Cause lawyering in conflicted, authoritarian and transitional societies: politics, professionalism and gender


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I. Introduction

The classical western sociological view of lawyers rested on claims to ‘political neutrality and social detachment’ (Sommerlad and Hammerslev Vol 1, ch 1: 1). Building on the pioneering work of Abel and Lewis (1988a; 1988b; 1989b), this chapter employs an explicitly engaged sociology of lawyers to explore the intersection between politics, professionalism and gender for cause lawyers. Because the bulk of the cause lawyering scholarship during the last 30 years has been based on the experience of settled democracies, we begin with an overview of its key themes. Drawing on an international comparative research project, we then focus on the particular challenges for cause lawyers in conflicted, authoritarian and transitional contexts. In an attempt to redress the literature’s disproportionate focus on male cause lawyers and ‘masculine’ causes we consider the relationship between gender and cause lawyering in these contexts. Informed mainly by our interviews with female cause lawyers, we reflect on how gender affects professional identity as well as strategies, tactics and relations with social or political movements. We also look at the ways in which female cause lawyers manage the paradoxical opportunities and challenges presented by conflict and transition and engage with competing understandings of struggle (eg the relationship between the gender equality movement and the struggle against apartheid or the Israeli occupation). To conclude, we reflect on how cause lawyers strive, in exceptionally difficult circumstances, to reimagine, reshape and reconfigure the law.
II. Cause Lawyering in Settled Democracies

Research on lawyers and social change can be traced to the early twentieth century (Krishnan 2006; see also Hurst 1950; Vose 1959). The theoretical foundations of cause lawyering have included socio-legal literature on access to justice (Cappelletti 1979), professional identities (Larson 1977), the sociology of the professions (Riesman 1951, Johnson 1972) and strategic litigation (Vose 1958). Critical discussion of cause lawyering, however, was only beginning to bear scholarly fruit as the first ‘Lawyers in Society’ volumes were published in 1988/89 (eg O’Connor 1980; Katz 1982; Barkan 1984). Since then it has emerged as one of the richest streams in socio-legal studies. The prominent role of lawyers in the civil rights movement sparked sustained interest in cause lawyering in the US (McCann 1994; Sarat and Scheingold 1998; 2001; 2004; 2005; 2006; 2008; Krishnan 2006). That focus has since expanded to the UK (Meili 2013), France (Kawar 2011), India (Krishnan 2005), Thailand (Munger 2015), Latin America (Pérez-Perdomo 2008), and elsewhere. Scholarship has addressed the relationship between cause lawyers, social movements and civil society as well as other legal actors including judges, legal academics and university law clinics, and the identity and motivation of those who perform this type of legal work (Eagly 2012; Halliday et al 2007). As the literature has grown, definitions and typologies have been contested and revised.¹ Recognising the need to account for diverse historical, legal and cultural contexts, Sarat and Scheingold (1998: 5) argued for a cross-cultural and comparative perspective. Our research embraces that challenge, but before attempting to ‘make sense of difference’ (Nelken 2010) in our comparative data it is necessary to establish some definitional parameters.²

We regard cause lawyering as a form of ‘moral activism’ which involves ‘using legal skills to pursue ends and ideals that transcend client service’ (Sarat and Scheingold 2004: 3–4). In contrast to more conventional lawyering, cause lawyering ‘implies agency

¹ For a typology of cause lawyers in conflicted, authoritarian or transitional societies see McEvoy 2019.
² Recognising the contested nature of the concept, Sarat and Scheingold (1998: 5) posit that it is more appropriate to speak of ‘the parameters rather than the definition of cause lawyering’.
and consciousness, political identification, social solidarity and goals’ (Hajjar 2005: 154). Rather than only deploying technical legal skills, it seeks to use law ‘as a vehicle through which to build a better society’ (McEvoy and Rebouche 2007: 305). This commitment to the promotion of a moral, social or economic cause reconstitutes cause lawyers as ‘essentially political actors – albeit ones whose work involves doing law’ (Boukalas 2013: 396; see also Sarat and Scheingold 2004: 15–17).

In contrast to other lawyers’ claims to be a neutral ‘hired gun’ (Spaulding 2003), cause lawyers typically ‘take sides’ (Sarat and Scheingold 2004: 9; see also Sterett 1998; Simon 1984) and identify with their client’s cause. Research by McConville et al (1994) has highlighted the disturbing degree to which clients in criminal cases are dependent on their lawyers. In the case of cause lawyering the balance of power less obviously favours the lawyer. Indeed, a central concern for cause lawyers is how politically motivated engagement squares with the idea of legal professionalism. The ethical challenges of a commitment to ‘non-client’ goals distinguish cause lawyers in both theory and practice (McEvoy 2011; 2019). They may accept work that is less well compensated and involves personal, physical, economic and social status risk (Menkel-Meadow 1998; Sfard 2009), particularly if clients (and their movements) were involved in armed struggle. While cause lawyering was originally viewed as primarily affiliated to left-wing causes, it now also embraces right-leaning causes such as advocacy against abortion and for gun ownership in the US, the rights of Israeli settlers, and even state agencies (Southworth 2008; Bob 2012; Dudai 2017; Dotan 2014).

A key challenge for cause lawyers is how to manage relationships not only with clients but also with the organisations or civil society groups to which they belong. It is unsurprising, therefore, that a significant theme in the literature is the relationship between cause lawyers and social movements (McCann 1994; Sarat and Scheingold 2004; 2006). Significant sub-themes include tensions between serving the interests of individual clients and those of the movement and the risk that lawyers may dominate such movements (diverting resources and energy from other potentially more transformative forms of social and political struggle). Other work (eg Tam 2010) has unpacked the complex web of factors shaping the professional and moral framework within which cause lawyers act and the range of approaches and structures they adopt, from reformist to radical sole practitioner
to grassroots collaborator. Because self-identification as a cause lawyer does not necessarily dissolve pre-existing commitments it is common to find ethnic, religious and political demarcations within their ranks. Cause lawyering is not necessarily a ‘label for life’. A particular event – such as the Grenfell Tower fire in London – may inspire conventional lawyers to adapt their tactics to suit that cause. Afterwards, cause lawyers may return to commercial or private practice.

National legal cultures may also have their own terminology for such lawyers. In Indonesia, lawyers who commit to political and social change are called aktivis or aktivis hokum (activist or legal activist) (Lindsey and Crouch 2013: 623). In South Africa, they are ‘struggle lawyers’ (from the anti-apartheid legacy), in Israel ‘ideological lawyers’. In many conflict or post-conflict sites, including Northern Ireland, the preferred term is human rights lawyer (McEvoy 2011). Although they may not identify as ‘cause lawyers’, the work of lawyers affiliated to UK Law Centres (who routinely provide their services free) and other organised pro bono institutions resonates strongly with our notion of a commitment to broader social and political causes (Byles and Morris 1977; Cummings 2004).

III. Cause Lawyering in Conflicted and Authoritarian Societies

Although most recent cause lawyering scholarship has focused on settled democracies, there is a growing literature on cause lawyering in conflicted, authoritarian and transitional societies (e.g. Bisharat 1989; Sarat and Scheingold 2001; Hajjar 2005; Halliday et al 2007; Luban 2012; McCann and Silverstein 1998; Hilbink 2004).


4 For example, Indonesian cause lawyers display many of the society’s wider ethnic, religious and political cleavages (Lindsey and Crouch 2013. South African cause lawyers include members of the Black Lawyers Association and the South African Women’s Lawyers Association.

5 At a public inquiry into this tragedy, the worst UK residential fire since World War II, many bereaved families have been represented by Michael Mansfield QC, one of the UK’s best-known human rights barristers. Other victims were represented by more conventional criminal defence, public law, housing and personal injury lawyers.
Tam 2013; Stern 2016), exploring themes such as legal strategies, relations with the state, conventional lawyers, and social movements (Sfard 2018). Our research has sought to develop that work by focusing on the relationship between cause lawyers and political movements, including those engaged in political violence (Bryson and McEvoy 2016; McEvoy 2019).

With Louise Mallinder, we conducted over 130 interviews in 2014/15 in South Africa, Israel/Palestine, Cambodia, Chile, and Tunisia, with 92 lawyers (mostly former cause lawyers), 20 legal academics, 10 judges, as well as human rights or NGO activists, politicians, officials, journalists, civil society actors and former political prisoners. The six jurisdictions were chosen to facilitate ‘structured, focused comparisons’ of theoretical themes (Patrick 2006). They had: (a) a history of violence, authoritarianism or political transition; (b) legal systems based on the principal ‘legal families’ (common, civil, and Islamic law, as well as Asian and African legal traditions); (c) a tradition of cause lawyering; and (d) in the case of the post-conflict and post-authoritarian sites, diverse transitional justice mechanisms (eg domestic trials, truth commissions, amnesty processes, recourse to international tribunals). An interview schedule mapped the broader theoretical themes, with adaptations for each site. Forty interviewees were female. A purposeful sampling methodology was employed to identify a diverse range of lawyers based on professional seniority, experience of politically contentious cases, and relations with a diverse spectrum of political and civil society organisations and perspectives (see O’Donovan-Polten 2001). These data were coded and analysed in light of our interdisciplinary literature review on cause lawyers, conflict and transitional justice.

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6 Funding was provided by the Economic and Social Research Council (ES/J009849/1). We acknowledge Louise’s friendship, help and support and thank all those who agreed to be interviewed. For further information see https://lawyersconflictandtransition.org.

7 Details on the female sub-sample are discussed below. We recognise the dangers of conflating ‘gender’ with ‘women’ and ‘leaving men as the unmarked, default category – the generic human against which others are compared and potentially deviate’ (Ni Aoláin et al 2018: xxxvi). We are also mindful of the ongoing debate in gender politics regarding use of the pronoun ‘female’ given its biological orientation. There is certainly widespread agreement that gender categories are much more complicated than a binary male/female dichotomy. Mindful of these differences and debates, we have opted to use ‘female’ and ‘woman’ interchangeably in this chapter since all the women we interviewed were female and the terms ‘female lawyers’ and ‘women lawyers’ were used by our interviewees.
While transitional justice scholars and activists are sometimes accused of exaggerating the ‘exceptional’ nature of the field (Posner and Vermeule 2004), the sites chosen were indisputably difficult for cause lawyers. Those that we interviewed all had encountered state violence or authoritarianism as well as deeply engrained suspicions from state authorities and mainstream legal professionals. Some had also experienced significant levels of non-state violence, including ‘armed struggle’ against the various regimes. Those challenging environments inevitably shaped the practice and self-image of cause lawyers as well as their relations with the legal system, other lawyers, and clients and their affiliated movements.

One prominent feature of the lives of cause lawyers in conflicted and authoritarian societies is the intensity of their professional and ethical challenges. There is ample research on the meaning of professionalism for professionals in general (eg Freidson 1994; Evetts 2003; Dent et al 2016) and lawyers in particular (Abel 1989; Hanlon 1998; Seron 2007). In some conflicted or authoritarian contexts (eg South Africa during apartheid) the law was a tool of repression, injustice and discrimination (eg Ellmann 1992; Abel 1995). In such circumstances, as one South African cause lawyer explained: ‘Your real allegiance should be to the rule of law, not to an unjust law’. Cause lawyers may also face harassment from hostile state actors; and conventional lawyers and the local bar could be indifferent or hostile (McEvoy and Rebouche 2007; Batesmith and Stevens 2019). Many cause lawyers had to manage complex relations with politically motivated clients and their affiliated movements. Cause lawyers in South Africa, Israel/Palestine and Chile had all represented clients who engaged in political violence for objectives with which the lawyers sympathised.

Lawyers affiliated with a political or military struggle deployed a wide spectrum of approaches and styles of engagement. Some were prepared to break the law to achieve a political goal, but few appeared willing to abandon their commitment to some version of

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8 Interview with female international human rights lawyer, Johannesburg, 16 August 2014.
9 See Kouwagam and Bedner Vol 1, ch 37; see also Lindsey and Crouch 2013.
the rule of law. Given the widespread distrust of their own bar associations, many cause lawyers we interviewed developed their own version of ‘struggle ethics’ to provide a roadmap to appropriate professional standards and advice on strategy and tactics (McEvoy 2019).

One difference between cause lawyers in conflicted and authoritarian contexts and those in settled democracies appeared to be an openness to tactics other than litigation. Our research suggests that relations between cause lawyers and social or political movements differ from those described in the cause lawyering and social movement literature (McCann 1994; Barclay et al 2011). As one of the authors has detailed elsewhere, some cause lawyers negotiated with their clients and the movements to which they were affiliated in order to transform trials into sites of political resistance against the regime – perhaps most famously in the Rivonia trial of Nelson Mandela and his co-accused (McEvoy 2019, see also Allo 2015).

The concern about legal dominance (Scheingold 1975; Handler 1978; Olson 1984; McCann 1986) appeared to be diluted in conflicted or authoritarian contexts (Bryson and McEvoy 2016). As a prominent South African cause lawyer noted:

> To be honest, it wasn’t a classical client/lawyer relationship; it was more a kind of partnership because of where we had come from and what our history was. We were seen as partners or comrades...it certainly wasn’t a case of X or Y struggle lawyer saying to Jay Naidoo or to Cyril Ramaphosa do this do that... these are very strong, highly intelligent, very committed people who’d been to jail... They’re not going to sort of sit back and listen to a lawyer wax lyrical. I think they would take advice, you’d discuss it, but it wasn’t a question of struggle lawyers giving advice in a sort of hierarchical or autocratic manner. They would have told us to piss off, you know.\(^\text{12}\)

Another important restraint on legal dominance was the fact that lawyers regularly questioned whether they were doing more harm than good. This was particularly true for lawyers operating in what they saw as hopelessly corrupt or oppressive regimes, where

\(^{10}\) See Gowder 2016 on the contested meaning of the term.

\(^{11}\) This problem is not confined to authoritarian regimes. For example, Mather and Levin, ch 10 above, note that because the Israeli Bar Association has no tradition of defending the rule of law or human rights, Israeli human rights lawyers must ally themselves to NGOs like as Adalah and ACRI (Association for Civil Rights in Israel).

\(^{12}\) Interview with male South African cause lawyer, Johannesburg, 14 August 2014.
there was little chance of legal victory.\textsuperscript{13} Cause lawyers often focus on test cases, class actions or other strategic legal activities as part of a broader social or political struggle. Cause lawyers in conflicted or authoritarian contexts were, of course, eager to secure legal victories where possible. But given the intense conflict in such sites, many cause lawyers were acutely conscious of the risks of draining resources from other more effective and creative political or mobilising strategies (Albiston 2011; Scheingold 1975; Cummings 2017). As one South African lawyer told us:

\begin{quote}
My view in the 80s was that in many respects we were dulling the militancy of the people involved in our struggle and therefore dulling the militancy of people.\textsuperscript{14}
\end{quote}

In a similar vein, many cause lawyers were wary of legitimating the regime by participating in fundamentally unfair legal processes. For example, in the Israeli military courts, which process the vast majority of Palestinian politically motivated offences, the conviction rate has been reported to be as high as 99.7 per cent (Yesh Din 2007). Consequently, much of the work of Israeli and Palestinian cause lawyers is focused on negotiations and plea-bargaining regarding sentence reduction rather than the broader legal and political aspects of the occupation (Ziv 2018). As the prominent Israeli lawyer, Michael Sfard, has written (2005; 2018), such tactics pose profound existential questions for progressive Israeli lawyers. Those concerns resonated strongly with Palestinian cause lawyers. One high-profile Palestinian lawyer told us:

\begin{quote}
I don’t want to beautify the Occupation. I want to end the Occupation. That is the big difference…The military court system has been around for a very long time and I consider that the lawyers are partners in the crime.\textsuperscript{15}
\end{quote}

The sheer volume of cases processed in such contexts only heightened anxiety about legitimation. For example, one lawyer, who worked primarily on Palestinian administrative detention cases, recalled that he had represented approximately 1,700 clients

\textsuperscript{13} For example in Venezuela litigation for human rights almost invariably failed before the Chavista revolution (Gómez and Pérez-Perdomo Vol 1, ch 22).

\textsuperscript{14} Interview with male politician and former cause lawyer, Cape Town, 11 August 2014.

\textsuperscript{15} Interview with male Palestinian cause lawyer, Ramallah, 19 May 2014.
In a single year.\textsuperscript{16} Fearing they had become part of the problem, some cause lawyers have boycotted legal proceedings (McEvoy and Bryson 2021).\textsuperscript{17}

In some sites we studied, the space for legal activism was narrowed not just by authoritarianism but also by widespread corruption. In Cambodia, for example, lawyers not only struggle with the legacy of the Khmer Rouge but also work within a contemporary legal and political system widely regarded as authoritarian, unfair and endemically corrupt (Morris 2016; Donovan 1993). A leading human rights lawyer in Cambodia told us:

I promise you, anybody that wants to be a human rights defender their soul will be crushed basically. I’ll tell you this seriously and I’m thinking of one specific individual right now, she is the most inspirational young person I have ever met in Cambodia and she is amazing and she wants to be a human rights lawyer and specifically work on women’s rights – no way! She did the Bar exam, she comes from the provinces, she was asked for the bribe, she couldn’t pay it. In the final round of the Bar exam the President said you are a remarkable individual and if I had my way I would hire you tomorrow – and he doesn’t give praise like that – and she still failed because she can’t pay the bribe.\textsuperscript{18}

Even after being admitted, lawyers believed they must bribe court officials before a party can lodge a case and then had little confidence in the independence of the judge or the fairness of the proceedings (Batesmith et al 2015). Finally, there was widespread evidence of intimidation and harassment of lawyers, particularly those who attempted to uphold human rights and otherwise challenge the regime.\textsuperscript{19}

There are serious repercussions for engaging in legal work challenging undemocratic regimes. What Hilbink (2004) defines as ‘proceduralist’ cause lawyering in the US context may be deemed political in situations where even legal opposition to state

\textsuperscript{16} ibid.

\textsuperscript{17} For example, to protest the annexation of East Jerusalem in June 1967, more than 50 West Bank lawyers boycotted Israeli military tribunals (Catterall et al 2016; see also Qafisheh Vol 1, ch 32).

\textsuperscript{18} Interview with female human rights lawyer, Phnom Penh, 14 March 2014.

\textsuperscript{19} In 2009, UN Special Rapporteur on the independence of judges and lawyers Leandro Despouy decried the threats and intimidation lawyers faced, remarking that recent moves against lawyers in Cambodia indicated ‘a worrying new trend which could have a chilling effect on the legal profession’: UN News, ‘UN Rights Expert Concerned at Restrictions of Lawyers’ Freedom in Cambodia’ 1 July 2009. Yash Ghai (2010), former UN Special Representative for human rights in Cambodia, repeated these concerns.
power is viewed as potentially subversive. Reflecting on his work during the Ben Ali regime, one Tunisian lawyer said:

All of your work as a defender of human rights made you a politician in the eyes of the regime – they classified you that way. As long as you were defending human rights whatever you said was taken as political.

This is consistent with the findings in a number of the national reports in Volume 1. In Vietnam, lawyers who resist cooperating with the state may be prosecuted under the criminal code, and there is limited protection for any lawyer who fails to denounce a client’s offence. Similarly, during Nigeria’s military regime, lawyers who provided conventional legal assistance to clients deemed disloyal were viewed as undermining the government and posing a threat to national security. In such contexts, even the defence of an ‘ordinary’ apolitical criminal accused may become ‘a crucial site for struggle between the legal profession and the authoritarian state’ (Levin and Mather 2019).

Although most of our respondents suggested that their profession conferred some protection from the worst excesses of an authoritarian regime, many described threats, intimidation, beatings, and imprisonment. In Myanmar throughout the 1990s and 2000s, lawyers who advocated for the rule of law and social reform risked imprisonment, physical harm and even death, as tragically underlined in January 2017 by the assassination of U Ko Ni (Batesmith and Stevens 2019). Even in situations where lives were not at risk, respondents reflected on the burden of work. A seasoned Israeli human rights defender noted:

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20 Jewish-Israeli lawyers who represent Palestinians from the West Bank – even in cases that are not explicitly political – are sometimes considered cause lawyers given the level of risk involved and the political motivation imputed to those who ‘cross lines’ to protect Palestinians. See, for example, Hajjar 1997, Jabareen 2010, Sfard 2009.

21 Interview with male Tunisian cause lawyer, Tunis, 17 June 2014.

22 See Nicholson and Ha Vol 1, ch 43.

23 U Ko Ni was a well-known Burmese lawyer who founded the Laurel Law Firm. A leading constitutional lawyer and human rights campaigner, he was a senior legal advisor to the National League for Democracy party and played a leading role in pushing for constitutional reform.
IV. Cause Lawyering in Transitional Societies

Social and political transitions are generally considered *sui generis* – extraordinary periods of ‘great flux’ typically involving ‘paradigm shifts in the conception of justice’ (Teitel 2005: 279). The mediating function of law is particularly important in such contexts (Dezalay and Garth 2011: 273). Given that cause lawyers function at the intersection between law and politics, they are often at the centre of political transition. It is clear from the national reports that cause lawyers may sometimes function as a powerful symbol at the inflection point. In Libya, the arrest of a human rights lawyer, Fathi Terbi, is widely regarded as a pivotal moment in the collapse of Gaddafi’s regime. Similarly, we found that the image of Tunisian lawyers in their robes protesting against the Ben Ali regime was an important symbolic factor in the fall of the government (El Gantri et al 2015). As the President of the Tunisian Bar Association told us:

> Everybody knows...that when the lawyers went in a march with their robes – that means that it is something very symbolic and significant and very important ... something really serious is taking place.  

In many transitions, cause lawyers are viewed more favourably than conventional lawyers by those opposed to the regime. For opponents of the Pinochet regime in Chile, Ben Ali dictatorship in Tunisia, apartheid regime in South Africa, Israeli government in the Occupied Territories, or authoritarian Hun Sen government in Cambodia, the image of

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24 Interview with Israeli human rights lawyer, Tel Aviv, 14 May 2014. Lawyers who confronted the Turkish military regime in the early 1980s also experienced widespread burnout.

25 Carlisle Vol 1, ch 31.

26 Interview with President of Tunisian Bar Association, Tunis, 20 June 2014.

27 Lenin’s derogatory reference to ‘confounded rascals’ and ‘intellectual scum’ has found echoes throughout the twentieth century, See Lenin’s letter to D Stasova and to the Other Comrades in Prison in Moscow (1905) available at www.marxists.org/archive/lenin/works/1905/jan/19.htm. As former US Supreme Court Justice Sandra Day O’Connor remarked (1998), in settled democracies ‘lawyers are compared frequently, and unfavorably, with skunks, snakes and sharks’.
lawyers challenging a repressive state was often a powerful symbol of ‘work that encourages pursuit of the right, the good or the just’ (Sarat and Scheingold 1998: 3). For example, South African cause lawyers today are widely venerated as ‘struggle heroes’ in political discourse, official commemorations and the legal community (Marschall 2006). In Russia, the production of a special lapel badge in 2015 to celebrate the contribution of pre-revolutionary advocates illustrates the veneration of cause lawyers in oppositional public discourse.

Another reason regime opponents respect cause lawyers during conflict, authoritarianism and transition is the latter’s strong association with claims-making through human rights work. This is particularly true of ‘second wave’ cause lawyers who, having played an active role in the struggle against authoritarianism, may then shift their attention during and after the transition to address issues of gender equality, sexual orientation, migrant status, the environment or animal cruelty. Although many commentators bemoan the decline in political commitment among Indian lawyers in recent years (especially given their prominent role during and after the independence struggle), legal activists have been very influential in socio-legal political movements, championing cases concerning sexual harassment, gay rights, the death penalty and pro bono services. Chilean cause lawyers made a similar transition from political dissidence to strategic litigation on key human rights and equality issues after the transition to democracy. Similarly, in Taiwan, an increasing number of lawyers showed commitment to socio-political rights-based litigation as the country democratised (Hsu Vol 1, ch 41). Gobe highlights a similar generational difference between Tunisian lawyers born in the 1950s, who engaged in ‘highly transgressive’ activism against Bourguiba’s regime and suffered the sharp end of the state (beatings, car tampering, wiretapping, imprisonment), and

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28 We noted similar attitudes towards cause-lawyers in Tunisia and among left-leaning political actors and activists in Chile and Israel.
29 See Moiseeva and Bocharov Vol 1, ch 16.
30 See Ballakrishnen Vol 1, ch 36.
31 This has resulted in a transformation of Chilean legal culture from ‘a positivist jurisprudence and deference to political power’ towards the ‘embrace [of] a new understanding of rights and adversarial litigation for political ends’. See Villalonga Vol 1, ch 20.
younger professionals born in the 1970s, less transgressive and more likely to be affiliated with a host of radical left ‘fringe groups’, who lobbied hard to convince the Tunisian Bar Association to oppose Ben Ali’s regime. After the collapse of the regime, some of these younger cause lawyers became involved in the past-facing work of transitional justice, including prosecutions of former Ben Ali regime affiliates and the work of the Truth and Dignity Commission, while others either focused on more generic forms of cause lawyering involving issues of gender, trade union rights and so forth or returned to conventional legal practice.32

Of course, not all cause lawyers transition from political dissidence to rights-based litigation. Recent work by NeJaime (2012) has called attention to the role of cause lawyers inside the state: reforming the state; shaping state personnel and priorities; harnessing state power to advance shared movement-state goals; and facilitating and mediating relationships between political movements and the state. We documented numerous examples of cause lawyers who had once resolutely opposed the old state but now occupied a leading position in the new political or legal establishment, including ministers of state and front-row politicians, senior civil servants and judges. Some interviewees felt they had little choice in the matter: their appointment was essentially a continuation of the struggle by other means. A former ANC activist, now a senior government lawyer in South Africa, explained:

I’m in this job purely by accident, I didn’t want to be in it, but…I was told that I would have to submit myself to the democratic will of the movement, and I did….

Although he conceived of himself as an activist he added:

Parliament is still a site of struggle…I wouldn’t have believed it a couple of years ago, but you can be an activist lawyer in government as well.33

32 Gobe (Vol 1, ch 33) argues that the Tunisian Bar Association reluctantly joined the mobilisation against Ben Ali but was later able to claim ‘revolutionary legitimacy’ by virtue of retrospective association with the young lawyers who had led the way.

33 Interview with male politician and former cause lawyer, Cape Town, 11 August 2014.
A South African legal academic who briefly served in what he described as ‘the establishment of the new state’ was less confident about the role of cause lawyers within the state:

We have a particular duty now not to make the assumption that the people we knew once in the struggle who have now gone up to government are going to remain true to the struggle, because their struggle was something else now, their struggle was to govern. And very quickly we had an understanding that in the first five or seven years of the government that the persons who were being appointed to positions had no qualifications, besides the struggle qualification… they were actually placed in very, very difficult positions that they were never ever prepared for.34

A human rights activist in Johannesburg was even more scathing about the new phenomenon of what she described as ‘a progressive who’s talking left and walking right’.35

Although cause lawyers were typically associated with left-leaning and liberal causes, especially civil rights activism,36 the conservative shift in American politics in the 1980s sparked an interesting change in the relationship between lawyers and right-wing movements (Diamond 1995; Hodgson 1996). Sarat and Scheingold (2006: 7) suggest that, ‘If the history of the last half of the twentieth century was a history of civil rights activism, its successes, and its failures, the history of the early part of the new century may be a story of counter-mobilization and its apparent triumph’. Much of the recent literature on right-wing cause lawyers focuses on the US, but their role is also interesting in the context of conflict and transition (see Hatcher 2005; Southworth 2008; Tagliarina 2012; see also Bob 2012; Dotan 2014; Dudai 2017). In Chile, for example, we noted a growing concern among cause lawyers about the appropriation of human rights discourse by conservative forces. A leading human rights lawyer stated:

In Chile, the human rights agenda was ‘owned’ by the progressive world up until the end of the dictatorship. Afterwards it became part of the government agenda, but it was never an issue taken up by the right. Never. However, nowadays, and especially since the opening up of the country three years ago, conservative forces have started to re-articulate a discourse based on human rights. And this is much more dangerous because if they said

34 Interview with male legal academic and human rights activist, Johannesburg, 15 August 2014.
36 Hilbink (2004) notes that discussion of right-wing lawyers is curiously absent from much of the early research on cause lawyers.
before: ‘Those human rights bodies are full of left-wing activists’ nowadays they say, ‘what is the margin for State assessment, if everything comes from the outside?’

This issue has also been prominent in debates in Israel. Dudai (2017: 869) has argued that the state and the right in Israeli politics have dedicated huge resources to demonising traditional Israeli human rights NGOs as the nation’s ‘most despised enemy…dangerous “traitors”’ who must be countered with legislation, detention and even violence. At the same time, rightist groups have ‘mimicked’ the tactics and language of human rights mobilisation to support the occupation, settler land annexation and occasional police heavy-handedness (ibid: 873). As another legal academic at Hebrew University told us:

The human rights discourse was used by the left in the 90s, in the early 2000s and it was identified with the left – now this is not the case anymore in Israel. In Israel now anything is human rights – left, right, whatever you want – everything is translated into [human rights] discourse, everything that potentially can translate into the language of human rights is translated into human rights.

The appeal to universal human rights standards in a global context is reflected in both transnational activism for human rights, social justice and the environment and what can be described as a robust ‘counter-movement’ in defence of conservative causes (Bob 2012). Merry (2006a: 42) observes that human rights lawyers and activists (whether left or right leaning) serve as ‘translators’, who ‘negotiate the middle in a field of power and opportunity’, mediating between international law, local needs, donor interests, state policies and grassroots activism. This interpretation captures the myriad roles cause lawyers play, particularly at times of conflict and transition.

Because women cause lawyers must negotiate all these challenges within a framework of gender differences and inequality, we turn next to their experiences.

37 Interview with female Chilean human rights lawyer, Santiago, 30 April 2014.
38 Interview with male legal academic, Jerusalem, 12 May 2014.
V. Gender and Cause Lawyering in Conflict and Transition

There are three reasons for highlighting the experience of female cause lawyers. First, much of the existing literature is distorted by what Bernard calls the ‘stag effect’ – a disproportionate focus on the activities of male cause lawyers and ‘masculine’ causes. Second, the experience and perspective of female cause lawyers can inform important debates on gender and the legal profession more generally. Third, because it draws on comparative research in extreme circumstances, this focus provides an opportunity to reflect on ‘the feminist theoretical project’ (Conaghan 2000) more broadly – for our purposes, the intersection between scholarship on transitional justice, human rights and socio-legal studies.

Asking whether women do law differently potentially reignites divisive debates about whether women are intrinsically different in their approach to professional relations and affiliations (Gilligan 1982; Broughton 1983; Menkel-Meadow 1985). It must also be noted that all comparative analysis runs the risk of ‘flattening out differences’ within and between case studies (Sommerlad and Hammerslev Vol 1, ch 1). Our respondents’ experiences were significantly shaped by local political, historical, cultural, and religious forces. For example, religion was much more significant in Tunisia and Chile than in South Africa; and while serious ongoing human rights abuses were documented in Israel and

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39 It may be helpful to disaggregate female interviewees by category across the jurisdictions. Cambodia: lawyers working at the Extraordinary Chambers in the Courts of Cambodia (ECCC) as well as those employed by NGOs. Chile: human rights lawyers and activists, a legal academic and a government lawyer. Israel: legal academics, human rights lawyers and activists, a politician and lawyer, and lawyers in private practice. Palestine: human rights lawyers and activists working in private practice and on behalf of NGOs. Tunisia: one of Ben Ali’s former lawyers and allies and two Europeans working for Tunisian based NGOs, as well as human rights lawyers working in private practice and for NGOs. South Africa: two celebrated female struggle lawyers, a legal academic and activist, and a former ANC activist. Those who primarily identified as legal academics were also (or had been) practising lawyers.

40 Bernard (1976: 90) proposed the ‘stag effect’ to explain ‘the complex of habits, customs, and practices which have the effect of excluding women from male meetings, contacts and communications networks’. But it has since been applied more broadly to analyse the subtle ways in which women are overlooked and excluded in a range of professional and academic contexts (Dziech and Weiner 1984: 149).
Palestine, they were not remotely comparable to Cambodia, where much of the legal profession was murdered under the Khmer Rouge regime.

Focusing on female lawyers also runs the risk of implying that all the women we interviewed experienced the law and oppression the same way or, more broadly, that there is a homogenous category of ‘woman’ (Hunter 1996: 136). We have certainly been influenced by the ‘intersectionality’ critique of such essentialising: how black women may experience oppressive systems of racism and sexism simultaneously (see eg Crenshaw 1989; 1991). We have also tried to take seriously Hunter’s plea to legal feminists to ‘engage with law in non-essentialist ways’ (1996: 136). We were greatly assisted in that task by our interviewees. Black and white female cause lawyers in South Africa and Israeli and Palestinian female cause lawyers and activists were all acutely aware of the intersections of gender, race and class in their professional lives. While remaining alive to the danger of blurring distinctions between jurisdictions and respondents, we believe there is value in highlighting gender and offering what Popper (1959: 90) called ‘inductive generalizations’ about the distinctive experience of female cause lawyers.

The majority of our female respondents identified as feminists and often raised issues of intersectionality themselves. One cause lawyer reflected that during the apartheid era ‘being a woman was extremely difficult – and being a black woman was even more difficult’. Reacting to the contemporary veneration of male ‘struggle lawyers’, another South African said her ambition was ‘to recreate a history of black struggle lawyers which

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41 As Spelman argues (1988: 14), even if we agree that all women are oppressed by sexism, we cannot conclude that all women experience sexism the same way. This danger has long been acknowledged by feminist scholars working in the field of transitional justice (see eg Alam 2014: 3).

42 For an authoritative overview, see Hancock (2016).

43 This type of comparative analysis is designed to facilitate cautious and reflexive theorising beyond the local experience of diverse sites (Cotterrell 2012: 60).

44 Interview with female former cause lawyer, Cape Town, 12 August 2014. See also Crenshaw 1989. A recent study of the demographics of the legal profession in South Africa reports that black women continue to experience racial as well as gender discrimination (Klaaren 2014). See also Grabham et al 2008; Bottomley et al 1991; Yeatman and Gunew 1993.
I don’t think has the same place in South African legal history… the real “untold story” is of female black lawyers who are now more or less forgotten about’.45

In other contexts, the gendered experiences of female cause lawyers transcended ethnicity, citizenship and geography. One feature of life in the Palestinian Occupied Territories is Israel’s complex system of permits, which restricts the movement of the Palestinians, normalising the extensive use of checkpoints, stop and search and other intrusive security measures (Berda 2017; Parizot 2018). This distinguishes Palestinians who live within Israel and are entitled to Israeli citizenship from those who live in the Occupied Territories. One Palestinian Israeli citizen observed:

I consider myself privileged in a number of ways. I am a lawyer, I don’t have to dress or conform to some of the stereotypical expectations of how a Palestinian woman should behave. Because of my skin tone, I could pass as an Israeli. I speak English and Hebrew. And because I don’t live in the Occupied Territories, if I am moving around or if I am at an airport, I am not usually subject to strip searching or the other indignities [that are inflicted on] my darker skin colleagues.46

The gendered experiences of female cause lawyers can also be differentiated by other variables. One Libyan Tunisian lawyer we interviewed in Tunis suggested that female lawyers involved in the revolution against the Ben Ali regime tended to be ‘an upper class elite’ of ‘intellectual lawyers’; some more religiously minded Tunisians (including female cause lawyers) viewed the elite emphasis on human rights as a ‘western concept’ in tension with Islamic values.47 Across all our sites, lawyers identified familiar variables that could affect the professional lives of female cause lawyers, including perceived political affiliations, family connections, class, and rural/urban origins.

A minority of our interviewees did not describe themselves as feminists, and some denied that gender influenced their experience of lawyering. A former legal advisor to the Israeli government stated:

45 Interview with female international human rights lawyer, South Africa, 16 August 2014.
46 Interview female cause lawyer Jerusalem, 18 May 2014. Another Palestinian lawyer confirmed this fear when she told us that she was so used to being routinely strip searched when she went through airports that she carefully selected underwear for international travel in anticipation of such treatment.
47 Interview with female human rights activist, Tunis, 19 June 2014.
I don’t believe anyone relates to me because I am a woman. I am a strong woman, I have my own mouth, I’m not afraid of anyone, I can give answers to anyone, I can talk with the Prime Minister and look him in the eye. No, I don’t think it’s because I am a woman – [if they don’t like what I say] it’s because of what I said – they don’t like this. This is the main thing.48

This resonates with the broader literature on gender and the legal profession. For example, Hunter (2003: 120) found that, in order to navigate the ‘habitus’ of hegemonic masculinity, some Australian female barristers assume the roles of ‘honorary men’.49

Invoking the notion that women have superior ‘erotic capital’ in professions ‘where looking good, charm and social skills are important’ (Hakim 2010: 510), a number of our lawyers felt their status as a woman was an advantage. A South African Indian cause lawyer suggested that before her activism became well known, her femininity was disarming:

Initially when I got to court, I must say I was given a lot of respect. I don’t know whether it was my sari, because I used to go into court in a sari, and a sari looks very feminine and, you know, it sort of disarms people.50

A legendary Israeli cause lawyer concurred:

I was very aware that I was taking advantage of my being a woman, of my looks, of my attitude. I was not so vulnerable in reality, of course, and I could afford myself a very large range of talking – chutzpah perhaps. And being known for what I am – I didn’t have to hide it, I could speak like very few Arab lawyers could afford themselves to.51

Several female cause lawyers referred to the double burden of working within and outside their household. In South Africa, a female activist described an extreme version of the ‘long hours’ gender barrier in conflict situations, with obvious consequences for family life:

Being a struggle lawyer is – it’s not nine to five, firstly. It can be at any time – and normally all the arrests were only ever happening from night onwards – so you couldn’t have a nine to five [life].52

48 Interview with female state lawyer, Jerusalem, 16 May 2014.
49 Collier (2013) has argued that the concept of ‘hegemonic masculinity’ in studies of gender and the legal profession fails to account for important new dynamics within the global legal profession, such as ‘transnational business masculinities’ and rapidly evolving notions of ‘fatherhood’.
50 Interview with female former struggle lawyer, Cape Town, 12 August 2014.
51 Interview with female cause lawyer, Jerusalem, 20 May 2014.
52 Interview with female former ANC and human rights activist, Johannesburg, 15 August 2014.
Many interviewees also recounted examples of blatant sexism. A Tunisian cause lawyer recalled that when she arrived in a remote area to represent strikers, the offending landowner asked: ‘What are you doing here? Is there no man in your life that can control you?’ He then telephoned her husband (also a cause lawyer) to suggest he take his wife in hand.53 A legal academic and human rights lawyer in Chile noted that, while the situation for female litigators had improved, the legal profession was still a ‘very masculine world’.

There are a lot of women who litigate but they never end up in firms. Their partners are always men but they do most of the work, women do most of the work…after 6pm all the important meetings take place and women go home.54

In addition to these familiar structural barriers, this interviewee highlighted the type of ‘microassaults, microinsults and microinvalidations’ that Sue et al (2007: 274–75) have identified in relation to racial microaggressions. What grated most was the subtle undermining in court: ‘It’s very small things we notice that show that treatment for women is different – you are treated differently. The court employees, for example, call us “mijita” or “my dear”’. These ‘everyday’ irritations are manifestations of deeply embedded structural inequities (Essed 1991). Moreover, they are often employed to deny or dilute women’s status as legal professionals, ensuring they remain ‘fringe-dwellers in the jurisprudential community’ (Thornton 1996: 3–4).

The consequences of handling high-profile political cases depended on the scale of violence and rupture in a society, but female cause lawyers who ‘stuck their necks out’ to represent politically motivated clients or otherwise challenge the prevailing regime paid a high price. A Tunisian lawyer recalled: ‘They would beat us sometimes… I was actually kicked by a policeman wearing those big heavy boots and my foot was swollen for a while’. 55 In Chile, while lawyers were undoubtedly less likely to be murdered or

53 Interview with female cause lawyer, Tunis, 16 June 2014. In Iran, judges treat female and male lawyers differently, instructing women to be quiet or fix their head-scarves (Banakar and Ziaee Vol 1, ch 29). Similar types of ‘courtroom sexism’ are reported in India and South Korea.

54 Interview with female legal academic and human rights lawyer, Santiago, 28 April 2014. This is confirmed by statistics. In 2014 women comprised 32 per cent of large law firm lawyers but only 6 per cent of partners: De la Maza et al 2016: 48–49 quoted in Villalonga Vol 1, ch 20.

55 Interview with female cause lawyer, Tunis, 20 June 2014.
disappeared than other left-wing activists (Collins 2017), indirect intimidation could be worse:

In my case they killed the little woman who worked in my house, who helped me with cleaning my house, so she’s one of the people officially recognised as a victim of human rights violations. They killed her to intimidate me.56

But despite this, political conflict and transition paradoxically offered women avenues for professional advancement (Bryson and McEvoy 2016; see also Turshen et al 2001: 7).57 A Palestinian lawyer who had worked through the exigencies of the first intifada recalled:

The conflict really helped to push people into new roles that helped them to kind of define their own rights in new ways. So when Palestinian women in the 80s, when a huge percentage of the men were working inside of Israel leaving the homes with the families by themselves the mom became a huge kind of ‘responsibility taker’… many of the men actually were imprisoned and what does that mean for the woman that has to stay home and become the breadwinner and take care of the family and do all the traditional [male] roles? … I think all of that kind spurred more of an understanding of what those rights could be or should be.58

Opportunities also opened for female cause lawyers when societies began to transition away from violence, which happened in all our sites except Israel and Palestine. Feminist scholars studying transitional justice have warned that such junctures often have the potential for both advancement and entrenchment (Ní Aoláin and Turner 2007: 273).59 For example, Ní Aoláin (2012: 3) has argued that, while transition can create new ‘opportunities, ideas and sites of intervention’, such novelty can hide ‘deep pitfalls of structural and entrenched gender discrimination’. Female activists in South Africa were very aware of this evanescent ‘window of opportunity’. A leading member of the women’s movement and legal academic recalled:

56 Interview with female international human rights lawyer, Santiago, 28 April 2014.
57 These include cause lawyers we interviewed, such as Leah Tsemel, Gaby Lasky, Carmen Hertz and Yasmin Sooka, all described as legendary by legal colleagues.
58 Interview with female international human rights lawyer, Jerusalem, 22 May 2014.
59 In South Africa, Albertyn (1994: 62–63) cautioned that constitutionalism and rights can introduce a dangerous sense of apathy: ‘One of the tasks for women in South Africa is to ensure that the interim Constitution, with its rights framework, is not used in a way which restricts rather than furthers the goal of gender equality… all of this needs to take place within a vision of social reconstruction that addresses the material bases of women’s inequality’.
The first five or ten years is a great window of opportunity in every way. I mean all the other African countries told us because they’d been down our road before… they were just saying, you know, ‘use that space because it all really closes down’ – and of course it does close down. Institutions slowed down, bureaucracies become embedded, that kind of idea that we’re going to change the state and it’s going to be open and participative and efficient disappears very quickly… women were one of the important kind of moral touchstones of delivery on democracy.

The women’s movement had to be particularly vigilant because of ‘the boys’ networks and the difficulties of penetrating those networks and the ways in which the negotiations were ‘run by male lawyers and male politicians and deals that were made outside the formal chamber…women’s ability to manoeuvre into that was quite difficult’.60

A Chilean human rights lawyer similarly reported that the transition from authoritarianism was marked by a struggle to get violations against women recognised as human rights abuses:

We are trying to get them to understand that the violence suffered by women was a violence that was different from that of men and that it was also a kind of torture – but they are still trying to convince them…there’s not much reception… it’s much more than sexism. It’s a lack of awareness of women’s issues and it’s also awareness that this is a male chauvinist country. The challenge is that everybody thinks they are doing the right thing and that human rights are respected here. They are not even aware.61

A legal academic and public interest lawyer who served on the Rettig Commission (Chile’s truth commission to create an official record of the crimes committed during the Pinochet regime, 1973–90) recalled his embarrassment that no woman was initially selected to serve with him. He emphasized, nevertheless, that the two women eventually appointed – a lawyer and a social worker – played a vital role because it was important to record ‘not only the evidence but also what the people are feeling’.62 This raised concerns about pigeonholing women in ‘softer’ areas of transitional justice and the possibility that women commission members were expected to perform a disproportionate share of the emotional labour.63 There is also a danger, as Bourdieu (1998: 5) argues, that ‘being

60 Interview with female legal academic and human rights activist, Johannesburg, 13 August 2014.
61 Interview with female legal academic and human rights lawyer, Santiago, 28 April 2014.
62 Interview with male former secretary to the Rettig Commission, Santiago, 28 April 2014.
63 As noted in the thematic chapter on gender, women are often expected to perform emotional labour that is not demanded of men. Drawing on Menkel-Meadow’s research (2005), Choroszewicz and Kay, ch 6 above, also observe that women lawyers are held to higher ‘moral standards’.
included, as man or woman, in the object that we are trying to comprehend, we have embodied the historical structures of the masculine order in the form of unconscious schemes of perception and appreciation’.

Opportunities available to female lawyers during conflict and transition do not automatically translate into material gains for them or the wider society, raising the spectre of patriarchal state-building in the guise of transitional justice (Ní Aoláin and Turner 2007: 229; Snyder and Vinjamuri 2004). The durability of patriarchal legal and political cultures was a constant theme across all our jurisdictions. In South Africa, deep gender inequalities that have survived the overthrow of apartheid were often cited as a serious disappointment of the transition. Reflecting on ‘missed opportunities’ for women in South Africa, a former ANC activist stated:

I think that golden age has gone…I think we lost a lot of opportunities, we lost a lot of ground and we lost a lot of women…Some of them have become diplomats, others went into the party hierarchy, into government…you get into the structure and well the structure swallows you. And then that voice is no more, you know, it’s not possible to put a foot out again and enter the other platform. So now we don’t have those public spaces…organisations we knew during the apartheid era no longer exist. Local structures are not there anymore and if you’re out to mobilise people you need a vehicle to do it, you need a mechanism, and we don’t have those mediating mechanisms anymore. So yeah, I think we’ve lost the momentum on that really.64

Reflecting on the broader patterns and themes emerging from our interviews, we want to reiterate that many of the gender barriers resemble those found in settled democracies.65 The following summary by a male South African legal academic will be familiar to anyone who has explored gender in the legal profession in the last 30 years:

The women attrition rate is much higher. Women win all the prizes, nearly all the prizes in almost every law school. They are the majority in terms of numbers in classes…they’re the majority in terms of those who are seeking articles, let’s say, access to the profession. But something happens and they suddenly fall off the radar…women judges are largely invisible.66

Women were generally under-represented in the partnerships of large commercial firms and over-represented in less well-paid legal work for the government and NGOs or

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64 Interview with female former ANC and human rights activist, Johannesburg, 15 August 2014.
65 See Kay and Choroszewicz, ch 6 above.
66 Interview with male legal academic and human rights activist, Johannesburg, 15 August 2014.
siloed in ‘softer’ areas of law – what Triedman (2014) refers to as a ‘pink ghetto’. This mirrors a well-documented clustering of female lawyers in public law across the globe (e.g. Stanford Law Review 1988; Wilder 2007; Nelson et al 2009) and a feminisation that is largely confined to the ‘base of the organisational pyramid’. When asked why such gender disparities persisted in societies that had undergone radical political transformation, our respondents pointed to familiar barriers: long and unsocial hours incompatible with caring responsibilities; strains on personal and family relations; a masculine culture that patronises, sidelines and excludes women; ignorance of sexism and inequality among senior male lawyers; difficulties confronting female lawyers who seek to challenge patriarchal structures and patterns of behaviour; and the incompatibility of gender equality with a broader neoliberal agenda. But many respondents also discussed the ways in which broader campaigns for gender equality intersect with competing understandings of struggle. To paraphrase Derrida and Ferraris (2001: 20), they reflected on gender equality and justice ‘as it promises to be, beyond what it actually is’.

This theme – the role of gender in the broader political and sociological process of national imagination – featured repeatedly in our fieldwork. As feminist commentators have noted, Anderson’s seminal work on communal and national imagination tends to focus on the role of imagined ‘fraternities’ rather than ‘sororities’ (Anderson 1991:7; Zacharias 2001). Similarly, queer theorists have done much to highlight the fact that the heteronormative notion of the nation is an ‘ideological effect rather than a pre-political truth’ (Somerville 2005: 600; see also Parker et al 1992). A number of our interviewees recognised how gender and sexuality could be manipulated by powerful actors to foster variants of ‘the nation’. For example, Israeli cause lawyers told us that a central element of the national vision (among some Israelis) is a progressive stance on LGBTQ and gender

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67 There are some interesting exceptions. In Ghana, women occupy leadership positions as partners and senior associates in more than half the leading law firms (Dawuni 2017). In some post-communist countries such as Poland (Gadowska Vol 1, ch 15) and Serbia (Vuković Vol 1, ch 17), where the legal profession is particularly fragmented, there is a majority of female judges. The feminisation of the legal profession in Myanmar was part of the military regime’s strategy to lower the status of the profession (scores on entrance examinations are much higher for medicine and engineering than law) (Crouch Vol 1, ch 6).

68 See also Thornton and Wood Vol 1, ch 2.

69 See Kay and Choroszewicz, ch 6 above; see also Bryson and McEvoy 2016.
rights, which the state often deploys strategically to foreign audiences to support Israel’s claim to be ‘the only democracy in the Middle East’. One interviewee suggested that, in order to disguise the demonisation of human rights activism in Israel (Dudai 2017), the government sponsors NGO activists to attend international events on issues of gender or LGBTQ rights. She contrasted that with the vilification of those fighting human rights abuses related to the occupation, adding:

The Ministry of Foreign Affairs was just parading them all over the world and saying ‘look how great Israel is’ – I think it’s very problematic.

The routine Israeli denial of violence, torture and institutionalised racism has long been the focus of critical political and sociological analysis. Cause lawyers repeatedly drew parallels between Israel’s relative progressivism on LGBTQ rights – sometimes referred to as ‘pink-washing the occupation’ (Stallone 2019; Fenster and Misgav 2019) – and the normalisation of the occupation. As one Israeli cause lawyer said, emphasizing Israel’s relatively progressive stance on the rights of animals, individuals with disabilities, and women provides useful cover. ‘We cannot really be pro human rights in terms of the occupation so we need to be good in something else’.71

A Palestinian journalist and human rights activist based in Jerusalem had been beaten and threatened with taser guns in administrative detention. The worst treatment had been inflicted by female members of the military, which she attributed to the normalisation of cycles of violence and the masculinisation of society.72 Members of the military tasked with inflicting this type of treatment on prisoners are themselves brutalised:

You turn around and you beat your wife and you turn around and you shoot somebody and then you turn around in your anger and you beat Palestinians even more - you torture them even more. It’s a society that is violent, that is militaristic, that is obsessed with security. And they think they’re free and secure... this nationalistic, Zionist, militaristic narrative is so strong, it is so embedded in all aspects of society that like it becomes normal.73

70 Stanley Cohen’s seminal work *States of Denial* (2001) was inspired in part by his work on torture with the human rights NGO B’Tselem. See also Friedman and Gavriely-Nuri 2017; Handel et al 2017.

71 Interview with male Israeli NGO lawyer, Jerusalem, 11 May 2014.

72 Interview with human rights activist, Ramallah, 22 May 2014. See further Mann-Shalvi 2018.

73 Interview with human rights activist, Ramallah, 22 May 2014.
A similar phenomenon was noted in Tunisia. As Guellali has argued (2017), during the Ben Ali era ‘state feminism’ produced significant advances in gender equality, which were used to cover up systemic abuses of populations deemed threatening, including women (see also Ketelaars 2018). One prominent cause lawyer exiled by the Ben Ali regime noted:

Among the big lies of the former regime is that Tunisia was the land of women’s freedom and equal rights. In fact it is true that Tunisian women are ahead of Arab women on a number of levels – particularly in the legal texts - but in fact women suffered a lot because they may have had a husband who was a political opponent a brother a relative okay and they would suffer indirectly much more just because they are women they are more vulnerable in that way.74

Finally, most of the left-leaning male cause lawyers we interviewed were alert to gender equality issues and did not display the structural homology we associate with elite conventional lawyering (Hagan and Kay 1995). But it was clear that all the societies we researched bore some hallmarks of what Bourdieu (1998: 1) termed ‘gentle, imperceptible and invisible’ masculine domination. Some female cause lawyers experienced gendered variants of domination not only from the state but also within the ranks of cause lawyers. A leading female cause lawyer in South Africa illustrated this with reference to domestic violence. She recalled the difficulties she encountered in exposing the fact that another female cause lawyer had been suffering domestic abuse at the hands of her partner (himself a prominent cause lawyer in the anti–apartheid movement) – lest it embarrass and damage the broader struggle and respect for cause lawyers:

I said, ‘okay we’re going to help you and we’re going to take your case out’. And inside the movement there was such a powerful silence that she should not break, even though we were willing to help her take the risk…that’s the story of the struggle that’s not told.75

To recapitulate, the gendered experiences of female cause lawyers varied across societies we studied, although some common themes emerged. As in other contexts (eg Crenshaw 1989; 1991; Hancock 2016; Collins and Bilge 2016; Ang 2003), race, ethnicity, class, geography and citizenship all intersected with gender to shape the experience of female cause lawyers. Female cause lawyers experienced familiar patterns of structural

74 Interview with female cause lawyer, Tunis, 20 June 2014.
75 Interview with female international human rights lawyer, South Africa, 16 August 2014.
exclusion, sexism and micro-aggressions across the sites. Paradoxically, periods of conflict, authoritarianism and transition created opportunities for such lawyers, but these were time limited and double-edged. Different understandings of gender, gender-based harm and gender-based rights were evident across the sites, and in two contexts (Tunisia and Israel) feminist lawyers told us that progressive state policies on gender were deliberately deployed by the regime to obscure other human rights abuses – what Ní Aoláin (2012: 11) has termed ‘a wily form of gendered window dressing’. Finally, domestic violence towards women was silenced in South Africa, even within the cause lawyering community itself.

VI. Conclusion

In their seminal text on the political commitments and professional responsibilities of cause lawyers, Sarat and Scheingold (1998: 5) suggest that in the types of societies we studied ‘cause lawyering is cast in a largely defensive role – struggling to find a modicum of protection against arbitrary arrest and imprisonment, torture, and other acts of political repression’. The cause lawyers we interviewed were indeed often on the back foot, facing harassment and worse from the state and hostility or indifference from conventional lawyers and their own bar associations while simultaneously managing complex relations with clients and political/military movements. They nonetheless found creative ways to navigate this difficult terrain, often transcending a defensive adherence to minimal human rights protections for their clients. They developed mutually respectful working relations with political and social movements, mitigating their ‘legal co-option’ (eg Sarat and Scheingold 2004, 2006). They also devised strategies to resist and subvert the power of the state during periods of conflict or authoritarianism, ranging from boycotts of legal proceedings and joining public protests in their lawyers’ robes to transforming trials into sites of political resistance (Allo 2015). Much of this cause lawyering work, including that by lawyers within state structures, was sustained by a vision of a ‘real rule of law’ in which law could be ‘realigned with justice’ (Sachs 2011) 1). Efforts to realise that vision became a focus for cause lawyers in societies (Chile, South African and Tunisia) that have experienced a transition from authoritarianism.
There is a broader tendency in the literature on conflict and transition to cast men as active agents and women as passive victims (Campbell 2007: 427). Our research offers a useful corrective. Sexism, professional ghettoisation, as well serious gendered violence and intimidation were reported by women cause lawyers. However, it was also clear that periods of conflict, authoritarianism and transition presented women with the opportunities to break through some of the familiar glass ceilings, and many fought hard to assert their agency, however difficult the circumstances of their work. For the majority of those identifying as feminists, the vision of advancing women’s rights often interacted with other political and social struggles. Ní Aoláin (2012: 206) has wisely cautioned against an essentialist feminist analysis of conflicted or transitional societies that adopts an ‘uncritical, liberal feminist positioning’, which ‘directs our gaze away from the cultural, material and geopolitical sites’ in which struggles are located. Many women cause lawyers we interviewed were deeply aware of how their lived realities of gender intersected locally with issues of race, ethnicity, citizenship, class, political affiliation and other variables. That intersectionality is the perfect counterweight to the ‘stag effect’ in the study of cause lawyers.

References


Epstein, L (1985) *Conservatives in Court* (Knoxville, University of Tennessee).


Triedman, J (June 2014) ‘Big Law is Losing the Race?’ *American Lawyer* 46–53.


