The Ambivalent Language of Lawyers:
Between Liberal Politics, Economic Liberalism, Silence, and Dissent

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A. Between Silence and Speech—Lawyers and the Political Sphere

Contrary to numerous other professionals, lawyers are political agents in their daily professional practices. They are habitually acting through legalistic struggles to alter allocation of public goods (Halliday and Karpik, 1997). Frequently, they either function in politics and/or have meaning in politics (Abel, 1989, 1995; Barzilai, 2005; Eulau and Sprague, 1964; Feeley and Krislov, 1990, Feeley and Rubin, 2000; Haltom and McCann, 2004; Kagan, 2000; Lev, 2000; Sarat and Scheingold, 1998, 2001; Scheingold, 2004; Scheingold and Sarat, 2004; Shamir and Ziv, 2001). By definition of their profession, lawyers incline to legitimate the nation-state. Their professional ideology presumes crucial public constitutive functions of the legal complex and it relies on perceived state's abilities to respond rather effectively to public needs and expectations.

When lawyers practice in the legal complex—even those who voice political dissent--they act through the formal legalistic rules as those of jurisdiction, standing, justifiability, adjudication, procedures, rules of ethics, and rules of evidence. Hence, both legitimization and legalization of the nation-state through lawyers seem to be fundamental and expected functions of lawyers through the legal complex. These two functions of lawyers may be even empowered in liberalism since it advances two

foremost normative principles. First principle is the preference rendered to individual rights over any other type of collective good. Second principle is state's 'neutrality' and its ability to produce a procedural justice. Presumably, lawyers exercising professional knowledge of the legal complex may have a singular role in advancing these two liberal visions.

However, this chapter is not portraying lawyers in the course of conventional democratic politics. Rather, it is devoted to another aspect concerning lawyers, the legal complex, and the political liberalism- it argues that lawyers in diversity of sociopolitical and economic sites in state and civil society are crucial agents of the formation and signaling the sphere of deliberations in democracies. In other terms- when lawyers talk and furthermore when they are silent in the political sphere, and yet practice as lawyers, they actually determine the boundaries of the political discourse and political deliberations. Rather than using categories of 'private lawyers', 'government lawyers', and 'cause lawyers', this chapter adds a different and yet a complimentary theoretical vantage point for better understanding the legal complex. This article is not looking into a specific type of lawyers. Instead it is interested in comprehending the overall population of lawyers, and how the Bar has mobilized, effected and affected sociopolitical forces. It is focusing not only on the functions of empowering and challenging legalization of the state but also on how lawyers are meaningful to shaping the boundaries of political discourse. More contextually, this chapter also looks into the Israeli experience and in turn it invites a few generalizations that are comparable to other case studies around our globe.

B. The Comparative Setting:

B.1. Lawyering in Proportions

With more awareness of liberal rights and individualism, significantly associated with capitalism, industrialization and economic expansion, the number of lawyers especially in Western societies has increased. It is both important and striking to offer a comparison between those countries and Israel, which was established in 1948 subsequent to different waves of Zionist immigration mainly from East Europe and Russia to Palestine, beginning in 1882. It is important to put Israel in a comparative perspective since if its number of lawyers is comparatively diminutive, what does it

entail for lawyers' contribution to political liberalism and its absence. Alternatively, if the number of lawyers is considerable in comparative perspective, how does it affect political discourse and how lawyers contribute to framing it amid liberalism? The cross-national comparison may be striking since Israel does not have historical roots of liberalism and from this perspective its historical backdrop is significantly different from Western and European countries.

About 60% of Israel demographic increase and composition since 1948 is due to immigration from non- liberal countries; North Africa and Middle East Muslim countries (mainly in 1951-1961), East European countries (mainly in 1919-1923; 1946-1948); and from the republics of former Soviet Union (mainly 1989-1991). With no significant demographic origins of a Western liberal culture, and even considering some liberal experience since the end of the 1960s, we may hypothesize that the number of lawyers in Israel might have been rather low in a comparative perspective, and especially in comparison with Western liberal states. The praxis is counter intuitive, however.

I have gathered a data set about lawyers in 39 countries; some are western liberal democracies and others, non-liberal settings. My observation is that among European and most Western nation-states and most democracies, Israel has the highest number of lawyers per population size. In 2005 the country had one lawyer per 211 citizens, a figure which is significantly higher than in most liberal societies like the US [one lawyer per 434 citizens], United Kingdom, [one lawyer per 489 citizens], Germany [one lawyer per 619 citizens], Australia [one lawyer per 672 citizens], Holland [one lawyer per 1251 citizens], and France [one lawyer per 1281 citizens].

Table 1 about here

As Table 1 above exhibits, in comparative terms and considering population size, Israel had in 2005, 204% more lawyers than in the US, 232% more lawyers than in United Kingdom, 293% more than in Germany, 593% more than in Holland, and 601% more lawyers than in France. Not only that West European and North America countries share a more historically entrenched political liberal tradition, but all of them [with the exception of newly established democratic Portugal] have a more

prosperous economy with higher GDP per capita than Israel. And yet, Israel has the highest number of lawyers per population size. It would have been plausible to assume that number of lawyers in Israel may resemble a country like South Korea. Both, Israel and South Korea, have experienced an intensive economic development of the private sector, both do not have liberal origins and traditionally entrenched political liberalism. Further, both are under massive American political influence, and both are characterized by strong feelings of national security siege mentality. Yet, the relative number of lawyers in Israel is 30.13 times more than in South Korea, per population size.

Now, knowing that the number of lawyers in Israel is so high in comparison to many other countries invokes a crucial question. What such a large professional group means to political liberalism, the legal complex, and political power. Accordingly, the next section attempts to explore why Israel has had such a high number of lawyers. Then I argue that while lawyers have been agents that propelled some facets of political and economic liberalism, they have also constituted a structure of a limited political discourse, which has legitimatized and legalized the silence of dissent against some fundamental narratives of the nation-state.

How may we explain the existence of a large professional body of lawyers that is rather passive in the political discourse? How lawyers are meaningful, if at all, to political liberalism, the legal complex, and state-society relationships? If my solution to the puzzle is correct, we need to introduce the concept of *silence*, alongside *voice* for better understanding of collective action, state- society relations, and lawyers. In other words, this article invites to look at lawyers not only as agents of mobilization, legislation, regulation, and litigation. Additionally, we are best advised to comprehend and theorize lawyers as framers and markers of voice, silence, and political absence. If my argument is solid, it should assist in further exploring why lawyers may be both agents of social changes and agents of social maintenance in the very same legal complex. However, my solution may constitute an imagined community of lawyers. To avoid that methodological and epistemological slope this chapter distinguishes between various types of lawyers. In politics like in any space of language and behavior there are different types of voices and silences.

B.2. A Word on Legal Words

Language is a sociopolitical construct, with no in-depth meanings to its rules, unless mythical social certainty and deceptive social consent are investigated as lingual sources (Wittgenstein, 1958: 225-229; Wittgenstein, 1969; Wittgenstein, 1974: 188). Law is an epiphenomenological constitutive language that has its structure of norms and a grammar, i.e., rules of interpretations and rules of logic (Wolcher, 2005). I narrate lawyers as structures and agents of the legal language; lawyers are embedded in legal words as their world. They create it, generate it, and often present it as certain and consensual. Lawyers may talk and they may be silent and use these lingual facets of silence and talking as types of collective action towards the state and within its power foci.

C. Lawyers and the State: Beyond Isomorphism

Most nation-states are non-liberal, yet most democratic nation-states have some liberal characteristics as part of their institutional arrangements and national cultures. In comparative perspective, liberalism means a civil society, including political opposition groups, that somewhat moderates the state and may replace its governing bodies through practices that are based on individual rights, NGOs' activities, a relatively limited state's intervention in society, state protection that significantly guarantees individual rights, and plurality of recognized religious practices, even if the state, alike in Spain or England, renders preference to a specific religion. In various contexts various states would be characterized by different degrees of liberalism.

Israel fells into the category of a nation-state that is deeply involved in society and strongly promotes a republican interest of being prominently a 'Jewish and Democratic State'. Notwithstanding, it is experiencing strong effects of mainly an American liberal culture, among both its Jewish [81%] and Arab-Palestinian [19%] citizens. Israel is a mixture of non-liberal and liberal characteristics of the nation-state and its legal complex.

It is non-liberal in a few facets. First, the state prefers constitutionally and practically one religion (Judaism) as its state formal religion. While state's preference of one religion is a common phenomenon in world politics, including in Western Europe, in Israel such a Jewish republican preference also constitutes the dominant legalistic basis of allowing immigration into the country and bestowing citizenship. Furthermore, Judaism as state religion is also the basis of constituting differential expressive and implicit, formal and informal, public policy's treatments towards various groups and imposing constitutional and practical thresholds on access to electoral procedures, political rights, cultural rights, socioeconomic rights and land acquisition.

Second, through blocking and elevating the costs of using alternative channels of personal and collective fulfillment, the state compels non-Orthodox Jews to practice Orthodox habits in diversity of facets of life as marriage, conversion, daily religious practices of worshiping, and burial. Third, the state is highly involved in its citizens' lives, and is very central in most civil activities. Such an active state facilitates itself through an extensive maze of economic regulation and high taxation, centralized national education, a wide range of compulsory military service, and strong disciplinary ideological mechanisms around the legal ideology of Israel as a 'Jewish and Democratic State'. Fourth, the Arab-Palestinian minority in Israel and the Palestinians in the 1967 occupied territories have significantly and systematically been discriminated against Jews in various legal, political, socioeconomic, and cultural dimensions. Thus, public goods have discriminatorily been allocated for Jews against Arab-Palestinians, despite some liberal adjudication and involvement of the judiciary. Fifth, national security symbols are so salient and the military is the most central institution in social life, as to infringe upon basic human rights as freedom of expression, freedom of movement, and property rights. Beyond the issue of state-sanctioned religion, Israel has not fully responded even to a minimal definition of liberalism (Halliday and Karpik, 1997). It neither allows equal expression of voices and practices, nor has it been characterized by equal tolerance towards various minority groups and non-ruling communities.

However, Israel has also experienced some significant liberal characteristics and therefore it should be denoted as a country that has experienced political liberalism.

First, there has been an increasing legal construction and exercise of basic freedoms and individual rights within procedures of electoral democracy. While there is almost no written entrenchment of individual rights and human freedoms in constitutional legislation, heretofore, there is a constitutional judicial review of those [mainly judge-made] rights by the Supreme Court. Second, after the mid- 1990s more than ever before, national public policy towards minorities has somewhat recognized individual rights, primarily in issues as budget allocations, land distribution, language, and social and medical welfare. Third, civil society has been expanded including among Israeli Arab-Palestinians, a process characterized, *inter alia*, by increasing number of NGOs. Thus, as will be exhibited, the numbers of law offices and lawyers have increased, and as will be analyzed, below, the engagement of lawyers in various venues of public debates has been enlarged, as well. Fourth, some privatization of economy and religion has further been generated, and it has incited more practices of non-state economic organizations and pluralization of religious practices. Fifth, especially after the mid-1980s, the state has become more restrained, more moderate, as far as its direct intervention in the society is concerned, and its power structures have become more fragmented and in conflicts with each other.

Akin to other nation-states, the contribution of lawyers to national experiences of political liberalism has far been more central than merely importing and exporting liberal values that lawyers are presumed to advance. While Israeli lawyers, even in the early 1950s, had argued in courts and outside the judiciary for implementing some liberal legal rights as freedom of expression and freedom of association, to only identify Israeli lawyers with promoting liberal values might be irreducibly simplistic as is the case in other nation-states. Theoretically we should better comprehend lawyers not merely as individual agents who promote liberalism rather we should conceptualize lawyering as a site of collective action in the context of dynamics in political power and public discourse.

Israeli lawyers, in similarity to lawyers in some of the post-Soviet republics, were using their professional knowledge in order to be engaged in politics towards and during the state establishment in 1948. There is no way to comprehend the formation of the 'Jewish state' and processes towards its legalization and legitimization- both domestically and internationally- without considering the contributions of Zionist

lawyers to the legal construction and approval of the Zionist political project (Likhovski, 2002; Shamir, 2000). The interactions between the legal profession and the political founders of Israel were intimate and intensive as part of structuring and engendering state's political power. The legal complex was a constitutive epiphenomenological entity that had reflected and generated a Zionist collective desire to establish a Jewish state. Some of the state's political founding fathers studied law (e.g., David Ben-Gurion, Itzhak Ben-Zvi, Moshe Sharett). Later, they were significantly assisted by government and private lawyers in order to advance three massive national endeavors that took place, primarily, between 1939-1954. These projects were the confiscation of lands inhabited by Palestinians till the 1948 war over Palestine/Eretz-Yisrael; the construction of Israel as essentially Jewish; and the creation of the state's apparatuses of collective violence (Barzilai, 2000).

We should better understand how legal knowledge is immersed in processes of constituting state power foci. All these efforts to consolidate the state's national power were embedded in legislation and regulations that were aimed to legalize the new state and to entrench its professed essence as a Jewish republic. In this context, the legal complex had been crucial. Government lawyers were responsible for legalistically engineering these projects, while private lawyers were mostly with no aspiration to systematically challenge the mobilization of professional knowledge for national purposes. Lawyers submitted only very few appeals to courts dissenting these national projects. Generally, in the 1950s lawyers were either agents of the state or were silent about its policies. Most Israeli legal scholars, mainly concentrated in the only law school in the country until 1958, Hebrew University, Jerusalem, were occupied with issues concerning preparing drafts of a possible written constitution. Alternative models for the legal construction of the state were not debated in professional legal venues, and critical challenges to massive confiscation of Palestinian lands were almost not raised. Legal contests against the military rule over the Arab-Palestinian minority (1948-1966) had been rare and rather futile.

While the trend of absence of lawyers from public debates had continued well into the 1960s, another characteristic of Israeli lawyers has evolved since the 1970s, as part of alterations in state political power foci. At the same time as lawyers were involved in shaping state's political power, they also became more engaged in politics as agents

of liberal economy and have significantly contributed to the economic liberalization of the state and afterward to its interactions with global economy. Economic privatization of currency, financial institutions, governmental agencies, public services, and the labor market has altered the basic relations between state power foci and lawyers, since the liberal maze of economic transactions require the veil of certainty that legal knowledge may provide. Hence, under conditions of more economic pluralization, the legal profession may expand in numbers, as in England, US, and Russia (after the end of the Cold War), or it may incite strong states to limit the number of lawyers who are registered in the Bar so as to co-opt a smaller number of lawyers. This was the case in Japan and South Korea until the 1990s. Amid economic liberalization the state may conceive lawyers as a menace to its domination and in turn suppress the growth of the profession, or it may use lawyers as vehicles of economic entrepreneurship in order to have a better economically developed, but not disobedient, civil society. Lawyers may be perceived by state's power foci as a challenging professional elite, or as a vehicle to further boost the economy.

Israeli lawyers were perceived by the political elite as an obedient professional group of entrepreneurs. Mainly since 1967, and the colonization of the 1967 occupied territories, lawyers have become agents of liberalism in the state and through it. The number of private law offices and their gradual expansion in Israel and abroad has increased. Since economic growth and economic transactions require legalization, and since the legal profession may be economically benefited from such an economically legalized growth, lawyers have enjoyed the expansion of Israeli economy that was blooming partly due to exploitation of Palestinians in the Israeli labor market. Accordingly, lawyers have taken a rigorous role in liberalization of the Israeli economy and have transformed legal knowledge into economic and political strongholds. Thus, traditionally, the established law schools at Hebrew University, Jerusalem, and Tel Aviv University, have been antagonistic to the establishment of private law colleges. They have used the elitist argument that the level of studies might be severely diminished once the criteria of admittance would be associated with luxurious private tuition. Yet, under the market pressures of an increasingly liberal economy, which created a perceived need for more lawyers, private law colleges have been established since the mid-1980s, and the number of lawyers has dramatically been increased since the 1970s.

----Table 2 about here --

As Table 2 above demonstrates, the number of lawyers during the years 1968 to 2005 has increased in 1552%, while the population growth has increased in 245%. Accordingly, as the graph exhibits, demography may explain some of the growth in number of lawyers, however the increase in number of lawyers has been 5 times larger than what may be statistically expected based solely on population growth. Most of that dramatic increase, as shown above in Table 2, was absorbed by legal departments in commercial banks, insurance companies, municipalities, and by the state attorney general and general prosecutor offices, which have employed many among the lawyers. Yet, the private market of lawyers has noticeably been expanded as well. Since the late 1980s, as part of international capital flow onto and from Israel, a phenomenon of mega law offices, [law offices that have included several dozens lawyers], has been developed. Several law offices have established branches overseas, e.g., in London and New York City. Indeed, Israel economy has become more liberal and lawyers have been one major vehicle to incite it and to exult it.

As Table 3 below demonstrates, most lawyers in Israel in 2005 have defined their main legal expertise in private commercial and civil law (about 55%), while only very few have identified themselves as lawyers who deal with human rights. Since the statistics of the Bar is based on how lawyers would like to be defined in the market place, commercialized and advertised, the statistics exhibits to what a very significant degree most lawyers prefer to financially benefit from a liberal economy and accordingly be engaged in and be identified with issues of economic aspects in state law.

--- Table 3 around here----

This condensed genealogy of the legal complex unveils only one facet in the story about liberalism and lawyers in Israel and beyond. Until this point, my research demonstrates the strong association between *economic liberalism* and the increase in number of lawyers. We are still required to explicate the interactions between lawyers and *political liberalism*. We have to look more circumspectly into the legal

complex not as a unified space, but rather as a field in which different institutions, and various trends, even dialectical trends, have been interlinked to create a compound phenomenon. More specifically, we have to investigate how the liberal economic ontology and expansion of the legal profession have affected the political role of lawyering in shaping the boundaries of the public discourse. Lawyers have been an important component of economic liberalism, since they have been propelled by it and stimulated it. But have they also been important part of political liberalism, and how? Correspondingly, the rest of this chapter explores how lawyers have *talked* and have been *silent* concerning public issues of democracy, individual rights, and human rights, and what role they have played in claiming and disclaiming the state.

D. Voices of Ambivalence: Talks, Silence, and Dissent

D.1. On Speech and Silence: Lawyers as Sociopolitical Markers

While silence is a behavioral form of language, it may be a central mode of voice in the generation of public discourse and collective action. Thus, Wittgenstein has pointed that silence is a very meaningful part of language (Ostrow, 2002: 13-15). Silence is a politically meaningful facet of absence from expressive lingual formation and generation of the public discourse. Nevertheless, despite its being an articulation of absence, silence may be more meaningful for legitimization than an expressive voice. The meaning of silence is essentially contextual. Thus, if lawyers refrain from litigation, but encourage their clients to disobey the law, their silence has a meaningful voice of dissent. Absence from expressively constructing the public discourse might be a form of dissent through which opposition is aired. Alternatively, if lawyers have passively supported a public policy and governmental actions, their silence has had a legitimatizing consequence. If silence is a form of accepting a norm of status quo with no challenging hermeneutics, it becomes a functional absence, since the dominant norm is being legitimatized with no political opposition.

While talks engender some confidence around the contents of discourse (Baker and Hacker, 1985: 243-251; Wittgenstein, 1969), silence may undo a space of uncertainty as around one's attitudes. Hence, silence inclines to perpetuate the dominant attitudes and norms in a given public discourse. It may not defy hegemony and it may hinder

counter- hegemonic forces. If a lawyer litigates an issue s/he may challenge hegemony, however futile and confined it may be in the public discourse. Litigation may be only one type among various facets of collective action that may confront hegemony and public policy. Moreover, if a government is expecting an expressive consent of the public, silence may be a voice of opposition. Silence may constitute a strong articulation of dissent, amid a discourse in which one's expressive consent is being required or expected.

Notwithstanding these exceptions that are rare in public debates and political discourse, silence induces, whether intentionally and unintentionally, the generation of support of hegemonic attitudes and public policy. Silent lawyers, who are defined not through their formal professional positions and expressive professional functions, but through their practices as lawyers in the public discourse, are important agents of marking the public discourse. However, they are not always conscientious of their social responsibilities. Their silences legalize and legitimatize hegemonic attitudes concerning issues of human rights and the 'rule of law'. Since lawyers are by definition political actors, the phenomena of professional silence and silent lawyers should be further elucidated as a major issue in collective action and liberalism.

Analytically we may distinguish between several origins of silence. First, one may be unaware of a specific topic in public discourse. Lack of awareness of an explicit topic or significant lack of information regarding a topic and its various facets, may often result in silence. In the context of this chapter, unawareness of legal political issues is a rather implausible variable to explain silence among lawyers, especially since the topics that I discuss below have acquired high public profile and their saliency in the media has been high. Second, absence of social consciousness may be another independent variable that explains silence. Lawyers may be aware of a specific problematic issue concerning human rights and the 'rule of law', and still they may not be conscientious of the meaning of their silence and its ramifications on the public discourse. In Israel, legal education especially until the mid 1990s has ostensibly neglected to emphasize the sociopolitical role of lawyers and their social responsibilities.

Third, indifference and alienation towards the state or its political establishment may be another source of silence. Lawyers may know of a problematic issue in a certain public policy but be alienated towards the state and its political establishment or they may be indifferent as for possible ramifications of their silence. Fourth, lawyers may oppose a specific policy and be aware, even conscientious of possible negative ramifications of their silence in the political sphere, and yet they impose upon themselves self censorship for various reasons. *Inter alia*, they may presume that professional criticism concerning national security affairs is unpatriotic or may inflict damage on their ties with the political establishment. Such considerations may be powerful in silencing private and government lawyers. Fifth, lawyers may also agree with government policy, above being loyal to the regime's national narratives, and conceive silence as intentional legalization of a concrete public policy. I typify such conformity as silence, not because it is necessarily a wicked phenomenon, but due to the fact that silence hinders lawyers from having an active role in publicly debating and forming issues linked with human rights.

The subsequent parts of this chapter drill into spheres in which lawyers have been vocal and talkative in public life, and spheres in which they have been silent. This nexus of silence's talk explicates how lawyers have formed and marked the public sphere, beyond being agents of economic liberalism. I explore how lawyers were framers and markers of the public sphere without dramatically altering state and society relations. Thus, lawyers have propelled expansion of liberalism and have hindered its transformation into sociopolitical criticism of the nation-state. Through silence and speech they have been both the reformers of sociopolitical order and the guardians who have maintained some structured antinomies of liberalism in a non-liberal nation-state.

D.2. A Liberal Symphony

The legal profession—with its multifaceted functions in the legal complex---- has been a vehicle to affect public discourse and to somewhat moderate the state, primarily concerning issues that have not been considered as ‘national security’ and have not challenged the Zionist state to reconstruct its basic essence and ideology. Until the early 1990s such a professional monopolization of public civil debates had

largely been a characteristic of Jewish lawyers, who have constituted the ruling hegemonic group in the legal complex. Then, with the graduation of more Arab-Palestinian Israeli lawyers in Israeli and US law schools their expressive partaking in public discourse has also become more prominent. Accordingly, lawyering that has aimed to dominate and shape public discourse through talkative rhetoric of legal knowledge, has had several aspects.

First, the scope of civil society, both Jewish and Palestinian, has been expanded and institutionalized due to dramatically rising number of NGOs that have been watching, reporting, educating, lobbying and litigating human rights in Israel and its 1967 occupied territories. Lawyers have established NGOs to struggle governmental corruption and to enforce upon the government more transparency and accountability. Other lawyers have become prominent members and leaders of NGOs that have focused on litigation for human rights in the occupied territories and civil rights in Israel in its pre-1967 borders. Furthermore, lawyers have become leading figures in NGOs that have struggled for social justice, some of whom have been affiliated with legal clinics in law schools. These extra-parliamentary activities through NGOs and legal clinics have been embedded in US liberal experience and have been imported to Israel by US law schools' graduates, both Jews and Palestinians. Those lawyers were trained in US law schools as Harvard, Yale, Stanford, Columbia, NYU, and American University, had returned from the US to Israel and applied their legal education. Hence, it is hardly conceivable to imagine how the setting of human rights' NGOs could have been developed without the major contribution of lawyers. In this context, legal knowledge has certainly been politicized and mobilized through NGOs.

It is barely comprehensible how such a trend of litigious and legalistic advocacy in the legal complex could have been generated without basic liberal beliefs in individual rights, as individual equality, human dignity, property rights, freedom of expression, freedom of religion, and freedom of information. These beliefs and the legalistic presumption that litigation may be an effective type of political action have resulted in numerous salient issues that were litigated in courts through legalistic NGOs. One may mention, *inter alia*, affirmative action for minorities, gender equality in military service, tortures, prohibitions on unification of Palestinian families, civil supervision over the security services, military actions in the occupied territories, political

appointments, budget allocations, political partisan corruption, the status of Arabic language, land distribution, the status of internal Palestinian refugees and unrecognized Palestinian villages, religious conversions, and civil marriage. These issues were constructed, framed and conveyed through lawyers as salient topics in the public sphere and the mass media. Lawyers have been both agents and the structure. They have reflected liberal beliefs and constituted legalistic venues for debates and action framed through the media as crucial for decision making processes.

Second, in addition to the hectic facet of NGOs' actions in the legal complex, lawyers have become prominent in public bodies, e.g., governmental agencies, political parties and state institutions, as the State Comptroller. The legal profession has expanded itself beyond the more apparent functions of representing clients, either private or public. Based on a somewhat transnational and intergenerational myth about the virtues of their legal profession, lawyers have assumed managerial and leadership positions, outmatching any other professional group in the Israeli public sphere, with the exception of senior military officers. There is a strong causal relationship between changes in social stratification amid economic liberalism, fragmentation of political power, and lawyers' talk. Lawyers have benefited from the mounting liberal trust in legal knowledge that has incrementally replaced the declining confidence in dwindling legislative and governmental agencies. They have further been empowered through enlargement in the scope of the middle class that has conceived lawyers as agents of dispute resolution in protection of property rights and privacy, while the parliamentary and partisan political setting has dramatically become polarized and fragmented.

Third, alongside being economic entrepreneurs via their involvement in constructing economic transactions, lawyers have also become political entrepreneurs. Identified with the idea of political stability as conducive to economic equilibrium and prosperity, lawyers have hectically voiced public expectations, especially since the late 1980s, for reforms in the parliamentary system and have vociferously demanded direct elections for the prime ministership. A public presumption constructed by leading lawyers asserted that a fragmented parliament with severe polarization of attitudes can not ensure stability. Lawyers have vigorously voiced the argument as if

political stability through a semi-presidential system is preferred over political representation through the parliamentary system.

Throughout public debates and parliamentary deliberations concerning electoral reforms and possibilities of enactment of a written constitution, the US political model was influential, though not carefully studied. On the one hand, it may be sensible to anticipate lawyers' participation in deliberations on enacting a constitution, especially since Israel is perceived as one of the very few democracies that does not have an all- encompassing written constitution that entrenches human and individual rights. On the other hand, in the process of these debates lawyers marginalized all other professional experts, as political scientists and sociologists. They have constructed fundamental issues of state and society relations as if those are formalistic legalistic matters that may be resolved solely through relying on legal knowledge. Those lawyers were significantly empowered in a legal complex dominated by a very adjudicative, assertive, rather liberal Supreme Court, which after 1986 has repeatedly enunciated its aspiration to expand its judicial constitutional review, and has systematically articulated that nurturing individual rights is its main vision.

Fourth, the status of the Israel Bar has been altered. Since all Israeli lawyers must be examined and licensed by the very same national Bar, it has acquired national, monopolist, and almost unchallenged public power of exclusive professional authorization of lawyers. Traditionally, the Bar has had four main functions in exerting its monopoly and aiming to discipline lawyers: examination, authorization, and annual registration of lawyers; ethical supervision over lawyers' professional conduct; informing lawyers and providing them with professional complementary education; and finally, nominating the Bar delegates to the Judicial Appointment Committee [JAC] that selects all judges and justices to the Israeli judiciary. Until the end of the 1990s, however, the Supreme Court justices were the most saliently important dominant institution in the legal complex, and the more the parliament has lost its political power, the more sway the justices have radiated.

Through letters of recommendations in professional academic committees, justices were involved in academic promotions in law schools, their concepts of the 'rule of

law' generated education of jurists in law schools, and they were the most significant body in the JAC. But since the end of the 1990s, the Bar has somewhat altered the balance of power in the legal complex and beyond. The mounting esteem of lawyering has made the Bar an important venue of political struggles. Elections for the Bar's governing bodies have gained high public visibility, a national media event, and often a juncture to those lawyers who were looking for political careers in the parliament, the government, and the bureaucracy. The Bar has always been with some political significance for political parties, but the growth in number of lawyers, its complete monopolistic status and its financial affluence, have made it more ambitious regarding its public rank. A very assertive and adjudicative Supreme Court has further encouraged litigation as a mode of political action at all levels of the Israeli judiciary.

---Table 4 around here---

The figures in Table 4 above summarize data on litigation in the Israeli judiciary between the years 1948-2005. Litigation in circuit courts has grown in 2265%, in district courts it has increased in 4843%, and in the High Court of Justice [HCJ] it has augmented in 667%. In all categories of the judiciary, litigation has amplified more rapidly than the pace of demographic growth. It points to the expansion of litigation associated with economic and political liberalism, and with fragmentation of political power foci. Based on my research, in a country of 6,869,500 citizens (2005), the number of files in active litigation has reached about 1,127,226 files, in all branches of the judiciary, including the branches of the Supreme Court [not only the HCJ], and Labor courts. Namely, as part of a general proclivity over time, one of every six citizens in Israel has litigated a case in the courts. The military occupation of the 1967 territories has certainly inflamed part of the litigation, since Palestinians from the occupied territories could have and in fact litigated in Israeli courts. The occupation was embedded in Israel economic expansion and also in fragmentation of its political power foci.

Vigorous litigation has been constituted, constructed, articulated, and generated through popular commercialization and further politicization of legal knowledge as instrumental know-how to resolve public issues. Lawyers have been empowered by

the state civil bureaucracy and civil society as articulated political and economic agents, and they aspired to have their public voice heard more compellingly. Accordingly, the Bar representatives in the JAC have become more vocal in expressing their stances in public issues, even in opposition to the attitudes of the Justices and Justice Minister. From 2004 until 2006 the Bar had conducted a national survey among all Israeli lawyers who were asked in structured questionnaires to have their evaluations of the judges and justices' efficiency and judicial faculties. The survey had referred to all courts, including the Supreme Court. Since 2004 the detailed results were published in the media noting the lawyers' evaluations of each one of the judges and justices, identified by their names. Yet, once the eminence of the Bar in the legal complex had been transformed into a straight institutional challenge to the Supreme Court, a conflict erupted. The reaction of the Supreme Court was infuriated and institutional crisis was unfolding.

The President of the Supreme Court, Aharon Barak, had ostensibly and abruptly disconnected all his commitments to meet with the Bar's governing bodies. He further canceled his traditional speech in the Bar's annual meetings [2004, 2005]. Barak overtly criticized the Bar for what he had regarded as an undemocratic move that was intended to contravene judicial independence and inflict biased pressures on the judiciary, particularly the Supreme Court. The institutional crisis in the legal complex has finally been resolved by a new equilibrium. Only after Barak's consent to set up a public Ombudsman to scrutinize public complaints against judges/justices, and under the intense pressures from all branches of the judiciary, the Bar announced its abandonment of the feedback questionnaire. Alike in most other democracies, the Israeli judiciary has dominated the legal complex, but the Bar has acquired significantly more public voice as part of political and economic liberalization.

Having about 32,600 registered lawyers (2005), supported by affluent law offices, being at the core of a bourgeoisie ideology and economic interests that form the legal profession as of great virtues and power, the Bar has aspired to have new and improved political strongholds in political life. A striving Supreme Court that has inflated its jurisdiction and accumulated institutional power through challenging the government, its bureaucracy, the religious establishment, the security services, political parties, and the parliament, has incited a coalition between the Bar and

partisan politicians [some of whom Bar members] who have desired to tame the Court.

These characteristics of a talkative lawyering point to the effects of political fragmentation and experience of liberalism on making Israeli lawyers, both Jews and Arab-Palestinians, more saliently and vocally engaged in political life. However, their voice has predominantly been raised concerning possible reforms in political rules of the political game. Most lawyers in Israel, with the exception of only few, have allowed the status quo in some major issues of public policy. While lawyers have been active as liberal agents in the economic sphere, they have largely been advocates of the basic legal ideology and national narratives. The stillness of Israeli lawyers has particularly been prominent regarding 'national security' issues. Hence, lawyers [including Arab-Palestinian lawyers] have shaped the political discourse through legalizing the state and its ideology and by advancing public debates about the rules of the political game. In practice, however, it was a rhetorical veil to the silence regarding national ideology, legal ideology, and national security. Below, I elucidate the political language of silence as constructed by lawyers.

D.3. The Clamor of Silence

The political proclivity of lawyers, as agents who mark public debates, has been very supportive of the political establishment and its Zionist ideology. It has prevailed even when a public policy might have been abusive of human rights. Generally, lawyers have not questioned the fundamental ideological principles of the state. It was mainly evident in the absence of debates initiated by lawyers around the legitimacy and legality of Israel as a Jewish republic, the place of the Arab-Palestinian minority in this context, and national security issues. Thus, despite international protest against torturing Palestinians who were under suspicion of planning terrorist activities, the Bar has never warned the Israeli government of the legal and humanitarian problems surrounding tortures, even once those very questionable tortures were widely reported by salient human rights NGOs as Amnesty International. The declared government policy of targeted killings incited debates in the Bar but most lawyers supported that policy of extra-judicial killings. In a survey conducted during April 2004 among Bar members [N=767], 69% responded that the policy of targeted killings is legal, 11%

thought that it is legal under very specific conditions, and only 20% considered the policy as unlawful.[1]

The general tendency among lawyers has been to settle economic liberalism with some political conservatism. When surveyed about the International Court of Justice's ruling (July 2004)[2] on the illegality of the 'wall of separation' along the West Bank [N=283], 40% argued that the International Court was with no jurisdiction to decide over the issue, while 27% defined the ruling as discriminatory against Israel. Only 33% justified the ruling.[3] Lawyers have not challenged the status- quo and have not raised criticism concerning problematic issues on the junction of national security and human rights. Generally, they have been silent regarding the military occupation as a whole. Referring more specifically to the Bar, denoting itself as a professional body it has stayed remote from any public criticism of the military occupation.

Government lawyers have had a foremost role in that context of silence. On the one hand, in internal debates, far from the public eye, some government lawyers protested against the continuation of the military occupation that has created intolerable situation in which lawyers were compelled to advocate massive abuse of human rights. Officially, however, government lawyers have censored themselves and as part of state power foci they have continued to legalize the military occupation with only a few instances of a public protest.[4]

Merely two groups of lawyers have constituted an exception to silence. They both have utilized liberalism to contest prevailing public policies. One group has been composed of Jewish lawyers who are dissenters to the Zionist enterprise. The other group has included Arab-Palestinian Israeli lawyers who have opposed Zionist ideology and its emphasizing the Jewish hegemonic essence of the state. The first

[1] http://www.israelbar.org.il/survey.asp?catId=263 [Hebrew].

[2] http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm

[3] Ibid.

[4] One of the exceptions was the special report written by Attorney Talia Sasson, Head of the Criminal Division in the General Prosecution Office, who has criticized the phenomenon of illegal settlements in the 1967 occupied West Bank. However, Sasson was nominated by the government to write the report. Later, in March 2005, it was formally adopted by the government. Sasson could have talked since the government allowed her to raise a voice in a way that had served the Ariel Sharon's governmental policy at that time.

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group has consisted of a few lawyers and NGOs who have charged fees from their clients, and yet have selected 'proper' legal cases in order to rupture the silence and dispute some of the Zionist regime's political fundamentals and prevailing public policies. *Inter alia*, they have litigated cases against non-separation between the state and Jewish Orthodoxy in issues as marriage and religious conversions, discriminatory state and corporate ownership of lands, unfair employment conditions of foreign workers, compulsory military service in the 1967 occupied territories, human rights abuses in the 1967 occupied territories, illegality of Jewish settlements in the West Bank, strict restrictions on unification of Palestinian families, military censorship on development and deployment of nuclear and biological weapons, and tortures.

Those lawyers and NGOs have presumed that criticism of the state through litigious efforts to de- legalize its distortions may legalize alternative modes of public policy and generate public discourse around them. Being expressive dissidents amid silence, those lawyers have not aspired to incite a sweeping sociopolitical mobilization. Rather, they have conceived that relying on legal liberal arguments and instigating adjudication may result in dismantling some discriminatory public policies. Thus, liberal legalistic terminology was employed to de legalize state policies and unveil their discriminatory essence through arguments as freedom of/from religion, gender equality, sexual preference's equality, distributional justice, human dignity, equal citizenship, and freedom of expression. Accordingly, dissident lawyers have stimulated the Supreme Court to judicially frame and reconstruct individual rights.

Nonetheless, since litigation is a court-centered collective action, which relies on the judiciary as state agent, the aspiration of lawyers, with different political affiliations, to reform the political regime and its underlying concepts and policies, has resulted only in a very confined success. Being somewhat receptive to liberal arguments, and obedient to state's narratives, the courts have been careful not to alter state ideology and the basic principles of its public policies. Since litigation is in-power activity (Barzilai, 2005), state political power has prevailed, especially and predominantly where state ideology has particularly been immersed alike in issues concerning national security and the social, religious and national boundaries between Jews and Palestinians. Liberal litigation has rendered a few legal victories for liberal proponents but could not have altered fundamental public policies and legal ideology.

Thus, an Israeli Arab-Palestinian family was allowed by the Supreme Court to settle a land registered under the ownership of the Jewish Agency. The HCJ, however, has emphasized in its ruling the Jewish essence of the state, and the Jewish control over its resources, including its lands. The judiciary has intensified the state's non-Orthodox supervision over religious councils and it has pluralized religious services and religious conversions. Yet, it has underscored the special legal status of the Jewish religion as the state's formal national religion. Namely, fracturing the silence has had a meaning of equalizing some localities of discrimination. Similarly, the Supreme Court has adjudicated appeals regarding the military actions and rule in the 1967 occupied territories, but has also legalized the government authority to rule over these territories. Hence, defying silence through litigation has also further legitimated the state, its main narratives, and state courts as markers of state and society relations.

Israeli Arab-Palestinian lawyers have been another group to rupture the silence. The phenomenon of Arab-Palestinian lawyers publicly litigating in predominantly Jewish courts for political purposes has existed in Israel for many years. However, only from the mid-1990s an organization of ideologically motivated Palestinian lawyers, named *Adalah* [Justice] has commenced to operate. It has institutionalized Israeli Arab-Palestinian appeals to the courts in order to incrementally recover the socioeconomic political conditions of the minority. This proclivity of litigation among the minority has been deployed by relatively young Arab-Palestinian lawyers, who grew up in Israel under the military rule imposed upon the minority (1948-1966), and later were educated in Israeli and American universities (Barzilai, 2003, 2005, See also: Ziv, 2000). They prefer to speak Arabic, but they are fluent in Hebrew and English. Personally, they have been affiliated with Arab-Palestinian political bodies in Israel. They are critical of the Jewish-Zionist regime for excluding Arab-Palestinians from national power foci, notwithstanding as lawyers they believe, with some doubts, in their professional calling and its ability to challenge the silence around the formal and informal discrimination against the minority (Barzilai, 2003).

Adalah lawyers have had some faith in the power of legal talks and rhetoric of liberal rights to render some significant legal alterations in the status quo, which in turn may impel some sociopolitical reforms. Their litigious tactic has been to apply liberal terminology of equality that compels the state to either overtly acknowledge

entrenched established discrimination or to offer legal remedies for minority members. Strategically, in the context of political liberalism, litigation has been perceived as political collective action that may turn a series of individual rights into a reality of group rights, even cultural and national autonomy for the minority. With some economic liberalization and a growing middle class, the Arab-Palestinian community, partly more attentive to potentialities of litigation, partly more confident in its economic and political power (Ghanam, 1997), has become more acquiescent to activities of NGOs in the legal complex.

The quandary among Arab-Palestinian lawyers, in-between lights and shadows of political liberalism, has not been whether an appeal to court might be upheld or dismissed, but whether breaking silence through adjudication by Jewish Zionist state's institutions may not result in de legitimacy of the minority's national identities. Indeed, litigation is not necessarily considered in terms of achieving legal victories (Feeley, 1992; McCann, 1994; Barzilai, 2005). In the case of Israeli Arab-Palestinians, litigation has been aimed to realize political, socioeconomic, and symbolic benefits, other than being perceived triumphant in the narrow litigious manner.

Talking liberalism in state courts has been a contentious issue among minority members. What Robert Kagan has coined as 'adversarial legalism' (Kagan, 2000), namely- a prevailing norm of resolving sociopolitical, cultural, and economic issues through litigation, has been a disputable matter among minority lawyers and minority human rights' activists (Esmeir, 1999; Jabareen, 2000). Thus, Arab-Palestinian feminist organizations, which have constituted a prominent portion of Arab-Palestinian NGOs, have inclined to another type of language, as a venue of negotiating society and state relations. They have searched for other avenues to shatter silencing forces around domestic violence and multifaceted social subjugation of Arab-Palestinian women, who have suffered from intersectional discrimination in the Jewish society as Palestinians and Arabs, particularly as Muslims, and in their own community, as women. Such NGOs have initiated grassroots activities, like assistance to raped and battered women and rescuing women from being murdered due to 'family honor' (Barzilai, 2003).

Litigation in state courts, on the other hand, has often been considered as superfluous and costly action with no tangible sociopolitical, cultural, and economic benefits for the community. Silence should be shattered not through articulating in state courts isolated events of abuses of power. Those isolated events would be legalized and transformed into narrow issues of rights and obligations Instead, collective action should be focused on de constructing the status quo, and forming an egalitarian social consciousness via daily grassroots practices. Even following *Kaadan* affair[5], in which the Supreme Court ruled that discrimination against Israeli Arab citizens in matters of land allocations is unlawful and prohibited, many Arab-Palestinian activists have perceived state law as Jewish, Zionist, and in turn discriminatory against the minority.[6] Though, some Arab-Palestinian grassroots organizations have not completely negated litigation in state courts, but rather have conceived it as secondary and only complementary to their grassroots activities.

Adalah has voiced expectations to benefit from the emerging liberal rhetoric in the judiciary, particularly among Supreme Court justices. The polarized and fragmented *Knesset*, with significant Jewish Orthodoxy and nationalist effects has not been considered as conducive to attain equality, while judicial professionalism has been perceived as less discriminatory and more attuned to liberal talks around egalitarianism. During the 1990s', *Adalah* lawyers have been professionally socialized in a more open Israeli society, networking with Jewish NGOs and the academia, under some cultural effects of liberal discourse of civil and human rights. Hence, they have conceived state law not merely as a set of coercive restrictions and regulations, but as a potentially dynamic and fragmented fabric. The fact that nation-states are fragmented aggregations of power foci is central for understanding state and society relations (Migdal, 1988, 2004). Lawyers have aspired to take advantage of the fragmented state and the dominance of its Supreme Court in the legal complex for

[5] HCJ 6698/95 *Kaadan V. The State of Israel* (8 March 2000) *Dinim* Vol. 57: 573.

[6] See: debates at the Hebrew University, Jerusalem, Minerva Center for Human Rights, April, 2000; Debates in the Association of Public Law, Jerusalem, June 2000.

generating some individual rights, and in turn to produce opportunities for minority members to redeem their socioeconomic and political predicaments within the complex boundaries of state's political power.

Adalah has shared a conceptual resemblance to Western policy-oriented NGOs, which have mobilized liberal law by litigating in state courts and submitting their grievances to state's political power (Epp, 1998; McCann, 1994). Those organizations have not been revolutionaries but rather pragmatist. They have accepted the prevailing legal terminological environment, and opted to utilize it for their needs and interests. *Adalah*'s Founder and General Director, Hassan Jabareen, has explained to me, in a personal interview, how liberal rhetoric of rights may be relevant for the minority: "The Israeli Supreme Court has already recognized the existence of women and reformist Jews as groups in Israeli law. There is no such acknowledgement of Israeli Arabs. We have tried to change the Court's language."[7]It should be underscored that *Kaadan* ruling, as explored above, has not conceived Arab-Palestinians as a community, as well. It has articulated a liberal perspective of individual (citizen) rights in the Jewish state and has accordingly recognized Arabs in Israel as equal individuals but not as a distinct non-ruling community (Barzilai, 2003).

In its appeals to the Supreme Court, *Adalah* has neither addressed a plea to reform the structure of the political regime, nor has it directly criticized national narratives of Judaism and Zionism. The appeals have used conventional and very concrete liberal legal causes, as discrimination between citizens, within the rules of the political game. The organization has aspired to break the silence and to narrow the spaces between Israeli Jews and Arab-Palestinians by using the liberal experience in state law. Among others, *Adalah*'s appeals have included demands to inscribe road signs in Arabic as additional formal public language; to provide public transportation for Arab students from their villages to their schools; to render state assistance to Arab students with learning difficulties in accordance to formal criteria implemented on Jewish students; and to allocate budgets for the minority in proportionality, which constitutes equality with the majority [for more details, see: Barzilai, 2003]. In this respect, *Adalah* has significantly assisted in breaking the silence around systematic state's

[7] *Personal interview* with Attorney Hassan Jabareen, *op. Cit.*

discrimination against Arab-Palestinian citizens of Israel. It has employed a liberal language of equality in rights to unveil discriminatory citizenship.

By using the same language of equality and discrimination, as Jewish litigants have exercised in courts, *Adalah* could have constructed and generated state law as equally applicable to the minority. Subsequent to Iris Young's distinction between challenging state's power and challenging its allocation of resources (Young, 1990), *Adalah* has not contended for reforming and restructuring state's political power, as it might have been expected facing its political affiliations with national Israeli Arab-Palestinian groups. Rather, since *Adalah*'s lawyers have appealed to state courts, and have conceived litigation as a main means of collective action, they have challenged policy, not meta-narratives, which incited discriminatory allocations of public resources. As Hassan Jabareen has explained to me: "we are using legal terminology in a way that the justice will feel that s/he may be seen as politically incorrect [if the appeal is dismissed. G.B.]."[8]

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Such an approach of talking liberalism through litigation has been effective to some extent. Thus, in the period between 1997-2000, *Adalah* had submitted twenty- five appeals to the Supreme Court. Its rate of success was 50% if all legal cases, including pending appeals, are being taken into account; and 67% of success if only eighteen legal cases that have already been decided are being considered. Yet, in most legal cases (75% of the successful appeals that were upheld in Court) the final legal result was based on out- of- court settlements.[9] In these legal settlements, the organization achieved some of its requested legal remedies, whilst state organs (e.g., the courts, government, public bureaucracy, the military, police, and the legislature) did not conceive those arrangements as substantial alterations in the status quo. For both

[8] *Ibid.*

[9] For all details, see: G Barzilai, ***Communities and Law: Politics and Cultures of Legal Identities*** (Ann Arbor, University of Michigan Press, 2003).

political actors, the state and *Adalah*, out- of- court settlements have been a rather utilitarian means to preserve legitimacy.

For the state, out-of-court settlements, framed within the legal terminological environment, have been better options than granting a complete formal equality through acknowledgement of community's rights. Dotan and Hofnung (2005) have explored several hundred legal cases of out-of-court settlements in other matters, in which the Supreme Court had preferred some narrow compromises, with no or minimal publicity, over salient and sweeping rulings. Thus, the Court could render some limited legal remedies according to some expectations of minority members, without endangering the hegemonic political culture of the Jewish majority.

For *Adalah*, out-of-court settlements have been an avenue to moderate discriminatory practices of the Jewish state. These legalistic settlements have also rendered a symbolic success, which has been functional for its organizational maintenance in the community as an organization of lawyers. As neo-institutional studies have shown, organizations, particularly professional organizations of lawyers have constructed law as their symbolic capital in order to survive and to generate themselves in the legal complex and public life, in general (Edelman, Uggen, and Erlanger, 1999; Sarat and Scheingold, 1998). *Adalah* has aspired to exhibit some degree of legal success in its adversarial strivings. Such a legal success in moderating the state through exercising the liberal language has assisted *Adalah* in framing itself as an effective communal organization that operates in the intersection of sociopolitical and legal complexities.

Additionally, these litigious achievements have procreated concrete (however, very restricted) public benefits, such as incremental process of formally framing more equality, and possible grounds for good reputation of *Adalah* in the hectic spheres of human rights' activists and competitive Israeli NGOs. Since 2000, *Adalah* has demonstrated its organizational abilities to monopolize parts of the minority discourse through advocating the families of 13 Israeli Arab-Palestinians who were killed by the Israeli police during violent demonstrations of Israeli Arab-Palestinians in October 2000 in reaction to the then opposition leader, Ariel Sharon's visit on Mount Temple. *Adalah* had coordinated the legal defense of hundreds of detainees under police

custody, and had coordinated the communal demands that policemen who were responsible for the killings would be criminally indicted.

Breaking the silence does not necessarily have practical ramifications. In practice, however, litigation in the context of political liberalism has had only a minor effect on mobilization of Israeli Arab-Palestinians. None of *Adalah*'s appeals to courts incited mobilization of parliamentary and extra-parliamentary forces. *Adalah*'s appeals have neither incited community's political struggles against the political establishment, nor have they fostered large internal reforms inside the community. *Adalah*'s relative legal effectiveness in gaining confined legal remedies and moderating the state notwithstanding, its ability to generate sociopolitical changes has been very doubtful.

The main realization of *Adalah*'s litigation till the end of 2006 has been in enforcing Jewish state's institutions to equalize individual rights between Israeli Arab-Palestinians and Israeli Jews. Such a not insignificant reform, with all its limitations, could not have been attained through silence and without an expressive tactic of liberal rights talk in the legal complex and beyond.

E. Conclusion

This chapter theorizes lawyers as agents of collective action who mark boundaries of state and society relationships through silence. It has analyzed and theorized double-edged ramifications of liberalism on lawyers and how they have shaped public discourse as both political agents of liberalism and as its generators. It is theoretically and empirically explicated why and how lawyers as political actors in the legal complex who use political liberalism may shape through silence and talks the boundaries of the political sphere. On the one hand, while doing so lawyers challenge allocation of public goods and often promote privatization and even more legal pluralism. On the other hand, lawyers in the liberal age do not only localize global neo-liberal markets through maintaining and legalizing capital flows. Also, they legitimatize state legal ideology that is carried through the legal profession and lawyers. Lawyers are a constitutive part of narrations and neo-institutional arrangements in the legal complex that enable them to dissent but only to a limited degree.

They generally talk in the framework of dominant ideologies and not less often they are silent regarding prevailing public policies. In Israel they are mainly silent concerning the hegemony of the state as Jewish and regarding national security issues. Once they are choosing to vocally raise a dissent as part of their profession they are trapped in their own mythologies and constraints and have to challenge the status quo only to a limited degree. Like in Greek legends they may use their profession and fly, but not too high lest their power be melted and dissolved. They can talk, but their talks are limited within the institutional and cultural boundaries of the very same ideology that enables them to have a voice. The Israeli experience of Jewish and Arab-Palestinian lawyers invites some comparable insights into the wonders and paradoxes of the legal profession as a means of political rhetoric and practices.

Bibliography

Abel, L, R, (1989) *American Lawyers* (New York, Oxford University Press).

---- (1995) *Law in the Struggle against Apartheid: 1980-1994* (New York, Routledge).

Baker, G, P., and Hacker, P, M, S,(1985) *Wittgenstein: Rules, Grammar and Necessity* (Oxford, Basil Blackwell).

Barzilai, G, (2003) *Communities and Law: Politics and Cultures of Legal Identities* (Ann Arbor, University of Michigan Press).

---- (2005) 'The Evasive Facets of Law: Litigation as Collective Action' 10 *Adalah Newsletter* http://www.adalah.org/newsletter/eng/feb05/feb05.html

Dotan, Yoav, (1999) 'Judicial Rhetoric, Government Lawyers, and Human Rights: The Case of the Israeli High Court of Justice During the Intifada' 33 (2) *Law and Society Review* 319-363.

Edelman, B. L, Uggen C, and Erlanger S. H (1999) 'The Endogeneity of Legal Regulations: Grievance Procedures as Rational Myth' 105 (2) *American Journal of Sociology* 406- 454.

Epp, C, R, (1998) *The Rights Revolution* (Chicago, University of Chicago Press).

Esmeir, S (1999) 'Litigation, Legal Discourse and Identity' 1 *Adalah Newsletter* 12-21

Eulau, H, and Sprague, D, (1964) *Lawyers in Politics: A Study in Professional Convergence* (New York, Bobbs-Merrill).

Feeley, M, M, and Krislov, S (1990) *Constitutional Law* (New York, HarperCollins).

Feeley, M, M (1992) 'Hollow Hopes, Flyerpaper, and Metaphors' in *Symposium-The Supreme Court and Social Change* 17 (4) *Law and Social Inquiry* 745-758.

Feeley, M, M and Rubin, L, E (2000) *Judicial Policy Making and the Modern State: How the Courts Reformed America Prisons* (Cambridge, Cambridge University Press).

Ghanem, A (1997) *Israeli-Arab Political Participation* (Haifa, Haifa University Press). [Hebrew]

Halliday, C., T,. and Karpik, L, (eds.) (1997) *Lawyers and the Rise of Western Political Liberalism* (Oxford, Clarendon Press).

Haltom, W, and McCann, W, M (2004) *Distorting the Law: Politics, Media and the Litigation Crisis* (Chicago, The University of Chicago Press).

Hofnung, M, Dotan, Y (2005) 'Legal Defeats- Political Wins: Why do Political Representatives Go to Court' 38 (1) *Comparative Political Studies* 75- 103.

Jabareen, H, (2000) 'Toward a Critical Palestinian Minority Approach: Citizenship, Nationalism and Feminism in Israeli Law' 9 *Plilim - Israel Journal of Criminal Law* 53-143 [Hebrew]

Kagan, A, R. (2000) 'Adversarial Legalism: Tamed or Still Wild?' 2 *New York University Journal of Legislation and Public Policy* 217-245.

Lev, S., D (2000) *Legal Evolution and Political Authority in Indonesia: A Study in the Political Bases of Institutions* (The Hague, Kluwer Law International).

Likhovski, A (2002) 'Colonialism, Nationalism and Legal Education: The Case of Mandatory Palestine' In R Harris, A (Sandy) Kedar, P Lahav, A Likhovski (eds), *The History of Law in a Multi- Cultural Society* (Aldershot, Ashgate Dartmouth).

McCann, M, (1994) *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago, University of Chicago Press).

Migdal, J, (1988). *Strong Societies and Weak States: State Society Relations and State Capabilities in the Third World* (NJ, Princeton University Press).

------2004. (ed.). *Boundaries and Belonging: States and Societies in the Struggles to Shape Identities and Local Practices* (Cambridge, Cambridge University Press).

Ostrow, B., M, (2002) *Wittgenstein's Tractatus: A Dialectical Interpretation* (Cambridge, Cambridge University Press).

Sarat, A, and Scheingold, A., S (eds.) (1998) *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford, Oxford University Press).

----2001. *Cause Lawyering and the State in Global Area* (New York, Oxford University Press)

Scheingold, A, S, (2004) *The Politics of Rights: Lawyers, Public Policy, and Political Change*. 2nd ed (Ann Arbor, The University of Michigan Press).

Scheingold, A., S, Sarat, A, (2004) *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (Stanford, Stanford University Press).

Shamir, R, (2000) *The Colonies of Law: Colonialism, Zionism, and the Law in Early Palestine* (Cambridge, Cambridge University Press).

Shamir, R, and Ziv, N. (2001) 'State-Oriented and Community Oriented Lawyering for a Cause: A Tale of Two Strategies' in Sarat A, and Scheingold S (eds), *Cause Lawyering and the State in Global Area.* (New York, Oxford University Press) 287-304.

Wittgenstein, L, (1958) *Philosophical Investigations* (London, Basil Blackwell).

-----,(1969), *On Certainty* (Oxford, Basil Blackwell).

-----,(1974) *Philosophical Grammar* (Berkeley, University of California Press).

Wolcher, E, L, (2005) *Beyond Transcendence in Law and Philosophy* (London, Birkbeck Law Press).

Young, M, I (1990) *Justice and the Politics of Difference* (Princeton, Princeton University Press).

Ziv, N, (2000) *Group Rights, Identity and Equality: Lawyering for Palestinians in Israel* (paper presented at the Law and Society meeting, Miami).

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