

The Institutionalization of Pro Bono in China

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ABSTRACT

Pro bono means that lawyers have an inherent duty to deliver free legal service or substantive fee reduction to the general public who need assistance. It has become a global phenomenon in the rapid development of the legal profession. In this century, Chinese lawyers and law firms began to accept pro bono values and perform pro bono work in China. I examined the development of Chinese pro bono from multi-dimensions including the legal profession, government, society, and legal service market, and will demonstrate that pro bono has been increasingly institutionalized in the Chinese context.

Keywords: Pro Bono, Legal Aid, Legal Profession, Chinese Lawyers

1. INTRODUCTION

Although there is no unified definition, pro bono could be roughly defined as something that lawyers should do for the goodwill of the public. Generally, lawyers are responsible for delivering free legal services or substantively reducing service fees for the general population who need help.[1] Pro bono has become a widely recognized obligation of lawyers around the world.[2] When Chinese legal professionals entered the global legal market, the values of pro bono were immediately yet deeply implanted in everyone, because in the Chinese context, pro bono is broadly understood as a public interest service.

Chinese pro bono has embodied the trend of institutionalization in the age of globalization. It might demonstrate that pro bono has been performed in a centralized and streamlined way within a well-organized structure advanced by different sectors including professional associations, law firms, government, and non-profit public interest groups. Previous research shows that this profound transformation was accelerated by multi-levelled efforts that can be examined by the legal profession, state government, society, and the legal service market.[3] I am going to probe the causes of internationalized pro bono in China based on these four dimensions.

2. LEGAL PROFESSION

Theoretically, all professions have a common obligation to deliver free public service to the poor.[4] Specifically, in the legal profession, lawyers are not businessmen so providing free legal services or other services for the good of the public is a professional responsibility for any lawyer, and one of the foremost principles in lawyering.[5] Thus, the institutionalization of pro bono is seen as an effort to make this principle into practice for lawyers significant.[6]

The only nationwide organized bar in China, All China Lawyers Association (ACLA), is established in 1985. Although the ACLA did not have a very long history, it plays a key role in developing pro bono services and instilling its values in Chinese law professionals. By making professional regulations and lawyers' conduct codes, the ACLA and local lawyers(bar) associations offer guidance and direction to legal professionals. Owing to the efforts of the ALCA, lawyers and law firms in China have come to accept the values of pro bono and initiate pro bono practice on a daily basis.

The ACLA promulgates "*The Code of Lawyer's Practicing Conduct*" in order to guide lawyers' professional conduct. The code stipulates that the ACLA is responsible for encouraging and directing lawyers' public interest service. Also, the ACLA has already set up two committees: "The Committee of Public Interests Legal Service and Social Responsibility" and "The Committee of Legal Aid and Public Interest Law" for better supervising the pro bono work of lawyers. In

addition, outstanding pro bono work and law firms will be honored by lawyers(bar) associations based on written professional codes. As early as 2003, the ACLA enacted “the Code of Lawyers’ Awarding Methods”. In article 7, an individual lawyer who is enthusiastic about public interest service and has been praised by the local community should be awarded. Followed by the ACLA’s methods, many Chinese local lawyers(bar) associations have set up annual awards for law professionals and law firms that made a major contribution to local pro bono service.

3. GOVERNMENT

The institutionalization of pro bono in China is bound up to state politics. In other words, the change of policy and law-making from the government advance institutionalized pro bono in China. The Chinese government always makes an effort to support pro bono work which has been looked at as a way to maintain social and community stability in China. In 2019, The Ministry of Justice (MOJ) in China promulgated “*Opinions on Advancing Lawyers’ Public Interest Legal Service*”, as a result, the pro bono workload has been set at least 50 hours or two cases on state-run legal aid per year as an annual obligation. To ensure this policy is fully enforced, it requires law firms closely evaluate every lawyer’s pro bono performance based on “*Law Firm Annual Evaluation Methods*”, which is enacted by the MOJ in 2010.

As legal aid service is one way to fulfil pro bono commitments, how to practice legal aid correctly was regulated as state law and took effect in 2022. The law clarifies how to deliver legal aid by professional practice and law firms. It also mentions financial resources, the role of local government, and the quality of legal aid. It has been observed as a milestone to carry out legal aid duty as well as pro bono work by law professionals in the Chinese context.[7]

It is noted that local governments also like to support professional lawyers’ pro bono participation. To make up for the limited human resource of a state-run legal aid project, Chinese local governments especially those which are in wealthy regions tend to use government funding to buy out legal services provided by local law firms, where lawyers will be designated routinely to provide free legal assistance to the public.

4. SOCIETY

Institutionalized pro bono in China is influenced by the rise and formation of civil society in China, which is featured by the accumulation of non-profitable services and manifests the interest and will of citizens.[8] This can be observed in the fast development of NGOs in China, particularly in some NGOs with nationwide work groups and a good social reputation in society. When

contributing value to the well-being of our society is instilled into our lawyers, pro bono commitment could be fulfilled by co-working with NGOs. The partnership between Chinese law firms and NGOs has taken shape into a win-win situation. Through their connection, professional lawyers and law firms could grow more networks on pro bono practice so that NGOs can enhance their support for the law by collaborating with lawyers and firms.

In this regard, the activities of Chinese large law firms should be concerned as leading firms with many offices in major cities, and reputable status began to establish and run their public interest foundation from which any lawyer’s voluntary work and charity affairs are conducted.

One way to mitigate the impact is to recruit more volunteers inside law firms and increase the participation rate in the public interest affairs because firms can use it to reach out to Chinese well-known NGOs to obtain more pro bono opportunities throughout China. Also, this framework can offer financial support to major and long-standing public interest projects, allowing law firms, lawyers, and NGOs to work together to continuously carry out a long-term public interest projects across China.

On the other hand, those small-sized and localized law firms and their lawyers can deliver their pro bono through the local community. Although it can be challenging for these firms and lawyers to establish a pro bono network with those large and well-known NGOs for a long-term partnership, their pro bono service could be related to local non-profit institutions, such as local volunteer associations and social media. Currently, volunteer associations and their community service have rapidly developed in society and a well-established network of community volunteer services has been formed, which involved local citizens in routine engagement. Therefore, it is a reliable pathway for those local law firms and law professionals performing local pro bono service.

5. LEGAL SERVICE MARKET

The institutionalization of pro bono does not merely mean lawyers’ altruism and civic engagement for the good of the public. Instead, it reflects the marketing strategy of legal professionals for business development. Taking advantage of pro bono is seemingly a good advertisement as law firms and lawyers can acquire more clients and maintain their leading role in the legal service market.[9] Therefore, how to deliver pro bono in the market and subsequently gain more business opportunities for lawyers are paid more attention by either individual legal professionals or law firms.

From the perspective of organization, large law firms play an important role in the institutionalization of pro

bono because they have more human and social capital than their counterparts. Exploring the relationship between the dynastic growth of large law firms and the institutionalization of pro bono in the U.S. It is apparent that large law firms manage pro bono work as a tool serving business development either in the flushing or the recession of the legal service market. The primary reason that law firms are interested in managing pro bono affairs is broadly connected with maintaining a lawyer's professional status in the legal service market. Particularly, many large law firms' pro bono work is for the purpose of lawyers' skill training and career advancement. For instance, research shows that young lawyers are more likely to be appointed to complete pro bono service in U.S large law firms.[10]

Looking at the institutionalization of pro bono in China, doing something for the public good embodies law firms' effort to establish a good social image and maintain professional status in the legal service market. Despite lawyers and law firms in China flourishing in recent years, some questions regarding the professional reputation of law professionals and the quality of the legal service market in China are emerging. However, these factors can hurt one's reputation in the market.

To better illustrate, when lawyers in China are on the road to professionalization, their professional status is increasingly paid attention to by the legal profession. Due to the Chinese legal tradition and the tendency of resisting lawsuits by the majority of the general public, Chinese nationals have always shown distrusting attitude toward lawyers in the history of China. This issue of lack of trust in law practitioners stemmed from Songshi, a legal practitioner or service provider that had an atrocious reputation in the period of feudal society.[11] Besides historical reasons, the primary one is because of the unique environment and the characteristic of fragmentation in general that caused the legal industry to fail to take full control of the market, resulting in it being less professional and unethical.[12]

Since legal history and tradition have always been absent in Chinese society, written law, common knowledge, and institutions had to be heavily dependent upon legal transplantation.[13] So to better understand the legal profession, it needs to be incorporated into local knowledge within the social context. Although lawyers in China are practising law in the local legal service market, this does not mean that they are a hundred per cent being charged by the legal service market because it has been fragmented by different legal service providers who have their own jurisdictions and compete with other law professionals.

A good example is that previous research shows that the unauthorized or non-professional legal practitioners called "Black lawyers" or "Road lawyers", both play an important role in dealing with judicial issues based on informal social connections. These practitioners have

already occupied a considerable percentage of the market in most rural areas and among people with low-income. Their legal service is marked by poor quality and full of unethical behaviors. [14] Since the public does not know the truth, they began to question Chinese lawyers' professional ethics and the quality of service. Chinese nationals tend to believe that lawyers only practise law for the money instead of for social justice. Consequently, damaging law professionals' reputations even more.[15]

This fragmentation of the legal service market leads to challenges and criticism facing every law practitioner around the country every day. To tackle this problem, the key strategy is to build one's social image. This can be achieved by providing better public interest service, which is seen as a gateway to improving their reputation as well as enabling clients to distinguish between professional lawyers and their non-professional or non-certified counterparts.

Therefore, lawyers and law firms started to get deeply involved in pro bono work. They frequently seek opportunities to participate in public interest activities with either nonlegal or legal public service institutions on a daily basis. Additionally, plenty of activities can be found online or in newspaper reports that many lawyers and law firms can devote themselves to.

Chinese large law firms are keen to use their strong social capital to display their good social image and enhance the social responsibility of lawyers that depend upon organizational advantages. A linkage between the social responsibility of lawyers and public interest service has been formed in Chinese leading law firms. Taking advantage of their strong human resource, financial capital, and social network, the consistency of pro bono work can be guaranteed. Their public interest contribution can be found in their annual work reports or firms' newsletters. Since 2008, many law firms have released social responsibility reports every year, which emphasized that pro bono practice is one of social responsibility adhering to every professional lawyer.

Pro bono is increasingly incorporated into the managing structure of large law firms. Specific funding and staff have been appointed for the management of pro bono. Inside the organization, especially large law firms have already set up a pro bono committee that is the core department to encourage, outreach, and direct law firms' public interest affairs. The leader of the committee, usually the managing partner of the firm, is also in charge of delivering the values of the pro bono to the public.

An increasing number of pro bono affairs have been reported by many Chinese large law firms to the public since they have enough human resources, and their pro bono work can be performed as routinely and frequently as possible. They have also established a team of volunteer lawyers who are responsible for providing voluntary legal service to the people in the working class

who need legal assistance. These firms also have a strong connection with Chinese mainstream social media to display their public interest activities. For instance, their pro bono achievement is often featured in the lawyers' social responsibility column and introduced as news of the firms' a great honour. A banner or headline that declares the obligation to perform pro bono work is available to view every minute on the website.

Although large law firms have shown a great contribution to the institutionalization of pro bono in China, the efforts of their counterpart cannot be ignored. Small law firms are not as powerful as large law firms, but their pro bono work has strong points that large law firms may not have. In other words, although large firms have more high-ranking professionals nationwide, the percentage of law professionals from small firms is much larger. Also, spatial divergence is another advantage that cannot be overlooked. Most large firms' offices have been established in Tier 1 and 2 cities so they cannot cover the majority of the area in China, compared to small law practitioners, who spread out across the country. This makes them much closer to communities and residents, which in turn tackles more diverse work in a large amount more efficiently. Despite the fact that they do not have a strong social network, financial support and human resources, they can share them with local organizations.

More importantly, since the state government is taking advantage of legal work to address social contradictions at a community level, pro bono is seen as an ideal method for lawyers to provide free legal services in communities to end the conflict. For example, a lawyer's contact information is released on the local lawyers (bar) association's website. They are appointed by local community institutions as an ambassador in the community so residents can contact them for free legal assistance. In addition, volunteer lawyers can find pro bono work through local newspapers or media as many free legal assistance hotline are run by local news outlets. Due to its huge population of readers and viewers, it is an ideal channel for expressing the values and information about pro bono to residents and helping legal professionals establish a good social image in the local legal service market.

6. CONCLUSION

As a direct result, pro bono has been increasingly institutionalized in Chinese lawyering despite the concept of pro bono did not exist 20 years ago. The rapid development of the legal profession, the fast formation of the legal service market, society and government support have become the four primary driving forces to advance this transformation in the Chinese context.

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