

LAWYERS, CONFLICT AND TRANSITION

RESEARCH INSTRUMENT: ISRAEL

BACKGROUND

This is a comparative project looking at the role of lawyers in conflict and transition in Chile, Cambodia, South Africa, Israel, Palestine, and Tunisia. We are interested in the role that lawyers play during conflict and authoritarian regimes, as well as transitional periods, in defending and promoting human rights, engaging with civil society, litigation strategies as well as conversely using law to inhibit transformation. Themes include:

- The meaning of the **rule of law in Israel**
- **Israeli legal culture** over time
- The role of legal collectives e.g. **Bar Association**
- **Public perceptions** of law and lawyers
- **Cause lawyering and social movements**
- Legal pluralism in Israel (e.g. **international human rights law** or **religious law**)

Project is **independent academic research** funded by ESRC involving QUB Law and TJI.

INFORMED CONSENT, DIGITAL RECORDING AND ANONYMITY

Explain anonymity and consent, and digital recording.

INTERVIEWEE'S PERSONAL BACKGROUND

- (For Lawyers) What motivated you to become a lawyer?

RULE OF LAW AND LEGALISATION OF POLITICS

- What does the phrase '**rule of law**' mean in Israel?
- How is the term '**human rights**' understood in Israel? When people use the term do they usually mean it in relation to the conflict with the Palestinians or does it have a broader meaning? What is included or excluded (e.g. socio-economic, gender, LGBT rights)?
- The shift in the Israeli Supreme Court from applying the **political question doctrine** to being more willing to **engage in political issues** and to frame them as legal question? What role did lawyers play in that shift?
- **How receptive are the Israeli judges to arguments based on international human rights law?** Why?
- On difficult political issues, do **politicians sometimes abdicate responsibilities** and expect lawyers or judges to **sort things out for them** – sometimes called the '**legalisation of politics**'. Can you give some examples? Why does this happen?
- What are the **consequences for Israeli democracy** and the 'non-governability problem'?
- To what extent is the legal system (courts, judiciary, legal collectives etc.) **free from political / state / military control**?
- Is Israel a **legalistic** society? If yes, what are the influences of that? What are the consequences of such legalism? **Media interest** in trials?

LEGAL CULTURE AND GENDER

- How would you describe the **legal culture** in Israel?

- What has shaped legal culture (e.g. legal education, political history, the nature of the Israeli state)? **How important are personalities** (e.g. chief judge, bar council head, law school Deans) in shaping legal culture?
- Can one discern **historical influences** or traits on Israeli legal culture, from the Ottoman period, British common law, and Jewish legal tradition? Can you give examples (practicalities, cultural traits – accents, language, dress, ceremony)?
- More generally, what influence has **relations with the international community** had on the development of Israeli legal culture? For example lawyers, **being educated in the US, UK or elsewhere?**
- What about Israeli lawyers with international contacts and networks? Is that the same on the left and the right? Are lawyers **‘brokers’** (maybe channels?) between the local and the international?
- Does **international funding** of human rights work affect local legitimacy?
- **Gender** in the Israeli legal community - Is law (and are lawyers) responsive to issues of gender? Is there sexism in the Israeli legal community? How is it manifested? Is it a macho legal culture?

LEGAL COLLECTIVES

- How would you describe the role of the **Bar Association** in Israel? Has it been a force for good in this society? Is it **independent** from the state?
- Does the Bar **stand up for lawyers** doing controversial work?
- Does it **speak (or maintain silence) with one voice?** Is it a player in national life?
- Influence of **deregulation?**

ROLE AND RESPONSIBILITY OF LAWYERS IN ISRAELI SOCIETY

- (For Lawyers) What are the characteristics of a typical Israeli lawyer?
- There are a lot of lawyers in Israel. **How are lawyers seen by the public in Israel?** Are lawyers ever seen as arrogant? Greedy?
- **Cultural Capital:** Do lawyers **have power or influence** on local debates? Does the state care about what lawyers say publicly? Does the public? Do lawyers use their power wisely? Do lawyers bring **hope for a better Israel?**
- **Do lawyers ever oversell the product of law and what it can achieve?**
- What is the relationship between **lawyers and the state** in Israel? How do lawyers see the state?
- Does state **try to intimidate lawyers?**
- What influence does the **relatively small size** of Israel have on its legal culture? e.g. lawyers or judges with very different political perspectives knowing each other on a personal basis, having been educated together etc
- How significant is the role of **lawyers in public life**, e.g. working in or leading political parties etc? ‘Outmatching every other professional group in the public sphere apart from former military’

CAUSE LAWYERING AND SOCIAL MOVEMENTS

We are particularly interested in lawyers who work for or with civil society groups, or victims, or social movements – lawyers who litigate on behalf of these groups or help them with strategy – sometimes called **‘cause lawyers’**.

- (For Lawyers) Do you see yourself as such a lawyer? If so, **why** did you become a cause lawyer? How would you define your 'cause(s)'?
- What other types of cause lawyers are there in Israel (e.g. refugee rights, LGBT rights...)?
- Are such lawyers seen as **troublemakers or traitors**?
- Doing such work, how does one maintain **professional 'neutrality'**? **Does professionalism mean neutrality**?
- When was the **most difficult period** to be cause lawyer on Palestinian rights? e.g. intifada, suicide bombings? Why?
- What are the ethical challenges for cause lawyers in **'acting on behalf of' Palestinians**? Are human rights lawyers uncomfortable with the **power imbalance** in such relationships?
- What about **Palestinian Israeli lawyers** and litigation (e.g. young US educated Arab lawyers fluent in Hebrew, English and Arabic) from 1990s. What impact have such lawyers had? Different litigation strategies? Different view of **law and activism** relationship? Appealing to the Israel state to uphold existing legal principles to prevent **discrimination against Palestinian Israeli citizens**?
- How does one balance **competing obligations** (to clients, social movement, community, livelihood, family)? What are the **main obstacles to legal activism** in Israel (e.g. resources, personal safety, effect on professional standing, legal culture?)
- Do lawyers tend to **dominate civil society organisations** – have the loudest voices with the most technical information? Or are they more likely to be **assistants** to civil society leaders?
- Within social movements, do lawyers **'professionalise' activism**? Are they viewed as **conservative, legalistic**?
- The mobilisation in 2011 around **'social justice'** – huge crowds. Daphni Leef said *'If I had mentioned law the crowds would not have come.'* What does that tell us about **the role of lawyers and their relations with this style of activism**?
- What about relations between **'grassroots anti-occupation activists** (eg Ta'ayush, Solidarity Sheikh Jerah, Anarchists Against the Wall) and traditional human rights lawyer organisations? To what extent do these groups share views on what constitutes a 'good lawyer'?

CAUSE LAWYERING IN RIGHT-WING ORGANISATIONS

- We are interested in the **mobilisation and cause-lawyering amongst settler or more right-leaning organisations** e.g. the *Almagor-Terror Victim Organisation* (e.g. oppose prisoner release and intervene in favour of collaborators), the *Legal Forum for the Land Of Israel* (protest against settler demolition and for Palestinian demolitions), *Israel Law Centre* (Palestinians to the ICC and challenging US banks for channelling monies). **What prompted right-wing organisations to move to legal tactics and the language of human rights? Do these groups still resort to extra-legal tactics?**
- What **impact has the shift in right-wing organisations had on Israeli legal culture**? Is this a good thing in terms of **mainstreaming human rights**?
- Any **coalition building** with left leaning human rights groups?
- How significant is the creation of *Blue and White Human Rights* to serve as a watchdog of violations by the Israeli Defence Force?

LITIGATION STRATEGIES ON HUMAN RIGHTS ISSUES

- How effective is litigation as a tactic compared to other strategies (e.g. political lobbying, demonstrations)? Give one or two examples where you can say yes, good lawyering, good litigation made a real difference to these people? Explain how this made a difference?
- Is litigation expensive in Israel? If not, what are the consequences for strategic choices?
- Has human rights litigation had a significant positive impact on events outside of the courtroom? Are there instances when litigation distracted people or resources? Cases that have provoked a backlash? Failed triumphs?
- What is the relationship between lawyers and clients? Who controls the relationship and the approach taken in cases? Has this dynamic changed over time?
- (For Lawyers) Are there clients you would not represent and, if so, why not? Has this changed over time?
- Where is it appropriate or inappropriate to reach out of court settlements?
- How do human right NGOs decide which cases to bring for judicial review?
- Are there any **legal settings or issues in Israel that lawyers should boycott** because they are unfair? Where? Where do lawyers draw the line?

STATE AND MILITARY LAWYERS

- What is your view of government lawyers? Can a **lawyer who works for the government** advance the cause of justice and equality? Would you work as a government lawyer? If not, why not?
- Are there **military cause lawyers** in Israel? What is their role? What influence does the International Law Dept have with commanders? Do they constrain the military? How?

LAWYERS AND POLITICAL NEGOTIATIONS

- What role did lawyers play in **political negotiations** in Israel? Do lawyers **help** or **hinder**?
- Were many of the political leaders lawyers, and was their training as lawyers relevant to the pace and outcome of agreements?

LEGAL PLURALISM / ROLE OF INTERNATIONAL LAW

- To what extent do Ottoman, British, and Jewish tradition and religious law form part of the Israeli legal system? Eg give us an example.
- Are there tensions between the secular and religious influences in Israeli law, e.g. lawyers arguing human rights principles versus traditional Jewish law before the courts?
- Is there any space for recognition in the Israeli legal system of Arab legal traditions or problem solving approaches in Arab communities?
- How has **international humanitarian law** shaped understandings of the occupation?
- How have Israeli approaches to international humanitarian law or international human rights law affected international law more generally?

ETHICS QUESTIONS

- Explain ethical commitment to put something back – two reports for local community – ask if they have any ideas?
- Have you had any previous experiences (good or bad) with international researchers? What made them good or bad in your view? Does international research actually help the people of Israel? Why did you agree to take part in this research?