

Hanging by the Cloak – Advocates for Social Change in Israel: Between the Legal and the Political

By Dr. Neta Ziv¹

Over the past 15 years, a small revolution has taken place in the profession of lawyering in Israel. Within this short span of time, tens of advocates have infiltrated the socio-legal arena, harnessing their professional and legal skills to utilize law in order to alter the *status quo*. These lawyers have developed an impressive agenda of socio-public law dealing with human rights and social justice, specifically with regard to disempowered populations and non-popular interests. This agenda includes, for instance, freedom of movement, freedom of expression and freedom of conscience (specifically of marginal and untolerated groups), the right to privacy and freedom of information; women's rights, gay rights, the rights of prisoners, detainees and people with disabilities; the rights of the Arab minority in Israel, and specifically their right to civil equality; protection of the rights of immigrant workers ('foreign workers') and trafficked women; protection of the rights of children, the elderly and refugees; advancing the protection of the environment and environmental justice; and the struggle for recognition of the social rights of impoverished groups in the spheres of housing, health services, social welfare, and education.

Do the advocates who work within these areas share common characteristics? I do not intend to draft an "ethnographic" portrait of the personal profile of this group (although the question of why certain people chose public law, and whether or not they have an identifiable personal-social-class-familial profile, is in itself an interesting one), but rather to draw attention to the professional component of their public activities. What is common to struggles within all the aforementioned areas is the existence of faith – always accompanied by a healthy dose of skepticism – since it is within the power of law to effect change where politics has failed. When the customary mechanisms of the democratic process are not sufficient to safeguard the interests and rights of disempowered and / or marginalized groups, they have recourse to the legal system, which is in theory free from the limitations and constraints of the political arena. Yet, at the same time, lawyers have increasingly introduced the most "politically" charged cases into the legal field; cases at the heart of public debate. Their motive for so doing is ideological, as the personal commitment of cause lawyers to these values is usually the impetus which drives them to the professional pursuit of social change.

¹ Dr. Neta Ziv is the director of the legal education program at the faculty of law at Tel Aviv University. She was a staff attorney at the Association for Civil Rights in Israel (ACRI) and her article largely reflects a reflexive view of her work in the past and the present.

Is it possible to reconcile the neutral professional dimension of lawyering, which relies upon the apolitical nature of law, with the political aspects of the profession? Here is the challenge faced by these advocates, and this thin line must be trodden with caution. On the one hand, they must maintain a clear 'professional' core; this is an area where one must play by the rules, which cannot be broken (albeit that they can be stretched from time to time). Such rules include the use of professional language, recognized legal definitions and arguments taken from the legal field, for the main advantage of lawyers is being able to recount their story using terms which the law recognizes, defines and permits. They must adhere to procedures designated by the law, and follow the universally recognized etiquette and manners, which distinguish advocates from "simple" activists, for example, the dress code, a specific formal and figurative vocabulary, the custom of bowing, etc. All of these tools are designed to place the dispute within the legal realm and to provide lawyers with both the legitimacy and reputation afforded – justifiably, we must presume – to those working within the field of law, as apposed to politics. On the other hand, cause lawyers must constantly be conscious of the ideological dimensions of the cases they are representing, and attempt to seek ways of introducing them to the legal arena that will also position them within the socio-economic-political area in which they are being debated. This is no straightforward task, as this dualism requires special talents that are not called for in regular legal work, and which do not originate from the motivation of utilizing law as a means of instigating social change.

Cause lawyers in Israel have already made significant progress down this path over the past fifteen years. At the end of the 1980s, they embarked upon high profile cause lawyering, aimed at bringing about social change. The areas in which these first steps were taken were classic issues of human rights: freedom of expression, freedom of movement, and freedom of religion and conscience. Since that time, we have witnessed increased activity in areas of equality based on sex and gender, sexual orientation, disability and nationality. The agenda has continued to diversify, and today includes many additional areas, as mentioned above. More recently, we have seen heightened activity around the areas of poverty, with regards to 'social rights', as well as the area of environmental justice, including environmental legislation. Undoubtedly, these lawyers have been working within the accepted norms of their professional areas; they have appeared respectfully before the courts, made their arguments "in good taste" (as the courts like to express it), delivered law of a high standard, and not excessively upset the system.

I will venture to say that, at times, it has appeared as though these lawyers have almost won the status of court favorites. Their cases are often interesting, challenging both legally and intellectually, and present the courts with the opportunity of developing precedence in areas of public interest, should they choose to do so. In this way, the courts can also strengthen their role as modelers of social values they deem worthy of advancing. The courts have generally recognized cause lawyers, and compensated them for their efforts with evenhanded treatment, and occasional commendation on the significance of their work and their

contribution to the legal system, at public events attended by legal professionals. The courts have thus “embraced” them, at times symbolically, and at others more tangibly.

Thus, a dilemma emerges: from social reformers mindful of the conservative power of any institutionalized governmental framework, cause lawyers have become compliant participants within this framework. Can this situation be avoided? How can the legal system be utilized effectively – the system upon which lawyers rely, and from which they draw their relative advantage over others – without falling into the trap of cooptation? How can we protect our special position as professional lawyers, whilst exploiting the advantage provided by using our legal work to bring about social change, without becoming part of the system? How can one operate simultaneously as an insider within the system and an outsider against the system? This is the greatest challenge facing cause lawyers in Israel today and, naturally, there is no simple answer to this question.

Cause lawyers in Israel, or at least those working for or identified with the large organizations, have already earned a certain status and reputation, which enables them freely and fearlessly to represent even non-popular interests, as well as excluded and controversial groups. Their status is not under threat, and they enjoy a high level of system-wide professional legitimacy. Clearly, there is no guarantee that this state of affairs will continue; this is a situation that could take a turn for the worse in the future, although it seems that there is no fear of change in this direction in Israel in the near future. As long as the current conditions persist, one should challenge the known and set boundaries of the playing field. One cannot, and naturally there is no benefit in “breaking the rules” in the arena in which we fight our battles. Yet, the boundaries between the legal and the political are unclear, and this ambiguity can be uncovered, and in turn flood the unequal power relations which bring about individual legal disputes, while they are being contested, in order to clearly present them within their social contexts. We must understand and remember at all times that the law is a tool for preserving the *status quo* no less, and perhaps even more, than it is a tool for change.

Above all, it is vital that lawyers hone their consciousness to the pitfalls of our work before a system of which we are an integral part, and which constitutes a main axis in the formation and preservation of our professional identity. Moreover, be very weary of embraces.