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Daniel Bonilla Maldonado
dbonilla@uniandes.edu.co

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The Mandarins of the Law

Pro Bono Legal Work from a Comparative Perspective

DANIEL BONILLA MALDONADO*

INTRODUCTION

The right to access to justice is one of the pillars of modern liberal democracies. On the one hand, it allows citizens to solve their conflicts by appealing to courts and to the administration.¹ On the other, as argued in the theoretical papers gathered in Part I, it allows citizens to choose and realize their life projects and to be fully included in the political community. Yet, all modern liberal democracies suffer an access to justice deficit to varying degrees. As argued in the introduction of this special issue, class, epistemological and market inequalities create notable obstacles to the materialization of the right to access to justice. Modern liberal democracies have developed four institutions—public defenders’ offices, court-appointed counsel, legal clinics, and pro bono work—to realize the State’s and lawyers’ obligations to securing the right to access to justice for all. This article is focused on only one of these institutions: pro bono legal work. This article pursues two intertwined aims: first, it describes and analyzes the conceptual architecture that supports pro bono work;² second, using these theoretical tools, it describes and analyzes the pro bono discourse and practices developed in Argentina, Colombia, and Chile.

*Full Professor, Universidad de los Andes School of Law, Bogotá. I would like to thank Natalia Serrano, David Luna and Julián Diaz for their excellent work as research assistants.


In Part I, I present the elements that form the standard global concept of pro bono work. Pro bono work is a global phenomenon defined by, and based on, a transnational discourse. In the first section of Part I, I argue that this transnational discourse conceptualizes pro bono work as a set of institutionalized free legal services that lawyers voluntarily provide to people with few financial resources or to protect the public interest. In the three following sections, I specify and analyze the concepts of subject, time, and space that this understanding of pro bono work creates, to present the categories that structure the discourse on pro bono work and contribute to the creation of part of the modern legal and political imagination. In the final section of Part I, I present and analyze the conceptual oppositions that structure the discourse on pro bono work and contribute to the creation of the concepts of subject, time, and space that support its conceptual apparatus.

In Part II, in the first section, I argue that the pro bono discourse and practices in Argentina, Chile, and Colombia are the result of a legal

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4. See KAHN, supra note 2, at 77-86.

5. See id. at 43-55.

6. See id. at 55-77.
transplant between the legal mandarins of North and South America. The Argentinian, Chilean, and Colombian legal elites import this set of practices and theories; the US legal elites export them. In the second section of Part II, I explore the reasons for the exchange of pro bono knowledge. In the third section, I present and analyze the role that clients and the state have in pro bono, as well as the local interpretations and variations of the transplantation that are emerging. Finally, in the last section, I explain why this knowledge still has not fused into stable institutions and practices in the importing legal communities. This legal transplantation has not taken root in the private spheres of the importing liberal states, and has had a minor impact on the realization of the right of access to justice.

The two parts of this article intersect. The conceptual architecture of the globalized pro bono legal discourse is fundamentally the same as the concepts that have been promoted by the pro bono foundations of Argentina, Chile, and Colombia. The theoretical analysis is useful for understanding both the standard pro bono discourse already disseminated globally and practiced by Argentinian, Chilean, and Colombian lawyers. This cultural analysis of pro bono work does not occur in the abstract. The differences and similarities among pro bono work in Argentina, Chile, and Colombia; the patterns that the pro bono discourse and practices follow in these three countries; and the specific ways they have contributed to the construction of regional lawyers' legal consciousness illustrates this cultural analysis. The relationship between theory and practice, therefore, goes both ways.

The theoretical and comparative analysis presented in this article is informed by both a cultural analysis of law, which serves as the theoretical framework; and by field work done in Bogotá by the University of the Andes and Fordham University in 2013, and in Buenos Aires and Santiago by the Public Interest Law Group (GDIP) of the University of the Andes in 2014. During the fieldwork stage, research teams conducted 183 semi-structured interviews with the staffs of foundations and with the lawyers who work at the firms


8. Informe-Argentina, supra note 7, at 170-75; Informe-Chile, supra note 7, at 339-42, 350-57; Informe-Colombia, supra note 7, at 222-30, 241-45.
affiliated with these organizations that work on pro bono issues in Argentina, Chile, and Colombia. The analysis is also based on three online surveys that were sent to all of the firms affiliated with the pro bono foundations. These surveys collected quantitative information to complement the qualitative information collected during field work. In the case of Chile, the analysis includes statistical information published by the Chilean Pro Bono Foundation between 2008 and 2013. The semi-structured interviews and the online surveys concern the work done by the three organizations and their affiliated firms, from the moment of their creation until 2013 and 2014, when UniAndes and Fordham completed the field work.

There were five reasons for selecting Argentina, Chile, and Colombia as case studies for this research project. First, although lawyers and social organizations have made efforts to institutionalize pro bono work in Latin America over the past three decades, there are currently no academic articles that describe and analyze this work in a precise and complete manner. The relationship between the right of access to justice and pro bono work in this region has not been thoroughly studied. Nor have the connections among the social obligations of lawyers, liberal democracies in the process of consolidation, and pro bono work been considered a valuable object of study in local or international literature.

Second, the processes aiming to promote pro bono work in Colombia, Argentina, and Chile were developed in the same time frame. Consequently, this variable remains stable and allows the analysis to focus on pro bono discourse and practices. The projects were started with the creation of the Chilean Pro Bono Foundation, the Argentine Public Interest and Pro Bono Work Commission, and the Colombian Pro Bono Foundation. The first two organizations started their work in 2000, while the third started in 2006. To date, these three initiatives continue to develop their work.

Third, the pro bono processes of Argentina, Chile, and Colombia are the oldest in Latin America, and are more consolidated. The three pro

9. One of the few Latin American law professors that has explored the topic is Martin Böhmer. See Martin Böhmer, Igualadores Retóricos: las profesiones del derecho y la reforma de justicia en la Argentina, 15 CUADERNOS DE ANÁLISIS JURÍDICO 187 (2003); Martin Böhmer, Trabajando como si no pasara nada. Las obligaciones del derecho en sociedades desiguales, JURISPRUDENCIA ARGENTINA, SJA 24/2/2010 (2010).

bono foundations in these countries began with the goal of serving as a clearing house for the pro bono work for the elite firms in Santiago, Buenos Aires, and Bogotá, as well as promoting pro bono work in the cities' larger legal communities. The three organizations created formal and informal channels of communication to share their positive and negative experiences. These experiences have been communicated with other countries through institutions like the International Pro Bono Network and the Cyrus Vance Center for International Justice in New York. The processes and structures developed by these first pro bono organizations became examples for initiatives seeking to create a pro bono culture in other countries in the region, like the Dominican Republic, Perú, and México.

Fourth, the legal and political systems of Argentina, Chile, and Colombia are analogous. The three countries are liberal democracies in the process of consolidation, and have historically been identified as being part of the civil law tradition. Chile and Argentina are still grappling with the effects of dictatorships on their democratic institutions, while Colombia is confronting the consequences of fifty years of armed conflict. The central government of these three countries have a weak presence in some of their provinces, particularly in impoverished rural regions far from the political center. The levels

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11. See Informe-Argentina, supra note 7, at 156-66; Informe-Chile, supra note 7, at 324-28; Informe-Colombia, supra note 7, at 245-67.

12. See Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-305, 335-57; Informe-Colombia, supra note 7, at 230-41.


15. See generally Stephanie Álvarez & Angelika Rettberg, Cuantificando los efectos económicos del conflicto: una exploración de los costos y los estudios sobre los costos del conflicto armado colombiano, 67 COLOM. INTERNACIONAL 14 (2008) (analyzing the societal and economic costs of the Colombian armed conflict); Adolfo Chaparro Amaya, Procesos de sujetivación, conflicto armado y construcción del Estado Nación en Colombia, 7 REVISTA ESTUDIOS SOCIO-JURÍDICOS (NÚMERO ESPECIAL) 411 (2005) (explaining the development of theories of political philosophy through the period of armed conflict in Colombia); Ricardo Vargas Meza, Drogas, conflicto armado y seguridad global en Colombia, 192 NUEVA SOCIEDAD 117 (2004) (analyzing the growth of drug activity during this period of conflict).

of inequality and poverty in these countries are also noteworthy. The GINI coefficient for Chile in 2017 was 46.6, for Argentina, 41.2, and for Colombia, 49.7. In 2017, 8.6% of the Chilean population was considered to be impoverished and 0.8% was below the multidimensional poverty measure. In Argentina, in 2017, the percentages were 32% and 0.5%, respectively, while in Colombia, these numbers were 27% and 4.8%, respectively. The three legal systems also share a notable lack of fulfilled rights for access to justice. Indices showing levels of satisfaction of legal needs are low. In Colombia, Argentina, and Chile, the gap between the normative discourse and the right to access to justice remains worrisome.


21. The three systems recognize the right of access to justice as a fundamental right. See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 19, no. 3; CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 13, 29, 213 (acknowledging equality before the law, due process and right to defense, and access to justice respectively).


The legal systems of these three countries are based on the Romano-Germanic tradition. The three criteria traditionally used in comparative law to classify legal systems—style, tradition, and ideology—support classifying them as part of the civil law family. Since the second half of the twentieth century, however, these three legal systems have been noticeably influenced by United States' legal theory, doctrine, and practice. Many legal transplants involve the United States exporting to Colombia, Chile, and Argentina, affecting key aspects of their legal systems. The transplant of the accusatory criminal system, neoclassical labor law, liberal theory of law, and


25. Id. at 6-14. The classification of the three legal systems within the Romano-Germanic family is widely accepted. Id. Elaborating on the characteristics of each system and comparing them with the systems that give rise to the family is a task that lies beyond the bounds of this article.


27. Cf. Kelemen & Sibbitt, supra note 26 (arguing that the American legal style is spreading to other jurisdictions, such as the European Union and Japan).


liberal constitutionalism\textsuperscript{31} are four noteworthy examples. A fifth example, fundamental for this article, is pro bono work. Pro bono in Latin America has developed along discursive patterns and practices created by the United States' legal community—in particular, those of the large New York law firms affiliated with the Vance Center.\textsuperscript{32} The similarities in the legal and political context of Chile, Argentina, and Colombia allow for this analysis to focus on their pro bono discourse and practices.

Sixth, empirically based comparative work allows for the creation of a textured dialogue between theory and practice.\textsuperscript{33} The description and analysis of the conceptual architecture is not only based on an analysis of the key documents of the transnational pro bono discourse. It is also based on broad field work describing the pro bono legal consciousness of lawyers in Argentina, Chile, and Colombia. Likewise, the qualitative and quantitative information collected can be analyzed more richly in the context of the theoretical tools offered in the first part of the article. Good theory must be nurtured on reality; good practices must be theoretically informed.

I. THE CONCEPT OF PRO BONO WORK

The Elements of Pro Bono Work

The standard global discourse on pro bono work defines pro bono as free legal services that lawyers voluntarily provide, in an institutionalized way, to people with few economic resources or for the public interest.\textsuperscript{34} This concept of pro bono work has seven elements, each of which are explained in this section. First, pro bono work is legal work.\textsuperscript{35} Pro bono is directly related to the knowledge of and practice of law. It is an activity that forms part of, and makes use of, the legal discipline. The concept of pro bono consequently excludes other kinds of voluntary and altruistic activities that lawyers can do, such as

\begin{itemize}
\item \textsuperscript{31} A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance, supra note 30, at 383-84.
\item \textsuperscript{32} Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-305, 335-57; Informe-Colombia, supra note 7, at 207, 230-41.
\item \textsuperscript{33} See Ran Hirschl, On the Blurred Methodological Matrix of Comparative Constitutional Law, in THE MIGRATION OF CONSTITUTIONAL IDEA 39, 39-66 (Sujit Choudhry ed., 2006).
\item \textsuperscript{34} See Pro Bono Declaration for the Americas, supra note 3; see also Deborah L. Rhode, Cultures of Commitment: Pro Bono for Lawyers and Law Students, 67 FORDHAM L. REV. 2415, 2441 (1999).
\item \textsuperscript{35} See, e.g., Informe-Argentina, supra note 7, at 148-51; Informe-Chile, supra note 7, at 305-12; Informe-Colombia, supra note 7, at 216-30.
\end{itemize}
philanthropy, participation on boards of directors of social organizations, and volunteer work on social projects.36

Second, pro bono work is provided by lawyers.37 Pro bono is a practice that should be done by those who are recognized as members of the legal discipline. Only those persons who have been formally educated in legal rites, procedures, and knowledge can do this kind of work.38 Each political community has criteria that determines who can officially be considered a member of the discipline. In some communities, the State determines the requirements that an individual must meet to be considered a lawyer.39 In others, the State delegates this task to private organizations, like bar associations.40 Consequently, individuals who have legal knowledge, but do not meet the criteria to enter the discipline formally, cannot do pro bono work. Social leaders who have become familiar with the law in their work, informal legal workers who have learned the law in their daily lives due to contact with the judicial or executive branches, and bureaucrats who know the law because it is part of their daily lives, among others, cannot do pro bono work. While these people could provide free legal services, such services would not be included in the standard transnational concept of pro bono work.

Third, pro bono work does not compensate lawyers.41 Lawyers should not receive any compensation for the legal services they provide to people with few economic resources, or for the public interest. The concept of pro bono work distinguishes sharply between the professional activities that lawyers receive payment for, and professional pro bono

36. Cultures of Commitment: Pro Bono for Lawyers and Law Students, supra note 34, at 2421.
37. See Informe-Argentina, supra note 7, at 148-51; Informe-Chile, supra note 7, at 305-12; Informe-Colombia, supra note 7, at 216-30.
38. See generally Fiona McLeay, The Legal Profession’s Beautiful Myth: Surveying the Justifications for the Lawyer’s Obligation to Perform Pro Bono Work, 15 INT’L J. LEGAL PROF. 249 (2008) (discussing the monopoly lawyers hold over the legal profession).
39. In Colombia, for example, the State enacted Lawyers’ Code of Ethics. See generally L. 1123/07, enero 22, 2007, Diario Oficial [D.O.] (Colom.) (detailing the ethical conduct required of attorneys and disciplinary repercussions for code violations).
40. In the United States, for example, Bar Associations are the institutions that approve law schools and regulate professional practice. See, e.g., AM. BAR ASSOC., ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019-2020 (2019) (ebook) (discussing standards and processes through which the American Bar Association approves law schools); Committees and Commissions, A.B.A., http://www.americanbar.org/groups/legal_education/resources/standards.html (last visited Nov. 20, 2019) (explaining the rules and committees that apply the ethical rules that regulate lawyers’ activities).
41. McLeay, supra note 38, at 259; Lucie E. White, Pro Bono or Partnership: Rethinking Lawyers’ Public Service Obligations for a New Millennium, 50 J. LEGAL EDUC. 134, 140 (2000).
activities. Pro bono work is understood as part of the social obligations that lawyers have in a liberal State. Litigating or advising on pro bono matters are tasks through which lawyers honor their social obligations. These activities, then, should not generate compensation, aside from informal recognition from their clients and political community.

Fourth, pro bono is voluntary. Pro bono work is understood as the result of an obligation that lawyers acquire autonomously. Therefore, pro bono work should not be an obligation imposed by those with power over lawyers, such as the State or their employers. It should not be understood as a heteronomous obligation. The obligation to perform pro bono work stems from different origins for different lawyers. The standard global concept of pro bono work does not include all justifiable reasoning for the existence of the obligation to do pro bono. Nevertheless, the obligation is typically associated with concerns about social inequalities that impede citizens' access to justice, the principle of solidarity, and awareness of lawyers' control over key knowledge necessary for the stability and prosperity of a liberal State. Some lawyers, however, also think they should do pro bono work for strategic reasons, such as improving their social reputation, raising their position in law firm rankings, and increasing their access to, or securing their position in, the national or international legal market.

Fifth, pro bono work should be institutionalized. Lawyers have always provided free legal services to people with few financial

43. See Informe-Argentina, supra note 7, at 148-51; Informe-Chile, supra note 7, at 305-12; Informe-Colombia, supra note 7, at 216-30.
44. See Scott L. Cummings, Access to Justice in the New Millennium: Achieving the Promise of Pro Bono, 32 J. HUM. RTS. 6, 6 (2005).
45. See Cultures of Commitment: Pro Bono for Lawyers and Law Students, supra note 34, at 2419.
resources. However, these activities have typically been individual, occasional, and informal. Lawyers decide sporadically, and at their own discretion, when to use their legal knowledge and service for people who cannot hire a legal professional. They allocate their unpaid time without following standardized procedures to accept and process cases. In contrast, pro bono is a permanent, formalized, and collective activity. Pro bono work should then be understood as an activity that is part of the daily undertakings of lawyers, that is done following standardized procedures, and that is part of the structures of law firms. This concept of pro bono does not exclude lawyers who work individually, rather than in law firms, but it does require pro bono to be permanent and formalized. The standard globalized pro bono work practices do, however, associate pro bono work with law firms. In practice, large law firms with either a large number of lawyers or a noteworthy reputation are the ones that have promoted and implemented pro bono work around the world.

Sixth, free legal services should be provided to people with few socioeconomic resources, and should be directed at representing or advising individuals who do not have the option of hiring a lawyer. Working free of charge for those who can hire a lawyer would create unfair competition with the other members of the profession, and could not be considered a way of honoring the social obligations that lawyers have in a liberal State. Lawyers are a diverse group that serve various social groups, in an increasingly competitive market. All lawyers should respect other lawyers' niches and not reduce the set of potential billable clients.

The seventh, and last, component of pro bono work is that it can serve the public interest, and should be directed at doing so. The content of the category "public interest" is not precise. It is an open, textured category that the standard global pro bono discourse does not interpret in a single way. It can refer to the interest of the majority, to contributing to the consolidation of the liberal State, or it can mean the

50. See id. (describing the business benefits and implementation methods of pro bono practice, particularly in large law firms).
51. See Informe-Argentina, supra note 7, at 135, 166-67, 170-75, 189; Informe-Chile, supra note 7, at 285, 298-305, 335-57; Informe-Colombia, supra note 7, at 207, 230-41; see also McLeay, supra note 38, at 254-62.
52. See Pro Bono in Principle and in Practice, supra note 42, at 115-17.
fulfillment of the bill of rights. Typically, however, this category is associated with activities that have a greater impact on the defense of the rights of an individual, or a small group of individuals. It is generally linked to legal practices such as strategic litigation, legislative advising, and legal literacy programs.

The Legal Mandarins and The Serfs of Law

The pro bono discourse and practices described create two types of interdependent subjects: legal mandarins and legal serfs. These categories not only name social reality, describing the individuals who practice or receive pro bono work, they also determine the way in which these individuals describe themselves and interpret their practices. The power of the categories is not only situated in the descriptions, analyses, or evaluations made from outside of lawyers and their clients. The most power that these categories have is in that lawyers, when they internalize them consciously or unconsciously, use them to construct their individual and collective identities. These categories condition the way in which lawyers and pro bono clients perceive themselves, and are perceived in a liberal State.

The conceptual architecture of pro bono work—which creates its own concepts of subject, time, and space—helps specify who lawyers and their clients should be, and what lawyers and their clients must do. Of course, these categories intersect with other broader and more specific categories, thereby creating a network of concepts within which the individual is immersed and constructing the reality with which she interacts. Notions like the liberal State, individual rights, equality, obligations, and solidarity are entwined with pro bono work to construct part of the modern legal and political imagination. These intersections configure a key dimension of the wide variety of perspectives that everyone who is part of the modern enlightened culture, which still defines key components of contemporary liberal democracies, are immersed in.

The first type of subject that pro bono discourse creates is that of the legal mandarins. These subjects are defined based on two categories: class and knowledge. Legal mandarins occupy a mid- or high-level position in the social and economic structures that their collective has developed to classify its members. Legal mandarins are also identified by their access to, and control of, the set of rituals, procedures, and content constituting the law. Legal mandarins construct, belong to, and

55. See id.
56. See id.
THE MANDARINS OF THE LAW

put in motion law, a foundational discipline for the liberal State. Their identity is directly related to knowledge that they control, and to the practices that this knowledge creates within the political community. The law and its official operators have the capacity to manipulate a discourse with a high technical content. This is crucial for meeting the basic objectives of any liberal State: peace, prosperity, and the protection of individual autonomy through the concretion of rights. The relationship between knowledge and legal power is fundamental to understanding the individual and collective identity of legal mandarins.\footnote{See generally Michel Foucault, El Orden del Discurso (Tusquets Editores 2004) (discussing the theory and philosophy of discourse).}

In a liberal State, legal mandarins play a role analogous to that of priests in a theocracy.\footnote{This is a variation of the argument that MacIntyre offers when he affirms that lawyers are the priests of liberalism. See Alasdair MacIntyre, Whose Justice? Which Rationality? 342-44 (1988).} In a theocracy, priests control the religious knowledge that allows them to communicate with the divinity, to interpret its mandates, perform its rites, and materialize its objectives. Not all individuals can become priests. The discipline determines who can achieve this category, by what processes, and after acquiring what knowledge. In a secular, liberal State, the legal mandarins are the ones who have privileged access to the legal system, and\footnote{See id.} positive law replaces divine law as the foundation of the political community.

Legal mandarins do not create the law; this is the privilege of legislators, those who monopolize the capacity to create legal norms. Mandarins, however, can make the law speak. They know how to interpret it: they know the law’s rites, and therefore how to put it in motion; they know its content and can thus achieve (or contribute to achieving) the objectives the law promotes. Not all individuals are recognized as or can be considered lawyers, even if they are familiar with the content and procedures that form the legal system. Like the Church, legal communities have created procedures to convert the lay person into a legal mandarin. There are rites of initiation and acceptance, practices to train apprentices, and tests that determine their rise in the hierarchy of the discipline.\footnote{See Foucault, supra note 57, at 18-28.}

The class and epistemological marks characterizing legal mandarins intersect. Access to legal knowledge is commonly determined by socioeconomic position. The high position that legal mandarans wield in the socioeconomic hierarchy allows them to cover the costs of training in the discourses and practices that constitute the law or provides them...
with the prior knowledge required to cross the border between the lay person and the initiated. Pro bono work is usually promoted and done by elite law firms around the world, whose lawyers are individuals who are either from privileged social classes, or have risen to these social positions through law programs offered by public universities.

Even individuals who gained their privileged positions through public university training do not generally belong to the less favored social classes. Without access to certain basic financial and epistemic resources, they would not be able to access a university, or to graduate with sufficient merit to secure a position at a large law firm. The relationship between socioeconomic status and knowledge goes both ways. Access to legal knowledge, and control of legal knowledge and power, allows individuals to maintain their privileged socioeconomic position. The knowledge they control gives them mobility in a market that pays significant economic revenues to its operators.

Legal mandarins have internal hierarchies that determine their position within the discipline. Mandarins "are all equal, but some are more equal than others." These hierarchies are rigid, and are found in comparisons of elite law firms and individual practitioners, and in the internal hierarchies of law firms. The first relevant hierarchy for understanding the conceptual architecture of pro bono work is that of the elite law firms and the independent lawyers. Pro bono discourse assumes that the former occupy a position higher than the latter within the discipline. The experience, knowledge, and human, financial and political resources at a law firms' disposal justify this distinction.

A second hierarchy determines the characteristics, rhythms, and effective commitment to pro bono work that exists within law firms.

61. See Access to Justice in the New Millennium: Achieving the Promise of Pro Bono, supra note 44, at 6-7; Managing Pro Bono: Doing Well by Doing Better, supra note 48, at 2364.


64. See Access to Justice in the New Millennium: Achieving the Promise of Pro Bono, supra note 44, at 6-7.

65. See Bergoglio, supra note 63, at 20-21.
The specifics of this hierarchy vary between legal communities and law firms. Nevertheless, this structure has three basic levels: partners, associates, and junior lawyers. The hierarchy marks the control of two sets of variables: legal knowledge and experience, and economic and administrative power. Pro bono work assumes and thereby contributes to maintaining this structure that distributes the epistemological and material power within law firms: the higher the lawyer is situated in the structure, the more power attributed to her.

To the degree that pro bono and pro lucro work compete, the commitment of the highest mandarins, the partners, is essential for the effective institutionalization of pro bono work. Given the radically vertical character of the hierarchy, the highest mandarins determine what the mid- and low-level mandarins can and cannot do. Without the effective adhesion of the highest mandarins to pro bono discourse, pro bono would not become part of the daily practices of law firms. There would be no policies to guide pro bono work, internal structures to facilitate it, or incentives to make it viable for lawyers. In Latin America, for example, pro bono work has faced serious problems with implementation, because the highest mandarins have not created the incentives necessary for it to be viable within their law firms. Most significantly, they have not decided that pro bono hours should be equivalent to pro lucro hours, and do not permit them to count towards meeting the minimum amount of hours that each lawyer must work per month. Without the ability to count their pro bono work towards their required hours, individual lawyers, rather than the firms that employ them, must assume the burden of pro bono work. In a niche of the legal market that requires working a very high number of pro lucro hours, this policy ensures that pro bono work is marginalized in the work dynamics of lawyers.

Legal mandarins are also defined by who they are not: serfs of law. The serfs of law are the “other” of legal mandarins. The mandarin’s identity depends on the existence of the serfs of law. The serfs of law are therefore equally constructed by epistemological and class markers.

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66. Informe-Argentina, supra note 7, at 170-75; Informe-Chile, supra note 7, at 285-88; Informe-Colombia, supra note 7, at 254-57.
67. See Access to Justice in the New Millennium: Achieving the Promise of Pro Bono, supra note 44, at 6-7.
68. Informe-Argentina, supra note 7, at 180-83; Informe-Chile, supra note 7, at 346-47; Informe-Colombia, supra note 7, at 261-67.
69. Informe-Argentina, supra note 7, at 180-83; Informe-Chile, supra note 7, at 346-47; Informe-Colombia, supra note 7, at 261-67.
70. The pro bono clients of Argentine, Chilean, and Colombian law firms are persons that have few social and economic resources. The typical pro bono cases are the ones that
Pro bono clients are outside of the law, they do not belong to the discipline. They do not have the tools to manipulate legal discourse and practices. Law is a highly specialized discipline that creates insurmountable barriers for those who are not initiated.

The liberal State promised the creation of clear and precise legal norms that could be understood by any citizen. The principle of equality required the creation of understandable legal norms; the universality of law demanded so. The Napoleonic civil code, one of the paradigmatic legal products of the liberal State, made this commitment. Reason would guide those drafting the code, and enable any individual to use its norms. Nevertheless, this promise proved impossible to keep. The number of legal norms that form a code and a legal system are very high. Their content is specialized, the techniques for manipulating them are complex, and the rites and procedures for putting them in place are intricate. Serfs of law cannot access legal knowledge directly. The opportunities for crossing the line between the lay person and the initiate are minimal. Serfs of law do not have the social status, the prior knowledge, or the financial resources necessary to do so.

The serfs of law are also defined by the position they occupy in the socioeconomic hierarchy of their political community. The serfs are at the bottom of this hierarchy. They do not have the financial resources to access the legal system by hiring a lawyer. From the point of view of the conceptual architecture of pro bono work, the serfs of law consequently cannot satisfy their legal needs. The law, omnipresent in a liberal State, affects them directly on a daily basis. Nevertheless, they have neither a way to confront the negative consequences law creates for them, nor a way to produce the positive effects it promises. The serfs of law cannot access justice, cannot make use of legal tools, and cannot interact with the institutions that could transform their existence.

The individual and collective identities of the serfs of law are constructed from their interactions with the individual and collective identities of the legal mandarins. The links that unite them are even

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affect low social and economic strata. See Informe-Argentina, supra note 7, at 167-70; Informe-Chile, supra note 7, at 316-24, 336-39; Informe-Colombia, supra note 7, at 261-67.


73. By definition, pro bono clients are people from low socioeconomic strata, or the social organizations that serve them. See, e.g., Pro Bono Declaration for the Americas, supra note 3.
stronger than the circumstances dividing them. The mandarins must
serve the serfs; if they did not, they would not be true mandarins. Their
identity is structured around a moral obligation requiring them to use
their technical knowledge to help satisfy the legal needs of the serfs.\textsuperscript{74}
The basis of this obligation varies. For some it might be the political
principle of solidarity; for others with religious inclinations, the virtue of
charity. Other legal mandarins base their interactions with the serfs of
law on self-interest.\textsuperscript{75} They assist the serfs of law because not doing so
would have a political or economic cost, and assisting them would
benefit the mandarin's reputation and access to the legal market.\textsuperscript{76}

Like priests, mandarins have a duty to mediate between the law
and lay people.\textsuperscript{77} In their interactions with the serfs of law, the
mandarin translates the law, warns of its possible consequences, and
represents or advises before the bodies that put the law into action. The
mandates of law, like divine mandates, must be translated by those who
have the epistemic power to do so. As in Catholicism, where priests have
the ability and knowledge to interpret and disseminate the biblical
message, lawyers have the ability and knowledge to interpret and
disseminate the mandate of the "law."

The task of translation and representation before the law is
sometimes demanding. Nevertheless, the majority of pro bono cases are
simple and routine, from a technical legal point of view.\textsuperscript{78} They involve
issues and circumstances determined by the position that the serfs of
law occupy in the socioeconomic hierarchy, including noncompliance
with labor agreements, minor crimes like theft and slight personal
injuries, alimony, and conflicts between lessors and lessees.\textsuperscript{79} There is a
direct relationship between class and the issues that typical pro bono
cases involve. These conflicts have a significant social and economic
impact on each serf of law, their family, and their community. However,
processing these cases is simple, they do not create great intellectual
challenges.\textsuperscript{80} Further, many pro bono cases do not require appealing to

\begin{thebibliography}{9}
\bibitem{74} See, e.g., Informe-Colombia, \textit{supra} note 7, at 216-30.
\bibitem{75} DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE
\bibitem{76} See DEBORAH L. RHODE, ACCESS TO JUSTICE 144 (2004).
\bibitem{77} This is a variation of the argument that MacIntyre offers when he affirms that
lawyers are the priests of liberalism. See MACINTYRE, \textit{supra} note 58, at 324-44.
\bibitem{78} See Access to Justice in the New Millennium: Achieving the Promise of Pro Bono,
\textit{supra} note 52, at 10. See also Informe-Argentina, \textit{supra} note 7, at 184-89; Informe-Chile,
\textit{supra} note 7, at 350-53; Informe-Colombia, \textit{supra} note 7, at 245-48.
\bibitem{79} See Informe-Argentina, \textit{supra} note 7, at 167-70; Informe-Chile, \textit{supra} note 7, at
316-24; Informe-Colombia, \textit{supra} note 7, at 245-47.
\bibitem{80} See, e.g., Access to Justice in the New Millennium: Achieving the Promise of Pro
Bono, \textit{supra} note 44, at 10.
\end{thebibliography}
the law to resolve. Instead, the serfs of law need a subject with greater social, economic, and epistemic capital to level the playing field with the opposing party in the conflict. Many pro bono cases are resolved with a call, a conversation, or a threat of legal action. The legal mandarin has the capacity to understand these problems adequately, to translate it into language that can be comprehended by the third party, and to offer solutions that are backed by the implicit or explicit threat of legal action.

The Liberal State, Progress, and Pro Bono Work

The time of the current pro bono discourse and practices is linear and finite. People always have legal needs in a liberal State. Conflicts, market needs, and the good life projects of subjects require that the law operates to resolve, satisfy, or realize them. From a normative perspective, the socioeconomic inequalities that are at the foundation of pro bono work can be neutralized, by moderating poverty and expanding access to legal education. Normatively, pro bono discourse considers it possible and desirable that all individuals be able to access legal knowledge and practices directly or indirectly. Progress within the liberal State is possible and desirable. Different political communities will be in different positions with respect to the history of pro bono work. Established liberal democracies may be closer to fulfilling that ideal than those in the process of consolidation. The financial and human resources destined to realize the right of access to justice, and redistributive policies would be closer to reaching the objective in the former than in the latter states.

As long as social and epistemological inequalities continue to exist, pro bono work should exist as well. The social obligations that require pro bono work will not disappear until levels of legal and material equality improve. Legal mandarins can work to improve the levels of political inclusion and to realize the rights of serfs of law in an individual or structural manner. Legal mandarins can work on cases for, or provide advice to, an individual or small group of individuals, or they can work on strategic litigation cases, legislative advising, or legal literacy campaigns that affect an entire group. The rhythm through which the levels of realization of the right of access to justice are improved varies depending on which area of pro bono work we are focusing on. Nevertheless, the need for free legal services will not disappear.

Inequality in access to justice could also disappear if the State decides to intervene in an effective manner in the legal market. The State could strengthen the institutions that provide free legal services
to people with few socioeconomic resources. It could strengthen institutions like the public defender's office so that all citizens have access to justice or that following pro bono discourse, everyone would have access to a lawyer. In Spain, for example, the discourse on pro bono work has not been influential, because the public defender's office has been efficient, and has been internalized by the legal community as a desirable part of the system. In these cases, while the socioeconomic and epistemological inequalities that negatively affect the lower strata have not disappeared, the State has created a public policy that levels the playing field, and provides access to lawyers for both the rich and the poor. Therefore, pro bono work is unnecessary.

Colombia shows the same problem, but from a different angle. For the Colombian lawyers who do pro bono work in association with the Colombian Pro Bono Foundation, the obligation to do pro bono work is subsidiary, as the State has the responsibility for materializing the right of access to justice. The legal market must act only to the degree that the State does not comply with its duties in an efficient manner. From a normative perspective, the Colombian legal mandarins should stop doing pro bono work once the State is strengthened and complies with its duty to protect the right that all citizens have to access a lawyer. These lawyers are committed to the idea that the moral obligation to do pro bono work originates indirectly in social inequality, and directly in principles such as solidarity. As a consequence, they consider it possible and desirable that Colombian liberal democracy work to make these inequalities disappear. When this happens, however far away it is in practice, pro bono work will disappear as its indirect cause will cease to exist.

The Private Sphere, The Legal Market, and Pro Bono Work

The space that the pro bono legal discourse and practices imagines is that of the private sphere of a liberal society. The conceptual architecture of pro bono work supposes the existence of both the public


82. Informe-Colombia, supra note 7, at 216-30.

83. Id.
and private spheres. The public sphere is the space of justice—it is where the basic structure of the political community is determined, political power is distributed, and the criteria for determining the distribution of scarce State resources are developed. In contrast, the private sphere is the space of morality—the space where individuals can exercise their autonomy to construct their individual and collective identities.

Pro bono work materializes without the intervention of the State. Normatively, it is imagined as an activity that emerged voluntarily within the legal community. Lawyers organize themselves and create the means to help satisfy the legal needs of people with few financial resources. Pro bono is an activity that emerges among individuals to serve other individuals. Formally, these subjects cannot be differentiated. The principles of basic human equality and equal citizenship do not allow us to distinguish them. Materially, however, the inequalities between the legal mandarins and the serfs of law are evident. Socioeconomically and epistemologically, they occupy different positions in the hierarchy.

Pro bono work is imagined, however, only in the private sphere. The mandarins of law can advise other citizens—their clients must be other citizens. The case may not involve a conflict; the challenge may be to determine the most suitable conduct in a particular circumstance. Even when a case is the result of a conflict, it can sometimes be resolved through mediation, rather than litigation. Sometimes, however, pro bono requires the public and private spheres to interact. When pro bono work includes a case in which the client's opposing party is the State, or when the conflict among citizens cannot be resolved in a private manner, these spheres must interact. The legal mandarin must represent the serf of law before the courts or the administration.

The standard global discourse on pro bono work imagines a space that is even more specific. Within the private sphere, pro bono work is projected onto the space occupied by large law firms. Being able to put pro bono into practice requires prerequisites that independent lawyers cannot easily meet, such as internal structures, time, and human resources present at law firms of a certain size. The Pro Bono Declaration of the Americas, the International Pro Bono networks, the

85. Id.
86. See Informe-Argentina, supra note 7, at 148-51; Informe-Chile, supra note 7, at 305-12; Informe-Colombia, supra note 7, at 216-30.
87. See Estudios registrados, supra note 62; FUNDACI6N PRO BONO CHILE, supra note 62; FUNDACION PROBONO COLOM., supra note 62.
Vance Center for International Justice, the Chilean Pro Bono Foundation, the Colombian Pro Bono Foundation, the Argentine Public Interest and Pro Bono Work Commission, and the great majority of the lawyers affiliated with these organizations, revolve around elite law firms. The transnational pro bono discourse assumes that independent lawyers occupy their time and energy in meeting their professional obligations. They do not have the institutional or human resources to do pro bono work that is not sporadic and informal. The discourse does not require or imply that independent lawyers cannot do pro bono work. However, the discourse is not developed in a manner that includes them explicitly. The Chilean Pro Bono Foundation, for example, has included among its affiliates 250 independent lawyers from Santiago. Nevertheless, it is telling that the foundation is understood as an organization of and for the elite Santiago law firms. Independent lawyers do not form part of the Advisory Council and the Board of Directors, the administrative structures that define the purposes of the organization, and the means through which they should be materialized. As within law firms, where all mandarins are equal but some are more equal than others, all law firms and legal professionals are equal but some are more equal than others in the legal community and in pro bono work.

The Binary Categories That Structure Pro Bono Work

The conceptual architecture of the discourse on pro bono work is, as indicated in previous sections, binary. Four conceptual oppositions cross the concepts of subject, time, and space, that the discourse on pro bono both assumes and helps to construct. The conceptual oppositions of knowledge/ignorance and inequality/equality are interwoven with those of solidarity/egoism and autonomous obligation/heteronomous obligation to construct the backbone of the conceptual apparatus that supports pro bono work. Pro bono work then starts from the premise that some individuals have legal knowledge that others do not. Some control a scarce resource—knowledge of the law—that others ignore. This

89. See Estudios registrados, supra note 62; FUNDACIÓN PRO BONO CHILE, supra note 62; FUNDACIÓN PROBONO COLOM., supra note 62; infra notes 105-07.
difference between legal mandarins and serfs of law is morally questioned by the discourse. This difference is evaluated as an inequality that has no justification and that intersects with class inequalities.

The relationship between the two types of inequalities is not unidirectional. Epistemological and class inequalities intersect and reinforce each other to marginalize the serfs of law in the political community and to prevent the materialization of their rights. Consequently, any action seeking to eliminate these inequalities should confront them jointly. Ignorance of the law, and the class differences that lead to this ignorance, require lawyers as a group to act in solidarity. Legal mandarins should contribute to eliminating these injustices. Lawyers have a moral obligation to put their legal knowledge in motion to contribute to satisfying the legal needs of the serfs of law.

This, however, is an obligation that lawyers acquire autonomously. It is not a heteronomous obligation. It is not mandated by an external agent that has power over lawyers. Thus, in the few jurisdictions where pro bono work is mandatory, like the state of New York, pro bono has been met with resistance by lawyers. This imposition contradicts the conceptual bases of the transnational pro bono discourse that many legal communities around the world have already internalized.

II. THE TRANSPLANT OF PRO BONO WORK TO LATIN AMERICA

Pro bono legal work is a transplant in Latin America. It is a set of knowledge and practices that were consciously exported by United States legal elites and consciously imported by Latin American legal elites. It is also a transplant that still has not taken root in the importing legal communities. Pro bono work in Argentina, Chile, and Colombia, the oldest importers of pro bono knowledge in Latin America, still has not been completely institutionalized, the pro bono culture is still weak, and the global impact it has on the materialization of the


93. See Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-305, 335-57; Informe-Colombia, supra note 7, at 230-41.


95. Informe-Argentina, supra note 7, at 183-189; Informe-Chile, supra note 7, at 333-35, 347-50; Informe-Colombia, supra note 7, at 257-261, 273.
right of access to justice is minor. Nevertheless, pro bono legal work has opened a space for itself in the region. The highest legal mandarins—the elite law firms of Argentina, Chile, and Colombia—have succeeded in creating organizations with varying degrees of institutional cohesion and efficacy to boost pro bono discourse and practices. The discourse is known and has been formally accepted by the lawyers affiliated with these organizations, and every year these organizations and firms take an average of 324 pro bono cases that contribute to improving the living conditions of a growing number of Argentines, Chileans, and Colombians with few socioeconomic resources.

The exchange of pro bono knowledge, and the contingencies experienced in the importing countries, are not extraordinary. Legal transplants have historically been one of the primary engines of legal change around the world, and it is common for exchanges of legal products to be promoted by the elites of both issuer and receptor countries. The legal knowledge that travels across national borders is quite varied in type: from legal norms, to theories of law, to informal practices and knowledge related to law. Latin America is a region that has historically imported law from Europe and the United States, and these transplants have not always managed to consolidate themselves within the legal communities of the region. The characteristics, dynamics, and consequences of the transplants, however, are not always sufficiently known. Consequently, the subjects that exchange legal knowledge, the channels through which this exchange is made, the reasons that explain it, the effects it has, and its

96. Informe-Argentina, supra note 7, at 170-75; Informe-Chile, supra note 7, at 339-42, 350-57; Informe-Colombia, supra note 7, at 222-30, 241-44, 252-54.
97. Informe-Argentina, supra note 7, at 156-66; Informe-Chile, supra note 7, at 324-28; Informe-Colombia, supra note 7, at 245-67.
98. Informe-Argentina, supra note 7, at 148-51; Informe-Chile, supra note 7, at 305-12; Informe-Colombia, supra note 7, at 216-30.
99. This is the average number for 2012 for which there is available information from the three organizations. In 2012, in Colombia, 212 cases were taken; in Argentina 190 (although a very low percentage came from the Comission); and in Chile 756. Informe-Argentina, supra note 7, at 158-59; Informe-Chile, supra note 7, at 315-16; Informe-Colombia, supra note 7, at 245-47.
101. Sujit Choudry, Migration as a New Metaphor in Comparative Constitutional Law, in THE MIGRATION OF CONSTITUTIONAL IDEAS 1, 17-25 (Sujit Choudry ed., 2006).
The relationship with the conceptual apparatus that supports pro bono work, is not always known and analyzed. In the pages that follow, these issues will be explored in relation to pro bono legal work using both the empirical information collected in Argentina, Chile, and Colombia in conjunction with the theoretical tools presented in the previous section.

The Subjects Who Transplant and the Knowledge Transplanted

The subjects who exchange pro bono legal knowledge in this case are clearly identifiable. In Argentina, Chile, and Colombia, the subjects who import are elite lawyers from Buenos Aires, Santiago, and Bogotá, as well as the organizations that these lawyers created to boost pro bono work in their legal communities. Examples include the Chilean Pro Bono Foundation, the Colombian Pro Bono Foundation, and the Argentine Public Interest and Pro Bono Work Commission. In each country there are lawyers that appear repeatedly when we examine the circumstances in which pro bono work emerged and developed. These lawyers are not the only ones who have contributed to the process, but they are the ones who have come to symbolize it: in Argentina, Martín Zapiola; in Colombia, Paula Samper; and in Chile, Beatriz Corbo, Ciro Colombara, María Paz Garafucil, Pablo Guerrero, Juan Pablo Olmedo, and Francisco Orrego. These lawyers had a noteworthy presence in the creation of the three pro bono organizations discussed above, and in exchanges with United States’ legal mandarins.

The number of lawyers who contribute to (and in practice implement) imported pro bono legal knowledge has expanded significantly. Today, the Chilean Pro Bono Foundation has fifty affiliated firms, the Colombian Pro Bono Foundation has thirty one, and the Commission has twenty. These law firms belong to the legal elite of Bogotá, Santiago, and Buenos Aires, and their lawyers are the ones who take the pro bono cases distributed by their respective

103. See Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-304, 335-57; Informe-Colombia, supra note 7, at 230-41.


105. Historia, supra note 90.


countries’ pro bono organizations. These firms contribute to the management of the pro bono foundations and pay an annual fee to support them.108

In these three countries, a few legal academics from private universities like University of Palermo, University of the Andes, and University Adolfo Ibáñez contributed have to the transplant process or in its consolidation. The Universities’ role is minor, compared to the roles that the firms and the pro bono organizations have played in the creation and consolidation of pro bono work in these countries. In Argentina, academics like Martín Bohmer recognized the value of pro bono work, created a space to reflect on its implementation in the country, made the first contacts with the United States’ legal mandarins who knew about the issue, and contributed to the management of the Commission.109 In Chile and Colombia, academics like Verónica Undurraga110 and Daniel Bonilla,111 respectively, contributed to establishing and managing of pro bono foundations, creating channels of communication between the organizations and legal academia, and championing the formal study of the subject in universities.

In the United States, the exporting subjects are the Cyrus Vance Center for International Justice and the law firms that are a part of it.112 The Vance Center is a social organization that aims to promote pro bono work in the United States and internationally.113 Currently, thirty firms in New York are part of the Vance Center Committee, the governing body of the organization.114 All of these are elite law firms, some of which are the largest and most influential law offices in the

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108. See Informe-Argentina, supra note 7, at 156-66; Informe-Chile, supra note 7, at 298-304; Informe-Colombia, supra note 7, at 254-57.
109. Informe-Argentina, supra note 7, at 146 (providing the transcript of an interview of a Partner and Co-founder of the Commission on July 2, 2014).
110. She is part of the Board of Directors of Fundacion Pro Bono Chile. See Directorio, supra note 91.
111. See FUNDACIÓN PRO BONO COLOM., INFORME DE GESTIÓN (2014), http://probono.org.co/wp-content/uploads/2015/03/Informe-de-Gestión%233n-2014-PDF.pdf (stating that Daniel Bonilla is an honorary member of the Board of Fundación Pro Bono Colombia and that he designed and promoted the research project that is analyzed in this article).
112. For the history of the Vance Center engagement with Latin America, see Pro Bono Network of the Americas, supra note 3.
world. Firms likeDebevoise & Plimpton, Sullivan & Cromwell, and Davis Polk & Wardell are part of this organization. These firms have also been particularly active agents in the exchange of pro bono knowledge with Latin America. Lawyers from these firms, along with Vance Center employees, promoted the drafting of the Pro Bono Declaration of the Americas, participated in seminars on pro bono in Latin America, managed the shipment, use, and application of its publications, and have maintained a constant communication with the Latin American pro bono organizations.

The subjects who promote the exchange of pro bono legal knowledge between Argentina, Chile, Colombia, and the United States are the highest legal mandarins. All are lawyers who are at the peak of their legal communities, and solidly positioned in the legal market. While the conceptual apparatus that supports pro bono legal work does not exclude independent lawyers, it has mainly been developed, disseminated, and implemented by legal elites organized in law firms with high economic and social capital. The State and potential pro bono

119. Four of the most important events that the Vance Center organized and that are connected to the drafting of the Pro Bono Declaration of the Americas are the Conferences on Pro Bono in Buenos Aires (2001), Santiago (2002), Sao Paulo (2003) and the Strategic Summit of the Americas in New York (2005). See La Declaración de Trabajo Pro Bono para el Continente Americano una Iniciativa a Hemisférica que Promueve Acceso a la Justicia, supra note 118. For some of the most recent events, see Events, CYRUS R. VANCE CTR. FOR INT'L JUST., https://www.vancecenter.org/events/ (last visited Nov. 13, 2019).
121. See Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-305, 335-57; Informe-Colombia, supra note 7, at 230-41; Martin Zapio Guerrero recibió el premio al Abogado Pro Bono del Año, supra note 104; Paula Samper Salazar, supra note 104; Sobre nuestro trabajo Pro Bono, supra note 104.
clients have also been outside of this. The States of Argentina, Chile, and Colombia have not had any presence in the process. No social organizations representing the interests of the population with few socioeconomic resources in these countries have participated in its development or establishment. The serfs of law of these three countries receive the benefits of pro bono work. However, they have not been part of the processes that have allowed for its importation and implementation.

The pro bono legal knowledge that has been imported and exported is a set of practices collected in a literature formed by a set of primers and documents of diffusion of what we could call pro bono policies. The knowledge that is exchanged has been acquired by elite United States firms, particularly those based in New York, and collected in a series of documents published by the Vance Center. These are not academic publications or texts that profoundly examine pro bono work. Their aim is to describe and promote the standard pro bono practices of the large New York firms. These texts cover the basic concept of pro bono work, the internal structures that the firms require to implement it, the virtuous practices that have to be learned, and the negative experiences that have to be avoided.

Pro bono legal knowledge has also arrived in Latin America through formal and informal personal exchanges. The Latin American legal mandarins, who have led the process of transplanting pro bono work, have visited both the Vance Center (or its predecessor, the City

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123. See, for example, what is said in the Guide, drafted by Vance Center and a law firm from New York, and widely disseminated and utilized in Colombia at GUÍA PARA LA IMPLEMENTACIÓN DE PROGRAMAS PRO BONO EN LAS FIRMAS DE ABOGADOS DE LATINOAMÉRICA, supra note 122, at 2.

124. See id.

125. See, for example, the content of the Manual in id. at 3.
Bar Justice Center) and the firms that form it numerous times. The lawyers who led the transplant process in Chile did so before creating the pro bono foundation. Before starting the process in Santiago, they wanted to learn from the pro bono experiences of the large US law firms. Participating in a case before the Inter-American System of Human Rights allowed some of the leading Latin American pro bono lawyers to engage with United States pro bono work.

The Argentinian lawyers interested in pro bono invited the director of New York Lawyers for the Public Interest, Joan Vermeulen, to Buenos Aires at the end of the 1990s to meet with the law firms that might be interested in working on pro bono issues. Shortly before this visit, Vermeulen became the founding and executive director of the Vance Center (she held this last position for ten years). After its creation, the Commission and its directors met with the staff of the Vance Center on multiple occasions to discuss the ways they could promote and establish pro bono work in Argentina. The Colombian lawyers who led this process from the beginning have met in New York and Bogotá on multiple occasions with the staff of the Vance Center or affiliated firms. Lawyers from American firms linked to the Vance Center have participated in seminars and private meetings on pro bono work organized by the Vance Center in association with three Latin American pro bono organizations. These events have taken place in New York, Santiago, Bogotá, and Buenos Aires.

126. See Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-305, 335-57; Informe-Colombia, supra note 7, at 230-41.
127. Informe-Argentina, supra note 7, at 144-48.
128. See Informe-Argentina, supra note 7, at 144-48; La Declaración de Trabajo Pro Bono para el Continente Americano Una Iniciativa a Hemisférica que Promueve Acceso a La Justicia, supra note 118.
The enormous specialized literature that exists in the United States with respect to pro bono work has not circulated among the organizations that promote it in Argentina, Chile, and Colombia, or the firms that form them. This literature is not mentioned by the lawyers involved in pro bono, does not appear cited in the publications of the organizations, and is not discussed by its members. Nor is this literature widely known in Latin American legal academia. Courses on professional ethics tend to move between two extremes: a formalist examination of the codes of professional ethics, and an analysis of moral theory, for example, deontologism or utilitarianism. The theoretical and empirical study of the social responsibilities of lawyers in democracies in consolidation, such as the Latin American democracies, is in the margins of the legal discourse of the region.

In Latin America, the literature on this issue, in general, and on pro bono work in particular, is scarce. To date, there is not a single book dedicated to examining pro bono work from an academic point of view or entering into dialogue with the literature produced in other countries. There is not even a book that gathers the translations of classic articles on pro bono work produced in other regions of the world. The organizations that promote pro bono work in Argentina, Chile, and Colombia, have produced some documents promoting pro bono or gathering quantitative information about the work that their firms do. Nevertheless, the organizations do not have standardized methods to collect, systematize, and analyze this information. Consequently, the data they offer are not always reliable and precise; the organizations

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131. See generally RODOLFO LUIS VIGO, ÉTICA DEL ABOGADO: CONDUCTA PROCESAL INDEBIDA (2d ed. 1997).

132. See Böhmer, supra note 9 (exploring the efforts made by lawyers and social organizations to institutionalize pro bono work in Latin America).


134. See Informe-Argentina, supra note 7, at 158-59; Informe-Chile, supra note 7, at 285-88; Informe-Colombia, supra note 7, at 252-54, 277-81.
and their firms are not certain of the dynamics and characteristics of their pro bono work.\textsuperscript{135}

The transplant of pro bono legal knowledge is evidenced in four fundamental aspects of the pro bono discourse and practices in Argentina, Chile, and Colombia. First, the concept of pro bono work in Colombia, Chile, and Argentina is the same one promoted by the Vance Center and endorsed by the firms that form it.\textsuperscript{136} Our field work shows an absolute homogenization of the legal consciousness in these countries. Several documents, published by the foundational Latin American organizations, state that pro bono work is a set of free legal services that lawyers voluntarily provide to people with few socioeconomic resources, or to benefit the public interest; these documents include the \textit{PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm}\textsuperscript{137} and \textit{Statement of Pro Bono Principles},\textsuperscript{138} by the Vance Center; the Pro Bono Declaration of the Americas,\textsuperscript{139} \textit{Ways Offices Can Increase Their Pro Bono Contribution},\textsuperscript{140} and the \textit{Guide For The Implementation Of Pro Bono Programs In The Law Firms Of Latin America}.\textsuperscript{141} No interview, of the 183 conducted, found the concept of pro bono work to be outside of these parameters. Lawyers may refine some of its elements; for example, pro bono lawyers could require their clients to pay for the costs of legal or

\begin{itemize}
  \item \textsuperscript{135} See Informe-Argentina, supra note 7, at 158-59; Informe-Chile, supra note 7, at 285-88; Informe-Colombia, supra note 7, at 252-54, 277-81.
  \item \textsuperscript{136} Informe-Argentina, supra note 7, at 148-51; Informe-Chile, supra note 7, at 305-12; Informe-Colombia, supra note 7, at 216-30.
  \item \textsuperscript{139} Declaración Pro Bono para las Américas, supra note 3; Pro Bono Declaration for the Americas, supra note 3.
  \item \textsuperscript{140} Ronald J. Tabak, Formas en Que Los Estudios Jurídicos Pueden Actuar para incrementar su Representación del Trabajo Pro Bono, http://www.probono.cl/documentos/documentos/Formas%20en%20que%20los%20estudios%20jur%20C3%A9dicos%20pueden%20incrementar%20su%20trabajo%20pro%20bono%20%28Ronald%20Tabak%209.pdf (last visited Nov 10, 2019).
  \item \textsuperscript{141} See La Declaración de Trabajo Pro Bono para el Continente Americano una Iniciativa a Hemisférica que Promueve Acceso a la Justicia, supra note 118; GUÍA PARA LA IMPLEMENTACIÓN DE PROGRAMAS PRO BONO EN LAS FIRMAS DE ABOGADOS DE LATINOAMÉRICA, supra note 122 (detailing the procedures to establish pro bono practices in Latin America). Also see the manual that complements the guide, FREQUENTLY ASKED QUESTIONS: A SUPPLEMENT TO THE PBDA IMPLEMENTATION HANDBOOK: A GUIDE TO ESTABLISHING A PRO BONO PROGRAM AT YOUR LAW FIRM, supra note 122 (providing further detail on the procedures to establish pro bono practices in law firms).
\end{itemize}
administrative proceedings, or argue that activities that law firms do, like philanthropy, should also be included in the concept of pro bono work. Nevertheless, these details were the exception and did not change the standard concept of pro bono work promoted by the Vance Center and disseminated by the Latin American pro bono organizations.

Second, the transplant of pro bono legal knowledge is evidenced in the internal structures that allow for its development within the firms. Both the Latin American and New York law firms have a hierarchical pro bono structure that revolves around the following figures: the committee, the partner, and the coordinator. Pro bono committees establish the pro bono policies of the firm. They generally include lawyers that occupy a high position in the firm’s hierarchy, such as partners and senior associates. The pro bono partner is in charge of leading the pro bono activities within the firm and managing the execution of pro bono policies. The pro bono coordinator, usually a junior lawyer beginning her career, is in charge of the daily administration of the firm’s pro bono program. In Latin American law firms, the coordinator is the first point of contact between the firm and the pro bono organization, and they are in charge of distributing the information about the pro bono cases available, and in some cases, following up on their development. This structure is promoted explicitly by the literature published and disseminated in Latin America by the Vance Center.

Third, each organization in Latin America mirrors the functions of the Vance Center. They are the institutions created by elite law firms to promote pro bono work in their communities. These three Latin American foundations and the Vance Center are also in charge of mediating between the supply and demand for free legal services. The Chilean, Colombian, and Argentinian organizations function as clearing

142. See Informe-Argentina, supra note 7, at 166-89; Informe-Chile, supra note 7, at 312-35; Informe-Colombia, supra note 7, at 222-30.
143. GUÍA PARA LA IMPLEMENTACIÓN DE PROGRAMAS PRO BONO EN LAS FIRMAS DE ABOGADOS DE LATINOAMÉRICA, supra note 122, at 4-7.
145. See Informe-Argentina, supra note 7, at 156-66; Informe-Chile, supra note 7, at 324-28; Informe-Colombia, supra note 7, at 245-67.
houses. Consequently, they are in charge of receiving potential pro bono cases, evaluating them, and accepting these cases to then distribute them among the affiliated firms if they are able. The Vance Center promotes the creation of these kinds of institutions nationally and internationally, works with affiliated law firms on pro bono cases for international clients, and puts international clients in contact with law firms so they can take pro bono cases.

Fourth, all the offices that participate in these three Latin American pro bono organizations signed the Pro Bono Declaration of the Americas. This Declaration was promoted by the Vance Center and drafted by a diverse group of nine lawyers from the Americas. The Declaration is a normative document that defines the concept of pro bono work, explains the reasons why lawyers should do this kind of work, and articulates a series of principles that should guide it. This international document reproduces the concept, bases, and principles of the pro bono discourse promoted by the Vance Center, and accepted and disseminated by the foundations in each country. The only concrete obligation that the signatories of the Declaration assume is twenty hours of pro bono work, per lawyer, per year. The three Latin American organizations aim to comply with this obligation. The lawyers who are committed to the management of the foundations, or to

146. Informe-Argentina, supra note 7, at 156-66; Informe-Chile, supra note 7, at 324-28; Informe-Colombia, supra note 7, at 245-67.
149. See Declaración Pro Bono para las Américas, supra note 3.
150. See Pro Bono Network of the Americas, supra note 3.
151. For example, the Pro Bono Foundation of Colombia states in its website, “All our work is inspired and is based in the following document, [the Declaration].” See Declaración del trabajo Pro bono para el Continente Americano, FUNDACION PRO BONO COLOMBIA, http://probono.org.co/quienes-somos/declaracion-del-trabajo-pro-bono-para-el-continente-american/ [https://web.archive.org/web/20140531071138/http://probono.org.co/quienes-somos/declaracion-del-trabajo-pro-bono-para-el-continente-american/] (last visited Nov. 20, 2019).
152. Pro Bono Declaration for the Americas, supra note 3.
153. See Informe-Argentina, supra note 7, at 170-75; Informe-Chile, supra note 7, at 339-42; Informe-Colombia, supra note 7, at 222-30.
the administration of the pro bono programs at their firms, also have this figure as a goal.

The Causes of the Transplant

The exchange of pro bono legal knowledge between the United States and Latin America is explained both by the functionalism implicit in the importing and exporting of elites, and by the geopolitics of legal knowledge. The transplant of pro bono work in Argentina, Chile, and Colombia puts in motion and illustrates the functionalist theory dominant in contemporary comparative law.154 Functionalists think that transplants are the primary engine of legal change in the world.155 This argument is explained by the fact that all political communities face similar problems, but the strategies they develop to solve these issues are not always analogous.156 The most efficient way a political community can solve a problem is to learn from the successful experiences that other polities have had with the same challenge.157 The importation and exportation of legal theories, practices, doctrines, or norms reduces the economic, political, and temporal costs that usually must be paid when seeking to create an original solution.158

Some of the most noted functionalists also argue that legal transplants are commonly managed by the political and economic elites of the countries involved.159 In this sense, the possible tensions between the culture of the issuing country and the importing country are irrelevant.160 The elites are not necessarily familiar with, interested in, or willing to prioritize "culture." They emphasize the technical character of the problem and its "universality."161 Elites import legal knowledge for many other reasons, ranging from their political legitimation,162 to the search for a merely symbolic efficacy of the law that allows them to elude the problem concerned without having to pay a cost to do so.

157. Id. at 844.
158. See id.
159. Watson, supra note 155, at 3.
161. Id.
162. See Monateri, supra note 156, at 840.
Transplants may or may not take root in the receptor country. However, the cultural differences between the receptor country and the issuing country do not explain the failures in the operation of the transferred legal product.

The leaders of pro bono organizations in Chile, Argentina, and Colombia all report that the initiatives were set in motion in a three-stage process. In the first stage, the leaders recognized the serious problems of access to justice, as well as the difficulties of consolidating rule of law, in their communities. In these three countries, the lawyers interviewed described socioeconomic inequalities, epistemological inequalities, and inequalities in the legal market, as explanations for the difficulties that people with few financial resources have in accessing a lawyer. The lawyers interviewed consider these inequalities as completely unjustified. There are no reasons that can support the radical differences that exist between the legal mandarins (and other social elites) and the serfs of law.

In the second stage, pro bono leaders accepted the principle that lawyers have an obligation to contribute to solving these problems. The reasons for this obligation are the same in the three countries: the principle of solidarity and the virtue of charity. Nevertheless, different countries emphasize different aspects of this obligation, which they also perceive as having a slightly different composition. In Chile, the religious argument was the only one commonly offered as creating the obligation to do pro bono work. Lawyers affiliated with the pro bono foundation continually referenced their religious convictions to ground the work that the organization does. They connected their religious beliefs with pro bono legal work, along with other types of “charitable” work that they commonly do, such as participating on the board of directors of social organizations, donating money to social projects, and performing volunteer work in community activities.

In Argentina, the most common argument among lawyers to explain the obligation to do pro bono work was the principle of solidarity. Lawyers interpret this argument as the general obligation to help those in society who have less. However, this obligation is also based on the educational benefits that lawyers obtained from the political community, particularly if they studied law at a public university. Those interviewed continually mentioned the University of

163. See Informe-Argentina, supra note 7, at 138-42, 152-56; Informe-Chile, supra note 7, at 298-312; Informe-Colombia, supra note 7, at 216-30.
164. Informe-Argentina, supra note 7, at 138-42, 152-56; Informe-Chile, supra note 7, at 298-312; Informe-Colombia, supra note 7, at 216-30.
165. See Informe-Chile, supra note 7, at 298-304.
166. See Informe-Argentina, supra note 7, at 152-56.
Buenos Aires, their alma mater, as the reason why they had to do pro bono work.167 In their reasoning, lawyers like them had to "pay society back" through pro bono work for having received a free, high-quality university education.

In Colombia, lawyers offered an unusually diverse array of arguments as to the source of the obligation to do pro bono work.168 The argument of solidarity was the most common, although the virtue of charity also appeared in the interviews. The principle of solidarity was generically linked to class and epistemological inequalities. Sometimes the lawyers referenced the high levels of poverty in the country, while other times they referred to the private university education they received. They also referred to the privileged socioeconomic position they occupy with their families, and the legal knowledge that lawyers control in a monopolistic manner.

In the third stage, pro bono leaders decided to explore the solutions that other legal communities had given to the problem. Everyone involved in the process concentrated their research on the United States.169 The Colombian and Chilean leaders concluded that the best available solution to the problem was the one given by the US lawyers associated with the Vance Center (or its predecessor or allied centers). The Argentinian lawyers who came from academia and participated in the creation of the pro bono process in their country thought that New York Lawyers for the Public Interest had useful experiences that they could learn from, and the lawyers from Argentinian firms could only be persuaded of the importance of pro bono work by a powerful external agent like this. The social capital of New York Lawyers for the Public Interest would provide leverage for mobilizing Argentine lawyers around pro bono work because it was created and supported by large New York firms. However, the Argentinian lawyers that belonged to law firms did not have this strategic view of New York Lawyers for the Public Interest or the Vance Center. The current staff of the Commission—and the firms that do pro bono work today—do not have this view either. These pro bono operators interpret the work of the Vance Center and the New York law firms, from a normative point of view, as the best experience available in the market of legal ideas.170

The Chilean, Colombian, and Argentinian legal mandarins all found a counterpart willing to export the pro bono legal knowledge and

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167. Id.
168. See Informe-Colombia, supra note 7, at 216-30.
169. See Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-305, 335-57; Informe-Colombia, supra note 7, at 230-41.
170. See Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-305, 335-57; Informe-Colombia, supra note 7, at 230-41.
to support its consolidation in the receptor countries—the Vance Center. One of the Center’s objectives is promoting pro bono work internationally.\textsuperscript{171} It creates discourse on pro bono work as a product ready for exportation. The Vance Center begins with an assumption that all political communities have varying deficiencies with respect to the realization of the right of access to justice.\textsuperscript{172} The Vance Center also assumes that the United States’ pro bono discourse and practices are of high quality and can be exported to solve problems of access to justice that trouble other political communities around the world.

Finally, the Vance Center assumes that lawyers have moral obligations to their political community.\textsuperscript{173} The Center met in New York with Chilean and Colombian lawyers who were seeking pro bono legal knowledge to import. The Vance Center also sent its representatives to Argentina, so they could meet with the promoters of the pro bono initiative in the country and with the highest mandarins, who could give pro bono work the boost it needed to get started. The Center has also maintained close contact with the three Latin American pro bono foundations.\textsuperscript{174} This contact has translated into the exchange of literature, the organization of events for the promotion of pro bono work among the firms, support in seeking financing, and seminars aimed to incentivize the participation of law schools in pro bono work.\textsuperscript{175}

\textsuperscript{171} Our Approach, supra note 113.

\textsuperscript{172} In the United States the unmet legal needs of citizens are also high. See Deborah L. Rhode, Access to Justice: An Agenda for Legal Education and Research, 62 J. LEGAL EDUC. 531, 534 (2013); Deborah L. Rhode, Access to Justice: Again, Still, 73 FORDHAM L. REV. 1013, 1015 (2004).


\textsuperscript{174} See Etiqueta: Cyrus Vance Center, supra note 130; Fundación Pro Bono conversa sobre el pro bono en América durante el Foro Pro Bono Europeo 2014, supra note 130; Fundación Pro Bono participó en el primer Congreso internacional sobre el Pro Bono y Acceso a la justicia en República Dominicana, supra note 130; Future of pro bono discussed in Chile, supra note 130; Informe-Argentina, supra note 7, at 144-48; Informe-Colombia, supra note 7, at 222-30, 241-44; Integrantes de la Red Pro Bono Internacional se reunieron en Chile en el marco de conmemoración de 14 años de trabajo, supra note 130; La Declaración de Trabajo Pro Bono para el Continente Americano Una Iniciativa a Hemisférica que Promueve Acceso a La Justicia, supra note 118; Red Pro Bono de las Américas realizó mesa de trabajo en Panamá sobre trabajo Pro Bono, supra note 130; Round Table Invitation, supra note 128.

\textsuperscript{175} See Etiqueta: Cyrus Vance Center, supra note 130; Fundación Pro Bono conversa sobre el pro bono en América durante el Foro Pro Bono Europeo 2014, supra note 130; Fundación Pro Bono participó en el primer Congreso internacional sobre el Pro Bono y Acceso a la justicia en República Dominicana, supra note 130; Future of pro bono discussed in Chile, supra note 130; Informe-Argentina, supra note 7, at 144-48; Informe-
Now, it is important to state that legal elites did not solely appeal to reasons of principle to justify the importation and exportation of pro bono knowledge to Argentina, Colombia, and Chile from the United States. The highest legal mandarins of both regions of America also appeal to strategic reasons to justify the transplant, and to contribute to the local consolidation of pro bono. Today, pro bono discourse is a prestigious transnational discourse among global legal elites. The firms that are not part of international pro bono networks, and that do not do pro bono work in their countries, are affected both in terms of their reputation, and in the probability of entering or expanding their presence in certain legal markets. The law firms that do not adopt the discourse as their own—even formally—will see their commitment to the ideals of the profession questioned and will probably find obstacles in achieving the highest positions in the formal or informal hierarchies of the discipline.

In the United States, publications that rank law firms consider pro bono work as a variable in determining a law firms' status. The United States’ legal community recognizes that these classifications have played an important role in the establishment of pro bono work in the country. Occupying a low position, or descending in these hierarchies, has a negative impact on a firm’s reputation and, in the long term, can negatively affect their position in the market. In Latin America, there are no rankings of law firms that take this variable into account. In fact, there are no publications that have systematically and continuously ranked Latin American law firms. Nevertheless, journals like *Latin Lawyer* (which is focused on the Latino legal market in the United States as well as in the Latin American and European legal markets) continually discuss pro bono work and law firms'
achievements on the matter. This kind of publication is attractive to the highest legal mandarins of Argentina, Chile, and Colombia, because it is a valuable source of professional recognition. Likewise, for the highest legal mandarins of these three countries to remain outside of the pro bono network would imply abstaining from one of the most select clubs of the profession; it would mean exclusion from a source of prestige and local professional recognition.

Today’s legal market also has global dimensions. The large firms of the world, particularly US firms, have affiliates or allies in multiple countries. Latin America is an attractive emerging market for the large firms of the United States. Promoting pro bono work in the region allows firms in the United States to have a local presence and to be in touch with the most prestigious firms of a country. For the Latin American lawyers, interacting with lawyers from some of the largest and most prominent law firms in the world is attractive. This is a source of professional recognition and opens a space for finding new legal business. When the New York lawyers visit Buenos Aires, Bogotá, or Santiago, the meetings on pro bono work become a relevant professional event. Many lawyers attend these pro bono gatherings; many partners do so as well. In contrast, at the routine meetings of pro bono organizations or national events for the promotion of this kind of work, fewer lawyers, and far fewer partners, participate.

Finally, importing and exporting pro bono knowledge, and putting it into practice in liberal democracies in the process of consolidation, counteracts the negative social image of lawyers. It is widely known

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183. See Bergoglio, supra note 63, at 18; Carole Silver et al., Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Glocal, 22 GEO. J. LEGAL ETHICS 1431, 1463 (2009).


185. See, e.g., Informe-Columbia, supra note 7, at 230-44.

that lawyers are perceived negatively in countries such as the United States, Colombia, Argentina, and Chile. Lawyers are seen as dishonest, and as individuals who promote and amplify social conflicts for their own benefit, and as subjects who serve the interests of the most powerful in the socioeconomic hierarchy.\textsuperscript{187} Doing pro bono work, importing it from a prestigious country like the United States, and exporting it towards democracies in the process of consolidation, allows firms to project a positive social image in their communities. Thus, pro bono work is a way for law firms to recognize and realize their social obligations. It allows them to spread the idea that they have a commitment to the weakest members of society.

The geopolitics of legal knowledge is the second reason for the transplant of pro bono knowledge from the United States to Latin America.\textsuperscript{188} This transplant, like the majority of transplants, travels in only one direction: North-South. Legal products migrate from the Global North, particularly the United States and Western Europe, towards the Global South, Latin America, Africa and the greater part of Asia.\textsuperscript{189} Colombia, Chile, and Argentina, like the rest of Latin America, have historically been classified as poor contexts for the production of legal knowledge.\textsuperscript{190} The United States, in contrast, has been classified as a rich environment for the creation of original legal products.\textsuperscript{191} The Argentinian, Chilean, and Colombian legal mandarins could have decided to create their own discourse and practices to provide free legal services to people with few resources in their countries. They could have opened spaces for discussion with universities, bar associations, and local social organizations. Instead, from the beginning of the process, they decided to look towards the United States from to explore the legal products that American lawyers created for the matter.

Efficiency explains this attitude, in part.\textsuperscript{192} It is much less costly to export existing products that have proven their value in legal practice,


\textsuperscript{191} See \textit{La economía política del conocimiento jurídico}, supra note 188, at 36.

\textsuperscript{192} See Monateri, \textit{supra} note 156, at 844.
rather than to create new legal material that runs the risk of failing, or that would have to go through a long period of development and adjustment in order to meet its objectives appropriately. The market of legal ideas has a global and multidirectional dimension. The best legal products can and should be created in any part of the world and travel towards any part of the globe. Nevertheless, the attitude of the importers and exporters of pro bono knowledge is also explained by the premises internalized by both Latin American lawyers and United States lawyers regarding the geopolitics of legal knowledge. The prestige that the United States enjoys makes United States lawyers and, in this case, Latin American lawyers, assume that United States legal products are valuable and exportable. The United States is assumed to be a well for production of original legal knowledge, its products are presumed to be of high quality, and its operators are interpreted as capable of using them efficiently and ethically. In contrast, Latin America is interpreted as a space of diffusion and reproduction of legal knowledge created in other latitudes, its legal products are assumed to be of low quality, and its operators inefficient and ethically naïve or questionable.

The Clients, the State, and Local Variations to the Transplant

The transplant of pro bono knowledge, as stated above, occurred between the highest legal mandarins. It is important to make explicit that neither the State nor the potential or actual pro bono clients have been part of the process of transferring this type of knowledge and putting it into practice. The absence of the State is understandable given the conceptual architecture that supports the pro bono discourse. The space of pro bono work is the private sphere, and two groups of citizens that are connected through a moral obligation that is acquired autonomously are thought as its active and passive subjects. From the beginning, the State is not part of this conceptual frame. Involving the State would mean questioning the premises of pro bono work. Making the State part of pro bono discourse and practices would also not necessarily help to consolidate it or make it more effective.

193. See La economía política del conocimiento jurídico, supra note 188, at 36-37.
194. Id. at 34-35.
196. See id. at 15-16.
197. See id. at 24.
It is understandable that pro bono clients are absent from the importation and realization of pro bono work in Argentina, Chile, and Colombia, given the conceptual architecture of pro bono. The legal mandarins control legal knowledge; they are the active subjects of the system and of pro bono knowledge. The serfs of law, in contrast, are unfamiliar with legal practices, theories, doctrines, and norms; they are passive subjects in the legal order and with the legal mandarins. The epistemological distance between the two is so wide that it is understandable that within the discourse the mandarins do not ask the serfs of law what pro bono should be, and how it should be put into operation. It is also unimaginable that the serfs of law would request a space to present their points of view on pro bono work. In Argentina, Chile, and Colombia, they have not been invited to do so. Nevertheless, there have been no reports that the clients, individually or collectively, have wanted to open a space within pro bono discourse and practices. The conceptual architecture of the institutionalized free legal services market makes this undesirable. It is not within the horizon of perspectives that both the legal mandarins and the serfs of law are immersed in.

Nevertheless, the absence of clients in pro bono discourse and practice is problematic. In the narrative, and in the legal consciousness of those who internalize pro bono discourse, clients are understood as mere passive receptors of a practice that has a sizeable impact on their finances, liberty, and individual and collective stability. Pro bono work therefore runs the risk of making the same mistakes made by the providers of free legal services that have historically been offered in the region. Pro bono work is a type of legal service that is not differentiated in its objectives from the services provided by legal clinics, social organizations, and public defender offices. These institutions have been questioned because they marginalize clients from the articulation of the problem, and from the means of solving it. The lawyer determines the concept and the means for providing the free legal services, and how the problem that the client faces is defined and solved.

199. See supra Part I, Section: The Legal Mandarins and the Serfs of Law.
200. See id.
Lawyers from the elite Chilean, Colombian, and Argentinian law firms may have difficulties establishing a dialogue, with either the clients themselves or the organizations that represent them, about the way pro bono discourse should be developed and implemented. Law firms do not have the time or the knowledge on participative processes to do so. Nevertheless, it is not clear why pro bono foundations could not advance this dialogue. Their mission is precisely to promote and establish free legal services. It would seem that to reach these objectives, it would be critical to establish channels of communication with the people the pro bono foundations' work is directed to. Although it would be difficult to demand law firms to create a process to construct pro bono discourse in a participative manner, they could be demanded to create a more horizontal relationship with their clients, for example, by allowing clients to have a more active role in the definition and solution of their cases.

However, it is useful to indicate that the transplant of pro bono knowledge still has not undergone variations or interpretations that distinguish it from the original US product. The Chilean, Argentinian, and Colombian pro bono discourse and practices still precisely reflect the United States' model. The standard pro bono concepts, structures, and practices have not been adjusted to make them suitable for local contexts. The only practice that departs from the conceptual architecture of pro bono work—and how it is put into practice in the United States—is the Chilean Pro Bono Foundation's practice of making ties with a significant number of independent lawyers—250 individuals as of 2014.204

This practice sensibly adjusts the US practice to account for differences in the legal markets—the Chilean legal market in particular, and the Latin American legal market in general—are still dominated by lawyers who either work independently, in association with a small group of colleagues, or as employees of the State.205 These associations, however, are not constituted as legal enterprises like the law firms. Lawyers do not create an independent legal entity, but they agree to share a space and the basic expenses required for their professional activity. This practice of the Chilean foundation demonstrates the way the transplant can be adapted to the local context and how these adaptations can transform part of the conceptual architecture that supports pro bono work.

204. Historia, supra note 90.
The discourse on the matter could then cease to revolve solely around elite firms. This would allow a greater number of lawyers to be included and would question the idea that only the large law firms can provide free legal services in a permanent and formalized manner. Nevertheless, this change is only just beginning. Independent lawyers are at the margins of the pro bono work that is done in Chile, and at the Pro Bono Foundation of Chile, independent lawyers are not part of the administrative bodies that guide the organization’s policies and direct it. The transplant’s lack of stability can be explained by the relatively short time it has been in operation, and because it still has not managed to take root and consolidate in the importing legal communities.

The Future and Solidity of the Transplant

The pro bono organizations of Argentina, Colombia, and Chile have made valuable advancements in the difficult process of creating a pro bono culture in their legal communities. They have created three organizations that aim to promote and institutionalize pro bono work. The sustained existence of these three foundations is an important achievement. The Chilean and Argentine foundations have existed for nineteen years,\textsuperscript{206} while the Colombian foundation has existed for ten.\textsuperscript{207} The foundations have committed staffs that have invested significant amounts of time and energy in the promotion of pro bono work. The field work shows that the firms' evaluation of the work that these organizations do is very positive. In particular, the firms find that the foundations have been especially effective in their work as mediators of the supply and demand of free legal services. The organizations have managed to create solid standards for the reception, admission, and distribution of pro bono cases.

The three organizations generally receive their cases from two sources: an internet platform that any potential client can access, and agreements with social organizations that work with people with few socioeconomic resources.\textsuperscript{208} The three organizations evaluate potential pro bono cases using two criteria: the first economic and the second related to the public interest.\textsuperscript{209} In the first factor, the organizations make sure that the potential clients actually belong to a low

\textsuperscript{206} Historia, supra note 90; La Comisión Pro Bono, supra note 144.
\textsuperscript{208} See Informe-Argentina, supra note 7, at 160-63; Informe-Chile, supra note 7, at 324-28; Informe-Colombia, supra note 7, at 248-51.
\textsuperscript{209} Informe-Argentina, supra note 7, at 160-63; Informe-Chile, supra note 7, at 324-28; Informe-Colombia, supra note 7, at 248-51.
socioeconomic stratum, and therefore cannot hire a lawyer. In the second factor, organizations determine if the claim serves the public interest, even if the person requesting the service has the financial resources to pay for a lawyer.

These criteria are basically used to determine if a social organization has provided services to people with few financial resources or the public interest as its mission. Theoretically, these criteria may also be used to evaluate cases that aim to contribute to the solution of a structural social problem through strategic litigation or lobbying. Nevertheless, the firms affiliated with these three pro bono organizations have taken very few public interest cases. Further, those they have taken have not always arrived through the foundations. Once the cases are admitted by the organizations, they are sent to all affiliated firms weekly via email.

The three initiatives have also managed to make pro bono discourse known among the elite firms of Bogotá, Santiago, and Buenos Aires. All the lawyers interviewed knew of the existence of an area of professional practice named “pro bono.” Much more importantly, all of the lawyers interviewed had internalized the concept of pro bono work promoted by the foundations. The diffusion advanced by these three organizations has managed to homogenize the legal consciousness of the lawyers who work for their affiliated law firms. All lawyers indicate that pro bono work is the set of free legal services that lawyers voluntarily provide, at no charge to people with few financial resources, or in defense of the public interest. This is not a minor achievement. Before the creation of these three organizations, the words “pro bono” were not part of the vocabulary of the Chilean, Argentinian, and Colombian lawyers. This discourse has also started to permeate universities and some sectors of independent lawyers. The organizations have developed activities of dissemination with universities like University of Rosario and University of the Andes in Colombia; University of Palermo and University of San Andrés in Argentina; and the University of Chile.

210. Informe-Argentina, supra note 7, at 160-63; Informe-Chile, supra note 7, at 324-28; Informe-Colombia, supra note 7, at 248-51.
211. Informe-Argentina, supra note 7, at 160-63; Informe-Chile, supra note 7, at 324-28; Informe-Colombia, supra note 7, at 248-51.
212. See Informe-Argentina, supra note 7, at 167-70; Informe-Chile, supra note 7, at 316-24; Informe-Colombia, supra note 7, at 245-51.
213. See Informe-Argentina, supra note 7, at 148-51; Informe-Chile, supra note 7, at 305-12; Informe-Colombia, supra note 7, at 216-30.
214. See Informe-Argentina, supra note 7, at 167-70; Informe-Chile, supra note 7, at 316-24; Informe-Colombia, supra note 7, at 216-22.
215. For a description of the programs for promoting pro bono work and interns that the Colombian Pro Bono Foundation has with the universities of Rosario, Sabana, Javeriana
The diffusion of pro bono discourse has also managed to get a significant number of affiliated firms to agree to create structures for the administration of pro bono work. The majority of offices have incorporated some variant of the tripartite structure recommended by the foundations to administer pro bono programs, creating a pro bono committee, pro bono partner, and pro bono coordinator. The size and commitment of the firms have determined which of the firms have all three levels of the structure, and which have only the position of coordinator. The creation of these structures, without taking their efficiency into account, is a valuable step forward for the future consolidation of pro bono work in Argentina, Chile, and Colombia. The institutional frames that would allow for efficiently advancing pro bono work already exist in many of the firms formally committed to the discourse supporting it.

Finally, the firms affiliated with pro bono organizations have taken a low number of cases annually. For the clients served, the advice or representation of a competent lawyer, like the ones who work at the affiliated firms, is important. Without the support of the foundation and its firms, these people would probably not have access to a lawyer at all. Without the pro bono work of these professionals, individuals would not be able to defend their interests and rights. The interviews show that the feedback that the organizations and lawyers receive from their clients is positive. Nevertheless, it is important to note that none of these organizations have stable and efficient procedures to follow up on the cases, and to evaluate the quality and effectiveness of the services they provide. In this sense, it is not certain what effects the cases have and how the clients evaluate the service received.

However, in spite of these noteworthy advances, the transplant of pro bono legal knowledge still has not managed to take root in the Colombian, Chilean, and Argentinian legal communities. The

\[216. \text{See Informe-Argentina, supra note } 7, \text{ at } 166-89; \text{Informe-Chile, supra note } 7, \text{ at } 312-35; \text{Informe-Colombia, supra note } 7, \text{ at } 222-30.\]

\[217. \text{See Informe-Argentina, supra note } 7, \text{ at } 148-51; \text{Informe-Chile, supra note } 7, \text{ at } 305-12; \text{Informe-Colombia, supra note } 7, \text{ at } 216-30.\]

\[218. \text{See Informe-Argentina, supra note } 7, \text{ at } 160-63; \text{Informe-Chile, supra note } 7, \text{ at } 324-28, 336-39, 343-45; \text{Informe-Colombia, supra note } 7, \text{ at } 233-36; \text{see also Access to Justice: Again, Still, supra note } 172, \text{ at } 537.\]

\[219. \text{See Informe-Argentina, supra note } 7, \text{ at } 184-89, 193-98; \text{Informe-Chile, supra note } 7, \text{ at } 333-35, 350-53; \text{Informe-Colombia, supra note } 7, \text{ at } 241-44, 261-267; \text{see also Access to Justice: Again, Still, supra note } 172, \text{ at } 537.\]
conceptual architecture that supports pro bono discourse and practices links the legal mandarins to the serfs of law based on a moral obligation that the mandarins assume autonomously. This obligation aims to contribute to protecting the serfs' rights and achieving their full inclusion in the political community. This conceptual architecture also imagines that the social and epistemological inequalities that create the obligation can gradually be corrected in a liberal State. The time of the discourse is linear and it is imagined with an end. The discourse is committed to the idea of progress of the political community. The State, primordially, has the obligation to correct these inequalities. Nevertheless, according to the discourse, legal mandarins have the obligation to contribute to their elimination through pro bono legal work. With this objective in mind, the highest mandarins of Argentina, Chile, and Colombia imported pro bono legal knowledge from the United States. As a consequence, the consolidation of pro bono work must be measured not only in terms of its taking root in the local legal culture, but should also be measured in terms of the actual impact on the realization of the right of access to justice and, therefore, the elevation of levels of social justice in the political community.

When evaluating pro bono work in Chile, Argentina, and Colombia in light of these two criteria, one can conclude that it has not become firmly institutionalized in the law firms that imported it or promote it today, and that it has had a minor impact on the right of access to justice.220 The objectives pursued with its exportation and importation have not managed to materialize to a sufficient degree. The initiatives have not succeeded in creating a pro bono culture within the firms. The pro bono work that is done in Argentina, Chile, and Colombia still has not developed a set of clear, precise, and efficient policies to guide its implementation in law firms. The pro bono structures that firms have are also not efficient enough. In many of the firms, the formal structures do not advance the continuous and systematic tasks necessary to promote and administer law firms' pro bono work. Pro bono work remains on the margins of daily life for the law firms linked to the pro bono foundations, and still has not taken root in the business structures of the Chilean, Colombian, and Argentinian law firms.

Likewise, the number of pro bono cases taken by Chilean, Argentinian, and Colombian firms is notably low, and therefore, the cases' impact on the satisfaction of legal needs is minor. During the fifteen years of existence of the Chilean and Argentine foundations and

220. See Informe-Argentina, supra note 7, at 170-75; Informe-Chile, supra note 7, at 339-42, 350-57; Informe-Colombia, supra note 7, at 222-30, 241-45; GUÍA PARA LA IMPLEMENTACIÓN DE PROGRAMAS PRO BONO EN LAS FIRMAS DE ABOGADOS DE LATINOAMÉRICA, supra note 122, at 4-7.
the six years of existence of the Colombian one, the firms worked on an average of 344 cases annually.\textsuperscript{221} The lawyers that work for the law firms have also not managed to meet the objective of twenty hours per year, per lawyer, as recommended by the Pro Bono Declaration of the Americas.\textsuperscript{222} These numbers are particularly telling if we contrast them with the economic, political, and legal power that these firms gather.\textsuperscript{223} Due to their class status or for professional reasons, many of the lawyers at these firms have channels of communication with the financial and political leaders of their countries. Many of the best lawyers from Argentina, Colombia, and Chile work in these law firms, and bring an extraordinary amount of legal knowledge and experience with them.

The reasons that the transplantation of pro bono knowledge has not been effective are various and diverse in nature. The first, and most important, is a lack of commitment to pro bono work from the highest mandarins who control the business structures that provide this kind of legal service.\textsuperscript{224} This lack of commitment has particularly serious effects for the consolidation of pro bono work, given the hierarchical structure that law firms have. Associate and junior lawyers cannot do anything other than what their superiors instruct them to do. Lower-level attorneys enjoy notably little discretion to choose the tasks that they must advance within the office.

The empirical surveys showed that partners, on average, are formally committed to pro bono discourse. Nevertheless, this formal

\textsuperscript{221} This is the only period for which there is information about the number of cases taken in the three countries. Between 2009 and 2012 the firms affiliated with the Pro Bono Foundation of Chile took 558, 821, 570 and 573 cases, respectively. The Argentine firms affiliated with the Commission, 160, 200, 200, and 190, respectively. Between 2009 and 2012 the Colombian firms affiliated with the Pro Bono Foundation of Colombia took 128, 209 and 211 cases, respectively. See Informe-Argentina, \textit{supra} note 7, at 158-59; Informe-Chile, \textit{supra} note 7, at 315-16; Informe-Colombia, \textit{supra} note 7, at 245-47.

\textsuperscript{222} See Informe-Argentina, \textit{supra} note 7, at 158-59; Informe-Colombia, \textit{supra} note 7, at 245-47; Informe-Chile, \textit{supra} note 7, at 315-16. In 2013, the Chilean Pro Bono Foundation reported that the affiliated firms had reached this goal for the first time. However, this is probably an imprecise figure. The field work showed that firms in Chile, as in Colombia and Argentina, do not have rigorous standards for tracking and systematizing the pro bono work that they do. The Chilean Pro Bono Foundation, like the other two organizations, has not developed solid and stable procedures to track and systematize the information on the pro bono work that its law firms do.

\textsuperscript{223} The Colombian market is smaller than the Argentine and Chilean ones. Nevertheless, in 2018, for example, Colombian law firms billed over 2 billion pesos (598 million dollars). \textit{2018 un gran año para la industria legal}, DINERO (Sept. 7, 2019, 12:01 AM), https://www.dinero.com/empresas/articulo/facturacion-de-las-firmas-de-abogados/276449.

\textsuperscript{224} Informe-Argentina, \textit{supra} note 7, at 170-75, 184-89, 198-202; Informe-Chile, \textit{supra} note 7, at 339-42; Informe-Colombia, \textit{supra} note 7, at 277-81.
commitment does not materialize in decisions that allow for its effective implementation within law firms. In particular, partners have not yet made the decision that would have the greatest impact on the quantity and quality of pro bono work that is done in their firms: equating billable hours with pro bono hours. Most firms typically establish some goals for billable hours that all lawyers must meet on a monthly basis. The number of hours varies depending on the firm, but is usually in the range of 140 to 170 hours a month, or between 1,600 and 2,000 hours a year.\textsuperscript{225} This is a sizeable number for any individual. Complying with these goals require a high investment of time and energy.

Meeting these goals has significant economic and professional effects for lawyers. Satisfying these objectives determines promotions, bonuses, and sometimes, salaries. As a consequence, if assuming that pro bono is a type of work that should be done after completing the pro lucro hours established by the firms, it becomes improbable that pro bono work will be able to take root within law firms' structures. The material conditions that law firms establish make pro bono work very difficult to realize. In the best of cases, some Chilean, Argentinian, and Colombian firms use pro bono work as an auxiliary criterion in the annual evaluations that determine issues like bonuses or promotions.\textsuperscript{226}

These working conditions also create an unfair distribution of burdens and benefits. The lawyers are the ones who have the obligation to do pro bono work in their "free time," while their firms are the only ones who receive the global credit for the pro bono work that their lawyers do. The offices increase their levels of social recognition, enter in contact with the international networks of lawyers that promote pro bono work, and have the possibility of getting new clients with the promotion of the pro bono work that their lawyers do. The only strategies that the Argentinian, Chilean, and Colombian firms have developed to incentivize pro bono work are soft strategies like diplomas and honors, trips, and dinners.\textsuperscript{227} The lawyers who do pro bono work, in consequence, only get the possibility of satisfying the moral obligations and receiving a minor recognition for their work.

The lack of an effective commitment to pro bono work by the highest mandarins is not only manifested in formal issues like official policies and incentives, it is also expressed in informal attitudes and practices. On average, partners take very few pro bono cases and

\textsuperscript{225} Interview with Partner and Founder, Fundación Pro Bono Colombia (Aug. 26, 2015).

\textsuperscript{226} See Informe-Argentina, supra note 7, at 180-83; Informe-Chile, supra note 7, at 346-47; Informe-Colombia, supra note 7, at 261-67.

\textsuperscript{227} Informe-Argentina, supra note 7, at 180-83; Informe-Chile, supra note 7, at 346-47; Informe-Colombia, supra note 7, at 261-67.
participate little in internal or external activities related to the administration or promotion of pro bono work. The informal practices that partners assume on issues like pro bono work are fundamental for their consolidation. If the low- and mid-level mandarins see that the highest mandarins do not take pro bono work seriously, they will not do so either. For example, when it is clear that partners only participate in pro bono meetings or seminars when lawyers from New York firms linked to the Vance Center attend, the associates and junior lawyers interpret that this type of work within the firm is not valuable. If partners do not take pro bono cases regularly, then associates and junior lawyers will not feel the need to do so either. If partners indicate or argue that junior mandarins should accept the majority of pro bono cases, the lowest in the hierarchy, they are sending the message to their organizational structures that this type of work is not very relevant in the life of the law firm.

The fact that partners have not articulated formal incentives and promote informal disincentives with respect to pro bono work is reflected in the following facts. Empirical work shows that those who do more pro bono work within the firms are the junior lawyers and pro bono partners. The field work consistently showed that the former, on average, have a genuine interest in pro bono work. There are still some elements in their legal consciousness that link law to social justice. They are also starting their professional career and their levels of consumption are minor in comparison to the other lawyers from the firms. Whereas pro bono partners have a large degree of autonomy within the firms, financial stability, and an old or new interest in social justice.

In contrast, the lawyers that, on average, do less pro bono work in Chile, Argentina, and Colombia are the associate lawyers. They are typically in a particular moment of their personal and professional lives; they have greater financial burdens, usually due to family issues, and they are in a decisive moment for their rise within the hierarchy of the firm. Pro bono work is at the margins of the professional life of the mid-level mandarins in as much as it does not play any role in achieving their legitimate objectives of professional ascent and financial stability. The absence of "hard" incentives for doing pro bono work within firms means that associate lawyers are not interested in this kind of work. It also means that the junior lawyers are the perfect "victims" of pro bono work.

228. See, e.g., Informe-Colombia, supra note 7, at 230-44.
229. See Informe-Argentina, supra note 7, at 170-75, 184-89, 198-202; Informe-Chile, supra note 7, at 339-42; Informe-Colombia, supra note 7, at 254-57, 277-81.
230. Informe-Argentina, supra note 7, at 170-75, 184-89, 198-202; Informe-Chile, supra note 7, at 339-42; Informe-Colombia, supra note 7, at 254-57, 277-81.
work: they are willing to do it and they are at the bottom of the hierarchy, so cannot refuse it when it is assigned to them formally or informally. Similarly, this pattern makes it possible for pro bono partners to be the ones who put pro bono discourse into practice. For them, formal incentives are irrelevant given their professional and financial position, and the informal disincentives created by other partners do not affect them personally.

The highest mandarins’ lack of commitment to pro bono work is also connected to the gender inequalities that exist within their firms. Gender inequalities in law firms are reproduced in pro bono work. In countries like Chile, Colombia, and Argentina, few women occupy positions of power within law firms. In the case of pro bono work, this hierarchy is reproduced in a very visible manner: while the great majority of pro bono partners, the members of pro bono committees, and the board of directors of the foundations are men, the pro bono coordinators and the staffs of the foundations are women.

In Argentina and Chile, for example, 90 percent and 66.66 percent of the coordinators are women, respectively. The staffs of the Colombian Pro Bono Foundation and the Argentine Pro Bono Work Commission are formed only by women; in the case of Colombia, two female lawyers; and in Argentina, a female lawyer and a female communications associate. In Chile, eight of the ten members of the staff are women. This “feminization” of pro bono work is explained by the idea, structural in a patriarchal society, that women should ideally occupy the private sphere, are naturally inclined to do social work, and when it is inevitable that they work, they should occupy themselves.

233. Informe-Argentina, supra note 7, at 156-66; Informe-Chile, supra note 7, at 312-35; Informe-Colombia, supra note 7, at 222-30.
234. Informe-Argentina, supra note 7, at 156-66; Informe-Chile, supra note 7, at 312-35; Informe-Colombia, supra note 7, at 222-30.
235. Informe-Argentina, supra note 7, at 156-66.
with "soft" tasks like those related to solidarity or charity. The problem, of course, is not in the women who do pro bono work within and outside law firms in a committed and serious manner. Without the work that these women have done in the pro bono foundations, it is not likely that the advances mentioned above would have been achieved. The problem is in a structure that hierarchizes pro lucro work as "serious" and pro bono work as "weak," and that links the former with men and the latter with women.

The second reason for the fragility of the legal transplantation are the institutional and political weaknesses of the foundations that promote pro bono work in Argentina, Colombia, and Chile. The creation of these organizations, was an important step in furthering the process of the consolidation of pro bono work. The organizations' staffs are also serious and committed. However, the Colombian Pro Bono Foundation and the Argentine Pro Bono Work Commission, do not have the financial and human resources necessary to effectively advance their work. The annual budget of the former is approximately 100,000 dollars and that of the latter is approximately 32,000 dollars.

In Colombia, the money available covers the salaries of two young lawyers and a secretary. The lawyers have to do all kinds of tasks: from answering the phones, maintaining and administering the internet platform, coordinating interns, and organizing fundraising events, to organizing meetings with social organizations, universities, and firms, as well as writing and processing proposals to get international funding. The salary that they earn is also low, and there are no alternatives within the organization for them to grow professionally. Nevertheless, the organization has a headquarters (leased), and the law firms committed to the foundation regularly pay the annual fees they have.

In Argentina, the lawyer and the communications associate work part-time for the Commission, earn a low salary, have an almost nonexistent budget, and do not have their own office; the headquarters of the organization is in the Bar Association of the City of Buenos Aires, a private organization. The law firms pay their pro bono fees to the foundation regularly, though. In contrast, the Chilean Pro Bono Foundation, is different. In 2013, its annual budget was a little more than $340,000.00, it has a staff of eight people, it has its own headquarters on lease, and it has a reasonable expense budget.

238. Sánchez, supra note 232, at 461-64.
240. In 2013, the last year for which there is available data, the foundation received almost CLP 200'000.000, equivalent to $341,751.82. FUNDACIÓN PRO BONO CHILE.
Nevertheless, the three organizations have a profoundly vertical relationship with the firms that form and finance them. Their autonomy is very low and the political capital they have with respect to the firms is minimal. The staffs of the pro bono organizations, while appreciated, are typically perceived and treated as low-level employees at the service of the firms. In this sense, the capacity they have to autonomously decide which paths to take within the policies articulated by the firms, through the boards of directors, is quite reduced, and their capacity for negotiation with law firms is minimal. The staffs of the foundations are immersed in a situation they cannot easily escape: the firms consider these foundations to be their organizations, but also require results from them that would depend in part on their autonomy. Law firms demand significant results, and that their levels of efficacy be increased, but they do not contribute with the financial resources necessary for this to happen, or they do not assume the number of pro bono cases that would be necessary to have the impact they would like to have in the political community.

The third reason for the fragility of the legal transplant is the assistentialist perspective of the legal services they provide to people with few financial resources. The strategy assumed to confront the problems of access to justice by the pro bono foundations of Chile, Argentina, and Colombia is not notably different from the strategies developed and implemented at the end of the 1960s and beginning of the 1970s by governments, universities, and social organizations in these three countries. This model, which had a notable impact in Chile and Colombia, was also a transplant imported from the United States. Through its international development agency, and with the support of organizations like the Ford Foundation, the United States’ government exported institutions like legal clinics, and promoted creating and strengthening public defender’s offices, and legal social organizations, to further protect the right of access to justice.

The Latin American countries that imported these legal products were persuaded by the arguments offered by the Law and Development movement to justify them. This intellectual movement’s key argument was that there is a direct proportional relationship between

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243. Hall & Fretz, supra note 201, at 783-84.
244. Trubek & Galanter, supra note 203, at 1068.
245. JAMES A. GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA 53 (1980).
liberal law and economic development and social justice.\textsuperscript{246} It was argued that economic development in Latin America had stagnated, and its levels of social justice were not desirable, because its legal systems were formalist and exclusive.\textsuperscript{247} Consequently, the dominant legal consciousness in the region had to be transformed, along with the practices it created. For example, law schools needed to change their pedagogical methods in favor of the study of case law and the Socratic method common in the United States' legal academia.\textsuperscript{248} Likewise, their legal systems needed to be much more inclusive, and thus create institutions like legal clinics to allow people with few financial resources to be able to access justice.

The justification for the legal services that were developed and implemented during the 1970s in Latin America is different from that of the pro bono legal services of the twentieth century. Pro bono work does not appeal to developmentalist arguments as a justification. Nevertheless, the strategies that both models use to attack the lack of access to justice among people with few economic resources, are the same. The two models are based around free legal services that focus on individual cases, and do not involve clients' participation in the conceptualization, development articulation, or implementation of these services. It is true that the model of the 1970s emphasized litigation,\textsuperscript{249} while the model of the new century emphasizes advising.\textsuperscript{250} Nevertheless, the difference is not one of principle: it is motivated instead by practical issues. Lawyers from elite firms do not generally accept cases that involve litigation. They would have to invest too much time and energy, and the justice system is very slow. In a country like Chile, these are the kinds of cases that the independent lawyers affiliated with the pro bono foundation would take.

However, the kinds of cases that the two models usually accept are the same. Empirical work and specialized literature indicate that the pro bono cases are the same as the typical cases of the legal services based on the law and development movement.\textsuperscript{251} In the two models, both cases address minor criminal, civil, family, and labor issues that an individual, or a small group of individuals, is involved in. This form of conceiving and materializing free legal services was severely and

\begin{thebibliography}{99}
\bibitem{246} See Trubek & Galanter, \textit{supra} note 203, at 1071.
\bibitem{247} \textit{Id.} at 274-275.
\bibitem{248} Thome, \textit{supra} note 202, at 529.
\bibitem{249} \textit{Id.} at 528.
\bibitem{251} Informe-Argentina, \textit{supra} note 7, at 167-70; Informe-Chile, \textit{supra} note 7, at 316-24, 336-39; Informe-Colombia, \textit{supra} note 7, at 261-67.
\end{thebibliography}
repeatedly criticized in the 1980s. Some of the most well-known leaders of the law and development movement argued, repentantly, that it was unlikely that the lives of people with few financial resources would be positively affected through these legal actions. They argued, if the source of the problem was not attacked, individual problems would keep emerging and would do so indefinitely; if the clients' opinions of the services provided were not kept in mind, one would run the risk of developing paternalistic legal services that do not take the true interests of the people and communities involved into account.

The pro bono initiatives of Chile, Argentina, and Colombia have asserted the need to take public interest cases, those in which a structural social problem can be confronted through law. Nevertheless, the empirical work shows that the number of public interest projects that have actually been taken is very low. Lawyers from the three countries repeatedly mention the same cases to illustrate the collective interest work that their firms or organizations do. In Argentina, the most highlighted work revolves around the elimination of all barriers in public and private schools in Buenos Aires that obstruct children with disabilities to move freely. Additionally, Argentine lawyers tend to highlight their work surrounding the right that all citizens have to access the federal senate's employee census and the budget used to pay the salaries of these employees. In Colombia, the Islote Case is often referred to when demonstrating collective interest work, where the rights to health and a healthy environment of an Afrocolombian community in the Caribbean coast of Colombia were protected. Lastly, in Chile, The Last Temptation of Christ is typically used as an illustration of some of the firms' pro bono work. Even so, the interviews show that lawyers from the three countries want to take more difficult pro bono projects. In fact, they repeatedly question their foundations for not finding and distributing more public interest cases. However, this ambition enters into conflict with the common characteristics of these types of projects: given their complexity, lawyers must invest more time and energy than what they must employ in an individual pro bono case; given their polemic and high-profile character, they may create conflicts of interest with their pro lucro clients, or with the State.

252. See Hall & Fretz, supra note 201, at 787.
255. See Informe-Argentina, supra note 7, at 166-67, 170-75, 189; Informe-Chile, supra note 7, at 298-305, 335-57; Informe-Colombia, supra note 7, at 230-41.
Public interest cases usually have multiple legal and political dimensions, can only be resolved in the medium or long term, and are technically and administratively challenging for those who work on them. If the pro bono lawyers of Argentina, Chile, and Colombia have difficulties finding the time that would allow them to take a simple pro bono case, they would have much more difficulty finding the time necessary to work on a structural case. These projects are also usually morally and politically polarizing, and can therefore create a social debate that the firms do not want to be involved in. Likewise, these cases may easily conflict with the economic interests of the firms' regular clients, or may lead to questioning the relations that many of the elite law firms have with the governments of their countries.256

In Argentina, a significant part of the pro bono work that is done is presented as being in the public interest.257 However, the cases that are catalogued in this way, by the Commission and by its firms, are those in which corporate-type advising is done for social organizations, such as being incorporated, changing organizational rules and principles, or registering a brand or patent. The argument used to qualify this type of pro bono work as public interest is the supposed “multiplier effect” of the work that social organizations do. Nevertheless, neither the Commission nor the firms have criteria to determine which organizations actually create these broader virtuous cycles. In practice, this type of work is done because the needs of the social organizations can be satisfied with the corporate knowledge and practices common in law firms. Also, some of this work is done for the foundations created by pro lucro clients. These are the organizations through which the firms' regular clients materialize their corporate social responsibility. This type of work is undoubtedly valuable for social organizations. However, it could hardly be said that the law firms are contributing to solving a structural social problem with this work.

The fourth reason has to do with the characteristics of the legal market in the importing countries. In Argentina, Chile, and Colombia, there are no external incentives for the firms to commit to pro bono work.258 The empirical research shows that this kind of work is still not as relevant as it is in the United States, for recruiting new talent, keeping the talent that firms have already hired, or getting new

256. For an analysis on conflicts of interest in US firms, see Access to Justice in the New Millennium: Achieving the Promise of Pro Bono, supra note 44, at 10.
257. See Informe-Argentina, supra note 7, at 148-51.
258. See Informe-Argentina, supra note 7, at 183-84; Informe-Chile, supra note 7, at 347-50; Informe-Colombia, supra note 7, at 259-61.
clients.\textsuperscript{259} As long as pro bono work is marginal in their legal communities, recent graduates will not use it to determine where they want to work, and associate or junior lawyers will not use pro bono opportunities as a criterion to decide if they want to remain at a firm or switch to another. Potential national or foreign clients rarely ask about the pro bono work of firms to determine which firm they want to hire. Finally, no mass media monitors and evaluates the pro bono work that the firms do, and there are no rankings of Latin American firms that take pro bono work into account as one of their criteria.

These characteristics of the Latin American legal market have determined that firms do not use pro bono work as a marketing strategy.\textsuperscript{260} Most law firms include information about their pro bono work on their web sites or institutional brochures. However, it is not a tool that they continuously and systematically use to open new markets. Pro bono is still not considered to be an effective instrument for the materialization of their business' mission. However, this is not the only reason why firms do not steadily advertise their pro bono work. The firms also argue that they do not do so because lawyers should not benefit from fulfilling their moral obligations.\textsuperscript{261} In this manner, an ethical moral argument, possibly of direct or indirect religious origin, limits the use of pro bono work as a tool of promotion of the law firms in Chile, Argentina, and Colombia.

The fifth reason is the lack of a philanthropic culture in these three political communities.\textsuperscript{262} In Latin America, it is not common for individuals to donate their time or financial resources to charitable institutions or activities. Pro bono work therefore does not have a cultural context that can be adhered to, or that can serve as support for entering into lawyers' consciousness. Most Colombian, Chilean, and Argentinian jurists, like most of the citizens of these countries, do not have volunteer activities on their moral radar.

The sixth and last reason is the class and epistemological differences between the legal mandarins and serfs of law that do not allow for the fluid and stable communication that is necessary to bring

\textsuperscript{259} See Rethinking the Public in Lawyers' Public Service: Pro Bono, Strategic Philanthropy, and the Bottom Line, supra note 46, at 1446; Elissa Madeline Stoffels Ughetta, \textit{La responsabilidad social y el trabajo pro bono: el abogado como un agente de cambio en negocios ganar-ganar en el siglo XXI}, 5 \textit{DERECHO EN SOCIEDAD} 1, 9 (2013).

\textsuperscript{260} See Informe-Argentina, supra note 7, at 183-84; Informe-Chile, supra note 7, at 347-50; Informe-Colombia, supra note 7, at 259-61.

\textsuperscript{261} See Informe-Argentina, supra note 7, at 183-84; Informe-Chile, supra note 7, at 347-50; Informe-Colombia, supra note 7, at 259-61.

The empirical work shows clearly that it is difficult for lawyers from elite firms to initiate fruitful dialogues with their pro bono clients, and vice versa. Class markers are an obstacle to the creation of these channels of communication. Pro bono clients feel uncomfortable in the neighborhoods where the firms are located, as well as in their offices. Pro bono clients and lawyers also use different language. The criteria to determine what is relevant or the best paths to follow to resolve the conflict are not similar. As a consequence, it is difficult to plan the cases, implement these plans, and create the levels of confidence necessary for the cases to be successfully advanced.

CONCLUSIONS

The conceptual architecture of pro bono work creates a type of subject, time, and space that contributes to the configuration of the modern political and legal imagination. These conceptual categories determine the way lawyers and their clients are described and evaluated in contemporary liberal democracies. These categories contribute to the construction of the individual and collective identities of lawyers and non-lawyers, as well as the construction of the legal and political communities they are immersed in. Pro bono discourse and practices construct two interdependent subjects, legal mandarins and serfs of law, that are characterized by their class and epistemological inequalities. These two types of subjects are permanently connected by a moral obligation that requires the former to provide free legal services to the latter. These two subjects are thought to be located in the private sphere of a liberal society, and are committed to a finite, linear idea of time. The pro bono subjects have a vertical relationship—but one based on the principle of solidarity—that is realized in the urban space of the elite firms of Santiago, Bogotá, and Buenos Aires, and the social organizations that the firms created to support and materialize their pro bono policies. Consciously or unconsciously, these subjects are committed to the idea of progress. The liberal State and pro bono work can advance in the satisfaction of the right to access to justice. From the beginning, pro bono normative discourse imagines the end of its history.

This conceptual architecture has been materialized in a transnational discourse that was imported by Argentina, Chile, and Colombia and exported by the United States. Pro bono work is a legal transplant in the region. In spite of some valuable achievements, this legal product has still not taken root in the importing legal

263. See Informe-Argentina, supra note 7, at 184-89; Informe-Chile, supra note 7, at 350-53; Informe-Colombia, supra note 7, at 267.
communities. In Argentina, Chile, and Colombia, there is still not a culture of pro bono work; there are no solid structures and policies within the law firms that promote this kind of work; and the impact it has had on the right of access to justice is minor. Time will tell if this transplant manages to take root in the local legal cultures. Hopefully it will: pro bono work is one of the instruments through which lawyers realize their social obligations. It is a tool that may be useful in democracies in the process of consolidation, both to realize the rights of people with few financial resources and to achieve their full political inclusion.