Cause Lawyering

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Abstract

Cause lawyers are powerful gatekeepers to the political and legal institutions where the dynamics between law and social change get played out. Yet, after years of research, we still seem far from a settled picture of cause lawyering and cause lawyers. In this article, we first describe the social and cultural practices that constitute cause lawyering. Second, we link cause lawyering to the clients served—from sophisticated social movement organizations to ordinary people. We show that cause lawyering is powerfully shaped by the clients served and by the contexts in which that lawyer–client relationship is situated. Finally, we examine the political context of cause lawyering. We also address larger questions in this research tradition: Is cause lawyering different from other forms of lawyering? How and why does cause lawyering produce tension between the lawyers and their clients? Does cause lawyering generate different kinds of professional and political identities?

CAUSE LAWYERING AND SOCIAL CHANGE

Law and legal institutions are the preserve of the powerful. Repeat players make the rules and have the resources to enforce those rules in their favor (Galanter 1974). Moreover, in American political culture, law is so pervasive that it has come to dominate the way that ordinary people think about their problems and the choices they make about resolving those problems in their daily lives. In this way, law preserves the privileges of repeat players not just through court decisions but also through the beliefs and practices of ordinary people (Ewick & Silbey 1998, Silbey 2005). Yet even as it reenforces the status quo, individuals often draw upon the law to resist injustice (Marshall 2003). Moreover, although marginalized groups may generally be one-shotters, they may occasionally organize to create a collective voice with greater influence on legal institutions (Galanter 1974). Beyond social movements, legal categories may motivate ordinary people to resist injustice in their own lives (Marshall 2003). Law and legal institutions, therefore, provide a contested terrain where hegemony is both re-created and resisted (Hunt 1990, Sarat & Scheingold 1998).

Cause lawyers are powerful gatekeepers to the political and legal institutions where the dynamics between law and social change get played out (Galanter 1974, Hunt 1990, Silbey 2005). Yet, after years of research, we still seem far from a settled picture of cause lawyering and cause lawyers. Cause lawyers work for nonprofit organizations in poor communities (Hajjar 2001, Meili 1998, Shdaimah 2005); cause lawyers work in large law firms (Boutcher 2013, Wilson 2010). Cause lawyers oppose the state; cause lawyers work within the state (Dotan 1998, NeJaime 2012, Woods & Barclay 2008). Cause lawyers are self-conscious and committed social movement activists (Heinz et al. 2003; Jones 2005, 2006); cause lawyers stumble into activism through involvement with cases and conflicts of wider political significance (Shamir & Chinski 1998, Wilson 2010). Cause lawyers are committed to lofty goals of protecting the rule of law and advancing human rights (Dezalay & Garth 2001); cause lawyers represent members of marginalized communities with their everyday problems when those communities do not have the resources to engage in wider political mobilization (Lopez 1992, Meili 1998, Shdaimah 2005). Over the years, scholars have made convincing claims that all of these activities constitute cause lawyering and all the attorneys who engage in them are cause lawyers.

We build on the work of others who have organized this research into influential typologies, largely focused on the lawyers themselves—their motivations, their practice settings, their goals, and their strategies (Hilbink 2004; McCann & Silverstein 1998; Menkel-Meadow 1998; Sarat & Scheingold 1998, 2001, 2005, 2006; Scheingold & Sarat 2004). This focus makes sense given that the original puzzle motivating the research was why lawyers would pursue social change in a profession that was largely committed to neutrality, independence, and preserving the status quo (Menkel-Meadow 1998; Sarat & Scheingold 1998, 2001, 2005, 2006). These typologies analyzed attorneys' motivations as well as their perspectives on the legal system (Hilbink 2004, Menkel-Meadow 1998). In the end, these studies have found that cause lawyers are motivated by the same complex set of factors that motivate all social action—some combination of rational self-interest, altruism, politics and ideology, reputational concerns, and emotional commitments.

We believe the emphasis on cause lawyers unduly narrows the kinds of analyses we do and leaves undertheorized critical components of cause lawyering, especially the relationships of these lawyers with clients and the political environment. McCann & Silverstein (1998, p. 278) encouraged attention to the "particular relational contexts" in which lawyers work. The authors argued that personal ideology matters less than the social and cultural practices in which cause lawyers

participate over time. In short, by studying lawyers, we risk underestimating the role of cause lawyering in the broader field of law and social change.

For these reasons, we prefer to emphasize cause lawyering over cause lawyers. We define cause lawyering as the set of social, professional, political, and cultural practices engaged in by lawyers and other social actors to mobilize the law to promote or resist social change. We make this choice for several reasons. First, focusing on practice avoids the methodological challenges associated with discerning motivations. It also allows us to account for all the different things that cause lawyers do: the way they relate to and construct their clients; the way they organize their practice settings to support their work; the way they engage different layers of networks of lawyers, of activists, of experts; their relationships to the various institutions, networks, and organizations that constitute the cause they are serving; and their choice of strategies given prevailing political and judicial environments. Thus, we can better assess the role of cause lawyering in wider movements for social change.

We join others who have conceptualized cause lawyering in relation to the cause and its clients (Boutcher 2013, Heinz et al. 2003, McCann & Silverstein 1998, Southworth 2009, Wilson 2010). We expand on these analyses by developing a relational framework that places cause lawyering in several different overlapping contexts: the degree to which the cause is organized, the settings in which cause lawyering is practiced, and the surrounding legal and political environment. These contexts structure the way that cause lawyers construct their clients and the way that clients construct their lawyers—a set of cause lawyering practices that remains understudied and undertheorized. In the course of mapping out this framework, we show that cause lawyering follows many of the same patterns as conventional lawyering, illustrating that cause lawyering can both reinforce and subvert the status quo.

We note one important limitation of this article. We have drawn extensively on research on the American experience of cause lawyering, based largely, but not exclusively, on the research generated in the cause lawyering project fostered by the collaboration between Austin Sarat and Stuart Scheingold. Because of space limitations, we do not deeply engage with the extensive emerging literature on lawyering in the public interest in other parts of the world (Boukalas 2013, Dezalay & Garth 2010, Halliday 1999, Liu & Halliday 2011, Merry 2009, Santos & Rodríguez-Garavito 2005). This growing and fruitful field of research will allow for further analysis of new forms of cause lawyering and new networks of transnational influence, but unfortunately, it is outside the scope of this review.

In the rest of this article, we address several questions in turn. First, we ask what cause lawyering is. We describe the variety of social and cultural practices that constitute cause lawyering. We note the places where cause lawyering differs from other kinds of lawyering, but also emphasize the very ordinariness of cause lawyering as well. Second, we link cause lawyering to the clients served—from fully developed social movement industries, complete with elaborate organizational structures, to marginalized people that have not yet found a collective voice. We show that the kinds of activities practiced by cause lawyers are powerfully shaped by the clients served and by the contexts in which that lawyer–client relationship is situated. And finally, we examine the political context in which cause lawyering occurs. In the course of this review, we address some of the larger questions that have emerged from this research tradition: Is cause lawyering different from other forms of lawyering? How and why do tensions emerge between lawyers and their clients in the course of cause lawyering? Does cause lawyering produce different kinds of professional and political identities? Following some of the more recent scholarship in the field, we argue that this shift in theoretical focus to the social field of cause lawyering will address wider questions about the relationship between law and movements for social change.

BOUNDARIES OF CAUSE LAWYERING

As they mapped out the field, Sarat & Scheingold (1998) claimed that cause lawyering was different from all other forms of lawyering. The varieties of cause lawyering have been documented largely through case studies of different kinds of attorneys practicing different kinds of law in many different settings for many different clients and causes. This accumulation of case studies has provided us with insights about cause lawyers' status in the legal profession (Israel 2005), the relationship between cause lawyers and the movements they represent (Boutcher 2013, Jones 2005, Levitsky 2006, Marshall 2006), the role of lawyers in producing political change in nation-states (Barclay & Fisher 2006, McCann & Dudas 2006), and theories of democratization and globalization (Dezalay & Garth 2001, Hajjar 2001, Shamir 2005). Yet case studies show that cause lawyering and conventional lawyering share many of the same practices, keeping the gates to the legal system on behalf of clients. Unlike conventional lawyering, however, cause lawyering also consists of social and cultural practices that amount to social movement activism. In this section, we review the mix of activities that fall along this spectrum.

The Lawyering in Cause Lawyering

Lawyering consists of a set of gatekeeping practices that control access to formal legal institutions and decision makers. In general, lawyering consists largely of screening cases and providing clients with information about their legal rights and responsibilities. It also includes advising clients about how to arrange their affairs in ways that give them the full benefits of legal rules while avoiding the costs imposed if those rules are ignored. And finally, lawyering involves representing clients in the small number of cases that actually make it to court. These practices are squarely within the repertoire of many, if not most, cause lawyers, and many of the services described in the case studies on cause lawyering would be familiar to most attorneys.

For example, the iconic cause lawyer is Thurgood Marshall, and the iconic organization is the National Association for the Advancement of Colored People (NAACP), who together used the courts to create social change (Francis 2008, Hilbink 2002, Tushnet 1987). Marshall and other NAACP lawyers gained legendary reputations for developing and pursuing test cases that created new rights for members of marginalized groups in society. They offered advice to communities that sought relief from structural inequality. They screened cases, making decisions about which ones were most likely to prevail in the court system. And of course, they went to court and won. Where they differed from conventional lawyers, however, was in the openly political goals associated with their work. Mostly working in or with legal rights organizations, NAACP lawyers searched for model plaintiffs in hospitable jurisdictions, seeded prominent law journals with supportive law review articles, and worked with sympathetic experts (Hilbink 2002, Tushnet 1987). In addition, they sought law reform in other lawmaking arenas, lobbying legislators or drafting new laws. Funded largely through the support of their members and philanthropic organizations, the NAACP was sometimes removed from the concerns of grassroots communities, and its choices about which cases to pursue were often opaque to the marginalized people they represented. In impact litigation, movement activists and organizations are the plaintiffs that initiate legal action. They bring cases to trial courts and pursue them through the appellate process to create binding precedents that will generate new public policy.

By accessing and navigating the formal and informal practices of the legal system, cause lawyers can bring the power of that system to bear on the claims of marginalized groups. Through litigation (Hilbink 2004, Morag-Levine 2001, Wilson 2010) and lobbying (Erskine & Marblestone 2006), new laws and new legal interpretations may be secured from legislatures, agencies, and courts. More importantly, the support of these institutions can greatly enhance the enforcement of, or

compliance with, legal decisions. For example, Hatcher (2005) argues that litigation in pursuit of institutionalizing a laissez-faire ideology in the courts not only has produced isolated victories for the property rights movement but also, through those victories, has facilitated the movement's development by altering the opportunity structure for mobilization. These tactics make the legal system more responsive, which, in turn, provides incentives to use legal tactics more often.

Of course, this model of cause lawyering is very closely tied to American models of lawyering and liberal legal rights where the legal system is an avenue to generate change when more traditional access to power is foreclosed. Some lawyers in other countries with different legal traditions have tried to adopt this model, with varying degrees of success. For example, Morag-Levine (2001) describes the Israel Union for Environmental Defense's effort to introduce litigation-based politics of environmentalism in Israel. Given that environmentalism was not particularly important in Israel's political agenda, pursuing the "politics of rights" was even more of a challenge. Morag-Levine's analysis focuses on the organization's efforts to generate plaintiffs and causes of action, largely through efforts to educate the public about environmental issues. Although it met with some modest success in the Israeli case, most agree that impact litigation is not necessarily a form of social or political change that is readily adapted to all political regimes.

These cases may not attract widespread public attention, nor have an impact on public policy, but this form of lawyering offers representation to poor and marginalized members of society who might not otherwise have a voice in legal institutions. However, cause lawyering may also be practiced in less lofty settings, requiring more defensive strategies. Indeed, several studies have shown that cause lawyering can occur in the course of routine legal practices. Legal aid lawyers (Shdaimah 2005) and public defenders (Etienne 2005) are engaging in cause lawyering as they advise clients and represent them in legal proceedings. Small law firms can pursue civil rights and discrimination cases (Trubek 1996). During the First Intifada, private lawyers represented Palestinians in Israeli military courts (Bisharat 1998, Hajjar 2001).

Of course, litigation is not the only form of lawyering. In fact, many lawyers never set foot in a courtroom, and the same is true for cause lawyers. Case studies offer many examples of cause lawyers whose gatekeeping for their clients consists primarily of offering clients advice and providing them with information about legal rules and institutions. In these studies, what emerges are more collaborative relationships with clients, where lawyers provide advice and support to clients rather than directing strategy. For example, Porter (1998) described a law firm in Philadelphia that formed in the early 1950s to serve the emerging African American middle class. Although the lawyers in the firm initiated civil rights litigation and did criminal defense, they also practiced corporate law and commercial law on behalf of a growing number of black businesses and professionals. The firm's lawyers wrote contracts, drafted articles of incorporation, and helped businesses navigate the regulatory environment, all in an effort to build African American businesses. Similarly, in the Santa Monica living wage campaign, lawyers took a supporting role, primarily researching and explaining how to draft an ordinance that was legally sound and would accomplish the organization's goals (Erskine & Marblestone 2006). And Shamir & Ziv (2001) describe the supporting role that lawyers played in an Arab family's land purchase challenging housing discrimination in Israel.

Like other attorneys, cause lawyers sometimes earn a profit (Bloom 2001, Scheingold & Bloom 1998). In cases of consumer rights, employment discrimination, and products liability, lawyering can be lucrative. The cases cause lawyers pursue can have a broader impact—improving working conditions, holding government officials accountable, or getting unsafe products off the market, for example. The lawyers' pursuit of profit, however, muddies their motives and, to some, makes them an uncomfortable fit in the category of cause lawyers. In this article, however, such practices constitute cause lawyering as long as they are directed at creating social change.

The Intersection of Cause Lawyering and Activism

Lawyers understand—perhaps better than anyone—the limitations of the legal system in bringing about social change, and the advice that lawyers often give their clients is to stay out of court. Within lawmaking arenas, cause lawyers may help clients identify and evaluate opportunities associated with the selection of targets (e.g., courts or legislatures) and tactics (e.g., legal tactics or protest). In fact, framing the courts as inhospitable to a social movement's claims may spur more radical action. As movement actors consider a range of tactical options to convey their claims, lawyers may support their clients' evaluation of costs and benefits by clarifying the boundary between lawful and unlawful actions. And in the course of providing this advice, cause lawyers may find themselves working with other activists, taking on tasks that are not traditionally associated with the legal profession. Relatedly, activists who have no formal legal training may find themselves engaged in cause lawyering.

For example, cause lawyering may include leading public information campaigns for underserved communities, aimed at raising consciousness about legal rights and remedies. Members of marginalized communities may be unfamiliar with their legal rights or with possible legal threats. Moreover, as one-shotters, they do not have the luxury of hiring attorneys to offer them counsel. Thus, workshops and meetings that provide people with basic information can serve the cause. Levitsky (2006) describes the way that small grassroots LGBT organizations worked with lawyers to sponsor workshops and produce brochures on such topics as family law and nondiscrimination in education.

It is true that traditional lawyers also offer such workshops—going to senior centers, for example, to deliver talks about estate planning—but they often perform that service with an eye toward generating additional business. The cause lawyers Coutin (2001) studied in a small community organization did not expect to find paying clients when they offered workshops on immigration regulation to groups of undocumented workers. Rather, they performed this service as part of their commitment to a wider community.

Cause lawyering may also include efforts to organize communities. Lawyers may facilitate stakeholders' awareness of, and mobilization around, shared grievances by bringing together individual clients experiencing similar problems and by articulating those personal problems as social issues and legal grievances. The resulting individual changes have the ability to create a basis for collective action. To this end, lawyers may encourage community members to engage in self-help, for example, by offering their own testimony at public hearings or by having them do their own legal research (Marshall 2006). By demystifying the law and legal institutions, cause lawyers can promote public participation in the legal processes that shape people's lives. In addition, cause lawyering can extend entirely outside of legal institutions, as lawyers organize more general community action to demand, for example, better living conditions, working through other political channels or even—on occasion—more disruptive political action, including rent strikes and civil disobedience.

Cause lawyering may also consist of building the political coalitions that help an entire social movement generate its agenda for social change. Pressing claims in public forums may provide stakeholders with a means of participating in a larger discourse concerning the priorities of the causes and movements that they represent. As described by Barclay & Fisher (2006), all actions (particularly those that are well publicized) communicate strategic options and preferences to the larger movement. In so doing, they constitute an informal referendum on the movement's agenda. As different actors and organizations either emulate-repeat or abandon-reject these tactics, they signal their relative support for particular strategic orientations (Barclay & Fisher 2006). Consequently, the movement agenda is largely constructed by the aggregation of the choices of

each actor/organization comprising the movement. The case of South African and transnational corporate social responsibility movements (Shamir 2005) is illustrative, as the introduction of a new moral language in the South African courts became a model for corporate social responsibility in the global community.

The many case studies have demonstrated that cause lawyering is not much different from other kinds of lawyering, given that it consists largely of providing legal advice to clients and representing their interests in court. Indeed some cause lawyering activities overlap with political activities, but they are fully consistent with advancing the interests of a client, the role of a zealous advocate. In the next section, we explore the factors that make cause lawyers distinctive—specifically, the relationships cause lawyers have with their clients and their attention to the political context of their activities.

CONTEXTS OF CAUSE LAWYERING—THE CLIENTS AND THE SETTING

The most notable distinction between cause lawyering and conventional lawyering is the client served. Cause lawyers represent clients who are advocating or resisting social change, people who might not otherwise have a voice in the legal system. Yet our review of the cause lawyering literature revealed a wide range of different kinds of clients. On one hand, they may be one-shotters—poor people, victims of discrimination, or other individuals—whose personal problems have led them to a lawyer's office. On the other hand, they may be large social movement organizations or other advocacy groups that offer a collective voice for those within a community suffering from structural inequality. Thus, the clients of cause lawyers do not fit any single profile. Rather, they have vastly different resources at their disposal, and they have different levels of sophistication about the legal system. In addition, there are differences in their vulnerability to the effects of structural inequality. A poor person whose heat is turned off is exposed to the risks and vagaries of the legal system in a way that an advocacy organization promoting prayer in school is not. These factors shape the nature of the clients' interactions with the cause lawyers who represent them.

Indeed, the cause lawyering literature has accounted for differences among clients. For example, in their influential typology, McCann & Silverstein (1998) emphasized the relational contexts in which cause lawyering occurs and argued that the institutional settings in which activists and lawyers interacted were more helpful than ideology in explaining the practices and political impact of the work they did. More recently, Wilson (2010) urged researchers to focus on the events and struggles that constitute the cause. Still, existing frameworks do not always take account of this wide spectrum of client circumstances—variation that might be useful in explaining how cause lawyering is practiced. Moreover, the research does not always capture the ongoing relationships between the cause lawyers and the clients, or the way those relationships can shape both cause lawyers and clients.

In this section, we borrow from research on the legal profession, research that has shown that clients have a powerful influence on the practice of law. So, for example, we know that lawyers organize themselves according to the needs and demands of their clients (Heinz & Laumann 1982). Heinz and Laumann identified two hemispheres of the profession: one housed in large law firms that serve mostly corporate clients and one consisting mostly of small firms and solo practitioners who represent individuals (Heinz & Laumann 1982, Heinz et al. 2005). We also know that lawyers try to construct their clients, turning clients' private problems into legal claims and managing those clients into compliance with the lawyers' directives (Sarat & Felstiner 1986). Of course, this process of constructing the client may become more complicated as the clients become better organized and acquire more resources. In fact, in the competitive market for legal

services, corporations have the upper hand in these negotiations over client identity and may retain more power and authority in their relationships with their lawyers (Galanter & Henderson 2008, Kirkland 2004, Nelson & Nielsen 2000). Thus, to hold on to clients, lawyers in large law firms often sacrifice the independence generally associated with the legal profession.

We argue that like the conventional practice of law, there are (at least) two hemispheres of cause lawyering. In one hemisphere, lawyers represent large, well-organized advocacy groups focusing on legal rights. These groups are part of a wider social movement industry, sharing the national spotlight with other organizations who might pursue different strategies outside of the legal realm. In the other hemisphere, lawyers serve members of marginalized groups—the poor, the unemployed, criminal defendants—who may be victims of structural inequality but who have not yet developed a collective identity and mobilization strategy. The value of adopting this approach is that we can fine-tune the relational contexts, disentangling the social movement organizations from practice settings. In addition, we expect that this client-focused approach can shed light on the tensions between cause lawyers and clients that have frequently been identified in the cause lawyering literature; we suggest that those tensions are less noticeable when the lawyers are accountable to a well-organized group of activists. Finally, we suggest that focusing on the client can raise interesting questions that remain relatively unexplored in the cause lawyering literature—namely, the way that cause lawyers and clients mutually construct one another.

Large Social Movement Organizations

Some causes are associated with fully developed social movements, consisting of organizations, complete with a staff of well-trained and salaried activists, as well as an attentive membership. Members may participate in movement activities—by attending protests or writing letters to public officials—or they may simply provide funds to support the organization. In this way, the organization and its mission reflect a collective vision for its members. As social movement organizations proliferate, some may be able to attract extensive resources, both from private foundations and from membership donations. With those resources, they can mount public relations campaigns and other actions that attract wider attention. Based on these activities, these large organizations can become the voice of the social movement and, by extension, the constituencies that they represent.

An ample literature in social movement studies suggests that as they grow, large social movement organizations become more conservative in their tactical preferences (Jenkins & Eckert 1986, Piven & Cloward 1979, Staggenborg 1988). They are more likely to pursue strategies that target traditional political institutions and that have a low risk of offending the general public or government officials. They prefer these institutional strategies over more disruptive and confrontational protests, which might alienate donors or decision makers (Jenkins & Eckert 1986, Piven & Cloward 1979). Rights-based social movement organizations are a paradigmatic illustration of these processes. These organizations attract funding from large foundations and their own fund-raising efforts. They favor litigation campaigns that expand rights claims and other forms of legal advantage, and they tend to shy away from more confrontational, grassroots action.

These rights-based social movement organizations are prevalent in studies of cause lawyering because they routinely turn to the courts to pursue their agendas for social change (Hilbink 2002, McCann & Silverstein 1998, Wilson 2010). The leadership of these organizations often consists of staff activists who combine professional activism with legal action. According to McCann & Silverstein (1998, p. 266), staff activists "distinguish themselves as leaders in formulating group demands, developing group strategies, waging broader political campaigns, and even challenging their own organizations on behalf of constituent interests or principles." Staff activists are more

likely to have contact with other activists and organizations in the wider movement. They often enjoy the professional independence commonly associated with conventional lawyering, and that independence puts them in a position to steer the entire movement. With enough influence, they can come to dominate a movement's strategic priorities (Levitsky 2006).

However, many lawyers working for large social movement organizations have more constrained roles. For example, some lawyers working for advocacy organizations are what McCann & Silverstein (1998, p. 266) call "staff technicians," who "tend to restrict themselves to execute the more narrowly technical legal aspects . . . of campaigns initiated by others." The cause lawyering practiced by technicians will most likely resemble the activities associated with conventional lawyering.

Social movement organizations with more resources might also be able to attract lawyers in private practice who act as hired guns on behalf of the movement (Boutcher 2013). On occasion, these lawyers are actually paid for their services; lawyers might collect fees, for example, as a contingency against the verdict if the plaintiff is injured, or attorneys' fees might be associated with the kinds of claims being made, such as civil rights violations or employment discrimination. In other cases, law firms might represent social movement organizations on a pro bono basis. Boutcher (2013) has shown, however, that these pro bono services tend to be available to a relatively narrow set of causes, leaving out less organized, less prominent social movements.

In the case studies of cause lawyering, attorneys are likely to experience lower levels of independence when working as salaried employees or as paid professional attorneys for well-organized and well-established movements. Moreover, the degree to which lawyers must be responsive to movement leaders, and movement leaders must be responsive to the needs and desires of rank-and-file members, depends on the structure of the organization/movement (Burstein 1991, Olson 1984), as well as the lawyers' structural position vis-à-vis the organization/movement (Hunt 1990, Levitsky 2006, McCann & Silverstein 1998, Olson 1984). In larger advocacy groups, cause lawyers will have fewer opportunities to construct their well-organized and well-established clients. As the repeat players in the social movement world, large social movement organizations are sophisticated about the possibilities and limitations of legal strategies. Their experience with legal institutions means that they are less likely to be managed by their attorneys. The lawyering practices in these settings are more likely to be confined to traditional forms of lawyering—managing litigation and providing legal advice. In these contexts, lawyers are less likely to embrace political mobilization, leaving that to other employees or professional activists.

Cause Lawyering in the Absence of Mobilization

People in marginalized groups often struggle with personal problems that emerge from structural inequalities: unfair working conditions and unemployment, inadequate housing and crumbling schools, and race-based prosecutions and convictions. Social movement scholars have frequently noted that such grievances are pervasive throughout society, but grievances do not necessarily amount to movements. Rather, movements coalesce when, among other things, those who are suffering recognize the collective nature of their personal problems and join together to redress them (Snow et al. 1986).

Yet when they are in trouble, many individuals may find their way to a lawyer, particularly in the United States. When working with such clients, lawyers are often struggling to meet their clients' basic needs—getting the heat turned back on, having welfare benefits restored, or obtaining protective orders from abusive husbands. Based on their expertise and their experience, these lawyers turn to the legal institutions and mechanisms that they know best (Meili 2001, Shdaimah 2005). Yet because they see a steady stream of clients, many of whom have the same or

similar problems, attorneys for poor people are in a position to recognize the collective nature of these problems. In such cases, poor people's lawyers may move beyond formal legal institutions and focus instead on other political activities. They may try to raise awareness about the political nature of these problems by giving public talks in the communities where they work and by networking with community leaders (Lopez 1988, 1992).

According to case studies of cause lawyering, these lawyers are often found working in the communities, close to the people they serve. Some work at the public expense, in legal aid offices or in public defender offices (Etienne 2005); others work for nonprofit organizations that emphasize service delivery (Shdaimah 2005, Meili 1998). Others are solo practitioners who represent clients with limited resources. To earn a living, these lawyers must handle a large volume of cases, and their heavy caseloads can compromise the quality of the work that they perform for any particular client. In these settings, lawyers come into close contact with the people who are actually suffering as a result of structural inequality. Their contact is not mediated by social movement organizations and paid activists. However, because of their education and professional expertise, attorneys occupy a position of power with respect to their clients.

In this context, lawyers have greater latitude in constructing their clients. In Shdaimah's (2005) study of a nonprofit legal services corporation, lawyers were self-conscious about using this power to manipulate clients. But the clients themselves were grateful for the information they received from the attorneys, and although the clients could not act on their own, the assistance of the attorneys expanded their capacity to pursue their interests. Other lawyers in such communities may adopt the mantle of "rebellious lawyering," mobilizing the communities they serve to pursue political action. In this capacity, they may pursue more political activities, such as organizing community action against landlords or leading protests against the police (Lopez 1988, 1992).

The Third Hemisphere of Cause Lawyering

Thus far, we have seen that the hemispheres of cause lawyering roughly correspond to those in the rest of the legal profession. Well-organized, high-profile social movements attract the assistance of top legal talent or committed staff lawyers, whereas individuals from marginalized groups are more likely to be served by cause lawyers who are pressed for resources, especially time. In the former scenario, the cause is usually represented by an organization that has enough experience and knowledge to take a more active role in the lawyer–client relationship, doing more to direct strategy. In the latter, the needs of individual clients are often so overwhelming, demanding so much attention, that lawyers have little time or opportunity to pursue wider political strategies. In these hemispheres, cause lawyers appear to experience relatively little tension between their political and professional commitments. These lawyers rarely confront the dilemma of compromising their clients' personal interests for the sake of a political victory or a favorable judicial precedent. The large social movement organization's resources help them constrain the professional independence that makes this tension possible. For poor people's lawyers, the immediate needs of the clients are simply too urgent to be compromised by politics.

Cause lawyers and their clients have more complicated relationships in the space between these two hemispheres. We follow Heinz and colleagues (1998) in conceptualizing this space as a "third hemisphere" of cause lawyering, where lawyers and other activists design different practice settings to meet clients' needs. In this section, we review the case studies in the cause lawyering literature for occasions when this tension emerges and when it does not, paying particular attention to the organization of the causes and clients. We believe the tension arises when lawyers engage in practices in which they try to transform victims of structural inequality into legal subjects. However, under certain circumstances (which we try to define), clients may be equally successful in

transforming lawyers into activists. When causes are represented by social movement organizations with an established set of strategies, tactics, and collective identity practices, lawyers assume an activist identity that moderates their efforts to control their clients.

Case studies show that tension between cause lawyers and their clients emerges when political goals or legislative achievements take precedence over the clients' immediate needs: "With the individual case a vehicle for the advancement of general principles, the client is seen as of secondary importance" (Hilbink 2004, p. 680; Menkel-Meadow 1998). In screening cases, for example, cause lawyers may pass over clients who have pressing needs but whose circumstances do not present the best factual case on which to base a judicial precedent. Clients with criminal records, for example, or clients coming from jurisdictions with unfavorable legal environments may never get the services of a cause lawyer who looks for more sympathetic victims. And even sympathetic clients may find that they have few choices in determining litigation strategy—whether to settle, whether to appeal, or whether to continue sustaining the costs of litigation. Those decisions remain in the hands of the cause lawyer. Shamir & Chinski (1998, pp. 233–34) observed that cause lawyering presents "the dialectical tension between representation as a form of objective expertise and representation as a form of silencing in which the voice of the client disappears." In such cases, plaintiffs become symbols, reduced to icons for larger political principles. Their participation in the cases is minimal, and the everyday struggles that they hope the law will resolve are rendered invisible, even irrelevant (Shamir & Ziv 2001).

This relationship is most likely to develop in the absence of a mass mobilization. The cause may be related to a social movement, and the movement may even have organizational strength. In several cause lawyering studies, researchers describe civil rights organizations or NGOs that find suitable plaintiffs to front their lawsuits, but are otherwise disengaged from the voices of the people who are struggling with these problems (Morag-Levine 2001, Shamir & Ziv 2001, Ziv 2001). Thus, the social movement organizations themselves are severed from accountability to their wider constituency. This is a familiar story in studies of social movements, with many studies showing that as movement organizations grow and attract more resources, they begin to hire professional activists who prefer institutional strategies in official channels (Jenkins & Eckert 1986, Piven & Cloward 1979, Staggenborg 1988). And as they shift to institutional strategies—such as litigation and law reform—they demobilize more radical, disruptive action that engages the grass roots (Piven & Cloward 1979). When cause lawyers get involved with causes organized in this way, there is no grassroots presence with alternative strategies to get in the way of lawyers turning their clients into legal subjects.

In fact, in some cases, cause lawyers can form movement organizations such that those organizations, in effect, constitute the entire movement. Several studies describe organizations of lawyers who act on their own to define a movement's goals, identify the strategies, and pursue their activities with little or no interaction from anyone who might be considered a constituent. For example, in his paper analyzing the American consumer rights movement, Meili (2006) described the way that lawyers dominated the networks of activists who were active in trying to counteract consumer fraud. The participants in these networks spoke largely to each other and rarely had any contact with grassroots organizations of actual consumers. Meili (2006, p. 127) described them as "free agent litigators," relatively untethered from any responsibility or accountability to a larger constituency. Similarly, Ziv's (2001) account of the disability rights movement—in which 29 million disabled citizens were represented by lawyers in public interest organizations—led her to observe, "It is questionable if they had a client at all" (p. 217). In these cases, lawyers are constructing themselves as activists, but their activism consists almost exclusively of legal action and does not necessarily bring them into contact with the people who will be most affected by the work they do.

The tension may also arise in the competition among different social movement organizations in a wider network. In expansive social movements, organizations develop a division of labor covering a variety of tasks and activities, including social service provision, direct action, and community empowerment, as well as legal advocacy. In such an environment, legal rights organizations can still exert a disproportionate influence over the larger movement agenda (Levitsky 2006, Meili 2006). Levitsky (2006), for example, showed that several organizations in Chicago's wider LGBT movement wound up redirecting their strategic resources when legal rights organizations, including Lambda Legal Defense and Education Fund, decided to pursue marriage equality as their primary goal. Legal rights organizations often have more resources than other groups, and those resources ensure that their priorities will not be drowned out, even if it means that they are disengaged from more grassroots groups. Thus, in these cases, lawyers are in a superior position to construct the cause and the clients as a legal subject, but questions remain about how accountable they are to the constituents of the movement.

By contrast, many cause lawyers enjoy more collaborative relationships with their clients (Jones 2005, McCann & Silverstein 1998). The clients in these case studies tend to be social movement organizations, for whom additional resources may be helpful in directing their attorneys' energies. More importantly, though, better-organized clients also have clearer goals, better-defined strategies, and established practices that generate and reenforce the group's collective identity. These organizational practices may draw cause lawyers into the ambit of activism, where they share in a movement's collective identity, and that identity, in turn, shapes the way that cause lawyers practice law.

Jones's (2005, 2006) research on communities of cause lawyers captures the variation in their identities. According to Jones, core cause lawyers are embedded in social movements and their related organizations. Often working in a public interest setting, these lawyers are as likely to be performing activist tasks as they are to be practicing law. Indeed, these lawyers may be marginalized in the legal profession, but the movement community compensates them for any sense of loss. They derive personal and professional satisfaction from being a member of the movement (Jones 2005). Jones argues that the practice settings most hospitable to fostering activist identities are social movement organizations and law school clinics (Jones 2005; also McCann & Silverstein 1998). Obviously, such settings provide opportunities for more interactions with other activists, but they also allow lawyers to interact with constituents of the movement on a regular basis. Sustained contact with the intended beneficiaries of movement action may also reenforce movement identity. Moreover, these practice settings insulate cause lawyers from countervailing messages about the legal work they should be doing—for paying clients, for example (Jones 2005).

Collaborative relationships between clients and lawyers may also be fostered when a movement has goals and strategies outside of the legal arena, which, again, is more likely when the social movement has some independent organizational history and experience. When litigation and law reforms are only one part of a movement's agenda, then cause lawyers must accommodate those other strategies. Thurgood Marshall, for example, was notoriously critical of direct action as a civil rights strategy. He believed that it made protestors look disrespectful of legal authority, which, in turn, undermined the NAACP's constitutional claims for equal protection under law. Yet some civil rights lawyers directed their energies toward bailing protestors out of jail when they committed acts of civil disobedience (Francis 2008). And in more recent movements, some cause lawyers may embrace civil disobedience and other forms of mass mobilization as effective tactics, encouraging their clients to participate (Den Dulk 2006).

And of course, as we have already observed, cause lawyers themselves may engage in the planning, strategizing, and other activities alongside lay activists. Beyond the role that these activities play in advancing movement goals, cause lawyers' participation has an effect on their own

identities. Social movement studies have emphasized the importance of participation in the formation of collective identity (Polletta & Jasper 2001, Taylor & Whittier 1992). Doing the work of social movements requires engagement with their interpretive frames—the way the movements describe their injuries, the parties they hold accountable, and their aspirations for a better world. In doing this work, lawyers repeatedly come into contact with others who adopt the same frames. Some of these frames might be rights oriented, or might promote the rule of law, but not all of them will focus on law. And this form of participation creates collective identity—a sense of shared fate with others in the movement (Polletta & Jasper 2001).

Research on cause lawyering suggests that lawyers' collective identity shapes the way that they practice law (Jones 2005, Marshall 2006). These lawyers are more likely to have cooperative relationships in which constructing legal subjects has a lower priority than pursuing other movement goals. In these relationships, clients participate in planning litigation in the same way that they might plan a demonstration or a media campaign. In addition, grassroots activists may play a role in litigation proceedings by helping with discovery or by attending hearings.

Shamir & Ziv (2001) offer an interesting comparative analysis of two different kinds of practice in this third hemisphere of cause lawyering. In one case, the lawyers were disconnected from their clients, trying to vindicate more general principles of Palestinian land ownership in Israeli appellate courts. Shamir and Ziv refer to this as state-centered activism. In the second case, lawyers worked closely with a grassroots group to engineer a real estate transaction that tested Israeli rules governing Palestinian land rights, a strategy that Shamir and Ziv labeled community-based activism. These descriptive categories capture the distinction between the targets of legal action in the two cases but do not offer an explanation for why the lawyers would choose these different approaches, beyond their own motivations and visions of their role. We expect that the explanation is better situated in the different movement organizations where resources and collective identity practices can shape the way that the lawyers approached their strategic decisions.

In this third hemisphere, lawyers and clients may have very different visions of the meaning of winning and losing. Cause lawyers have been accused of diverting movements into the distracting goals of seeking successful judicial precedents. But even a winning judicial outcome might be too costly for a victim of injustice to bear. Clients may prefer more modest victories—settlements, for example—to offset the costs of their injuries. When cause lawyers and clients collaborate, by contrast, they may share interpretations of winning and losing. So both cause lawyers and activists may see losses in court as opportunities to invest in the wider movement and to encourage further mobilization (Cummings & NeJaime 2009, Meyer & Boutcher 2007, NeJaime 2011).

We have argued in this section that the practices of cause lawyering are closely related to the practice settings where it is conducted and that those practice settings are closely related to the way the clients and causes are organized. These contextual factors shape the interactions between lawyers and clients—interactions that determine whether the lawyer remains independent or whether she develops an activist identity that pulls her further into the movement. In the next section, we consider the role of the political environment in shaping the opportunities and constraints for cause lawyering practices.

POLITICAL CONTEXT

Cause lawyering also occurs in a particular political context, which depends heavily on the structure of a society's legal and political institutions. Legal institutions are often designed to preserve the privileges of the powerful (Galanter 1974), and some are clearly designed to repress dissent. Yet, in some societies, marginalized communities can use the courts and other lawmaking institutions to press their claims for redress. The openness of these institutions to such claims is often a matter

of perception. Based on their observations of political events and on their own experiences, both cause lawyers and their clients will develop views about how receptive lawmaking bodies will be to their demands. Still, these perceptions can exert an influence on both the timing and the content of cause lawyering practices. And cause lawyering practices, of course, can influence the shape of the political and legal environment.

The cause lawyering literature reviewed in this article is grounded largely in the American experience of liberal legalism, where rights are available to political minorities who may vindicate those rights in the courts (Halliday 1999). And many studies of cause lawyering occur against the backdrop of social movements that are trying to expand civil rights to different groups in different contexts, including disability rights (Olson 1984, Ziv 2001); pay equity and animal rights (McCann & Silverstein 1998); and, of course, marriage equality (Barclay & Marshall 2005, Cummings & NeJaime 2009, NeJaime 2011). These are familiar fixtures in American political life, particularly in the politics surrounding marginalized groups whose resources may not stretch far enough to lobby Congress or to finance electoral campaigns.

Still, even in the United States, liberal legalism has its limits. The changing politics of the American judicial system has produced a legal environment that is far less hospitable to claims for new rights, and these changes have affected cause lawyering in a number of ways (McCann & Dudas 2006, Scheingold 1998). For example, Scheingold (1998) argued that the triumph of a free market ideology, a growing malaise on the political Left, radical reductions in publicly supported legal services, and an increasingly insecure and competitive legal market had a dampening effect on left-activist lawyers in mid-1990s Seattle. They saw themselves as less and less part of a unified political movement. As a result, they became more fragmented and more likely to focus on discrete short-term goals, scaling back their expectations and shifting emphasis from efforts to transform the legal, political, and social systems to instead providing meaningful assistance to those who are oppressed or victimized.

The political climate in American courts conversely produced an expansion of right-wing rights mobilization (Den Dulk 2006, Hatcher 2005, Southworth 2009). Drawing on organizational models adopted by liberal causes, right-wing advocates organized themselves into such groups as the Manhattan Institute for Policy Research, the Pacific Legal Foundation, and the Federalist Society (Den Dulk 2006, Hatcher 2005). Using the same legal strategies formulated by left-leaning cause lawyers in the 1950s and 1960s, lawyers for these organizations took advantage of a more conservative judiciary to promote their causes of fighting government regulation and the secularization of American Society (Den Dulk 2006, Hatcher 2005, Heinz et al. 2003, Southworth 2009).

Of course, even in these challenging conditions, litigation has not ceased being a cause lawyering practice. Rather, the nature of the litigation has, in some cases, changed. Lawyers may take a longer view of the course of litigation. For example, in the face of overwhelming odds, death penalty lawyers nevertheless continue to vigorously represent defendants in capital cases, even when they know that the chances of less-severe sentences—let alone acquittal—are remote. They do not expect to abolish the death penalty with their representation, or even to avoid the death penalty in individual cases. Rather, they view their work as documenting the arbitrariness of the death penalty for some future political environment that will be more amenable to their claims (Sarat 1998).

Lawyers may also steer away from substantive rights–based arguments, preferring instead to pursue narrower, technical legal procedures to protect their clients. Sterett (1998) has shown that British lawyers trying to protect immigrants from increasingly restrictive laws pursued more procedural claims rather than try to promote substantive rights for immigrants. This strategy required lawyers to pursue individual cases rather than broader claims that would affect a wider

population. Moreover, Sterett contends that this approach to litigation has been strategically efficacious, as the dramatization of individual injustices has helped raise public awareness and place these issues on the political agenda.

And of course, even in an unfriendly political and legal environment, cause lawyers may nevertheless mount impact litigation campaigns, as demonstrated by the recent experience within the campaign for marriage equality (Cummings & NeJaime 2009, NeJaime 2011). Of course, given the risks associated with the courts, the nature of impact litigation now requires more engagement with the public, and lawyers are likely to invest more time in political strategies, especially in the face of unfavorable legal outcomes (Barclay & Marshall 2005, McCann 1994, Meyer & Boutcher 2007, NeJaime 2011).

Still, the retraction of rights in the United States has resulted in the development of new cause lawyering practices that eschew litigation and the courts and focus instead on community empowerment (Alfieri 1991, Lopez 1992, Shdaimah 2005). Cummings (2002, 2006) argues that a new "governance lawyering style" emerged, displacing the litigation strategies pioneered by the NAACP, American Civil Liberties Union (ACLU), and federal legal services lawyers. This new style of cause lawyering aims to mobilize community participation in economic development by promoting partnerships between government and business elites, and thus the lawyering practices consist largely of transactional work, such as negotiating contracts and soliciting resources. This form of lawyering depends on collaboration and cooperation with more powerful actors, thus creating disincentives for political confrontation. This approach therefore risks demobilizing more radical demands from poor communities. Still, Cummings (2006) argues that pairing this governance lawyering with more adversarial demands can create accountable economic development in those communities that need it most.

Cause lawyering can also be practiced within the state. Although many of the case studies depict cause lawyering as an oppositional practice—legal crusaders challenging legal institutions that exclude or oppress minorities—there are occasions when a multifaceted, complex state lends its support to a cause (Dotan 1998, Epp 2009, NeJaime 2012, Woods & Barclay 2008). Actors with social movement experience can find themselves working in governmental agencies, where they can not only shape the policy agenda to reflect a movement's priorities, but also promote laws and policies that advance the movement's goals. Indeed, this form of cause lawyering is the very essence of insider politics and could be the most conservative form, contributing to deradicalization and the end of grassroots participation (NeJaime 2012). By definition, this lawyering pursues the goals of the state. Still, cause lawyering from within the state offers movements a share of state power from which they might otherwise be excluded (Dotan 1998, Epp 2009, Woods & Barclay 2008).

Cause lawyering looks much different in the context of authoritarian regimes. Such states do not offer their citizens an expansive collection of rights designed to protect the individual from excesses of state power, nor are there legal traditions supporting the rule of law over the exercise of political power. In these political environments, there are few institutions to channel individual or collective grievances about social and political arrangements. Moreover, any expression of such grievances outside of official political institutions is likely to be repressed, sometimes brutally (Halliday 1999). On occasion, however, political conditions may expand the rule of law, creating new rules and processes that may likewise expand the room for legal arguments. So the political moment that accompanied the transfer of sovereignty of Hong Kong to China offered new opportunities for cause lawyering (Tam 2010), and the end of apartheid brought lawyers into the process of imagining a new constitution and a new state (Klug 2001).

This political climate also shapes the legal profession, which tends to be politically embedded in the state. Lawyering in authoritarian regimes and transitional regimes often consists of political brokerage, finding the right set of state officials and negotiating a resolution of the client's problem.

For example, in the aftermath of the Cuban revolution, private legal practices were dissolved, and lawyers were reorganized into state-run collectives (Michalowski 1998). Clients came to these collectives when they got into trouble with the state, but the lawyers there did not necessarily challenge state authority. Rather, they sought to provide equal representation to all citizens and sought negotiated solutions that could advance the goal of equity. But in the end, the lawyers' goal was to reconcile individual interests with the broader mission of the state (Michalowski 1998).

Some of the most fascinating research in the field has explored the conditions of cause lawyering in these challenging conditions. This research has identified different varieties of practice. For example, cause lawyering can take the form of proceduralism, navigating existing legal institutions in everyday legal practice but doing so in ways that offer some measure of protection to individuals who are being threatened by state power (Bisharat 1998, Hajjar 2001, Liu & Halliday 2011, Tam 2010). By carefully balancing tactics that maximize the allowable range of formal protection for their clients against their political obligations to the state, cause lawyers can make incremental changes that promote greater protection for the individual. It may not rise to formal recognition of rights, but the pragmatic consequences of such practice may curb state power, at least in individual cases (Bisharat 1998, Hajjar 2001, Liu & Halliday 2011).

Outside of the practice of law, cause lawyering in these regimes consists of more explicitly political practices. Several studies describe political mobilization by cause lawyers on behalf of such causes as professional autonomy (Liu et al. 2013) and an independent judiciary (Ahmed & Stephan 2010). Although explicitly political cause lawyering is also found in liberal democratic settings, the nature of the political activities in authoritarian regimes is notably different. For example, widespread mass media campaigns are impossible, but activists may find other outlets for their public statements. These outlets may have lower profiles, but the activity may nevertheless present dangers to the activists, as well as have an impact on a wider group of activists and constituents (Liu et al. 2013). Or, in the case of Pakistan, lawyers themselves organized massive demonstrations that ended in violence to protest the politicization of the judiciary and to demand greater independence (Ahmed & Stephan 2010). Finally, in transitional regimes, lawyers often find themselves at the center of designing constitutional and political reforms (Klug 2001).

Authoritarian and transitional regimes are also the setting for global cause lawyering. We know that transnational human rights networks offer support for cause lawyering in places where civil rights and civil liberties are either just beginning to be institutionalized or routinely ignored (Dezalay & Garth 2001; Hajjar 2001; Meili 1998, 2001; Tam 2010). By participating in these networks, activists get access to new legal arguments and political tactics that may be useful in their daily legal practices. More importantly, the networks offer moral support when the work is overwhelming (Meili 2001). Finally, these networks offer the possibility of mobilizing international political pressure, especially in moments of political transition. We still need to know more, however, about the settings where global cause lawyering thrives and where it still represents a danger to both lawyers and clients.

CONCLUSION

For those interested in studying the relationship between law and social change, legal institutions and actors are conservative, channeling dissent into narrow and constrained arenas dominated by those with power and resources. Legal practices are suspect, then, in any effort to produce meaningful social change that challenges the authority of the powerful.

Yet the continuing puzzle is why social movements so often make strategic choices that implicate the law. Why do they file lawsuits? Why do they hire lawyers? Why do they seek law reform? Why do they invoke rights? We have plenty of evidence demonstrating that activists are

not naive (McCann 1994, McCann & Silverstein 1998, Olson 1984). And the cause lawyering literature is replete with examples of cause lawyering that challenges the existing state of affairs. In some regimes, taking disputes to the courts is an act of courage; demanding constraints on brute political force is a dangerous idea. Yet in liberal democracies, cause lawyering may move outside formal legal institutions, supporting activists as they press their claims to other audiences.

To understand the contribution of cause lawyering to social change, we should think more carefully about the clients and causes that are represented. Lawyers construct their clients, a central feature of the gatekeeping that characterizes the legal profession. What makes cause lawyering distinctive is that clients also construct their attorneys. This process challenges the neutrality of the legal profession and brings lawyers more fully into the collective identity of social movements. We have suggested that the organizational attributes of clients will influence this process, but we suspect that other relationships and characteristics would also prove to be important.

Finally, we believe a relational approach—emphasizing legal, social, cultural, and political practice—is a valuable way forward in the study of cause lawyering. By emphasizing the settings, contexts, and networks of cause lawyering, we can begin to build theories about how cause lawyers negotiate the relationship between law and social change.

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