

**THE SOCIAL RESPONSIBILITY OF LAWYERS –
INSTILLING A *PRO BONO* CULTURE**

INTERNATIONAL LAWYERS FOR AFRICA (ILFA)

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When lawyers are moved to do good works they are generally driven by some combination of a guilty conscience and a social conscience.

INTRODUCTION

At one end of the spectrum there are those who dedicate their professional lives directly to public interest work. Others may be motivated somewhat in the way that Mr Nobel was driven to use a fortune made in gunpowder to endow a peace prize. As one commentator put it, *pro bono* work is seen as "an antidote to the contradiction between commercial motivations and the practice of law as a profession".¹

Probably only a small minority of lawyers attending this conference can claim to be full time public interest lawyers so one may be tempted to think that it is the guilty conscience rather than the social one that is the key to stimulating the *pro bono* reflex on this occasion. Instead we are going to suggest that this apparent contradiction between commercial self-interest and altruism is a false dilemma. As a lawyer you can do well by doing good and, furthermore, just by pursuing your profession you are acting *pro bono publico*.

THE EITHER/OR FALLACY

In recent years the *pro bono* activities of major law firms have been increasingly seen as coming under the broader umbrella of "corporate social responsibility" CSR, as the acronym goes has been progressively in vogue in both the United States and Europe in particular since the turn of the millennium. The European Commission produced a green paper on the subject in 2001² and by now the majority of major commercial and governmental concerns have some form of CSR policy statement out there.

In the United States CSR had historically tended to develop along the lines of the philanthropic "Nobel" model i.e. it is fine to have a major conglomerate which combines the business of selling cigarettes with the business of selling life insurance, so long as the

¹ Harland Koops "Should major law firms have a social conscience" University of Western Sydney Law Review [2001] UWSL Rev 10

² 'Promoting a European framework for corporate social responsibility' issued by the European Commission's Directorate for Employment and Social Affairs

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corporation gives generously to charity and, preferably to one or both of the major political parties.

In Europe the focus has been on encouraging businesses to recognise and seek to further the interests of all so-called stakeholders. The international unit of the English law society published a paper in 2001³ which summarised the European Commission's definition of CSR as "the combination of economic, social, environmental and human rights interests for the good of a company, workers, shareholders and society; a way of managing change and social development with improved competitiveness"

As the last three words of this definition highlight, much emphasis has been placed on the notion that a responsible CSR policy is actually good for business because it enhances reputation, helps attract and retain employees and is increasingly shown by pollsters to be a significant element in motivating customers to choose to do business with an organisation. So when it comes to fostering a *pro bono* reflex amongst lawyers it can be helpful to remind ourselves that we can indeed do well by doing good.

INTERNATIONAL LAWYERS FOR AFRICA (ILFA)

From time to time, lawyers' professional and personal work quietly honours our profession. Daniel H. FitzGibbon, a lawyer from Indiana, was "loaned" to various developing countries throughout the world to assist them in forming their democratic governments and in instructing the business infrastructures in their countries to enable economic development. His view of the role of law in economic development has become more commonplace and was shared by the late Dr. Ibrahim Shihata, the departed and venerable Senior Vice President and General Counsel of the World Bank. According to Dr. Shihata, legal reform requires profound knowledge of the economic and social situation in the country involved and can only be useful if it is done by the country itself in response to its own felt needs.⁴ ILFA shares this view.

The idea of training African lawyers to assist their countries in the international dialogue on issues such as economic development inspired a number of lawyers in major London law firms. Together we took this idea and ran with it. Today, we have at least 15 London law firms involved in this initiative.

The 3rd of September 2007 saw the first intake of African lawyers through the ILFA initiative. ILFA recognises the need to adopt legal norms recognised internationally in order to succeed

³ Corporate Social Responsibility a view from the Law Society International Unit September 2002

⁴ Ibrahim F. I. Shihata, 1990

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in a world driven by global economic forces and competition for capital markets. As such ILFA's central objective is to equip African lawyers with the legal and commercial skills necessary for their nations to compete and excel.

In this pursuit, ILFA's goal is to act as a catalyst in providing high quality work experience and training to talented African lawyers at top London firms and with input from international lawyers from leading universities such as Oxford and Cambridge.

The moving spirit behind the ILFA initiative is not only based on the theme of enlightened self-interest, but also on two further thoughts which tend to demonstrate that the perceived wisdom that there is some contradiction between the practice of law for profit and *pro bono* work is more imagined than real.

The first of these thoughts is that "commercial" lawyers can actually do good by continuing to do what they are doing anyway as part of their core business, by sharing their skills more broadly. This thought is in turn a sub-set of a broader idea, namely, that all of us as lawyers are on one level actually automatically acting *pro bono publico* simply by pursuing our profession in whatever way we choose.

ILFA'S ROLE IN INSTILLING A *PRO BONO* CULTURE

How then do these two notions relate to the work of ILFA and our broader theme of instilling a *pro bono* culture amongst lawyers?

A review of the websites of major law firms suggests that their *pro bono* activities can be broadly classified under three headings:-

- Charitable giving;
- Various forms of (not necessarily legal) work in local communities; and
- The provision of legal services for free.

Within this third category the paradigm example of harnessing core legal skills directly to *pro bono* endeavours is the practice of advocacy by professional advocates. In many cases, however, you may see banking lawyers trying to help individuals with social security problems in citizen's advice bureaus or commercial litigators helping with death row appeals to the Privy Council. In other words there tends to be some misalignment between the core skill and the *pro bono* endeavour rather than the direct harnessing of one to the other. It is this direct connection which ILFA seeks to achieve. How have we tried to do this?

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In our first year of operation in-country committees have been formed in 9 African states, typically comprising as a minimum a commercial lawyer, an academic and someone from government legal service or the judiciary. They have advertised the ILFA programme and interviewed aspiring lawyers to find the best. A dozen top firms in London have each agreed to host one successful candidate for three months working daily in their offices and with all candidates attending a central curriculum of lectures put on by leading academics and barristers as well as by the law firms themselves. The work they will be doing will be the everyday work of these firms and the training will either be training that the firms are putting on anyway or lectures from top specialists that these firms will want their own lawyers to benefit from.

The aim is to repeat this annually so that ten years hence there will be a diaspora of 200 or so alumni of this programme who one hopes will have made fruitful friends and connections between themselves and at their host firms. The future success of the project depends not only upon the continuing support of the firms and teachers giving their time but also on spreading the word in Africa that this valuable programme exists.

The output of the programme should be better skilled lawyers. Some may be tempted to ask, why is that a good thing? We have all heard the lawyers' jokes. Here we reach the further thought that just being a lawyer is *ipso facto, pro bono*. How so?

CONCLUSION

The idea that the law sustains the health of society was once perhaps most eloquently expressed in a speech of the English lawyer and parliamentarian John Pym some 365 years ago. As quoted in Harland Koops article cited above, Pym said:

"the law is the boundary, the measure, betwixt the king's prerogative and the people's liberty; whilst these move in their own orbs, they are a support and security to one another; the prerogative a cover and defence to the liberty of the people, and the people by their liberty are enabled to be a foundation to the prerogative; but if these bounds be so removed, that they enter into contestation and conflict, one of these mischiefs must ensue: if the prerogative of the king overwhelm the liberty of the people, it will be turned to tyranny; if the liberty undermine the prerogative; it will grow into anarchy....."

This is a thought that holds good not just in a liberal democracy but in any form of governance where the rule of law stands between the people and tyranny and between the citizens themselves and anarchy.

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On an international plane, and specifically in the context of the dialogue between the G8 countries and African states it is the law of nations that fulfils this role of striking a balance between liberty, anarchy, tyranny and order.

Trade, aid, the preservation of human rights and the elimination of corruption, all of the big issues in the international dialogue are delivered through the mechanisms of treaties and international institutions. If the law regulates the health of society and the international community then lawyers are the physicians, and we need good physicians. On this level just being a lawyer is *pro bono publico*.

But let us not throw out the baby of the guilty conscience within the bathwater of the false contradiction between law for profit and the public good. Doctors, unlike lawyers, are not paid to bend the rules of a good regimen or to preserve the health of their own patients to the detriment of others. So, go on, salve your guilty consciences and give generously of your time your money and your skills.