market our graduates enter; and it is largely a market for private practitioners. Our role in the distribution of legal services mirrors rather than shapes the status quo.

Second, law teachers and law schools benefit economically from the oligopoly that private practitioners of law enjoy. Third, the community plays a constitutive rather than a merely regulative role in producing the good that lawyers vend.

Law teaching in and of itself does nothing to address the problem that many people and organisations cannot afford the legal services they need. For that reason, whatever its public-oriented virtues, law teaching is in no way a substitute for the kind of service that the pro bono thesis requires.

There is much law teachers can do in the area of pro bono services. Law teachers can assist in writing amicus briefs; moot lawyers arguing appellate cases important to low-income clients. They can serve as expert witnesses for no fee or a reduced fee. They can assist public interest lawyers with research and help in refining novel legal theories.

A law firm may discharge its pro bono responsibilities collectively, without every lawyer's doing pro bono personally – for example, by subsidising a pro bono department. The same thing is possible for law schools. Another way that faculty can help discharge their pro bono responsibilities through the institution of the law school is by supporting enhanced clinical programs. Steps like these require a culture of faculty pro bono in law schools and that will take time to develop.

**The professional responsibility of professional schools to study and teach about the profession**

D B Wilkins
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It is now fashionable to bemoan the increasing separation between the legal academy and the profession that it is supposed to serve. This criticism typically takes one of two forms. The first, represented by the ABA's influential MacCrate Report, argues that law schools are not teaching law students the skills they need to be competent and ethical practitioners. The second complains about the increasingly theoretical character of law teaching and legal scholarship. The law school of today, these critics contend, pays insufficient attention to the doctrinal questions real lawyers and judges face, and to the style of practical and analogic reasoning needed to resolve these problems. It is nothing less than an ethical failure by the legal academy to meet the legitimate needs of its three principal constituencies – students, the bar and society. If individual lawyers, the bar and the public are to emerge from this time of change with a legal profession capable of meeting the enormous challenges it now faces, then the legal academy must become an active participant in developing and transmitting the empirical and theoretical knowledge about legal practice that will allow us to construct a vision of legal professionalism fit for the twenty-first century instead of for the nineteenth.

Even if one could muster a plausible argument that law schools were justified in confining their instruction to teaching students how to 'think like a lawyer' in some bygone era, no such argument can be credibly advanced today. In the 'golden age', lawyers typically practised alone, often in small towns or cohesive neighbourhoods. The few who worked in law firms or other organisational settings encountered relatively stable career paths and senior lawyers with at least a professed interest in teaching their new recruits. Today's graduates can no longer count on any of these traditional forms of socialisation. What is needed is systematic and rigorous quantitative and qualitative research about the profession's institutions, or-