

What's In a Name?: Cause Lawyers as Conceptual Category

Something to Believe In: Politics, Professionalism, and Cause Lawyering, Stuart Scheingold and Austin Sarat.

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Abstract: Stuart Scheingold's and Austin Sarat's "Something to Believe In: Politics, Professionalism, and Cause Lawyering," (Stanford University Press, December 2004) draws on a decade of empirical and theoretical work on cause lawyering. Scheingold's and Sarat's law and society scholarship contributes to our knowledge of lawyering, the law, work with clients and social movements, and the interplay between what Ewick and Silbey have called "legality" and the social world. Their cross-disciplinary work makes a significant contribution to the social sciences as well as to the field of legal studies. This review examines the utility of cause lawyering as a concept that contributes to our academic knowledge base as well as to the "actual" work of lawyering. Scheingold and Sarat push the boundaries of the legal-centric framework of the scholarship on lawyers in their examination of the relationship between cause lawyering and the legal democratic state. This paves the way for what is missing from this literature and thus absent from Scheingold and Sarat's analysis, which is an examination the client side of cause lawyering.

Stuart Scheingold's and Austin Sarat's "Something to Believe in: Politics, Professionalism, and Cause Lawyering"¹ examines the cause lawyering project. This book is an important achievement, synthesizing a body of innovative inter-disciplinary, trans-national scholarship. Scheingold and Sarat go well beyond the general summary. They offer a theory of cause lawyering as a window onto conventional lawyering and liberal democratic society in general. Scheingold and Sarat analyze the contested terrain of cause lawyering, including the tensions between cause lawyering and the more general professional project as conceptualized by lawyers, law schools, and bar associations.

Scheingold and Sarat coined the term “cause lawyering”:

What we call cause lawyering is often referred to as public interest lawyering within the legal profession and among academics. However, we prefer *cause lawyering* because it is an inclusive term. It conveys a determination to take sides in political and moral struggle without making distinctions between worthy and unworthy causes. Conversely, to talk about public interest lawyering is to take on irresolvable disputes about what is, or is not, in the public interest. Whether the pursuit of any particular cause advances the public interest is very much in the eye of the beholder.²

With an array of monikers such as public interest lawyering, rebellious lawyering,³ collaborative lawyering,⁴ etc., one may ask how this term adds to our

¹Stuart Scheingold and Austin Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (2004).

² Id. At 5.

³ Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*. (1992).

⁴ Lucie White, *Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice*. 1 Clinical L. Rev. 157.

understanding.⁵ As a conceptual category, cause lawyering has proven fruitful. Scheingold and Sarat's work frames a decade of cause lawyering literature, some of which has been published in the three cause lawyering volumes edited by the authors to date.⁶ *Something to Believe In* shows just how far cause lawyering scholarship has come. Perhaps most surprising is the inclusion of right-activist cause lawyers that the labels with left-activist connotations precluded. Scheingold and Sarat draw on recent work such as that of Den Dulk, Hatcher, and Southworth, which include these lawyers in their analysis, to enhance our understanding of lawyering for causes.⁷

Delving further into the concept of cause lawyering as it has evolved and expanded, Scheingold's and Sarat's review and analysis of the rich empirical and theoretical literature pull together what cause lawyers share, despite the differences in substantive goals, practice settings, and practices. They ask whether the term is sufficiently capacious to include the diverse practices and ideologies of the concept to house what Scheingold⁸ has termed "left-activist lawyers" and right wing cause lawyers; pro bono folks, salaried cause lawyers, and small firm practitioners. Exposing

⁵ See also Thomas M. Hilbink, *You Know the Type...: Categories of Cause Lawyering* 29 *Law & Soc. Inq.* 657 (2004) (reviewing Austin Sarat & Stuart Scheingold, eds. *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998) and Austin Sarat & Stuart Scheingold, eds. *Cause Lawyering and the State in a Global Era* (2001)).

⁶ *Cause Lawyering: Political Commitments and Professional Responsibilities* (1997, Oxford University Press); *Cause Lawyering and the State in a Global Era* (2001, Oxford University Press); *Worlds Cause Lawyers Make: Structure and Agency in Legal Practice* (2005, Stanford University Press)

⁷ Kevin R. Den Dulk, n.d.. "In Legal Culture, but Not of It: The Cause Lawyering of Evangelical Conservatives." Unpublished paper; Laura J. Hatcher (2005) "Economic Libertarians, Property and Institutions: Linking Activism, Ideas and Identities Among Property Rights Advocates." In *The World Cause Lawyers Make: Structure and Agency in Legal Practice*, ed. Austin Sarat and Stuart A. Scheingold. Stanford, CA: Stanford University Press; Ann Southworth (2005) "Professional Identity and Political Commitment Among Lawyers for Conservative Causes." In *The World Cause Lawyers Make: Structure and Agency in Legal Practice*, ed. Austin Sarat and Stuart A. Scheingold. Stanford, CA: Stanford University Press.

⁸ Stuart Scheingold, *The Struggle to Politicize Legal Practice: A Case Study of Left-Activist Lawyering in Seattle*, in *Cause Lawyering: Political Commitments and Professional Responsibilities*, (Austin Sarat and Stuart Scheingold eds., 1998)

commonalities among such a disparate group of practices and ideals by bringing them together under the definition of cause lawyering reveals what otherwise may remain unexamined: cause lawyering's necessary but fraught relationship with conventional lawyering. More fundamentally, they claim a central role for oppositional lawyers vis-à-vis justice and the rule of law and, more broadly, liberal democracy .

The first chapter begins with the observation that the so-called crisis of professional malaise that otherwise pervades the legal profession is conspicuously absent among cause lawyers. This is largely because, for the most part, cause lawyers do not experience alienation from the work they do. Nor do they experience the disjuncture between their personal and professional identities that exist for so many conventional lawyers. Scheingold and Sarat draw on studies that show that cause lawyers, despite their often marginal position within the organized bar, are more likely to express professional and personal satisfaction from their career choice than are lawyers in general. Thus cause lawyers provide a model that can help to solve a problem that has long plagued law students and lawyers as a professional group.

Law is attractive to cause lawyers not as an end in itself but as a means to a larger goal. Scheingold and Sarat view this as the key distinction differentiating cause lawyers from conventional lawyers

Moral and political commitment, the defining attributes of cause lawyers are, for most of their peers, relegated to the margins of their professional lives.

For cause lawyers, such objectives move from the margins to the center of their professional lives. Lawyering is for them attractive precisely because it is a

deeply moral or political activity, a kind of work that encourages pursuit of their vision of the right, the good, or the just.⁹

The definition of cause lawyers as lawyers who espouse ends that are above and beyond the provision of legal services to clients is a “big tent” definition and has stretched, sometimes contentiously, to encompass a variety of diverse causes, practice settings, and legal tactics. While Scheingold and Sarat explicitly see behavior and intent as combined requirements of cause lawyering, intent is clearly the more important of the two.

The moral and political commitment that is a professional concern for most lawyers is what makes lawyering worthwhile for cause lawyers; indeed it is what defines them. It is the very same virtue of professional and personal coherence that also threatens their standing as legitimate professionals in the eyes of conventional practitioners and theorists.¹⁰ Cause lawyers use the law as “political actors,” and their personal and professional identities are mutually constraining, even as they confer benefits. This tension is a central theme of Scheingold’s and Sarat’s book.

In a well-established sociological tradition, chapter two takes an historical perspective to examine the way that the marginal or challenging practices of cause lawyering hold up a mirror to mainstream legal practice in ways that are generally unacknowledged. Perhaps the most controversial claim in this vein is that all law practice is involved with values and politics, even (particularly?) ones that shore up existing legal practices within the traditional professionalized adversarial system. In making this point, Scheingold and Sarat draw closely on the critiques¹¹ that are leveled against supposedly

⁹ See Scheingold and Sarat, *supra* note 1 at 2.

¹⁰For similar issues that confront activist social scientists, see Sanford F. Schram, *Praxis for the Poor: Piven and Cloward and the Future of Social Science in Social Welfare* (2002).

¹¹Such as that of Jerrold Auerbach’s classic *Unequal Justice* (1976), which Scheingold and Sarat cite.

neutral or objective academic practices, which are by now largely recognized as suspect in their extreme forms, although these views still pervade the academy.¹²

Although some of the work on cause lawyers crosses national boundaries, most of it is focused on U.S. cause lawyers and the history reflects this more narrow focus. Scheingold and Sarat trace the history of lawyering in the U.S. and its ambivalent roots. Going back to the 19th century, they describe a profession that is “inclusive” but “stratified.”¹³ One model is the small-town lawyer who works as peacemaker, provides services to all, and is himself an example of equality of opportunity regardless of origins; at the opposite pole is the lawyer-statesman, a patrician who provides stewardship and allies himself with powerful economic and political elites.

The tenuous alliance that these professional models shared (at a time when both groups were comprised of white, native-born, Protestant men) was sorely tested by the influx of outsider groups, particularly Jewish and Catholic immigrants and African American lawyers. In attempts to retain control, elitist lawyers promoted ostensibly neutral rules. In the name of professionalization, they erected hurdles to entering and practicing the profession such as prohibiting professional training via apprenticeship rather than formal university training and outlawing contingency fees.

While the supposedly neutral, elitist patriarchal model remained, its legitimating counterpart in the form of the more egalitarian, socially mobile, peacemaker-lawyer was eclipsed. With time, scandals condoned and abetted by lawyers’ use of their professional abilities showed lawyers to be consistently on the “wrong side.” Lawyers were allied with

¹²In contrast see Anthony T. Konman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993), who claims that a non-partisan patrician lawyer/judge is the ideal that the profession should aspire to, which rests upon the belief that not only is such a “neutral” patrician ideal desirable, but that it is in fact attainable.

¹³ Scheingold and Sarat, *supra* note 1 at 31.

greedy robber-barons and others who acted to the detriment of the country and its citizens. Lawyers' professional practices were supposedly neutral; in fact they worked consistently to the benefit of one particular segment of society and to the detriment of others. What was ethical legal practice could no longer be credibly claimed as moral or just in the broader sense, particularly during the great Depression when a broader swathe of the population saw itself the victim of corporate greed sanctioned by the state and its legal institutions. The legal profession needed to shore up its diminished legitimacy in the eyes of the public if it was to retain its professional monopoly and right to self-regulation.

Here we see the beginnings of what becomes a cycle: lawyers (or would-be lawyers) on the margins want to become part of the profession in order to further themselves. The organized bar wants to retain its status and privilege but require the imprimatur of acting for the public good in order to do so. The rapprochement between the insider and outsider groups is one that is based on mutual interest, and it is one that repeated itself again in the 1960s and 1970s, following the crisis in faith in lawyers and the rule of law that the Watergate scandals and the exposure of civil rights abuses precipitated.

Scheingold and Sarat show that this mutual reliance is not without its dangers for cause lawyers, who must domesticate their practices in order to enter into or remain legitimate members of the bar. However, there is a payoff for those lawyers. As lawyers in my study of left-activist legal services noted, any venue of power that can be tapped into to provide assistance to their clients or cause is one worth pursuing.¹⁴ Such inclusion helps to legitimize the claims of clients and activists, and helps to translate them into

¹⁴Corey Shdaimah, *Intersecting Identities: Cause Lawyers as Legal Professionals and Social Movement Actors*, Unpublished conference paper presented at the Symposium on Cause Lawyers and Social Movements, UCLA Law School, April 8-10, 2005.

language and form that is acceptable and can provide the results that clients and organization seek. However, such inclusion also can limit lawyers working for causes to those forms, acting to temper those very claims.

On the flip side, cause lawyers can be seen as “taming” the organized bar. They hold them accountable to what otherwise might be empty rhetoric; lip service to ideals of equality that remain unchallenged and unclaimed but for the contentions of cause lawyers. In this vein, Scheingold and Sarat provide an oft-overlooked response to the crisis of the legal profession. Lawyers may aid and abet abuses, but it is often other lawyers who uncover the abuses made in the name of the law or professionalism, as was the case in the scandals of the 1960s and early 1970s.¹⁵ Thus the organized bar has further incentive and justification to “claim” cause lawyers as part of the fold. According to Scheingold and Sarat, this helps to explain, at least in part, why the organized bar has emerged as a staunch defender a variety of cause lawyering causes such as legal services funding. It also explains the forms that such defense has taken, and the way it has tamed the beneficiaries of its support, such as advocating a moratorium on the death penalty on the grounds that it cannot be *administered* justly.

As Scheingold and Sarat argue, this is not just due to mutual accommodation of different groups, but is in part a result of accommodating the “persistent, unalleviable anxiety”¹⁶ within lawyering itself. Lawyers claim to be neutral and zealous advocates at the same time that they claim to be defenders (and diviners) of the public good. Lawyers justify their profession as having a particular expertise entitling them to privileges without recourse to a substantive claim for a particular public good. But lawyers often

¹⁵ Scheingold and Sarat, *supra* note 1 at 42.

¹⁶ Scheingold and Sarat, *supra* note 1 at 48.

serve particular interests *in fact*, and this can be seen in the pattern and practice of the professional work of the elite organized bar, which tends to reproduce the status quo if left unchallenged.

Missing from Scheingold and Sarat's otherwise penetrating analysis of this mutual and tenuous dependency that is as ideological as it is instrumental, is attention to the relationship this has to causes (rather than cause lawyers). Cause lawyers explicitly claim to use law in the service of causes and as such do not seek to legitimate their core professional identity on the basis of neutrality. In large part, cause lawyers' efficacy in the service of their causes rely on such claims and the professional cache they confer. Many social movement actors and even individual clients are aware of the tradeoffs of alliance with the powerful, and will often espouse this (and the forms that it sometimes takes, as discussed more explicitly in chapter 4) despite the dangers involved therewith. To see this merely as the determination or bargain that cause lawyers strike is to ignore the cause or movement within which cause lawyers perceive themselves embedded.¹⁷

Scheingold and Sarat's third chapter analyzes a growing body of literature that explores the difficulty that aspiring cause lawyers have in retaining their commitments through law school. These findings are across the board; they appear in studies of elite and non-elite law schools, in law schools that profess a commitment to cause lawyering and those that do not, and in a variety of geographic areas. Less obvious than the *fact* of this steady decline in what law students would call "public interest" careers over the course of their law school education is the *cause* of such decline. Although Scheingold and Sarat acknowledge the importance of job markets and the political climate, the

¹⁷ Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*. 31 Harv. C.R.- C.L. L. Rev. 443 (1996) and Shdaimah, *supra* note 14.

explanation that seems to be largely agreed upon is that student fall-off is the product of socialization.

Virtually all of [the studies] trace the changes wrought by legal education to the process of teaching students how to think like lawyers – and to the moral and emotional repercussions of that cognitive conversion. The dominant view is that moral sensibilities are weakened or even extinguished by legal education, that political commitment is regarded as a barrier, not an aid, to making good lawyers.¹⁸

This conversion is characterized by teaching students not only to differentiate between “social justice” and “adversary justice,” or justice as it emerges within and through the law, but to accept this differentiation as desirable. While such differentiation can be sustainable when the clashes between these two are perceived as relatively unimportant and/or infrequent by broader society, the more often and seriously they are perceived to clash, the harder it is to sustain. For students who experience such a disconnect in their own lives and experiences, such a process can do violence to their sense of right and sense of self, and many are apt either to be changed by the process in conformity with dominant notions of lawyering or to drop out of school or, later, out of careers in the law.¹⁹

Even legal realists, who highlight the role that the social plays in the law in many ways merely substitute social science truth claims for legal truth claims. They continue to seek some ascertainable arbiter that is not necessarily truth but will allow for a clean determination, which can only be maintained by ignoring sources of knowledge that are

¹⁸ Scheingold and Sarat, *supra* note 1 at 58.

¹⁹ See, for example, Lani Guinier, Michelle Fine, and Jane Balen, *Becoming Gentlemen: Women, Law School, and Institutional Change* (1997).

situated and unstable.²⁰ Scheingold and Sarat cite Robert Granfield in calling this an “ideology of pragmatism.”²¹ This is an instrumental, almost cynical pragmatism, much different from the turn-of-the century pragmatism. The latter contained an ethical component that tied acknowledgement of the limitations of human knowledge to a duty to reflect and revise to account for a broad range of changing and varied experiences.²²

Those who claim that their calling as lawyers is not at odds with the personal, political or religious commitments offer an alternative.²³ These are clearly marginal voices, and are featured in seminars and electives rather than in the “hard-core” courses. Law professors who think and teach this way are themselves marginalized.²⁴ Many who acknowledge the place for emotion and perspective in the law warn that this is suspect; it must be ‘kept under wraps’ and couched in legal reasoning, because such appeals are both strategically untenable in the courts and “sap rigor.”²⁵

The legal ideology of pragmatism is compounded by what Scheingold and Sarat label a hierarchy of placement.²⁶ This is the tendency to become wrapped up in the race for placement in good schools, good jobs, and high salaries that begin early in the law school career (and sometimes before). It is pervasive. Indeed law schools are dependent upon this, in part, for their ranking and, in turn, their ability to attract students and funds. This together with the high cost of law school and debt burden that many feel, or come to

²⁰Scheingold and Sarat, *supra* note 1 at 61. See also Kristen Bumiller, *The Civil Rights Society: The Social Construction of Victims* (1988).

²¹ *Id.* at 64.

²²Louis Menand, *The Metaphysical Club* (2001).

²³See for example Joseph G. Allegretti, *The Lawyer’s Calling: Christian Faith and Legal Practice* (1996). This is the experience

²⁴Patricia Williams, *Race and The Alchemy of Race and Right: Diary of a Law Professor* (1991).

²⁵Scheingold and Sarat, *supra* note 1 at 64.

²⁶ *Id.* at 64.

feel, can only be justified (and in turn justify) jobs with high paying, conventionally prestigious firms in the private sector.

If prestigious corporate firms are at the pinnacle of the placement hierarchy, Scheingold and Sarat at times portray cause lawyering opportunities as its lowly counterpart.²⁷ They do provide a number of examples that belie this contention, but do not really examine it fully. My own research has shown that where there is support for cause lawyering within a group of like-minded practitioners together with support from the private bar, cause lawyers hold considerable professional status.²⁸ The image of the beleaguered, low-paid public interest lawyer has its own cache. This points to the importance of a budding cause lawyer's reference group. Cause lawyers in my study saw fellow cause lawyers and clients as a reference group. When clients rather than corporate lawyers are a point of reference, some lawyers feel privileged to hold well-paying jobs which are also professionally satisfying. As Scheingold and Sarat note, scarcity of cause lawyering opportunities can work to deter budding cause lawyers,²⁹ but it can also enhance the standing of those who persevere and obtain cause lawyering jobs. However, this alternate prestige does not penetrate the atmosphere of law school.

So which cause lawyering-minded students are able to survive the law school gauntlet to become cause lawyers? What Scheingold and Sarat find in reviewing a number of studies is that ideological commitment to a cause might be necessary but not sufficient. It seems that the chief factor that determines whether law students continue on to careers in service of a cause is a healthy cynicism about the law. These are students

²⁷ See for example, *id.* at 4.

²⁸ Corey Shdaimah and Sue Wasserkrug, *Consciously Creating Community*, paper presented at the Annual Meetings of the Law and Society Association, Pittsburgh, PA, June 3, 2003.

²⁹ *Id.* at

who do not entertain a naïve sense that justice will be achieved by and through the law, but who understand the law as a social phenomenon. They do not become disillusioned because they do not have illusions to be shattered. As the importance of reference groups suggests, for these students practicing cause lawyers are often a lifeline that helps them stay the course, and provide them with a role model to strive toward and emulate.³⁰ Association with other like-minded students and faculty also provides support. These networks and their own “pragmatic” approach can help them take advantage of what concessions are available from the law schools which, like the legal profession, have their own self-interested reasons to at least pay lip-service to broader conceptions of justice and public service.

Chapter 4 investigates the different practice settings where cause lawyers work—setting up a definitional issue as to how far the bounds of cause lawyering can be stretched before it is no longer, or only very marginally, cause lawyering. Scheingold and Sarat create a typology of cause lawyering by setting: pro bono, salaried, and small firm practice. In each of these settings, would-be cause lawyers make a number of tradeoffs, based on a matrix that is made up of job stability, economic security, professional autonomy, and professional culture. It might seem obvious that lawyers in large firms are highly constrained. Many can only realize their cause lawyering aspirations during non-billable hours for clients who are neither in direct or “positional conflict” (i.e. representation of poor tenants in firms that represent landlords). On the other hand, when cause lawyers working in this capacity can take on legal issues, they bring substantial and valuable resources, including social capital, to bear for the causes they represent. More surprising perhaps is how constrained the supposedly more autonomous salaried and

³⁰Scheingold and Sarat, *supra* note 1 at 69.

small firm pro bono lawyers are. The former are constrained by powerful funding and institutional limitations, and the latter by their need to generate sufficient income to support themselves and sustain cause lawyering activities. What Scheingold and Sarat conclude is that no matter what the practice setting, cause lawyering is always endangered by practice settings, each of which sets its own constraints.

Cause lawyers need to think about the options open to them and the compromises that they are willing and able to make personally and professionally. The possible accommodations made in each of these situations also depend on the broader political, social, and economic climate. Scheingold and Sarat follow the theme that there is a mutual dependency between the organized bar, the legal system, and private firms and cause lawyers. As this need waxes and wanes on the side of the more powerful mainstream who also hold the purse strings, so too does the support for cause lawyering. Even when support is high, the more closely cause lawyers are aligned with centers of power, the less likely cause lawyers are to stretch the way they use the law in favor of cause, and to the perceived detriment of existing interests.

Scheingold and Sarat reflect ambivalence about when cause lawyering becomes so compromised by practice constraints that it ceases to be cause lawyering. While they readily accept that pro bono lawyers can be cause lawyers despite the institutional settings in which they work, they seem to be less willing to accept legal services providers as cause lawyers, going so far as to question whether representation of individual clients is cause lawyering.³¹ This represents an elitist view of cause lawyering, discounting the political import of day-to-day work with and on behalf of marginalized clients, organizations, and issues *to the extent that such work is undertaken out of*

³¹Id. at 96

*commitment to a cause.*³² The question, of course, is a legitimate one, and one that cause lawyers need to reflect on if they are to sustain their commitments. It is unclear, however, why these compromises (when they are in fact undertaken reflectively and strategically) are any more suspect than other compromises that cause lawyers working in different venues take. This is indicative of one of the lacunae in the cause lawyering project. Although we know a lot about the motivations of cause lawyers, and what sustains them through school and allows them to practice, there is insufficient systematic investigation of what lawyering in service of a cause means to lawyers, and how they view their role in bringing about the changes for which they advocate. Only close attention to work on the ground can reveal whether in fact the work that such lawyers do is related to a cause, including a cause that encompasses service to marginalized individuals or groups. This blind spot is also related to the lack of attention to the interplay between lawyers and causes and the intended and actual beneficiaries who are the carriers (or targets) of causes.³³ This is where much some of the most recent cause lawyering literature is heading, and its absence here is conspicuous.

Scheingold and Sarat conclude that the litmus test for cause lawyers is their willingness to put their careers on the line and to make sacrifices. When their cause lawyering is “more than a story” and comes to require a substantial investment of self or career, then cause lawyering is just that, regardless of the setting or the constraints that are placed upon it and that lawyers are willing to accept.³⁴

³²Shdaimah, *supra* note 14. See also Howard Lesnick, *The Wellsprings of Legal Responses to Inequality: A Perspective on Perspectives* Duke L. J., 413 (1991).

³³ Shdaimah, *supra* note 14.

³⁴Scheingold and Sarat, *supra* note 1 at 96.

Heretofore, Scheingold and Sarat have examined cause lawyers in contrast to their conventional professional counterparts. In chapter five, however, they show that cause lawyers are diverse in other ways. In what is perhaps the most innovative analysis in this book, they look at cause lawyers across settings and politics in order to sketch a continuum that is grounded in cause lawyers' relationship to liberal democracy. While some cause lawyers do indeed work to stabilize and shore up liberal democracy, others are more radical, mounting challenges to the very system which provides them with their work tools and professional legitimacy. This also sheds light on the way that cause lawyering, the practice that many lawyers love to hate, does or does not confer legitimacy to the private, mainstream bar. Cause lawyers whose work is in line with liberal democratic values confers social capital on lawyers. Cause lawyers provide "proof" to bar associations' claims that the legal profession and its practitioners provide a public good. This helps lawyers and bar associations retain their role as public stewards of democracy and of their own profession at a time when lawyers and the law have been alternately criticized as elitist, litigation-happy, and manipulators of an unfair system. Cause lawyers who work in ways that undermine liberal democratic values present a challenge not only to the legal profession, but to the legal system as a whole.

Between these poles stretches a continuum. At one end are cause lawyers whose causes and visions are ideologically compatible with liberal democracy. This group includes left-liberal, neoliberal and libertarian cause lawyers. These lawyers do not challenge the legal system and its legitimacy fundamentally, even when they criticize the legal system for failing to live up to liberal democratic commitments. They are also more

likely to stick to the conventional legal practices, and to feel less compromised doing so. In short, their work is invested in, and therefore less threatening to, liberal democracy.

At the other end of the spectrum are cause lawyers whose ideology presents a challenge to liberal democracy or some part of it (such as property rights) and who hold goals that, if realized, will undermine this. This group includes social democratic, emancipatory-democratic, and evangelical-democratic cause lawyers. Such cause lawyers in fact use the tools of liberal democracy, but would be content to see it replaced with another vision.³⁵ What is salient here is whether cause lawyers support or oppose liberal democracy, regardless of left-right political orientation.³⁶ This group is less privileged than the former group, because conventional lawyering is less likely to benefit the cause they serve and thus they are more likely to turn to non-legal means, such as political mobilization.³⁷ Their work within the system often feels too much like working with the “master’s tools” and thus leaves them feeling more ambivalent and compromised. Their work within a system which they oppose can be viewed as an acknowledgment and legitimation of that very system. The legal system is also less likely to be receptive to their claims, which do not fit within more conventional, constitutionally framed arguments.

Scheingold and Sarat are not explicit enough in bringing this full circle to connect with the first two chapters that discuss cause lawyers’ identities and the way in which cause lawyering illuminates lawyering in general and lawyers’ relationship with the state. The more oppositional cause lawyers are, the more they are marginalized in relation to conventional lawyers, the organized bar, and the legal system as a whole. Conventional

³⁵Id. at 105.

³⁶Id. at 100.

³⁷Id. at 123.

lawyers criticize their instrumental use of the legal system and the tools it offers. Cause lawyers oppositional to liberal democracy problematize lawyers' professional role as guardians of liberal democracy, a role that has been noted as early as de Tocqueville and has been used to legitimate lawyers' privileges and the perception that the profession serves a public good. Cause lawyers whose work actively seeks to undermine liberal democracy threaten the profession as a whole because it belies this claim.

Scheingold and Sarat's continuum helps explain how cause lawyers who are reticent to use tools that undermine liberal democracy in the service of their causes due to their beliefs about the law or the legal system find their identity as *cause* lawyers questioned. They are often challenged by groups or individuals as conservative or co-opted. At the other end, lawyers who work to undermine understandings of liberal democracy find their identity as *cause lawyers* questioned.

Cause lawyers at various points along the spectrum will feel the pulls in different ways and to varying degrees, depending upon the tactics they use, the goals they set for themselves, and the extent to which their work is at odds with prevailing notions of liberal democracy. Conventional lawyers and bar associations, in turn, will similarly experience them as more or less threatening to the professional project relative to their placement along this continuum, and will provide support or opposition in accordance. Such a conception provides a better understanding of the relationship between lawyers and liberal democracy more generally. Scheingold and Sarat's is a more credible claim than that made by advocates of the lawyer-statesman position or the bar association's high flown rhetoric that, whether it is taken as self-serving or idealistic, fails to capture how lawyers and the public perceive and enact their relationship to liberal democracy.

Theirs underscores the importance of the relationship of lawyers and liberal democracy without idealizing it, allowing for a more reflexive understanding that is more accurate and more conceptually (and politically) useful.

In their concluding chapter 6, Sheingold and Sarat show how cause lawyers work within and against institutions that do not, perhaps cannot, live up to their own expectations. Because of this cause lawyers expose the gap between what law is and law's ideal, the promise of liberal democracy and its failures, the vision of justice and the impossibility of reaching it within the legal system. This tension is expressed within the opportunities and constraints of the legal profession and its institutional sites: law schools, bar associations, legal practice, and democratic advocacy.

In this final chapter, Scheingold and Sarat briefly engage cause lawyering in the global context, and we see that oppositional lawyering can emerge in a variety of regimes. Cause lawyers inside and outside of liberal democracies face similar problems of being both a necessary part of and in opposition to state institutions. The profession's commitment to the rule of law is a source of legitimacy and leverage jumping off point for cause lawyers, and can be used as a tool to promote cause lawyering aims in regimes that are otherwise hostile to such claims.³⁸

Additionally, globalization presents new opportunities for cause lawyers to work within but also against the state. With these opportunities come challenges: here there seems to be as much danger from corporate economic interests that drive globalization as there is from the state. If cause lawyers work against the state on a globalized stage, they risk co-optation or promotion of these interests, even coincidentally, in ways that may endanger the interests they would promote even more (or in different ways) than the

³⁸ Id. At 131-32.

state. Cause lawyers then need to examine where to focus energies; where is the enemy; and whether in a globalizing world they want to weaken a more fragile and tenuous state. In this chapter, Scheingold and Sarat give us a taste of directions and questions that pique the appetite, but leave us curious for more. This is largely a function of the recent and dynamic evolution of transnational cause lawyering and the fast-growing literature on this phenomenon. Their insights into cause lawyering in the United States provide a promising lens through which to view this, and hints at ways our understanding of the former may be changed in the process.

My main critique of Scheingold and Sarat's rich and valuable analysis of cause lawyering and the legal profession as a whole is that it is very much a legal-centric analysis. It tends to ignore other measures of the effect on liberal democracy and more public conceptions of social justice, as does the cause lawyering project in general. It does not always pay sufficient attention to the client side of cause lawyering, whether the client is an individual, an organization, or a cause. This, too, holds a mirror to mainstream legal scholarship, which too often remains decontextualized and with tenuous relevance to practice. How do cause lawyers influence society beyond and outside of the legal system? What are the ways in which they shape the social terrain? How do intended beneficiaries of cause lawyers see the work they do? This, in part, is examined in the next iteration of the cause lawyering project which seeks to connect cause lawyering and social movements. The solid foundation that Scheingold and Sarat lay in "Something to Believe In" is a fruitful jumping off point for the exploration of cause lawyering in just such a broader context.