## A Political-Professional Commitment?

# French Workers' and Unions' Lawyers as Cause Lawyers

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The expression "cause lawyering" doesn't exist yet in France, either in the scientific literature (legal and sociological<sup>1</sup>) or in the literature for professionals and practitioners. Introducing this U.S. concept to the French socio-legal landscape, I hope to address some of the special links between French law and politics. But such a process of importation needs to be epistemologically careful. Cause lawyering has to be put in its national and social context.

Labor law has existed in France (under a variety of names) since the beginning of the twentieth century. From the very beginning, some attorneys helped (and worked for) workers' unions and socialist parties (what was called in France "mouvement ouvrier"), advising their leaders about judicial strategies and representing them in court.<sup>2</sup> Nowadays, many lawyers specialize in labor law (also called "social law"), but few of them defend and represent only workers and labor unions. Such lawyers have both a political and a professional commitment. They qualify, according to Sarat and Scheingold's definition, as cause lawyers—lawyers who "challenge established conceptions of professionalism with efforts to decomodify, politicize and socialize legal practice."<sup>3</sup>

As many cause lawyering scholars have shown, engaged lawyers experience many difficulties in assuming both roles, precisely because the legitimacy of each is based on different principles. Indeed, one part of the definition of activism or political engagement is the pursuit of an "ethic of conviction"<sup>4</sup>; "professional power" is, for its part, based on the institutionalization of "formal knowledge," and more precisely social recognition of such institutionalization.<sup>5</sup>

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TABLE 2.1
Background Information on Interviewees

type <sup>a</sup> Father's profession
Businessman
?
rateur ?
Worker
Physician
?
?
Carpenter
Small banker
?
Shopkeeper
Attorney
Small corporation's manager <sup>b</sup>
Teacher
Physical therapist
1

<sup>&</sup>lt;sup>a</sup>In France, the status of *collaborateur* is very specific: theoretically, it is used of newcomers into the profession, who work simultaneously for two sorts of clientele: the clientele of the "boss" (who is a partner—with the status of *associé* or an individual) and his or her own clientele. After a few years, the second clientele becomes more important and the attorney can found his or her own firm. Actually, a general trend of the profession is the lengthening of the duration of *collaboration*, so that many *collaborateurs* can be seen as hidden salaried attorneys.

Thus it is logical that a lawyer <u>involved in</u> contrasting activities should experience a sense of contradiction, from both within and without; one goal of the study of such lawyers should be to understand how they "accommodate to the political and professional contradictions that are intrinsic to left-activist legal practice."

However, attorneys who specialize in defending workers don't seem to feel these contradictions. Rather, they claim the position of "go-betweens" and most of them do not feel any conflict between belonging to the legal field on the one hand and to the political or activist field on the other. To explain this, it can be shown that cause lawyering for such attorneys is a "way of salvation," to use Max Weber's phrase. That is, they continue to be what they have been: traditional lawyers on the one hand (far removed from corporate lawyering) and activists with traditional or current beliefs on the other. Thus their conception of lawyering and their political engagement are often fulfilled through cause lawyering, principally because such law practice allows them to continue to live in a certain form of what Weber would term "enchantment" allowed by their profession and political commitment.

<sup>&</sup>lt;sup>b</sup>Her mother is a labor inspector (*inspecteur du travail*), a state officer in charge of controlling actual implementation of labor law in corporations.

Such an approach leads to some important theoretical and methodological points. Theoretically, first, cause lawyering cannot be considered only in idealistic terms, which would view cause lawyers as "altruistic" people, "lawyering for the good," whose goal is turned "to achieve greater social justice." An alternative theoretical approach is that such lawyers are interested in practicing labor law in an activist way. Thus analysis of cause lawyering allows us to follow a theoretical line proposed by Pierre Bourdieu in his sociology of interest<sup>10</sup>: showing interests that have been concealed within apparently altruistic and pro bono activities doesn't mean that people are cynical or self-conscious about their interests. The second consequence of such an approach is methodological. To pursue a sociological analysis of workers' lawyers and, at the same time, contribute to the effort to define cause lawyering, it is necessary for the investigation to go in several directions. It has to take into account the objective social positions of people—their actual practice of lawyering, their social and political background, and their economic situation—as well as their mental and cognitive orientations.11

In pursuit of those objectives I conducted a series of semi-structured interviews. Fifteen lawyers, who specialized in defending and representing workers and unions, were interviewed in Paris and in several large towns. The interviews lasted between one and two hours; they were taped (one excepted) and transcribed.

#### 1. Questions of Importation

I begin by attending to the importation of a U.S. notion into the French landscape of legal and political sociology. Indeed, as has already been noted, the expression "cause lawyering" doesn't exist in France; this paper, then, is an attempt at importation and conceptual translation. It is a contribution of French sociology to the study of cause lawyering.<sup>12</sup>

### Forgetting Conditions of Production of a Concept

Importing a concept like "cause lawyering" into an academic tradition different from the one in which it was created does not necessarily mean acceptance of "symbolic imperialism." It is true that in the context of American hegemony in the social sciences, and specifically in socio-legal studies, importing the concept could be seen as resignation to the domination of U.S. intellectual products. Thus Bourdieu and Wacquant suggest we should be very critical of people, called "smugglers," who "propose and propagate, often sincerely, Amer-

ican cultural products" and of "American cultural institutions which accompany and often organize—even without explicit consultation—the process of collective conversion to the new symbolic Mecca." <sup>13</sup>

One danger of such importation lies in the consecration of the concept, ignoring the different contexts that allowed scholars to create it. As Austin Sarat<sup>14</sup> has explained, the concept of cause lawyering emerged in a specific context, namely the evolution of the Law and Society movement in the United States. In this context U.S. socio-legal scholars became increasingly interested in studying the legal professions and less interested in the political side of lawyering. Studying cause lawyering could be considered a way of restarting a project whose subject is at the intersection of law, political science, and political commitment. Such a blending of political and scientific engagement fits very well with the recent history of scholarship on cause lawyering. It is unusual in France, where the epistemological split between the social sciences and the social world is quite deep.

French socio-legal studies, called legal sociology, are very different from their American counterpart. They originated in law schools, as a sub-product of legal studies. Nowadays, socio-legal studies have been taken over by new-comers from sociology and political science. But it remains difficult, for example, to propose courses in legal sociology in faculties of sociology. Thus for two main reasons—differences in the conception of political and academic engagement, and differences in the history of legal sociology—the importation of U.S. socio-legal concepts by French academics must be done carefully and thoughtfully.

Lastly, trying to import a foreign concept into a national sociology raises the huge question of comparison. In my case, differences in legal systems and in the structures of unionism complicate the analysis. For instance, the social role of lawyers is very different in France and in the United States, to such an extent that in the French language, the word "lawyer" can be hard to translate. In France the idea of a single concept of "lawyering" describing, under a single rubric, attorneys, law teachers, and other legal professionals is unthinkable.

#### A Careful and Useful Importation

Despite such challenges, cause lawyering still seems a useful construct with which to study the professional and political situation of French union lawyers. This concept reshapes ties between law and politics. Recently some French scholars have newly considered the place of law in the social and political order. Employing Bourdieu's sociology, they have focused on actors and social groups that use the authority of law as a political tool. Moreover, these scholars have

shown how law can be considered a field (in a Bourdieuian sense) where actors compete to define the scope of law.<sup>16</sup> The concept of cause lawyering can be attached to this sociological tradition. It can be used to reintroduce to the political sociology of legal actors a Weberian sociology of the professions—that is, a sociology of professional activities in practice settings.

Cause lawyering is also a useful contribution to a constructivist tradition within the law and society movement. Cause lawyers can be considered as those actors who are able to "transform" conflicts into legal and political disputes.<sup>17</sup> They also bridge the gap between law and social movements. This last fact is crucial in understanding the role of attorneys in the French labor movement.<sup>18</sup>

## 2. Cause Lawyering as a Condition for the Possibility of a Traditional Conception of Professional Engagement

Taken as a whole, workers' attorneys share a traditional conception of lawyering, with respect to their social status and their occupational position.

### A Weak Position Beyond a Certain Diversity

Workers' attorneys occupy a fairly weak position within the profession as a whole: they all work in very small firms, often as sole practitioners; their style of activity is much more litigation-oriented (emphasizing small-scale litigation, for example, before a *conseil des prud'hommes*—see Table 2.2) than that of other kinds of lawyers. They tend to come from disadvantaged backgrounds, and their social trajectory is based on achievement rather than on ascription, to use catgegories from American sociology of stratification. Within a profession that is increasingly divided and unequal, workers' lawyers who declare themselves to be politically engaged belong to a marginal segment of the profession.<sup>19</sup>

Consider, for example, a small firm in a town in southwestern France. This firm specializes in defending workers. It is composed of only three attorneys. Both partners, founders of the firm, are women. Because they work in a middle-size town, they cannot make their living solely from labor law. While their revenue is a bit higher than the national average, they are very dependant on funding from legal aid (*aide juridictionnelle*), which produces around 40 percent of firm's revenue. Both of the partners had upwardly mobile, working-class parents.

Along with the homogeneity of social positions among workers' lawyers, there is also a certain diversity. Some have managed better than others to make a living from their political work. Others are not able to be what they consider

#### TABLE 2.2

Methods of Litigation for Workers' Lawyers: Labor Relations Board (Conseil des Prud'hommes), Civil and Criminal Court (Tribunal de Grande Instance)

- 1) In France, the conseil des prud'hommes is a very special institution. Its courts are formed by four conseillers (two representing employers and two representing workers), who are not professional magistrates but are elected by all French workers and management and judge in the name of the Republic. All the personal disputes involving labor (except questions referred by the criminal courts, such as accidents at work) are judged by the conseil des prud'hommes. Workers can defend themselves alone or can be represented by a union's legal specialist (called défenseur syndical) or by an attorney. The procedure is brief and informal, and the defense pleadings are brief (and it is above all an oral procedure). If there is an appeal against a judgment, the court of appeal (cour d'appel) is composed of professional magistrates. Then, the last appeal takes place before a cour de cassation (which is the Court of Final Appeal) and establishes precedents (jurisprudence).
- 2) In case of mass layoffs, a law of January 1993 allows workers' councils to litigate before *tribunal de grande instance*. If the council representatives think that the procedure of collective redundancy is not correct, they are allowed to call a lawyer who would intervene formally and would complain before civil courts.
- 3) Finally, in the case of an accident at work, when employers are accused of having prevented union representatives from doing their job or when unions' constituents are attacked by employers (for example during a strike), the competent jurisdiction is the criminal court.

real cause lawyers. To survive they have to widen their realm of activity, for example litigating with (and not against) employers, or being divorce attorneys (which in France seems to be the most common type of litigation). The low social position of such attorneys can be easily understood when one remembers that the market for labor law, as for other realms of law, is quite limited in France. Moreover, unions tend rely on just a few attorneys.

One forty-year-old Parisian female lawyer I interviewed has a case load in which she spends about 60 percent of her time defending workers, with divorce litigation as her second major activity. She also has to serve as legal counsel for a workers' council.<sup>20</sup> Such activities have to do general law (property law, divorce law, consumer protection law...) but very rarely with labor law.<sup>21</sup>

Another lawyer, a woman practicing in Lille, a large city in northern France explained: "Today, I'm working alone with a secretary... with a clientele which... is not very remunerative, because it is based on legal aid... And I'm not a native of this region, without reliable contacts who would provide me... a steady practice." Thus this attorney also specializes in family law (that is, divorce law) and provides paid legal counsel for women's associations.

In contrast, other workers' attorneys didn't seem to have difficulties finding a clientele, because they had been supported by unions or because of their social origin. This allows them to specialize in worker defense. As will be seen below, their social position has huge implications for their conception of engaged lawyering.

### A Traditional Conception of Lawyering

Notwithstanding their diversity, workers' attorneys share a common conception of their profession and of their practice. They want to maintain the traditional image of French lawyering, and consider themselves its guardians. This conception of lawyering is based on a few fundamental principles: independence, liberty, disinterest in financial gains, respect for ethical rules.<sup>23</sup> Thus one attorney explained that when he chooses young *collaborateurs*, "there must be a certain... I am waiting for... some ethics, a certain behavior toward our function, toward our clients... he must have the same cast of mind [as mine]; it is not essentially the profit motive."<sup>24</sup>

Désintéressement is a key issue. Karpik shows how this "rhetoric of generosity" was invented within the profession at the end of seventeenth century by some leaders in order to find a place in the social space between merchants and political power. Karpik treats this ethical rule as a "strategy," and then as a collective identity.<sup>25</sup> For workers' and unions' attorneys, désintéressement is both a strategy and an ethical ideal. Thus many of the lawyers interviewed strongly rejected any other form of lawyering, such as lawyering driven primarily by the profit motive. Attorneys who specialize in corporate law, tax law, or commercial law provide the perfect counter-example to workers' lawyers, because they are not independent and because they only want to earn money, putting aside their convictions and ethical responsibilities. A forty-two-year-old woman insists on the difference between corporate attorneys and her conception of lawyering: "You will see, the practices of workers' lawyers are very small, small. We don't have any international structure, we don't have any national structure. It's another world . . . It remains a very small practice. It is a choice as well. Elsewhere, we couldn't have the same liberty to speak and to choose."26

Another example is drawn from an interview with an attorney well known in the profession and in the unions. He showed a book to the interviewer, *Cabinets d'avocats en France: les acteurs du droit des affaires en France*, <sup>27</sup> and said about it: "For me, the analysis is wrong. It is a sort of... market vision. . . . It is something dealing with market and corporation."

Workers' lawyers see themselves as gatekeepers of "true" lawyering, but their discourse often sounds like a lamentation about its disappearance and the increasingly widespread presence of corporate lawyering, with its departures from the traditions of the French legal professions. As an examination of actual changes in the profession would show, such fears are often ungrounded. Indeed, the transformation of the French bar is quite progressive and is located primarily in just a few business towns (Paris, Nanterre—a suburb of Paris—Lyon, Strasbourg, Bordeaux, and Nice). Elsewhere, traditional patterns of the

profession still remain. Nonetheless, lawyers I interviewed felt that the way they practice (and the profession they love) is disappearing.<sup>29</sup>

This conception of their profession is linked to their social position. They belong to a marginalized segment of the bar and think of themselves as the only "true" attorneys—as the last bastion of respect for the traditions of the French bar. This outlook gives them a certain feeling of moral superiority and helps justify their choice of practice. But to fully understand these positions, it is necessary to attend to the political side of their activity. In their lives and in their work, workers' lawyers always combine law and politics.

## 3. Cause Lawyering as a Condition for the Possibility of Loyalty

Fusing law and politics is the first definition of cause lawyering. This approach is quite well known in France, where attorneys have been always closely linked to political action.<sup>30</sup> This linkage between political and professional engagement turns out to be another way for workers' and union attorneys to claim their place in the tradition of the French legal profession. Moreover, such engaged professional practice allows people to be loyal to traditional beliefs, despite appearances to the contrary.

#### Cause Lawyering as Political Lawyering

Workers' attorneys can be seen as the successors to a large number of French lawyers who have taken part in political action. Indeed, from the end of the nineteenth century, a slow decline in the legislative and executive power of lawyers led them to invest in new forms of engagement—such as defense of the middle class<sup>31</sup> and participation in the judicial strategies of workers' unions and, thereafter, in resisting the Germans and in the anti-colonial wars.<sup>32</sup> Since the 1970s, many attorneys have been engaged in a variety of social movements or interest groups.<sup>33</sup>

Many lawyers for workers and unions see themselves as contributing to the old spirit of lawyers' political engagement and define themselves as militants. Many refuse to acknowledge a divide between political and legal action.

Evidence for the claim of a link with politics can be seen in an interview with a fifty-seven-year-old man. On the walls of his waiting room were many press articles about victories against management. As one client waiting to see this lawyer put it: "We know where we are." On the walls of the attorney's room were also a few slogans from May 1968, unions' posters, and a picture of Che Guevara. At the end of the interview, he said, as if he were pleading: "I always

practiced engaged law.... Labor law is not neutral. You are on one side or the other. As for our firm, we are on the side of the workers.... Law is a wonderful way to change the world."<sup>34</sup>

When another lawyer was asked about her tie to politics, she answered: "Explain politics? But it came naturally, because the firm opened in 1974... in '74, there were many social movements, students were engaged, lawyers were engaged... There isn't any break between the profession and militancy." 35

But if a political definition of themselves and of their activity is common to most of the lawyers I interviewed, there is no single definition of "militancy" or of "politics." The younger and the less well established attorneys see their engagement as a "humanistic" one, much more than an actual political one. Their conception of workers' lawyering is rather broad: to defend the "weaker" against the "stronger."

Consider, for example, the explanation of a forty-year-old woman in Paris of why she became a labor lawyer. After talking about her career path, she said: "The workers' status has always... I have always been preoccupied by their weakness... When I became an attorney, it was in part in order to defend the weaker against the stronger. Indeed, labor law is from the outset a law in which you find one side weaker and another side stronger—linked together by this subordination between them."

#### A Stage in a Constituent's Career

Moreover, workers' lawyering is for some of the engaged attorneys a condition of their loyalty to traditional beliefs. Many of the lawyers interviewed who were more than fifty years old were leftist militants in the 1970's (one was Maoist) or members of the Communist Party. Older lawyers were engaged in opposition to the Algerian War. When they relate their life-histories, their lawyering appears to them to be a normal step in their career of engagement.<sup>37</sup>

A fifty-three-year-old woman attorney in a western French town told me that having attended law school at the very beginning of the seventies, she committed herself to the women's liberation movement, far-left associations, and workers' unions and a student union. When she decided to become a lawyer, she was not at all interested in law or in the legal profession.<sup>38</sup>

Another lawyer related a life-history beginning with youthful opposition to the Algerian War and including involvement with far-left movements. In 1967, this lawyer became a leader of the UJC-ML (*Union des Jeunes Communistes Marxistes-Léninistes*), which was a Maoist movement. In 1968–70, he organized anti–Vietnam War committees. In 1973, he became a member of the Paris bar and then left Paris for one of its suburbs. Thanks to his ties with some unions,

he built a firm specializing in the representation of unions and workers, and in 1985 he was elected leader of the bar (*bâtonnier*) in Versailles.<sup>39</sup>

In a study of militants active between 1968 and 1975, Isabelle Sommier found that many former 1968 militants found refuge in what she called "escapism"—that is, an "attempt to exorcize an embarrassing past" and a refusal to undertake new political engagement. <sup>40</sup> In contrast, workers' lawyers explain how their legal engagement is driven by their political commitment, and they relate a linear trajectory, which is quite unusual for militants of the 1970's. <sup>41</sup>

Some of the best known workers' lawyers now have a comfortable income and have adopted a bourgeois way of life. Nor do they have much contact with the working class. Illustrative of this contradiction is the case of an attorney whose firm is located in a suburb but who explains very seriously that the location is "in the underbelly of the beast"—that is, the underbelly of capitalism. He implicitly says that he has adopted a Maoist strategy in his choice of location. 42 He located his firm in a suburb close to Nanterre, where many large corporations have their registered headquarters and their central workers' councils. Yet he portrays himself, like other workers' lawyers, as not having changed—as still being faithful to old beliefs and old commitments. 43

Such judgments, however, overlook the circumstances that are often preconditions of commitment to political lawyering. As one lawyer explained his own diminishing political engagement: "When I began my professional activity [at the beginning of the 1970's], I had two different fields: labor law and housing law. My main principle was never to represent a boss or a house-owner. It was clear. I had chosen my side. Then, after a certain time, when you settle down... your family, your children... I said to myself: I must provide for my family... And it is true that for about seven to eight years, I have been agreeing to work for employers."

In other words, as one's family responsibilities increase it becomes more and more difficult for some lawyers to live solely for and from political engagement. Those who are able to do so—that is, practice cause lawyering in a fulfilling way—tend to be associated with unions. For others, like the attorney quoted above, it is necessary to broaden their client base, and that often means representing "the other side." To understand how this works, it is necessary to consider in more detail how labor law is actually practiced.

## 4. Cause Lawyering as a Practice: Creating Social Capital and Building New Legal Categories

Analysis of the practice settings of lawyers representing workers reveals the mutual interdependence among lawyers and union leaders and militants.

Unions provide clientele to attorneys, yet attorneys translate the cause they defend into legal and judicial categories—contributing to a "rising in generality," that is, a cause's taking on a general rather than a particular significance.<sup>45</sup>

### Labor Lawyers and Unions: Building and Maintenance of Clientele

Workers' lawyers have two sorts of clients: unions and individual workers. Major cases are brought to them by organizations that exist at different levels of unionism, particularly *confédérations*, *fédérations*, *unions départementales* (see Table 2.3) and workers' councils (*comités d'entreprise*).

For many years, unions have built networks and enduring relationships with lawyers who have become their regular attorneys. By sending workers to such attorneys, unions provide clients that are essential if these attorneys are to be fully engaged—that is, if they are to confine their labor law practices to exclusive representation of workers. For these lawyers, political commitment and professional engagement cannot be separated from the material benefits that are derived from their practice.

Different sorts of relationship exist between unions and workers' attorneys. Some lawyers are historically linked to unions and tend to monopolize legal representation of the unions and their members—preventing other attorneys, and principally newer firms, from gaining access to this client base. Older lawyers, who are the main figures in this kind of cause lawyering, lead a leftist

## TABLE 2.3 Some Aspects of Union Organization in France

First, French unions are divided into five main kinds of organizations, each with its own legal office:

- —CGT (Confédération générale du Travail), the most important union, historically linked to the Communist Party
- —CFDT (Confédération française et démocratique du Travail), a leftist union but has regularly negotiated with managers' associations
  - —FO-CGT (Force Ouvrière), which is mainly present in the civil service
- —CFTC (Confédération française des Travailleurs chrétiens), distinguishable as a Christian union
  - —CGC (Confédération générale des cadres), managers' and executives' union.

Second, unions are organized with two additional categories:

- —Constituents who share the same occupation are also gathered into *fédérations*, which have some autonomy from the *confédération*. Some *fédérations* are well known: for example, the CGT *fédération* of printing (called FILPAC—Fédération de l'Imprimerie, du Livre et du Papier-Carton) and the CFDT *fédération* of chemistry and energy (FCE). These federations sometimes have their own legal service.
- —Constituents are also organized on a territorial basis, in *départements* (territory divisions), called *unions départementales*. They do not have legal services, but there are some militants who specialize in law, and above all in *prud'hommes*.

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lawyers' union, Syndicat des Avocats de France, and have come to monopolize the field of union defense and representation.

One example is provided by a very famous firm in Paris. The present leader inherited the firm and his union clientele from his father. The firm is very closely linked to the CGT [Confédération générale du Travail; see Table 2.3], and this preferential relationship has existed for more than fifty years.

Another attorney explained his practice by noting: "Our firm has been working with the CFDT (Confédération française et démocratique du Travail) since 1973.... If we have regular connections with CFDT people or with clients sent by CFDT, we often ask in vain for strong relationship, strategies to follow, and mutual expectations."

A last example is a workers and union firm in a town in northern France. The firm was established in the early 1970's. All of the CGT's local unions work with this firm. Accordingly, other attorneys who aspire to cause lawyering must somehow overcome the obstacle of being largely excluded from the client base provided by union representation.<sup>47</sup>

Thus attorneys who are younger and do not have a traditional union's practice face many difficulties in attempting to build a practice which would allow them to live from and for cause lawyering. They do not have the social capital traditional cause lawyers have. Indeed, the relationship between such traditional workers' attorneys and unions can be seen as depending on the activation and maintenance of a social capital—that is, the "whole actual or potential resources that are bound to ownership of a sustained network of more or less institutionalized relationship" (Bourdieu 1980: 2–4). These relationships are, according to Bourdieu (ibid.), founded on "exchanges that are inseparably material and symbolic."

To the extent that they are dependent on such social capital, French cause lawyers confront ethical and moral contradictions. Ethically, they want to see themselves as independent liberal professionals whose legitimacy is based on freedom and individualism. Morally, they are considered "organic intellectuals" (Gramsci 1983) engaged in "radical practice" in solidarity with unions.<sup>48</sup> This engagement with, and dependence on, unionism is intrinsic to the older generation and takes shape in what is called "collective" litigation—that is, the struggle. This dependence on unions directly contradicts the ethical ideal of independence. Indeed, there is evidence that the leaders of legal committees within unions are highly critical of attorneys and even cynical toward them, considering them to be legal tools in their hands.

For a newer generation of union attorneys, the contradiction is moral—rooted in their difficulty building client networks. Several of them give legal

consultations which are organized by the union. But they must earn additional income by serving a few clients for whom they will litigate. This leads to more limited engagement with cause lawyering.

#### Creating Categories and Reframing Socio-Legal Disputes

In contemporary French society, law plays an increasingly important role. As a result, unions often have to reframe their action and their conception of labor in legal terms and categories. In such circumstances, lawyering has pervasive utility.

Analyzing the actual situation of contemporary French unionism can be very useful in understanding the importance of law and legal professionals.<sup>49</sup> First, the crisis of unions and of union activism led them to transform their mode of struggle. More and more, unions are becoming institutions which provide services, including legal aid. Second, the relationship between the State, management organizations, and worker unions has been changing for about ten years. Collective bargaining has been increasing, and management organizations have been strengthening their skills, above all their legal skills. In these new conditions, law is a major tool, which is regularly deployed. Law has become a new means of legitimization. Law provides a new frame for all public policies—and more specifically for social and labor policies. Union organizations have to respond to such challenges by conforming to the new rules of game, even if they would not have chosen them.

In this context, cause lawyering is a major resource for worker unions. One of the major activities of political lawyering is to create new legal categories, through which old definitions and representations of reality are transformed. Such engaged lawyers produce a discourse through which labor problems, difficulties with management, even the class struggle, become legal questions to which legal answers can be given. The social reality of work is thus transformed into a legal and judicial reality. Cause lawyers who were interviewed for this research took on a major role in the activity of legalizing labor questions. Among the many tools cause lawyers use to bring labor problems within the scope of the law, two are particularly important.

One tool for such discursive and social transformation lies in what is called in France *jurisprudence* work—that is, the use of precedents by judges and attorneys. A concrete analysis of such work allows us to see how lawyers deploy precedents in their pleadings in order to show that a present case can be linked to earlier judicial decisions. Thus much of the everyday work of lawyers is taken up with reading legal literature (and often scholarly literature) in order to locate precedents which could be useful for the present case. Obviously, it is the

attorneys for workers who monopolize this work. At the same time, these cause lawyers are well versed in the daily reality of workplace practices—which allows them to define relevant precedents. This kind of work can entail collective action by lawyers. Some lawyers have organized meetings where they shared their knowledge about legal texts and judgments. Such cooperative endeavors among legal specialists working on behalf of unions typify the conception of legal action as collective and activist work.

But there is another important kind of cause lawyering activity. Michael Mc-Cann has demonstrated in his research on pay equity claims that for activists and for workers litigation is a way of appropriating new rights and new claims.<sup>52</sup> For attorneys, one way to claim such new rights is to build new legal categories which can transform old "oppressions" into legal offenses.<sup>53</sup> Litigation about "moral harassment" is a good example of this process. In French law, what is called in northern Europe "mobbing" did not exist until the end of the 1990's, when unions' legal specialists, law teachers, and labor lawyers introduced it. Every one of the lawyers interviewed for this research worked on such cases. "Moral harassment" is a way of defining longstanding practices by management—namely moral pressure, abuse of power, and so on.<sup>54</sup> These familiar aspects of the relationship between workers and management are being redefined by cause lawyers as offenses. One attorney in Paris explained the situation as follows:55 "We can," she said, "invoke article 1134 of the Civil Code... In that case, the bosses are purple with rage, because for twenty-five years they threw freedom of contract in our faces. But now we use article 1134, saying: the principle of loyalty is an essential principle within working contract, and so an employer who harasses his employee is guilty of disloyalty.... We have turned the gun on them."56

Thus legal action, and especially litigation, are building new ways of defining work, and attorneys are the main actors in this process of redefinition. Two important tools are used: precedents and the building of new categories. When they employ these tools, cause lawyers can be seen as legal inventors.

### Conclusion

Two conclusions can be drawn from this qualitative investigation into workers' cause lawyers:

1. On the one hand, cause lawyering can be seen as political lawyering. As with all political activity, it is impossible to reduce commitment to altruism or to disinterested activity. On the contrary, workers' lawyers must live from, and not simply for, activism. This does not mean that they are not motivated by ide-

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ological belief. If one major recent gain in political sociology has been to link interests and beliefs, then the analysis of cause lawyering needs to take this sort of approach.

2. On the other hand, there is a danger that cause lawyering can lead to putting too much reliance on the law, as if law could solve everything and be an omnibus means of fighting against injustice. As McCann usefully reminds us, legal action is only one of the tools for social action that are available to social movements.

#### **Notes**

Special thanks go to Stuart Scheingold and to John Feneron at Stanford University Press for much helping put this paper into correct English.

- 1. Until Liora Israël's paper (Israël 2001) and a volume of the French political science journal *Politix* in 2003.
  - 2. For a history of such tradition, see Vauchez and Willemez (2002).
  - 3. Sarat and Scheingold (1998: 7).
- 4. In German, Gesinnungsethik, which is opposed to Verantwortungsethik (Weber 1919).
  - 5. Freidson (1986).
  - 6. Sarat and Scheingold (1998: 119).
- 7. What is called here "political" is not directly linked to the field of political competition for leadership or to political parties; thus unionism is considered political action, though in France unions have made many efforts to stay far away from politics in the strict sense of the term.
- 8. Weber (1919). In France, one of the major contributions of Pierre Bourdieu was the application of Weber's notions of sociology of religions to other social activities and other fields. It thus became possible to show, without any religious connotation, how people are looking for something like "salvation," even outside of religious contexts.
- 9. This definition of cause lawyering can be found in the text of Carrie Menkel-Meadow's radical paper (1998). But this idealistic vision of cause lawyering is one of the possible directions followed.
  - 10. See, for example, in French, Bourdieu (1994).
- 11. "There exists a correspondence between social structures and mental structures, between objective divisions of social world and visions and divisions that people implement. . . . The two approaches, which can be considered 'structuralist' and 'constructivist,' are logically inseparable. . . . Analysis of structures and of 'social mechanisms' only gains its whole explicative strength and its descriptive truth because it includes the results of the analysis of perceptions' and actions' schemes that people [agents] implement in their judgments and activities" (Bourdieu 1989: 7–8; translated by me).
- 12. The use of the concept for understanding non-U.S. situations has always been an important part of cause lawyering studies, as can be seen from a survey of the tables of contents of earlier books on the subject: see Sarat and Scheingold (1998, 2001).

- 13. Bourdieu and Wacquant (1998: 113; translated by me).
- 14. In his introduction to the cause lawyering meeting at Cachan, France, in October 2003. The following lines must be read as a reconstruction of an intellectual history by a French scholar and do not represent the views of the organizers of cause lawyering project.
- 15. See, for example, Commaille (1994) and Lacroix (1985) for two different traditions.
- 16. Public law and, moreover, constitutional law have been analyzed by François (1993). But Dezalay remains the main "translator" of Bourdieuian sociology in the sociolegal field; see e.g. Dezalay and Garth (1999).
- 17. The term "cause lawyering" was translated at the beginning of the 1990's by *Politix*, a new political science journal.
- 18. As proposed, for example, in the United States by Burstein (1991) and McCann (1994).
- 19. Studies of the present state of the profession are very few; see, however, Karpik (1999); Vauchez and Willemez (2002), Boigeol and Willemez (2005).
- 20. In France, the activities of workers' councils have to do not only with their offical role but with activities <u>concerning</u> workers (organization of holidays, canteen lunches, and entertainment).
  - 21. Interview, September 11, 2002.
- 22. Interview, September 20, 2002: "Donc aujourd'hui je fonctionne toute seule avec une secrétaire... Avec une clientèle qui était pas... qui est assez fragile puisqu'elle est fondée sur beaucoup d'aide juridictionnelle... Moi, je suis quelqu'un qui est pas du tout de la région avec aucune relation qui puisse me drainer... une clientèle assurée."
- 23. Karpik (2001); for a general description of ethical rules, see Damien and Hamelin (2000). In reality, of course, the attorneys who were interviewed talked much about money and about the necessity of owning a practice: in this regard at least, Karpik's book can be seen as a bit idealistic about lawyers (for more about this idealistic point of view, see my Ph.D. dissertation on French lawyers in the nineteenth century, Willemez 2000).
- 24. Interview, February 22, 2002: "la loyauté dans la manière de... faire, de travailler. Il faut une certaine... j'en attends... une certaine éthique, un certain comportement par rapport à notre fonction, à nos clients... il faut que ce soit la même forme d'esprit, c'est pas essentiellement un but lucratif."
  - 25. Karpik (1989: 737-39).
- 26. Interview, October 12, 2000: "Vous allez voir, les cabinets de droit du travail pour les salariés sont de tout petits cabinets. Tout petit. On n'a pas de structure internationale, on n'a pas de structure nationale. C'est un autre monde . . . Ca reste de tout petits cabinets. Mais c'est aussi un refus. On pourrait pas avoir la même liberté de parole, de choix, d'orientation."
- 27. This is the French version of "the Pritchard," a well-known list of corporate lawyering publications, put out by *Legalease*.
- 28. Interview, September 1, 2000: "Pour moi, c'est une fausse analyse. C'est une sorte de vision... du marché . . . C'est un peu un truc de marché, de marché-entreprise."

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- 29. Vauchez and Willemez (2002).
- 30. Le Béguec (1994)
- 31. See Israël and Elbaz, this volume.
- 32. In recent years, French scholars have been investigating the place of lawyers in social movements and interest groups: see, for instance, Agrikoliansky (2002) and Israël (2003) on human rights and civil liberties, Mouchard (2002) on the unemployed and poor, and Willemez (2003) on unions.
  - 33. Halliday and Karpik (1997).
- 34. Interview, September 1, 2000: "J'ai toujours fait du droit engagé. . . . Le droit du travail n'est pas neutre. On est dans un camp ou dans un autre. Nous, en ce qui nous concerne, on est dans le camp des travailleurs. . . . Le droit, c'est un moyen absolument extraordinaire pour changer le monde."
- 35. Interview, February 20, 2002: "Expliquer le politique? Mais ça s'est fait naturellement, parce que le cabinet s'est ouvert en 1974... c'était le social, il y a des étudiants qui militent, il y a des avocats qui militent... il y a pas de coupure entre la profession et la militance, ça va avec."
- 36. Interview, September 11, 2002: "C'est vrai que le statut des salariés m'a toujours... leur fragilité m'avait toujours préoccupée... Quand je suis devenue avocate, c'était un peu pour défendre les faibles contre les forts. Effectivement, le droit du travail, c'est un droit dans lequel il y a *a priori* d'un côté les forts, de l'autre côté les faibles, avec le lien de subordination." The "link of subordination" is a French legal category which defines the link between the employer and the worker in a working contract (*contrat de travail*).
- 37. Engagement can be seen as a career, if one uses interactionist sociology (Becker 1963). Some French scholars who specialize in social movements or political parties use this perspective: see for instance Fillieule (2001).
  - 38. Interview, February 20, 2002.
- 39. This life-history is based on an interview (September 1, 2000), but also on a book about May 1968 (Hamon and Rotman 1987).
  - 40. See Sommier (1998: 220-23); Mauger (1994).
- 41. <u>Regarding changes</u> in commitment, see Snow and Machalek (1984). For instances of conversion from unionism or far-leftist politics to humanitarian or writing of novels, see Collovald, Lechien, Rozier, and Willemez (2002); Collovald and Neveu (2001).
- 42. After May 1968, some far-leftist students in France (and sometimes the most brilliant of them) chose to disseminate far-leftist propaganda in factories and so became workers (concealing their educational background); some of them are still workers to-day.
- 43. Interview, October 18, 2000: "Moi, quand j'ai commencé mon activité professionnelle, j'avais deux champs d'activité importants: droit du travail et droit locatif. J'avais pour principes de ne jamais plaider pour un patron et de ne jamais plaider pour un propriétaire, c'était clair, j'avais choisi mon camp. Et puis, à partir d'un certain temps, quand vous vous installez, avec les charges qui augmentent, famille, enfants, je me dis: 'c'est bien, mais il faut que je fasse vivre tout le monde', et c'est vrai que depuis... mettons 7–8 ans, j'ai accepté de plaider employeurs aux prud'hommes."

- 44. The French sociologist Luc Boltanski showed how one of the distinctive features of representational activity is to transform a particular dispute or conflict into a general cause (Boltanski 1990).
- 45. "Notre cabinet travaille avec la CFDT depuis 1973.... Si nous avons des contacts réguliers avec des personnes de la CFDT ou envoyées par la CFDT, nous réclamons souvent en vain des relations suivies sur les dossiers en cours, les stratégies à mener, et les attentes que nous pouvons avoir les un des autres" ("documents préparatoires à la réunion du mercredi 27 juin avec la commission juridique de la CFDT"—no year given, written between 1999 and 2001).
- 46. Interview, September 7, 2002, with a respondent from the huge firm, now in practice by herself.
  - 47. To follow Scheingold's analysis (1988).
- 48. Interview, September 12, 2002: "Il y avait une époque que j'ai connue où la CGT considérait que les avocats étaient un peu ses larbins. Ils faisaient des grands-messes annuelles rue Lafayette. Il y avait les adjudants-chefs, les sous-adjudants-chefs, etc. ... Il y avait toujours Charles Lédermann qui lisait le bréviaire à tout le monde."
  - 49. See Vauchez and Willemez 2002.
- 50. In this way, it is interesting to combine two approaches of American sociology: first an approach based on "framing theories" (Snow and Benford 2000), and second an approach based on "social problems": in France, the sociologist D. Cefaï has proposed such a combination (Cefaï 2001).
- 51. For an analysis of such transformation of social problems into legal problems, see Gusfield (1963)
  - 52. McCann (1994: 65-68).
- 53. It can be shown that cause lawyers do not necessarily create or fabricate the causes they defend, but rather reframe them in new words and new categories.
- 54. The double origin of "moral harassment" is interesting: first it was a psychiatric definition and second a development based on aspects of sexual harassment.
- 55. The situation changed in 2001, when the law recognized "moral harassment" as an offense.
- 56. Interview, October 12, 2000: "On peut invoquer l'article 1134 du code civil... Alors là, les patrons sont un peu verts qu'on utilise cet article, parce que pendant 25 ans, ils nous l'ont mis entre les dents: c'est-à-dire la liberté du contrat, le contrat qui fait force de loi entre les parties, etc. Mais maintenant que nous nous servons de l'article 1134 en disant: le principe de loyauté est un principe essentiel au contrat de travail, et donc un employeur qui harcèle son salarié se rend coupable de loyauté... on a retourné l'arme contre eux."

#### References

Agrikoliansky, Eric. 2002. La Ligue française des droits de l'hommes et du citoyen depuis 1945: sociologie d'un engagement civique. Paris: L'Harmattan.

Becker, Howard. 1963. Outsiders. Chicago: University of Chicago Press.

Boigeol, Anne, and Laurent Willemez. 2005. "Fighting for Monopoly: Unification, Dif-

#### A POLITICAL-PROFESSIONAL COMMITMENT?

- ferentiation and Representation of the French Bar," in *Organization and Resistance: Legal Professions Confront a Changing World*, ed. Bill Felstiner. Oxford: Hart Publishing.
- Boltanski, Luc. 1990. L'amour et la justice comme compétences: trois essais de sociologie de l'action. Paris: Metailié.
- Bourdieu, Pierre. 1980. "Le capital social: Notes provisoires." *Actes de la recherche en sciences sociales*, January, pp. 2–4. Trans. as "The Forms of Capital," in *Handbook of Theory and Research for the Sociology of Education* (New York: Greenwood Press, 1986), pp. 241–58.

- Bourdieu, Pierre, and Loïc Wacquant. 1998. "Sur les ruses de la raison impérialiste." *Actes de la recherche en sciences sociales* 121–22: 110–18.
- Burstein, Paul. 1991. "Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity. *American Journal of Sociology*, 96, no. 5: 1201–25.
- Cefaï, Daniel. 2001. "Les cadres de l'action collective: définitions et problèmes," in Daniel Cefaï and Trom, Les formes de l'action collective: mobilisations dans les arènes publiques, 99–134. Paris: Editions de l'EHESS.
- Collovald, Annie, and Erik Neveu. 2001. "La critique politique du néo-polar," in *Juger la politique*, ed. Jean-Louis Briquet and Philippe Garraud, 193–215. Rennes: Presses Universitaires de Rennes.
- Collovald, Annie, Marie-Hélène Lechien, Sabine Rozier, and Laurent Willemez. 2002. L'Humanitaire ou le management des dévouements: enquête sur un militantisme de solidarité internationale en faveur du Tiers-Monde. Rennes: Presses Universitaires de Rennes.
- Commaille, Jacques. 1994. L'esprit sociologique des lois. Paris: Presses Universitaires de France.
- Damien, André, and Jacques Hamelin. 2000. Les règles et les usages de la nouvelle profession d'avocat. Paris: Dalloz.
- Dezalay, Yves, and Brian Garth. 1999. Global Palace Wars: Lawyers, Economists and the Creative Destruction of the State.
- Fillieule, Olivier. 2001. "Propositions pour une analyse processuelle de l'engagement individuel." *Revue française de science politique* 51, nos. 1–2: 199–217.
- François, Bastien. 1996. *Naissance d'une constitution: la Vè République*. Paris: Presses de Sciences-po.
- Freidson, Eliot. 1986. Professional Powers: A Study of Institutionalization of Formal Knowledge. Chicago: University of Chicago Press.
- Gramsci, Antonio. 1983. Cahiers de Prison. Paris: Gallimard.
- Gusfield, Joseph. 1963. Symbolic Crusade. Urbana: University of Illinois Press.
- Halliday, Terence, and Lucien Karpik. 1997. "Politics Matter: A Comparative Theory of Lawyers in the Making of Political Liberalism," in *Lawyers and the Rise of Western Political Liberalism*, ed. T. Halliday and L. Karpik. Oxford: Clarendon Press.
- Hamon, Hervé, and Patrick Rotman. 1987. Génération. Paris: Seuil.

- Israël, Liora. 2001. "Usage militants du droit dans l'arène judiciaire: le *cause lawyering*." Droits et Société 49.
- 2003. "Faire émerger le droit des étrangers en le contestant, ou l'histoire paradoxale des premières années du GISTI." Politix 62: 115–44.
- Karpik, Lucien. 1989. "Le désintéressement." Annales ESC 3 (May-June): 733-51.
- ——. 2001. French Lawyers: A Study in Collective Action (1274–1994). New York: Oxford University Press. (French edition 1995.)
- Lacroix, Bernard. 1985. "Ordre politique et ordre social: objectivisme, objectivation et analyse politique," in Jean Leca and Madeleine Grawitz, *Traité de science politique*, 1: 469–565. Paris: Presses Universitaires de France.
- Le Béguec, Gilles. 1994. "Le jeune barreau parisien au début des années 20," in *Avocats et barreaux en France (1910–1930)*, ed. Gilles Le Béguec. Nancy: Presses Universitaires de Nancy.
- McCann, Michael. 1994. Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization. Chicago: University of Chicago Press.
- Mauger, Gérard. 1994. "Gauchisme, contre-culture et néo-libéralisme," in Centre Universitaire de Recherches Administratives et Politiques de Picardie (CURAPP), *L'identité politique*. Paris: Presses Universitaires de France.
- Menkel-Meadow, Carrie. 1998. "The Causes of Cause Lawyering," in Sarat and Scheingold (1998): 31–68.
- Mouchard, Daniel. 2002. "Les mobilisations des 'sans' dans la France contemporaine: l'émergence d'un 'radicalisme auto-limité'?" Revue française de science politique 52, no. 4: 425–47.
- Sarat, Austin, and Stuart Scheingold, eds. 1998. Cause Lawyering: Political Commitments and Professional Responsibilities. New York: Oxford University Press.
- —. 2001. Cause Lawyering and the State in a Global Era. New York: Oxford University Press.
- Scheingold, Stuart. 1988. "Radical Lawyers and Socialists Ideals." *Journal of Law and Society* 15, no. 1: 122–38.
- Snow, D., and R. D. Benford. 2000. "Framing Processes and Social Movement: An Overview and Assessment." *Annual Review of Sociology* 26: 611–39.
- Snow, D., and R. Machalek. 1984. "The Sociology of Conversion." *Annual Review of Sociology* 10.
- Sommier, Isabelle. 1998. *La violence politique et son deuil: l'après 68 en France et en Italie.* Rennes: Presses Universitaires de Rennes.
- Vauchez, Antoine, and Laurent Willemez. 2002. *Contribution à la connaissance statistique de la profession d'avocat*. Rapport pour le Conseil national des Barreaux.
- Weber, Max. 1919. Politik als Beruf, in Gesammelte Politische Schriften. UTB, 1988.
- Willemez, Laurent. 2000. "Des avocats en politique (1848–1880): contribution à une socio-histoire de la profession politique en France." Thèse de doctorat en science politique, Université Paris I.
- 2003. "Quand les syndicats de saisissent du droit: invention et redéfinition d'un rôle." *Sociétés contemporaines* 52: 17–38.