Cause Lawyering in Transnational Perspective: National Conflict and Human Rights in Israel/Palestine

Lisa Hajjar

There is an interest among scholars working on cause lawyering to "globalize" the subject by studying professional and political networks that span national boundaries. The globalizing scope of human rights provides a particularly relevant perspective, complementing the more narrowly attenuated focus on the roles and activities of cause lawyers. The subjects of this article are Israeli and Palestinian cause lawyers who have worked in the Israeli military court system in the Occupied Territories. This study adopts a transnational perspective both because the context itself (Israel/Palestine) is composed of relations that span national boundaries (statal and ethnonational) and because it befits a consideration of the international networks of human rights. Following an introductory discussion of transnationalism and a brief background on Israel/Palestine and the military courts, I turn to three aspects of cause lawyering: the political motivations inspiring lawyers to engage in such work; a comparative assessment of the legal and extralegal strategies pursued by lawyers; and the influence of human rights on the politics of lawyering in this context.

I. Thinking Transnationally

Around the world, lawyers often play important roles in formulating and advancing social or political causes. "Cause lawyering" refers to the legal and extralegal engagements of politically motivated lawyers, whether the cause is comprehensive transformation, such as independence or democratization, or a more limited aspect of public policy, such as expanded rights or

Earlier versions of this article were presented at the 1996 Law and Society Association annual meeting (Glasgow, Scotland) and the Working Group for the Comparative Study of the Legal Professions (Peyresq, France). For these opportunities, I would like to thank Austin Sarat, Stuart Scheingold, and William Felstiner. Ronen Shamir and George Bisharat have provided extremely useful counsel and information over the past few years, including comments on earlier drafts of this article. I am very grateful to the three anonymous reviewers and to Joe Stork and Bashar Tarabieh for insightful criticism and suggestions. Field research was supported by grants from the American Association of University Women, the Joint Committee on the Near and Middle East of the American Council of Learned Societies and the Social Science Research Council, the Institute for Intercultural Studies, and The American University, Washington, DC. Address correspondence to Lisa Hajjar, Department of Sociology and Anthropology, Swarthmore College, 500 College Ave., Swarthmore, PA 19081 (e-mail: lhajjar1@swarthmore.edu).

Law & Society Review, Volume 31, Number 3 (1997)

guaranteed protections of some kind. In contrast to "conventional" or "client lawyering," which is tailored to accommodate prevailing arrangements of power, cause lawyering involves the application of professional skills and services to transform some aspect of the status quo.[1]

The very notion of "cause" implies agency, motivation, social identifications, political relations, and goals. The other side of the coin is the ways in which sociopolitical dynamics affect cause lawyering as opportunities for intervention expand or contract, political alliances shift, and causes become redefined by circumstance or deliberation. The study of cause lawyering, then, involves analysis of the contours of resistance through the medium of law within a given field of hegemonic relations.

Much of the work done on cause lawyering thus far has focused on national contexts wherein lawyers' causes relate to the politics or policies of their own state or to issues affecting their own society. Even when the subjects are lawyers working in support of causes which have an internationalist agenda, cause lawyering often is organized and operationalized within national boundaries.[2] However, there is an interest among scholars working on cause lawyering to incorporate a more "global" perspective. The objective is to study professional and political networks that span national boundaries in order to gain an understanding of the factors and forces that drive and/or inhibit cause lawyering in "local" contexts.

Although cause lawyering manifests itself in widely varied ways around the world in terms of the causes and practices of lawyers, the quest for change provides a kind of organizing principle at the heart of the concept. Globalizing the study of cause lawyering would not (necessarily) alter the subject (lawyers and their activities); rather, it would involve an opening up of the boundaries—often national—that frame the analysis.

Human rights, as both a normative discourse and a form of international politics, provides a global perspective particularly relevant to the study of cause lawyering. It offers a way of imagining the world or, more specifically, a way of imagining a world changed for the better. Many examples of cause lawyering are tantamount to human rights work of some kind, and human rights "works" in large part through the efforts and activities of lawyers. As Stanley Cohen (1995:5) notes, "Lawyers are the dominant profession to claim ownership of the human rights problem and have succeeded in establishing a virtual monopoly of knowl-

[1] While much of the focus on cause lawyering thus far has been directed toward those who are engaged in "progressive" causes (e.g., anti-apartheid, anti-death penalty, labor, environment, immigrants' rights), as a concept cause lawyering can certainly include lawyers working on behalf of conservative or reactionary causes.

[2] Sarat and Scheingold (1997) have edited a volume on cause lawyering which includes a number of case studies from around the world.

edge (how the subject is framed) and power (what strategies of intervention are used)." Yet there is a distinction between cause lawyering and human rights: the latter is *already globalized;* the genealogy of human rights is rooted in the globalization of modernist conceptions and powers of law, notably the ideologico-political significance of the rule of law.[3] Human rights *standards* are "supranational," thus transcending and penetrating the boundaries of state sovereignty. Nevertheless, the state remains the premiere (albeit not exclusive) object and subject of human rights. This tension in human rights between the national and the international is instructive for efforts to globalize the study of cause lawyering.

Human rights is both a promising and a problematic form of international politics. On the one hand, its overarching goal is to establish universal norms of government extending to all societies. This goal is promoted and advanced by a growing international human rights movement, in which lawyers play an important part. On the other hand, human rights goals often are marginalized in local contexts by the politics of sovereignty (i.e., through abuses perpetrated or made possible by the domestic authority of states over the populations they govern),[4] and in the international order by a lack of effective means or suprastate institutions capable of enforcing human rights standards as embodied in international laws and conventions (Henkin 1990).

The human rights dilemma is the need to accommodate while also challenging other forms of authority, notably state governments. A human rights perspective is simultaneously local and global because it enables and elicits international scrutiny of local conditions. Human rights work, like most cause lawyering, is targeted to national polities; there is not, except in the most abstract terms, an "international society." But whereas cause lawyering invokes a given local order through a focus on the roles and activities of lawyers, human rights invokes the international order through a focus on supranational standards (setting, monitoring, and enforcing). In this way the two are conceptually and politically complimentary. According to Richard Falk (1985:34), "[T]he protection of human rights is dependent on the interplay of normative standards and social forces committed to their implementation."

Cause lawyering on behalf of some human rights–type goal is one kind of social force to which Falk is referring. One question that this article seeks to explore is "the interplay": how cause law-

[3] The globalization of human rights is often described in terms of "generations" of rights. The first generation refers to civil and political rights, to which the rule of law is central. While it can hardly be said that there is an international consensus on human rights, this does not detract from the point that human rights has force and meaning at a global level.

[4] This is not to imply that abuses are limited to states and other institutions in the public sphere, but this is where most of the attention has been focused.

yers make use of the discourse and politics of human rights in a localized setting. The specific subject is cause lawyering by Israelis and Palestinians in the Israeli military court system in the occupied West Bank and Gaza.[5] The time frame under consideration extends through early 1994 when the Israeli occupation was unmediated by the transition to Palestinian "self-government" in parts of the territories.[6]

This case study approach allows for an assessment of the interrelations between local and global factors and forces as they affect a particular group of lawyers and their activities. At the risk of being contradictory, however, the scope of analysis of this study is best described not as global but rather as "transnational."

> The growing significance of a transnational perspective reflects the increasing interdependence of international life combined with the persisting weakness of global institutions. The transnational focus is an ordering halfway house responding to global needs, yet accepting the territoriality of power and authority. Transnational order as a logic is intermediate between the horizontal language of statism and hegemony, and the vertical language of supranationalism. (Falk 1985:49)

The ordering logic of transnationalism has three discernable dimensions relevant to the subject of cause lawyering in the Israeli military court system. One is the spatially abstract regulatory language of human rights, which circulates through the international order by producing and incorporating transnational networks. Monitoring and reporting on violations and other problems by organizations like Amnesty International and Human Rights Watch depends on information provided by local sources, including lawyers. This information is then relayed through the publication of reports, which criticize existing practices or policies and recommend changes. Optimally, from the perspective of human rights organizations and activists, those reports then become a reference point for all kinds of political concerns and activities, from foreign aid to military sales to United Nations resolutions. Human rights informs cause lawyering in the Israeli military courts through the use of human rights language by local lawyers and the development of contacts between them and human rights organizations for purposes of trying to

[5] This research on cause lawyering is part of a larger study of the Israeli military court system (Hajjar 1995), based on fieldwork done in Israel and the territories in 1991–93. The research methods include extensive participant observation in all the military courts and over 100 interviews with people representing the various categories of participants, including some 45 lawyers. I spent days or even weeks with a number of lawyers. In addition to providing information about their own roles and activities, lawyers were an important source of information about the history and workings of the system and contacts among the other categories (judges, prosecutors, and defendants).

[6] I returned to Israel/Palestine in June 1997 to examine the effects of the peace process on the military court system. See Hajjar 1997a.

elicit international support to challenge the status quo of occupation.[7]

The other two dimensions of transnationalism that apply to this study are spatially grounded in the history and politics of Israel and the Occupied Territories (Israel/Palestine). They involve trans-statal and trans-ethnonational relations (see Connor 1994; Verdery 1994). The Israeli-Palestinian conflict has been a constitutive aspect of these relations.[8] A second issue which this article addresses is the localized dimensions of transnationalism as they affect cause lawyering. The objective is to illuminate the processes and effects of government-in-conflict in relations among population groups in Israel/Palestine, and people's relations to the Israeli state.[9] At the most basic level, transnationalism manifests itself locally through the significance of differences between Jews and Palestinian Arabs, and the politico-legal distinctions between citizens of the Israeli state and residents of the Israeli-occupied territories.

Section II provides background information on the political and legal context of Israel/Palestine and a brief overview of the military court system. The remainder of the article focuses on the subject of cause lawyering in the military courts. Sections III and IV concentrate on the local dimensions and dynamics of transnationalism as they inform lawyers' motivations (sec. III) and lawyers' legal and extralegal strategies (sec. IV). Section V extends the transnational perspective to the international level by considering the varying influences of human rights on cause lawyering in this context.

II. Israel/Palestine as a Case Study of Transnationalism

A. Background

In 1967 when Israel occupied the West Bank and Gaza, the territorial boundaries of Palestine during the British Mandate were reestablished by the spatialization of control through a single power, now the Israeli state (Kimmerling 1989). But this geographic contiguity manifested itself in an explicitly transnational form. Israeli rule was jurisdictionally divided among several political formations with varying legal statuses: sovereign territory (Israel proper, i.e., inside the borders of the 1949 armistice com-

[7] A full consideration of the transnational nature of the work of international human rights organizations is beyond the scope of this study. See S. Cohen 1995.

[8] This claim could be extended far beyond Israel/Palestine, as various governments in the Middle East have used the conflict to set national agendas, prioritize the use of resources, and develop various kinds of foreign relations (political, economic and military).

[9] The term "government" is used throughout in the Foucauldian sense of process rather than, or in addition to, institutional formation. See Gordon 1991; Hunt 1993; Mitchell 1990, 1991.

monly referred to as the Green Line), military administration (Palestinian population centers in the territories),[10] and those parts of the Occupied Territories that have been legalistically transformed into de facto annexations (East Jerusalem, Jewish settlements, military holdings, and confiscated lands).[11]

Thus, political authority in Israel/Palestine provides one example of trans-statal relations, both because of the heterogeneity of ruling structures and because military occupation is, by definition, an "international" matter. Locally, *government* (the administration and control of land and people) is a prerogative vested in the Israeli state, which was empowered through the fact of conquest to extend its rule to the territories. The transnationalization of Israeli government was instituted through the various political and legal processes of jurisdictional mapping and administration. But this localized politico-legal arrangement is mediated by the overlapping authority of the international community, which bears—and at times assumes—a degree of accountability for the governance and fate of occupied Palestinians and the lands seized in war (see Playfair 1992).

The trans-ethnonational dimension is comparably complex. Ideologically and politically, the population in Israel/Palestine is comprised of "two people," specifically two ethnonations, Jewish and Palestinian Arab. This distinction was institutionalized and politicized over the last century, a product of the sweeping rise of modernist nationalism. The Israeli-Palestinian conflict is, at root, a contest of national claims to the historic homeland, an area that conforms to the contemporary boundaries of Israel/Palestine.

In terms of the character of its sovereignty, Israel is an ethnonational state because it is a Jewish state, but its citizenry includes people not of the Jewish "nation." The term "Israeli," which refers to citizenship status, includes Jews (conflating religion and nationality), Arabs (Muslim and Christian Palestinians) and Druze (Palestinians defined communally by their religion; they were categorized as Arabs until 1961 when the state accorded them the status of a distinct nation).[12] In ethnonational terms, "Palestinian" includes both Arab citizens of Israel and noncitizen residents of the territories.[13] The sociopolitical order

[10] Since 1994 the Israeli military has been withdrawing forces from Palestinian population centers, but the larger political implications of such moves on the ground do not alter the fact that as long as the military retains its authority in the territories, they remain occupied.

[11] For sources detailing the history and implications of these jurisdictional distinctions in the territories occupied in 1967, see Benvenisti 1990; Lustick 1997; Shehadeh 1993.

[12] There are two additional categories of identity among Israeli citizens: Beduin are Muslim Arab pastoralists and Circassians are non-Arab Muslims.

[13] The term "Palestinian" also encompasses the millions living in diaspora beyond the boundaries of Israel/Palestine.

in Israel/Palestine is structured hierarchically by the political disparities of Jewish statehood (i.e., Israel) and Palestinian statelessness.[14]

The combined significance of these trans-statal and trans-ethnonational factors poses a number of distinct challenges for sociolegal analysis on Israel/Palestine. First, the relationship between law and society is complicated by the fact that the parameters of analysis do not correspond to the boundaries of a sovereign state. There is no single legal order applicable throughout this area nor any common legal status or shared set of rights available to all people. Second, there is a serious question as to the semiautonomy of the law when it comes to matters relating to Palestinians because of the ways in which Israeli national security is given precedence over legal rationality within the legal codes and systems (see Briskman 1988; Lahav 1988; Shamir 1990, 1991; Zamir 1989). Third, the absence of a single "polity" corresponds to the absence of any kind of unifying legal ideology. There is no shared perspective on rights, justice, security, and so on.

Cause lawyering in the military court system has been a manifestation of the contested legitimacy of Israeli authority in the West Bank and Gaza. Most of the lawyers who have chosen to work in these courts have done so for political reasons which are rooted in their critique of Israeli government in the territories. However, cause lawyering in this context is a diversified enterprise. Some lawyers, primarily Jewish Israeli liberals, are critical of the *form* of Israeli rule, particularly to the extent that it involves the violation of rule of law standards. Other lawyers, including Jewish Israeli leftists, Arab Israelis, and Palestinian residents of the territories, take the occupation itself as the basis for their criticisms.

The situation in apartheid South Africa provides a salient contrast. There, cause lawyering exhibited a coherence of cause which included not only organized resistance to the racialized politico-legal order, but also a transcendent vision of a democratic future (Abel 1995; Ellmann 1992). Among lawyers working in the Israeli military courts, there is no such shared vision about the desired course of political change or common aspirations about the future of Israel/Palestine. Analytically and politically, the contrast illustrates the difference between lawyers working for a cause of national proportion or significance, and those working in a transnational context.

[14] Even though a Palestinian Authority (PA) was established in 1994, its powers are subsidiary to the Israeli state and limited to municipal government over Palestinian population centers (see Usher 1995). This development does not substantively transform the hierarchical order wherein the Israeli state retains an overarching hegemony even over areas of Palestinian "self-government." Whether such a change, in the form of an independent sovereign Palestinian state, will be an outcome of the peace process remains to be seen.

In South Africa, the politics of sovereignty provided an organizing framework for resistance because the state was not only a target for change but a goal. Cause lawyering strategies were coordinated with a larger political movement to reform existing governing structures and to remake the sociopolitical order into an inclusive democracy. In a transnational context, resistance can involve reformist strategies to alter existing governing practices, and counterhegemonic forms aiming to reconfigure government entirely. In Israel/Palestine, both are in evidence. There are movements oriented to the goal of a two-state solution, and others adamantly opposed to such an option. There are movements to democratize the Israeli state by transforming its ethnonational character and others that seek to expand the provision of civil liberties under the existing order. Consequently, when it comes to cause lawyering in Israel/Palestine, the relationship between politics and law reflects a political terrain where consensus on anything is hard to find.

B. The Military Court System

The military court system is a rather unique institution in that it is one of the few contexts where Israeli citizens and Palestinian residents of the territories have had regular and sustained contact. The system was established in 1967. Its authority and jurisdiction extends from the Israeli military government in the territories, which is part of the Israel Defense Forces (IDF) (Shamgar 1982a). However, the IDF's authority in the territories derives from the duties inhering in an occupant, as set out in international humanitarian laws (i.e., laws of war).[15]

The courts are manned by soldiers. Judges and prosecutors, virtually all of whom are Jewish Israelis, include both career soldiers and reservists.[16] Translators, most of whom are Druze Israelis, are essential to the functioning of the system, given the language barriers between Hebrew-only and Arabic-only speakers.

[15] The official Israeli position on the state's rights and duties in the territories differs radically and explicitly from international legal opinion. Briefly, the Israeli position devolves on the argument that the West Bank and Gaza are not technically "occupied" because they were not the sovereign territory of the states ruling them at the time of the war (Jordan and Egypt, respectively). Rather, the argument holds, their status was sui generis, making them "administered" rather than occupied territory. Consequently, the laws of war pertaining to occupation, notably the Fourth Geneva Convention, do not apply to Israeli rule on a de jure basis, although the government does claim to abide by the "humanitarian" provisions of the Convention on a de facto basis (never specifying which provisions it regards as humanitarian; the International Committee of the Red Cross, guardian of the Geneva Conventions, regards them as humanitarian in their entirety). For details on this issue, see Hajjar 1997b.

[16] All military court judges and prosecutors are lawyers. As of 1988, Israeli judges sitting on domestic benches have been excluded from doing reserve duty in the military courts, a decision taken by the military leadership to avoid any appearance of a "conflict of interest."

The defense lawyers who work in the military courts include Jewish and Arab Israeli citizens as well as Palestinian residents of the territories. In addition to these politico-legal status distinctions, lawyers' legal skills and education vary, in part along lines of identity: most Israeli citizens were educated in Israeli faculties of law, while most Palestinians from the territories were educated somewhere in the Arab world (primarily Egypt and Lebanon).[17] These differences are so significant as to make it impossible to regard military court lawyers as a cohesive group. However, they do constitute a category because they perform a common role: they all represent Palestinian clients.

The military courts have been used to prosecute Palestinians charged with security violations, which encompass activities ranging from violent actions to tax evasion to political expression.[18] Israeli government of Palestinians in the territories can be regarded as a rule/rights continuum characterized by a shifting give-and-take as determined by considerations of Israeli security and other national interests. Indeed, the Israeli state has deployed law to establish a relationship between security and virtually all aspects of Palestinian life. Over the decades since 1967, hundreds of thousands of Palestinians have passed through the military court system.[19]

Despite the Israeli state's rhetorical claims to abide by rule of law standards, the military court system is rife with problems which seriously compromise the availability of due process protections.[20] The problems include the prevalent use of torture and ill treatment to extract confessions from suspects, prolonged periods of incommunicado detention, the difficulties lawyers face in meeting clients and obtaining information about cases, the use of third-party confessions that are extremely difficult to challenge, the use of "secret evidence" that is unavailable to de-

[17] Israeli-trained lawyers have a certain advantage because the military legal system roughly resembles other Israeli legal systems, at least to the extent that all are modeled on the Anglo-American systems. In the Arab world, where most Palestinian lawyers are educated, the Continental legal system provides the general model. This is compounded by the problem that they have little preexisting understanding of Israeli laws of procedure and evidence when they begin working in the military courts.

[18] The laws enforced through the military court system include several thousand original Israeli military orders (see Rabah & Fairweather 1993; Shehadeh & Kuttab 1980; Shehadeh 1988) and the British Defense (Emergency) Regulations, 1945, the latter a holdover from the British Mandate in Palestine (see Moffett 1989; Hajjar 1994).

[19] Between 1988 and 1993 alone there were 83,321 cases. Of this total, only 2,731 defendants were acquitted (Human Rights Watch/Middle East 1994:2). There is also an extensive apparatus for detaining and imprisoning Palestinians extralegally, referred to as "administrative detention."

[20] Virtually everyone, including Israeli judges and prosecutors, discusses the system in terms of its problems, although the nature and cause of the various problems that people choose to highlight vary.

fendants or their lawyers, and the strong trend of judicial preference for prosecution witnesses, particularly soldiers.[21]

The cumulative effects of these problems serve to place onerous burdens on defense lawyers, both as legal practitioners and as representatives of Palestinian clients. Within the adversarial legal process, lawyers are *legally* positioned on the "side" of Palestinian residents of the territories and "against" the Israeli military administration. It is a taken-for-granted feature of the system that prosecutors enjoy a vast disproportion of advantages over defense lawyers, given that the purpose of the system is to sustain order and rule in a conflict situation (see Straschnov 1994; Yahav 1993).[22] Consequently, lawyers have few legal options to achieve the standard mark of "victory": acquittal through trial. Rather, for the most part they are forced to scramble for some lesser victory through plea bargaining: shorter sentences, the dropping of charges, exclusion of some flagrantly flawed evidence, and so on.

The pressure to plea bargain also comes from clients. For one thing, Palestinians generally have refused to regard the military legal system itself as a site of struggle. For another, dealing is widely recognized as the best means of getting a shorter sentence, thereby enabling people to be back on the streets where, it is popularly regarded, the "real" struggle takes place. Clients' insistence on dealing, however, does not derive from a single vision. Some are motivated simply by pragmatic considerations to minimize the consequences of their arrest, while others offer a politicized rationalization that dealing appropriately reflects their disregard for Israeli "justice." Consequently, given the structural and interpersonal pressures on lawyers to plea bargain, it should be no surprise that some 90–95% of military court cases end in a deal.[23]

Dealing is an individualizing process where the contents of a single case (evidence, history of past convictions, etc.) largely determine defense-prosecution negotiations over the outcome. The practice of plea bargaining, which constitutes the vast majority of lawyers' legal work in this system, undermines lawyers' abilities to

[21] For studies criticizing aspects of the military court system, see Amnesty International 1991; Cohen & Golan 1991, 1992; Dillman & Bakri 1992; Ginbar 1993; Ginbar & Stein 1994; Golan 1989; Gordon & Mazali 1993; Human Rights Watch/Middle East 1994; Lawyers' Committee for Human Rights 1992, 1993; Public Committee against Torture in Israel 1990; Thornhill 1992.

[22] Many judges and prosecutors I interviewed readily acknowledged these advantages, and the fact that they tend to come at the expense of defendants' due process rights. They rationalized this on the grounds that such measures are necessary in the fight against terrorism.

[23] Of the cases that do not end in a plea bargain, most are dropped by the prosecution. The instances of a defense victory through trial constitute a miniscule proportion of the total outcomes. Among lawyers I interviewed, the few who have on occasion taken cases to trial can count their victories in the low digits—if they are that lucky. For example, one lawyer from Gaza, who claimed to have the best record in the Strip (a claim supported by a number of other Gazan lawyers), said that in 11 years of practicing, he won 11 cases.

use the legal process itself for political ends (e.g., presenting arguments challenging the state's authority in general or some aspect thereof). But the legal process narrowly defined neither encompasses nor explains how many defense lawyers perceive their work. While most lawyers do not believe that political change would or could come from *within* the legal system—in large part because the prevalence of dealing—they do see their roles and activities in political terms. Most ascribe their motivation for working in the military courts to the desire to *be politicized* legal practitioners.

The military court system has always functioned as an institutional intersection in the conflict. During the period of the Palestinian uprising against the occupation, which began in December 1987 and lasted through the early 1990s, Israeli-Palestinian relations reached new levels of violence and repression. Tens of thousands of Palestinians were drawn into confrontations of various kinds with the Israeli military, many for the first time. Israeli measures to contain and stop the resistance included a vastly expanded use of the military courts.

The uprising had a transformative effect on cause lawyering. In addition to the chaos caused by the flood of cases, countless people with no previous experience or preexisting knowledge of the legal system were being arrested, interrogated, and charged. Many lawyers with long-time experience made sharp negative comparisons between their "uprising clients" and the types of people they had represented in the past, who were more politically seasoned, aware of the legal costs of resistance, and willing to pay the price for their activism. Whereas prior to the uprising, defendants were often organized along the factional lines of the Palestine Liberation Organization (PLO) and certain lawyers regularly represented people from one faction or another, when the uprising started, these lines became blurred (see Hiltermann 1991; Nassar & Heacock 1991). And by the end of the 1980s, Islamist activists affiliated with Hamas and Islamic Jihad (which are not part of the PLO) were being arrested in increasing numbers. Since Islamist militancy gained prominence only during the uprising, there were virtually no prestanding arrangements for legal representation. Lawyers stepped in to meet the demand, but secular/sectarian political differences added a new potential for tensions in lawyer-client relations. Nevertheless, for all intents and purposes Islamists shared at least the short-term political goal of secular activists: ending the occupation.

The legal terrain was also affected by the uprising. The escalating demand for legal services drew some 200 additional Palestinian lawyers into military court work, many for the first time. While plea bargaining remained the strategy of choice and necessity, the variations in skills, experience, and political views

were sources of tension among lawyers and between lawyers and other categories of participants.

But the uprising also had some positive effects on cause lawyering. One significant consequence was a heightened interest in the international community stimulated by media and human rights reports about conditions in the territories, including the military court system. This attention fueled and fortified a "human rights consciousness" among lawyers and enabled a whole new level of political and legal criticism of the court system that some lawyers had been striving to generate for years. In retrospect, this criticism can be seen as part of the political pressures that led to a transformation in the status quo of occupation, as manifested in the start of Israeli-Palestinian negotiations in November 1991.

III. On Being Politicized: The Importance of Identity

In the early years of the occupation, only a small number of lawyers worked in the military courts. In Gaza, four Palestinian lawyers (out of a total of ten) were willing to take military court cases from the outset. The West Bank had a larger population of lawyers, but none worked in the military courts—or any Israeli-run courts—in the early years because the entire profession was on strike to protest the occupation (see Bisharat 1989).

Felicia Langer, the first Israeli cause lawyer, began taking military court cases in 1968.[24] Langer, who is Jewish, was motivated by two interrelated goals: one was to provide legal assistance to Palestinians suffering injustices at the hands of the Israeli military and security personnel, and the other was to break down the "conspiracy of silence" within Jewish Israeli society about the nature of military rule in the territories. She believed that the former was made possible and perpetuated by the latter.

Langer played a groundbreaking role in struggling to raise public awareness about the problems in the military courts, using her first-hand experience to publicize information about Israeli abuses, including the use of torture (see Langer 1975, 1979, 1988). To enhance her legitimacy as a critic among Jewish Israelis, she drew lines around the kinds of cases she was willing to take: she refused to represent people charged with violent crimes. While she did succeed in gaining public visibility, it did not have transformative effects on Israeli public opinion. It did, however, earn her condemnation by Israeli officials as a "terrorist sympathizer" (see Shefi 1982:322–23). But her activities and visibility paved the way for a new generation of Israeli cause lawyers,

[24] Prior to Langer's entry into the military court system, Israeli lawyers who defended Palestinians were not cause lawyers. They included military lawyers assigned to the task and some private lawyers who saw the military courts as a new market for their services.

Jews and Arabs, who decided to take up military court work. They were joined by a growing number of Palestinian lawyers.[25]

By the 1980s, the number of lawyers working in the military courts either full or part time had climbed to nearly 200. They included about two dozen Jewish Israelis, four dozen Arab Israelis, and about 120 Palestinians from the West Bank and Gaza.[26] As mentioned above, the uprising drew additional Palestinian lawyers into military court work, but their tenure was brief, and many dropped out as the number of cases declined by the early 1990s.

The reasons Israeli lawyers cite for having chosen to work in the military courts vary. Jewish liberals have been inspired primarily by a concern that the military authorities were failing to abide by rule of law principles, thereby infringing on Palestinians' rights. While they would describe themselves as loyal citizens of Israel, they were critical of the state's tactics to maintain the occupation. Their motivation, then, was to inspire—and if necessary to pressure—the authorities to adhere to the relevant standards of legality for a military occupation. One liberal lawyer describing his work in this regard said that he is an enigma for judges and prosecutors. On the one hand, having served in an elite unit of the IDF he is literally "one of them." On the other hand, he makes a regular practice of reporting on events in the military courts in order to provoke a critical reaction among Jewish Israelis, the one constituency with a capacity to exert pressure on the state to change those policies and practices that contradict the exercise of legitimate authority. He said,

> There is only so much I, or any lawyer, can do in the courts. But when I see a problem, something really outrageous, I run to the media. I have good connections with journalists and they believe what I say because they know me. When I give them a story about something outrageous, like a kid being sent to jail with some long sentence just for throwing stones, or if someone comes to court with bruises from a beating, I want people to know about it. I don't want people to say they didn't know. . . . This is my real service.

Such views, if not necessarily such media tactics, are shared by other liberal Jewish Israeli military court lawyers, who are concerned about the negative effects the occupation is having on

[25] The increasing number of Palestinian lawyers working in the military courts was due to both a growth in the profession and the decision among some West Bank lawyers to break the strike.

[26] Because of the politico-legal distinctions among lawyers, no single organization represents them all. Israeli citizens belong to the Israel Bar Association, but this organization has largely resisted involving itself in the professional concerns of its members who defend Palestinians in the military courts. In 1976, Gazan lawyers organized themselves into the Gaza Bar Association, and in 1980, West Bank lawyers formed the Arab Lawyers' Committee. The organizational disunity also makes it difficult to determine the exact number of lawyers working in the courts at any period. The figures cited in the text are estimates provided by knowledgeable informants.

their own society and on Israeli legal culture. When liberals cross the Green Line to defend Palestinians against the state, it serves to disrupt the complacency about what goes on "over there." They are struggling to alter a strong popular view within Jewish Israeli society that it is legitimate to accord legal standards secondary status to national security,[27] which is held to be at constant risk from the dangers posed by the Palestinian collectivity in the territories (see Arian, Talmud, & Hermann 1988). Jewish Israeli liberals are motivated by a desire to intervene in the balance between security concerns and legal principles. According to one who occasionally takes military court cases:

> There is no formula to assess national security, and every Arab in the territories is not *necessarily* a security threat. Because of the procedural problems [referring to the use of "secret evidence"] lawyers have no way of knowing whether the judges and prosecutors are acting fairly in any case. . . . We have to be concerned that people get what they can from the court.

In contrast, Jewish leftists and Arab Israelis have seen their work as an opportunity to support the Palestinian nationalist struggle for independence and to develop solidarity relations with Palestinians in the territories. They share in the view that the occupation is in and of itself a violation of Palestinian rights, not simply a context within which human rights violations occur. However, the Jewish-Arab distinction has implications for their own perspectives on cause and for the way they are regarded by others.

Leftist Jewish lawyers tend to describe themselves as non-Zionists or even anti-Zionists who do not identify with the political establishment.[28] Yet, as Jews they are privileged within the sociopolitical hierarchy in comparison to all categories of non-Jews. Because they politically support the Palestinian struggle against the occupation, their activities as cause lawyers are considered suspect by many Jewish Israelis and the more outspoken among them are regarded as traitors to their own "side." As one lawyer described his decision to take up military court work:

> When I was young, I was ideologically sympathetic to the left, but I wasn't politically active. Then I started working for [a leftist lawyer] and that opened my eyes. I saw the conditions in the territories and I saw what kind of suffering the Palestinians face. . . . I understand the political motivations of Palestinians. It is my job to help them weather down the damage. . . . Being a Jewish Israeli makes it easier for me than for Palestinian law-

[27] Within official and politically mainstream Israeli discourse, the prioritizing of security over legality is often justified on the "necessity" argument. For an example, see Landau et al. 1987; for a critique, see Kremnitzer 1989.

[28] Within the Israeli political spectrum, these lawyers would actually be regarded as "ultra-leftists," since the term "leftist" is used to refer to people associated with Zionist left parties like Meretz (a coalition of Ratz, Mapam, and Shinui) and political movements like Peace Now and Yesh Gvul.

> yers. Palestinian lawyers have a very hard time and many of them take too much shit. I am not going to take shit from some soldier, and they know it.

For leftist Jewish lawyers, being politicized legal practitioners means defending people engaged in a struggle against a status quo of continuing oppression and disenfranchisement. As one well-known leftist lawyer described her cause: "I have done no favors and deserve no thanks. I am simply trying to make the place where I live [i.e., Israel/Palestine] free of occupation, oppression, exploitation and racism."

Arab Israeli lawyers compare themselves politically to like-minded leftist Jewish Israelis. But Arabs have a more ambiguous relationship with both Jewish Israeli society and their fellow Palestinians who live under occupation. Within the Israeli polity, Arabs are marginalized by definition as non-Jews. For those Arab Israelis who choose to practice across the Green Line, cause lawyering has been integrally linked to issues of identity. The question is not only what is the cause but also who are they—in relation to "their" state (Israel) and "their" people (Palestinians). One Arab Israeli lawyer expressed the contradiction: "I am a soldier in my people's army and I use the cards I have been dealt." His cards include Israeli citizenship.[29]

An Arab Israeli lawyer from Nazareth, who had been working in the military courts since 1973, described his motivation in comparative terms:

> Felicia [Langer] works for other people. I work for my people. Felicia is an Israeli [i.e., Jewish]. She does this work because she is a communist, and she has done great work. . . . But when I defend a Palestinian, I am in a sense defending myself, because the Palestinian struggle is my struggle.

Many Arab Israeli lawyers relate their cause directly to their ethnonational ties to Palestinians in the territories—they are "one people" in the "two people" ideologico-political dichotomy of Israel/Palestine. Indeed, some expressly say that they relish such work as a chance to engage in nationalist activities against the state, which has been less than kind and fair to their own community (see Kretzmer 1990; Lustick 1980; Shamir 1996; Zureik 1979). Others relate their cause more directly to leftist politics than national identity. Said one,

> The most committed lawyers are the leftists, whether we are Jews or Arabs. When [Israelis or Palestinians] criticize us, the first thing they point to is the fact that we are communists. But if we weren't communists, we wouldn't be here. We would be working somewhere else.

Arab Israelis see their status as citizens and their legal education in Israeli universities as very important points of distinction

[29] The military metaphor is ironic, because Arabs (with the exception of Druze) are not conscripted into the IDF.

between themselves and Palestinians from the territories, particularly as it bears upon their legal practice. Several describe themselves as having been "Israelized," which manifests itself as aggressiveness in dealing with opponents in the legal domain. One lawyer, who moved from the Galilee to East Jerusalem to work full time in the military courts, said that solidarity motivated him, but the fighting spirit is what has made him the most in-demand lawyer working in the military courts.

> I am a strong man. I respect myself as a lawyer and people respect me. Knowing the language is number one, then knowing the laws and precedents, and finally being able to have good relations with judges and prosecutors. Because I work well, I have a special relationship with the courts, and clients come to me for that reason. I can get things done. I always advise other lawyers [i.e., Palestinians from the territories] to respect themselves and behave with dignity so that the enemy will respect them. When you show weakness, you become weaker because people take advantage.

Arab Israelis' decision to cross the Green Line does not bear the same implications as a similar career decision by either liberal Jewish lawyers, who are motivated by a desire to effect change within their own society, or leftist Jewish lawyers, whose solidarity with Palestinians is tempered by the significance of the Jewish/non-Jewish distinction. Because of the rampant and pervasive discrimination against Arab Israelis inside the Green Line, any question of finding cause in loyalty to the state is unthinkable. Rather, for them the politics of cause is a matter of finding a space to be political: specifically, to act on their critique of the state and to support people with whom they have a national identification.

The example of Arab Israeli cause lawyers illustrates several important developments in the broader context. First, their decision to take military court cases has challenged the significance of the Green Line. Arab lawyers put ethnonational solidarity with Palestinians across the line into practice. One lawyer from Umm al-Fahum describes these relations as complementary:

> Military court work is routine, since most of what we do is plea bargain. I like complicated cases with lots of evidence because this is where I can make a contribution since I have the skills to really work the system. But for simple cases, it is actually better for people to use lawyers from [the territories] who live right there and can visit people in prison and keep in touch with the families. For me, just getting to Gaza presents lots of problems. [Israeli] lawyers can't visit as often as the clients or their families would like, and can't follow cases as closely since they aren't in the military courts every day. That's why I only agree to take the hard cases.

A second and contrasting development is the limits of such solidarity; hardly any younger Arab Israeli lawyers have taken up

practice in the territories, preferring to pursue careers within the domestic Israeli legal system. Older practitioners explain this generational gap as a consequence of the scanty legal accomplishments and material rewards that military court lawyers can claim. According to one, "They look at us and think we wasted our lives. We are poor even though we work hard . . . and the jails are still full of Palestinians."

A third development relates to political changes resulting from the Israeli-Palestinian negotiations, which began in 1991. The peace process has had a fracturing effect on the Palestinian "people" in Israel/Palestine, who are divided between citizens and residents of the territories. Among Arab Israeli lawyers, this has manifested itself as a trend to downsize or even end their practice in the territories. Many felt they had "paid their dues" to the Palestinian cause and could walk away with dignity. In the words of one lawyer who decided to quit military court work and take up practice in a northern Israeli city, "Israelis do 3 years of national service [i.e., conscription in the military]. I did 11."

Like the people they defend, Palestinian lawyers from the territories live under occupation and as such occupy a tenuous position *as lawyers* (see Bisharat 1995). The most common answer to the question of why they work in the military courts is that these lawyers want to involve themselves in the Palestinian national struggle for self-determination. Thus, their motivation is solidarity deriving from a common identity with the collective client: the Palestinian population in the territories. Some believe that their work is an integral part of the struggle, while others take a somewhat more detached view of the relationship between politics and legal practice. Of course, this distinction is limited by the fact that many lawyers have been arrested themselves. According to one West Bank lawyer:

> I would visit clients in prison about four days every week. When I was arrested, it wasn't in the night like other people. I was "invited" to meet with [a security services officer]. That's how they arrested me. First they questioned me in Fara'a [an Israeli prison near Nablus] about being a leader of [a Palestinian faction] and passing information from my clients in prison to people on the outside. Then they sent me to the desert [Ansar III, the prison camp in the Negev]. Even though it was totally disgusting, being there was a good experience for me. Now I could really understand how things work from the other side.

Palestinian lawyers frequently describe their motivation in terms of "national duty" and "honor." One young lawyer who started practicing during the uprising said,

> I always ask myself if working in the military courts is what I should be doing, if I am doing anybody any good. I feel sorry for the people. Being arrested or having a family member arrested and going through the whole process is very difficult for

> everyone. Visiting the prisons is depressing. The detainees stink, they are cold and scared and tired. But you are not talking about strangers. These are my people. I know I am helping them, even if all I am doing is bringing clothes and some news from their families. . . . People go to lawyers because they need them. Lawyers are part of the big picture of the struggle.

Although Palestinians have the occupation in common, there are some important distinctions among Gaza, the West Bank and East Jerusalem deriving from the differing political histories, socioeconomic conditions and Israeli governing policies in these three areas. In relative terms, the situation in Gaza has always been more desperate economically and highly charged politically. When the uprising began, Gaza lawyers went on strike for 11 months to protest the military's repressive policies toward the population at large and what they claimed were unworkable conditions in the military courts. The strike ended as a result of public pressure to provide legal services for the thousands of people who were being arrested. However, Gaza lawyers collectively decided not to charge fees for "security cases." This decision was a demonstration of corporate solidarity with other sectors of the population for whom the uprising was creating an economic crisis. Thus, working actually cost lawyers money, as they had to subsidize their own activities on behalf of their clients. One Gaza lawyer commented on this issue:

> The economic situation is a big dilemma. People are so poor, and there is a relation between the lawyers and the families, a social relationship, which makes it very hard to separate personal friendships from professional relations. . . . I lose perspective on the separation between myself and my clients and their families. . . . Because lawyers are the ones who pass between the families and the prisoners, we become like members of the family. I know more about my clients' lives and their problems than I know about my cousins.

In addition to the financial hardships, working in the military courts in Gaza is more dangerous, relatively speaking, than in the West Bank. In one telling example, an Arab Israeli lawyer was beaten by a soldier for protesting the expulsion of the wife of his client, who had waved at her husband in the dock. Afterwards, according to other lawyers on the scene, when the soldier learned that the lawyer was an Israeli citizen and not a Gaza resident, he reportedly said that he had hit him "because he thought that he was a Gazan lawyer and therefore it didn't matter" (Lawyers' Committee for Human Rights 1992:16). Raji Sourani, a Gaza lawyer who received the Jimmy Carter Human Rights Award in 1991,[30] said this of the situation: "Being a lawyer in Gaza is the

[30] Sourani shared the award with Avigdor Feldman, an Israeli lawyer who handles many cases of Palestinians before the Israeli High Court of Justice.

worst. Lawyers and detainees are almost equally assaulted and abused by soldiers in the prisons and courts."

While many of the hardships and problems facing Gazans are also faced by West Bankers, the West Bank is relatively more affluent, and most lawyers can count themselves among the middle class. Unlike in Gaza, during the uprising West Bankers retained the right to charge for their work, notwithstanding that thousands of cases were handled on a pro bono basis. In addition to fees which lawyers could collect directly from clients, there were several legal aid programs which provided lawyers' fees;[31] there were no comparable programs in Gaza, illustrating the more well-developed structure of nongovernmental organizations in the West Bank. In addition, many West Bank lawyers were able to receive payment "from Jordan," which meant that Palestinian factions with offices in Amman would dispense funds to cover legal fees of faction members; again, Gaza lawyers had no such options, illustrating the differing histories and relations between the two regions and the Palestinian leadership outside. So while work in the military courts was not particularly lucrative, West Bank lawyers never suffered the absence of income that Gaza lawyers faced. And for those who shifted over to the military courts during the uprising, it was their means of preserving a certain standard of living.

As is probably the case in other parts of the world, even cause lawyers are not immune from criticism about their financial motivations. Money was a very common theme among West Bankers when discussing themselves and their colleagues. One lawyer from Bethlehem, who said that she can barely afford to run an office, complained: "Lawyers are considered thieves by many people, and some of them deserve this reputation because they profit from other people's suffering. But for others, we are not even compensated for the work we do."

The legal environment in the West Bank is more complicated and diversified than that which obtains in Gaza for two main reasons: first, most Israeli lawyers practicing in the territories do so in the West Bank, and second, the differing legal status between East Jerusalemites and other West Bank Palestinians provides them with different personal rights and, thus, professional options.

While many Palestinian and Israeli lawyers have strong informal relations, there are also significant tensions rooted in the ways in which identity is politicized. For example, the West Bank lawyers' organization, the Arab Lawyers Committee, does not accept Israeli citizens as members. This not only reflects but exacerbates the politicization of difference within the profession. The

[31] Legal aid was provided on behalf of people with the status of refugees through UNRWA and for nonrefugees through the Quakers' East Jerusalem office.

ALC has expected Israeli lawyers to abide by strikes and other collective decisions, which many do, but has resisted expanding the role that nonmembers could play in setting or influencing those policies.

Identity differences find expression in the ways West Bank and Israeli lawyers view one another. There is a tendency among some Palestinian lawyers to regard Israeli citizens (both Jews and Arabs) as "usurpers." According to a prominent West Bank lawyer, "Palestinian lawyers are different from Israeli lawyers because we are Palestinians first and lawyers second. Many Israeli lawyers see their work as *work*, not as politics. Israelis never handle files for free." For their part, Israeli lawyers often reciprocate the criticism by looking down on Palestinian lawyers as less skilled. Responding to a question about why the ALC has never taken up the offer made by some Arab and Jewish Israeli lawyers to provide seminars in Israeli laws and procedures, one leader of the ALC said,

> Israeli lawyers who emphasize how important knowing the system is are just promoting themselves. We [in the ALC] considered the idea of seminars, but learning Israeli law isn't important because the military courts don't apply the laws. And we don't need any help learning procedures because none exist. Whenever we try to raise issues of procedure or law, judges say, "This isn't Israel."

Lawyers from East Jerusalem have a politico-legal status as "noncitizen residents" of Israel, which distinguishes them from other West Bankers. During periods when the Israeli authorities "close" or "seal" the territories, West Bankers cannot enter Jerusalem because it is regarded by the state as a sovereign part of Israel. Since the roads connecting the northern and southern parts of the West Bank run through Jerusalem, the region is effectively divided into two impassable halves. This has the effect of barring West Bankers residing in one part from access to the other. East Jerusalemites are not affected by such mobility restrictions. Consequently, they have the option during periods of closure to pick up many cases that West Bankers can't handle due to their inability to travel to courts or prisons located in other areas. As the number of arrests began to wane by the early 1990s, competition among lawyers for cases generated resentment on the part of some West Bankers. A lawyer from Bethlehem complained:

> Because of the closure I have had to delay all my files for Ramallah and the north. Jerusalem lawyers are starting to get a monopoly on new cases. Now when people come into my office, the first thing they ask me is if I can do prison visits, which I can't because I can't cross the Green Line. This is enough for many to decide not to hire me. I think we should all go on strike. This would solve at least part of the problem.

The political and professional issues associated with identity differences among the various subcategories of lawyers practicing in the military courts are reflected in the discrepant views on cause. With the exception of liberal Jewish Israelis, all others tend to see their cause as an expression of solidarity with the Palestinian population. But the politics of solidarity provokes debates over who has a greater "right" to act on behalf of the Palestinian people in the legal system. Clearly, the exigencies of sociopolitical identifications in the broader context of Israel/Palestine are important to the interactional dynamics within the court system. Lawyers' motivations, experiences, and relations with others reveal the contradictions of a localized transnationalism.

IV. Strategies of Resistance

How do cause lawyers' practices constitute forms of resistance to the status quo, and to what effects? Resistance is undertaken to challenge the nature of Israeli rule by propounding adherence to rule of law principles or to displace Israeli rule in the territories entirely by working for the goal of Palestinian self-determination. Cause lawyering strategies can be divided into three general categories: legal maneuvers, extralegal solidarity work, and publicizing problems to local and/or international audiences. This section focuses on the first two, and the following section addresses the third.

All lawyers engage in both legal and extralegal activities, but the significance they attach to each varies. Israeli citizens tend to put a greater emphasis on legal options, while Palestinian residents of the territories tend to foreground the extralegal dimensions of their work because of their greater social proximity and shared status with the collective client. One afternoon in 1993, two Gazans and a leftist Jewish Israeli debated this issue. Their discussion started with them concurring on the problems they face. But it soon took a turn as the Israeli lawyer started arguing that Palestinian lawyers actually do a disservice to their clients—and, by implication, to the cause of resistance—by not exploiting even the limited legal options available to them. She was frustrated in particular by the fact that they rarely challenge the authorities when they are denied access to clients being held incommunicado.

One of the Gazan lawyers chided her for not giving adequate consideration to the fact that, *as Palestinians*, they are vulnerable to the Israeli authorities and therefore can't capitalize on the technicalities of their professional rights. She countered that most lawyers don't exercise their rights because they haven't bothered to find out what their options are. She went on to argue that many participate in their own victimization (and that of

their clients) through ignorance or inertia. How, the Gazan asked, can lawyers know their options or act differently under the prevailing circumstances? Most lawyers live in poverty, employed by people who are even poorer than they are. Furthermore, they suffer the same political conditions as the rest of the population. He added:

> You talk about our rights as if Israel actually respected our rights, as if they were there for the asking. The basic rights we deserve are part of international law [the Fourth Geneva Convention], and what is the Israeli position on that? Forget it! We have lived without any rights since 1967. No lawyer is going to change that.

The structural inequalities in Israel/Palestine place Palestinian lawyers at greater disadvantage within the legal system. Under these circumstances, it is hardly surprising that many Palestinian lawyers see their role primarily as interlocutors between the people and the state, trying to minimize the negative repercussions of the occupation with the limited professional options at their disposal. Being lawyers provides them with the opportunity to have contact with people who have been arrested, and with their families. Thus, beyond the legal work of handling of cases, they function effectively like social workers by offering emotional and other extralegal forms of support. But such activities do constitute forms of resistance: within Palestinian nationalist discourse, *sumud* (steadfastness) is recognized as a part of the struggle against the occupation. Acts of solidarity can be undertaken as conscious efforts to erase the boundaries between the profession and the community it serves.

For Israeli citizens, who generally have fewer social contacts with Palestinian society at large, their sense of cause is often more focused on the legal terrain. One leftist Jewish lawyer with a long tenure in the courts said that she has had some differences with clients over her strategies:

> My first priority is always people in interrogation. I will do everything I can to help someone while he is in interrogation, even sacrificing my work on other files. With the [uprising], so many people were in interrogation, I didn't have time to do prison visits. It hurt me that [my clients] who are very *political* couldn't understand *my* politics. . . . I don't mind losing clients, or even feeling unappreciated. But it bothers me that people put their own interests [i.e., being visited in prison] before the bigger problems. . . . We all have our role to play, and they should understand mine.

Within the legal process itself, plea bargaining dominates, leading lawyers to refer to the military courts as a "*suq* [marketplace] of deals" and to describe themselves as "deal merchants." Lawyers are well aware that a collective refusal to plea bargain could have been a politically effective strategy, if for no other

reason than that it would create an enormous backlog for the authorities. But for a variety of reasons, lawyers have never been able to mount and sustain such a strategy. For one thing, the consequences for individual clients would be devastating. The structural advantages favoring the prosecution so seriously compromise the possibility of a defense victory at trial that the outcomes would inevitably be longer sentences for all involved. Lawyers' past experiences with trials strongly mitigate against the appeal of such a strategy, and those who have on occasion taken cases to trial say they regretted the decision in retrospect. One Gaza lawyer described an experience of taking what he believed was a sure-win case to trial:

> I brought 11 defense witnesses to testify against one soldier. The judge said that [despite the overwhelming number of witnesses], he couldn't let their testimony override the "dignity" of the word of a soldier because this would diminish the legitimacy of the IDF [in the territories]. So even though there was no confession, and so many witnesses saying that they had arrested the wrong person, my client went to prison.

Another factor working against the option of taking cases to trial relates to a sheer lack of time and adequate remuneration to make it worth lawyers' while. Although the uprising merely worsened the situation, many lawyers who practice regularly in the military courts have been too consistently overwhelmed with work to give the necessary attention to any one file. Furthermore, because release on bail is rarely granted, and given the delays which are endemic to the system, pretrial detention could be longer than the sentence, especially for people charged with minor crimes.

The prevalence of plea bargaining epitomizes the contradictory relationship between the politics of struggle and the legal process: plea bargaining systematically fragments political resistance through the individualization of cases. According to one Gaza lawyer, "By always plea bargaining, we just help the Israelis put Palestinians in jail faster." There is an obvious disjuncture between dealing, which involves concession, and the charged discourse of resistance beyond the court system. Throughout the years of occupation, the Palestinian political leadership demonstrated little interest and almost no involvement in the workings of the system or the legal activities of lawyers, aside from statements of solidarity and support for political prisoners.

This lack of political direction has left legal strategies to the discretion of lawyers. Their problems in organizing themselves, either formally through one group or informally on an ad hoc basis, have meant that this discretion has largely been a matter between individual lawyers and their clients. For those lawyers who would have liked to politicize legal practice by taking a collective stand to refuse to deal—something that many Israeli and

Palestinian lawyers have said they desire—such a strategy would only have been possible if undertaken by all or at least most lawyers working in the military courts. As long as any lawyer plea bargains and thus gets lower sentences for his or her clients, there is pressure on all lawyers to do the same or risk losing clients.

Within the legal process itself, lawyers have engaged in resistance activities on an individual basis. Examples of these strategies include trying to challenge confessions by calling for *zuta* (voir dire), just threatening to take a case to trial which sometimes motivates overworked prosecutors to lower the sentence or drop some charges, or even the troubling tactic of "dealing against files" by giving the prosecutor something on one case in order to get a break on another. A common strategy has been to delay, either to put pressure on prosecutors who were under orders to finish files quickly or to wait for a judge or prosecutor who might be more amenable to lowering the sentence or dropping some charges.

Even the most common practices, what lawyers describe as "begging for mercy," can be regarded as a form of resistance if the goal is understood as getting the shortest possible sentence for the client. One Arab Israeli lawyer described his strategy to tell judges and prosecutors what they want to hear in order to inspire them to lower the sentence:

> Sometimes I tell them that the occupation is really good for Palestinians, because this is what they believe. Sometimes I tell that my client is a poor fool who was taken advantage of by some troublemaker who made him throw stones or burn tires. They like this too, because they want to believe that the [uprising] is not really popular. . . . Good lawyers are the ones who can make their clients seem "innocent," not of the charges—because there is a confession—but innocent in a bigger sense, like being forced into activism.

Ultimately, individual lawyers' strategies hinge on a combination of skills and commitment, legal options related somewhat to issues of identity, and the nature of lawyers' relations with others. But despite the differences, their common role defending Palestinians has provided a basis for certain shared criticisms of the operations of the system and the way Israeli rule in the territories is maintained.

V. Cause Lawyering as Resistance Politics: Between Hegemony and Human Rights

Defense lawyers are the only category of participants whose involvement in the military courts is voluntary.[32] For most, their decision is based on a conscious desire to traffic in the highly charged fray of occupation politics. Those lawyers who are most politically *effective* are the ones who have been able to use the information they gain through their work to bring outside attention to the operations of the system and conditions in the territories. In this regard, human rights has been important both as a conceptual framework that enables lawyers to articulate their criticisms,[33] and as a transnational array of institutions that have provided clearinghouses for this information.[34]

The human rights business, including cause lawyering for human rights–type goals, is an elite enterprise (S. Cohen 1995:12). It requires the cultural capital to utilize and disseminate information. This is certainly true in the context of the Israeli military courts, because the lawyers who have been most successful in translating their individualized work into part of a larger social force have been (1) those with the political and intellectual savvy to cultivate connections with the local media and local human rights organizations (Israeli and/or Palestinian) and (2) a smaller number who have the language skills (particularly English) and political stature to serve as contacts to the international media and international human rights organizations. In these ways, cause lawyering involves not simply working in support of a cause but helping to establish what that cause is, at least to the extent that law and politics intersect. This intersection has been increasingly relevant over the last decade as resistance to the occupation has involved a marshaling of resources to appeal to the international community for substantive interventions.

The human rights dilemma comes to bear in this enterprise of framing and publicizing problems as means of evoking interventionary measures. States, in this case Israel, are the recognized arbiters of the rights of populations under their rule. While states are bound in principle to respect the internationally institutionalized standards of government (as embodied in the various human rights instruments), in practice the international order has little capacity to enforce those standards. Consequently,

[32] Defendants are there because they have been arrested, and judges, prosecutors, and translators are assigned to their roles as military duty.

[33] It is the very fact that Israel/Palestine is a transnational context that human rights rather than civil rights provides the normative reference.

[34] One effect of the uprising within Israel was the establishment of a number of new local human rights organizations with mandates to monitor and protest conditions in the territories. New Palestinian organizations in the territories were also established, joining the efforts of already existing institutions.

challenging states' violations of human rights demands ad hoc strategies to effect changes. Cause lawyering for human rights constitutes one such set of strategies. Yet there are significant differences in military court lawyers' views of cause, which have informed the kinds of connections they developed and the types of interventions they have sought to elicit.

Within Jewish Israeli society, the uprising confirmed mainstream and rightist popular views of Palestinians as inherently violent and threatening enemies. For liberal Jewish Israeli lawyers concerned about the rule of law, the implications were challenging. Their work with Palestinian clients gave them access to knowledge about the abuses being perpetrated by agents of the state. The contradictions between loyalty and legalism reached new heights. "A full acknowledgement of the truth about what your own government is doing, together with an active engagement with the implications of this knowledge, would threaten deeply cherished beliefs" (S. Cohen 1995:43).

Liberals have tried to mediate between the demands of rule and the principles of rights for people who are subjects of the Israeli state. Unlike the other subcategories of lawyers, Jewish Israeli liberals are inclined to identify with the state's discourse on security, which is a pillar of the Israeli hegemonic normative formation. But they have sought to generate a human rights consciousness by criticizing contraventions of legality and abuses of power. Liberals use human rights discourse, specifically legal norms and values, as a means to inspire social awareness and responsibility, disseminating their knowledge about problems and violations to the Jewish Israeli public. Their transformative project is to legitimize Palestinian rights within Israeli state practices. In the words of one liberal lawyer, "There are problems in Israel as there are in Northern Ireland when security is an issue. Terrorists can't expect our support, but the courts have an obligation to try them fairly. . . . Everyone has a right to certain legal rights."

The other subcategories of lawyers are less accommodating—if at all—of Israeli security concerns. Leftist Jewish and Arab Israelis are critical of the discourse of Israeli security, and Palestinians from the territories are outside of it entirely. For these three subcategories, the primary issue is not adherence to the rule of law (although the short-term relevance of this is not dismissed), but the human rights principle of self-determination, to which Israeli rule is seen as the (main) obstacle. The connections they cultivate and the strategies they deploy are aimed at ending the occupation, not simply modifying the way in which the state's authority is exercised on the ground. Being politicized legal practitioners means defending people engaged in a struggle against a status quo which, in their view, amounts to a colonial situation.

Their opposition to Israeli government of the territories is a form of anticolonial politics.

The international record on anticolonialism is mixed. There are important sources of potential support, such as the General Assembly of the United Nations, which has exhibited an enduring commitment to the cause of Palestinian self-determination. But in the arenas that actually count, international politics tends to exhibit a strong obstructivist trend against struggles of stateless people and in support of already-existing states. The problems facing Palestinians in the territories are rooted in the contradictions between local Israeli hegemony and the international ideal of self-determination. The state-centered international order provides an inspiration for seeking the creation of a Palestinian state. More immediately, the international community is a potential source of support to which Palestinians and their Israeli supporters appeal to counter the travails of life under occupation.

Although leftist Jewish and Arab Israeli and Palestinian cause lawyers have had little success directly linking their legal practices in the military courts to the larger goals of ending the occupation, they have succeeded in drawing international attention to circumstances in the territories. As one Arab Israeli described the consequences of ongoing efforts to make the criticisms public:

> We have to use our position as lawyers by publicizing how inhumane the occupation is and the injustices of the [court] system. This inside view can be used to deal with a number of factors relating to the occupation. First, [lawyers] have a right to go to the prisons, to see the actual effects of interrogation, what the authorities do to prisoners and their families. A lawyer must be courageous to write about what is going on without exaggerating or being afraid of the consequences. On this count, Felicia [Langer] has done one of the greatest steps to let the world know what was going on. . . . But it took the efforts of many lawyers to bring international attention to what is going on. A few years ago, no organization dared to challenge or criticize Israel, one reason being that there just weren't enough facts to counter the pro-Israel propaganda. But by exposing the facts about the occupation, now organizations and people not only can criticize Israel but must do so because the evidence is growing. Even the US State Department criticizes Israel for its policies in the [occupied territories]. This is an achievement for Palestinians.

The consequences of such efforts have been indirect in regard to the larger political goals of Palestinian self-determination and may seem inconsequential in comparison to cause lawyering in other contexts. But if we appreciate the fact that circumstances on the ground are affected by transnational flows of information and the political reactions they can generate, we can see that the implications of such activities are not unimportant. The Israeli

government certainly felt the pressure from the escalating criticisms lawyers helped to generate, and reacted by trying to challenge the legitimacy of the lawyers themselves as well as the veracity of their information and analysis (see H. Cohen 1981:xii). In one official Israeli response to an Amnesty International report on the military courts, the author wrote:

> The Report is, for the most part, based on unverified accusations of unnamed, often politically motivated, sources. In particular, the Report's author relied on allegations of "defense lawyers", many of whom have a vested interest in undermining the Israeli authorities. The Report contains no criticism of the defense lawyers' attempts to obstruct justice, nor does it attempt to cross-check their claims by objective means. It should have been explained that these defense lawyers often function not as "officers of the court", but rather as political actors willing to sacrifice the interests of justice and of their clients for political ends. (Gaulan 1992:2)

International concern about the occupation and the ongoing problem of Palestinian statelessness was increased dramatically by the uprising, thus providing an outlet for the criticisms being articulated by cause lawyers. The uprising resonated with the international community because the right to self-determination is widely regarded as one of the most important rights since it provides the basis for other kinds of rights and protections, at least in principle. To the degree that self-determination is contingent on the establishment of a sovereign state, we can see that the problems facing Palestinians—in the territories and beyond—are inextricably intertwined with international politics in a world of states. To be stateless is to be vulnerable in an international order that provides no institutionalized refuge, solace, or recourse. To be under military occupation, however, provides a clear and contestable obstacle to self-determination.

The problems associated with government-in-conflict in Israel/Palestine, while shaped by the historico-political specificities of this context, are not unique. Rather, they illustrate the inherent contradiction between supranational human rights ideals and the local politics of hegemony. Until the uprising, international human rights activities on behalf of Palestinians in the territories were limited, for the most part, to criticisms of the policies and practices of the Israeli military administration. With the uprising, it became increasingly apparent that the status quo of occupation must end. This critical awareness created a discursive space for projecting counterhegemonic views within the conceptual framework and language of international human rights.

Cause lawyers, many of whom had been dealing with these problems for years, were well positioned to focus attention in particular ways to raise the level of human rights consciousness locally as conditions on the ground reached crisis proportions.

They were also able to connect with human rights investigators and foreign journalists who were coming in droves to monitor and expose abuses. Such monitoring efforts served as conduits for information about Palestinian suffering and their aspirations for independence. These efforts were enhanced by the fact that by the late 1980s the international human rights movement had reached a stage of development (institutionally and discursively) where the implementation of human rights standards could be advanced, or at least advocated, with much greater force and influence than had been the case even a decade earlier. Thus, the more effective cause lawyers working in the military courts played an important role in producing knowledge about *how* the occupation was problematic, and the most effective ones marketed that knowledge to the international community.

In conclusion, cause lawyering in the Israeli military courts provides an example of the interrelations between the local and the international in one specific context. What we can deduce from this is that the state-centered international order sustains and reinforces certain fundamental contradictions between sovereignty and security on the one hand, and human rights protections and guarantees on the other. To the extent that cause lawyering in general assumes the possibility of "justice" and a principle of rights, globalizing the study of cause lawyering invites attention to the various ways in which international human rights inspire and empower lawyers to be politicized legal professionals and to reform or transform local orders.

References

Abel, Richard L. (1995) *Politics by Other Means: Law in the Struggle against Apartheid, 1980–1994.* New York: Routledge.

Amnesty International (1991) *Israel and the Occupied Territories: The Military Justice System in the Occupied Territories: Detention, Interrogation, and Trial Procedures.* New York: Amnesty International USA.

Arian, Asher, Ilan Talmud, & Tamar Hermann (1988) *National Security and Public Opinion in Israel.* Tel Aviv & Boulder, CO: Jaffee Center for Strategic Studies & Westview Press.

Benvenisti, Eyal (1990) *Legal Dualism: The Absorption of the Occupied Territories into Israel.* Boulder, CO: Westview Press.

Bisharat, George Emile (1989) *Palestinian Lawyers and Israeli Rule: Law and Disorder in the West Bank.* Austin: Univ. of Texas Press.

——— (1995) "Courting Justice? Legitimation in Lawyering under Israeli Occupation," 20 *Law & Social Inquiry* 349–405.

Briskman, Dana (1988) "National Security versus Human Rights: An Analysis of the Approach of the Israeli Supreme Court to the Conflict between National Security and Civil Liberties." M.A. thesis, Harvard University Law School.

Cohen, Haim (1981) "Foreword," in *The Rule of Law in the Areas Administered by Israel.* Tel Aviv: Israel National Section of the International Commission of Jurists.

Cohen, Stanley (1995) *Denial and Acknowledgement: The Impact of Information about Human Rights Violations.* Jerusalem: Center for Human Rights, Hebrew Univ.

Cohen, Stanley, & Daphna Golan (1991) *The Interrogation of Palestinians during the Intifada: Ill-Treatment, "Moderate Physical Pressure" or Torture?* Jerusalem: B'Tselem, Israeli Information Center for Human Rights in the Occupied Territories.

——— (1992) *The Interrogation of Palestinians during the Intifada: Follow-up to March 1991 B'Tselem Report.* Jerusalem: B'Tselem, Israeli Information Center for Human Rights in the Occupied Territories.

Connor, Walker (1994) *Ethnonationalism: The Quest for Understanding.* Princeton, NJ: Princeton Univ. Press.

Dillman, Jeffrey D., & Musa A. Bakri (1992) *Israel's Use of Electric Shock Torture in the Interrogation of Palestinian Detainees.* Jerusalem: Palestine Human Rights Information Center.

Ellmann, Stephen (1992) *In a Time of Trouble: Law and Liberty in South Africa's State of Emergency.* New York: Oxford Univ. Press, Clarendon Press.

Falk, Richard A. (1985) *Human Rights and State Sovereignty.* New York: Holmes & Meier Publishers.

Gaulan, Tamar (1992) Letter from the Ministry of Justice dated April 8, 1992, published as introduction to *Response of the IDF Military Advocate General's Unit to the Amnesty International Report on the Military Justice System in the Administered Areas.* Tel Aviv: Office of the Military Advocate General.

Ginbar, Yuval (1993) *The "New Procedure" in GSS Interrogation: The Case of 'Abd a-Nasser 'Ubeid,* trans. R. Mandel. Jerusalem: B'Tselem, Israeli Information Center for Human Rights in the Occupied Territories.

Ginbar, Yuval, & Yael Stein (1994) *Torture during Interrogations: Testimony of Palestinian Detainees, Testimony of Interrogators.* Jerusalem: B'Tselem, Israeli Information Center for Human Rights in the Occupied Territories.

Golan, Daphna (1989) *The Military Judicial System in the West Bank.* Jerusalem: B'Tselem, Israeli Information Center for Human Rights in the Occupied Territories.

Gordon, Colin (1991) "Governmental Rationality: An Introduction," in G. Burchell, C. Gordon, & P. Miller, eds., *The Foucault Effect: Studies in Governmentality.* Chicago: Univ. of Chicago Press.

Gordon, Neve, & Rela Mazali (1993) *"The Slaughter House": Sketch of the General Security Service Interrogation Center at Gaza Central Prison.* Tel Aviv: Association of Israeli-Palestinian Physicians for Human Rights.

Hajjar, Lisa (1994) "Zionist Politics and the Law: The Meaning of the Green Line," 2 *Arab Studies J.* 44–51.

——— (1995) "Authority, Resistance and the Law: A Study of the Israeli Military Court System in the Occupied Territories." Ph.D. diss., Dept. of Sociology, American Univ.

——— (1997a) *Changes in Human Rights Activism in Israel/Palestine since Oslo.* Center for Policy Analysis on Palestine Occasional Paper No. 8 Washington: Center for Policy Analysis on Palestine.

——— (1997b) "Two People, One State: War, Peace, Sovereignty and Law in Israel/Palestine." Unpublished, Swarthmore College.

Henkin, Louis (1990) *The Age of Rights.* New York: Columbia Univ. Press.

Hiltermann, Joost R. (1991) *Behind the Intifada: Labor and Women's Movements in the Occupied Territories.* Princeton, NJ: Princeton Univ. Press.

Human Rights Watch/Middle East (1994) *Israel—Torture and Ill-Treatment: Israel's Interrogation of Palestinians from the Occupied Territories.* New York: Human Rights Watch.

Hunt, Alan (1993) *Explorations in Law and Society: Toward a Constitutive Theory of Law.* New York: Routledge.

Kimmerling, Baruch (1989) "Boundaries and Frontiers of the Israeli Control System: Analytic Conclusions," in B. Kimmerling, ed., *The Israeli State and Society: Boundaries and Frontiers.* Albany: State Univ. of New York Press.

Kremnitzer, Mordechai (1989) "The Landau Commission Report—Was the Security Service Subordinated to the Law, or the Law to the 'Needs' of the Security Service?" 23 *Israel Law Rev.* 216–79.

Kretzmer, David (1990) *The Legal Status of the Arabs in Israel.* Boulder, CO: Westview Press.

Lahav, Pnina (1988) "A Barrel without Hoops: The Impact of Counterterrorism on Israel's Legal Culture," 10 *Cardozo Law Rev.* 529–60.

Langer, Felicia (1975) *With My Own Eyes: Israel and the Occupied Territories, 1967–1973.* London: Ithaca Press.

——— (1979) *These Are My Brothers: Israel and the Occupied Territories,* Pt. II. London: Ithaca Press.

——— (1988) *An Age of Stone.* New York: Quartet.

Landau, Moshe, et al. (1987) *Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity.* Jerusalem: Government Press Office.

Lawyers' Committee for Human Rights (1992) *Lawyers and the Military Justice System of the Israeli-Occupied Territories.* New York: The Committee.

——— (1993) *A Continuing Cause for Concern: The Military Justice System of the Israeli-Occupied Territories.* New York: The Committee.

Lustick, Ian S. (1980) *Arabs in the Jewish State: Israel's Control of a National Minority.* Austin: Univ. of Texas Press.

——— (1997) "Has Israel Annexed East Jerusalem?" 5 (12) *Middle East Policy* 34–39.

Mitchell, Timothy (1990) "Everyday Metaphors of Power," 19 *Theory & Society* 545–77.

——— (1991) "The Limits of the State: Beyond Statist Approaches and Their Critics," 85 *American Political Science Rev.* 77–97.

Moffett, Martha Roadstrum (1989) *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defense (Emergency) Regulations, 1945, in the Occupied Territories.* Ramallah, West Bank: Al-Haq/Law in the Service of Man.

Nassar, Jamal R., & Roger Heacock, eds. (1991) *Intifada: Palestine at the Crossroads.* New York: Birzeit Univ. & Praeger Publishers.

Playfair, Emma, ed. (1992) *International Law and the Administration of Occupied Territories: Two Decades of the Israeli Occupation of the West Bank and Gaza Strip.* New York: Oxford Univ. Press, Clarendon Press.

Public Committee against Torture in Israel (1990) *Moderate Physical Pressure: Interrogation Methods in Israel.* Jerusalem: The Committee.

Rabah, Jamil, & Natasha Fairweather (1993) *Israeli Military Orders in the Occupied Palestinian West Bank, 1967–1992.* Jerusalem: Jerusalem Media and Communication Centre.

Sarat, Austin, & Stuart A. Scheingold, eds. (1997) *Cause Lawyering: Political Commitments and Professional Responsibilities.* New York: Oxford Univ. Press.

Shamgar, Meir (1982a) "Legal Concepts and Problems of the Israeli Military Government—The Initial Stage," in Shamgar, ed., 1982b.

———, ed. (1982b) *Military Government in the Territories Administered by Israel 1967-1980: The Legal Aspects.* Jerusalem: Harry Sacher Institute for Legislative Research & Comparative Law, Hebrew University, Faculty of Law.

Shamir, Ronen (1990) "'Landmark Cases' and the Reproduction of Legitimacy: The Case of Israel's High Court of Justice," 24 *Law & Society Rev.* 781–805.

——— (1991) "Legal Discourse, Media Discourse, and Speech Rights: The Shift from Content to Identity—the Case of Israel," 19 *International J. of the Sociology of Law* 45–65.

——— (1996) "Suspended in Space: Bedouins under the Law of Israel," 30 *Law & Society Rev.* 231–57.

Shefi, Dov (1982) "The Reports of the UN Special Committees on Israeli Practices in the Territories: A Survey and Evaluation," in Shamgar 1982b.

Shehadeh, Raja (1988) *Occupier's Law: Israel and the West Bank.* Washington, DC: Institute for Palestine Studies.

——— (1993) *The Law of the Land: Settlements and Land Issues under Israeli Military Occupation.* Jerusalem: Palestinian Academic Society for the Study of International Affairs.

Shehadeh, Raja, & Jonathan Kuttab (1980) *The West Bank and the Rule of Law: A Study.* Geneva: International Commission of Jurists.

Straschnov, Amnon (1994) *Justice under Fire: The Legal System during the Intifada.* Tel Aviv: Yediot Aharanot [Hebrew].

Thornhill, Teresa (1992) *Making Women Talk: The Interrogation of Palestinian Women Security Detainees by the Israeli General Security Services.* London: Lawyers for Palestinian Human Rights.

Usher, Graham (1995) *Palestine in Crisis: The Struggle for Peace and Political Independence after Oslo.* London: Pluto Press, in association with the Transnational Institute and the Middle East Research & Information Project.

Verdery, Katherine (1994) "Beyond the Nation in Eastern Europe," *Social Text,* No. 38 (Spring), 1–19.

Yahav, David, ed. (1993) *Israel, the "Intifada" and the Rule of Law.* Tel Aviv: Israeli Ministry of Defense Publications.

Zamir, Itzhak (1989) "Human Rights and National Security," 23 *Israel Law Rev.* 375–406.

Zureik, Elia (1979) *The Palestinians in Israel: A Study in Internal Colonialism.* Boston: Routledge & Kegan Paul.