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Politics as Legal Action/ Lawyers as Political Actors: Towards a Reconceptualisation of Cause Lawyering

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Abstract

The 'resolutions movement' – a popular political mobilisation guided by lawyers, and expressed in exclusively legal terms and orientated towards legal objectives – has been an important expression of popular resistance to contemporary US counterterrorism policy. This article uses the resolutions movement as a vehicle for critically evaluating the cause lawyer literature and for reconceptualising 'cause lawyers'. The article discusses two different approaches to the political implications of lawyering. The first approach draws on the 'cause-lawyering' literature that appears initially as a perfect context for analysing the movement. However, detailed examination shows this approach to be premised on a strong dichotomy between law and politics, something that impedes analysis. To overcome the resulting aporia, a 'strategic-relational' approach, which sees both law and politics as social relations and practices, is proposed as an alternative. This allows a more nuanced discussion of the law–politics relation that facilitates analysis of the movement and leads to a set of proposals capable of enabling cause-lawyering studies to transcend its conceptual rigidity.

Keywords

Cause lawyers, law vs. politics, resolutions movement, strategic-relational approach, US counterterrorism

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Introduction

The study of cause lawyering is now established as a relatively distinct field of study that has significantly advanced our understanding of the politically informed character of legal practice. However, despite its potential to throw wide open key questions about the political character of law, efforts to do so have remained limited and disjointed. The cause-lawyering literature continues to consist of a multitude of empirical case studies preoccupied with the 'motivations' that underpin cause lawyering, the practitioners' 'consciousness' as an ultimate explanatory factor, and/or the descriptive account of their behaviour in given circumstances. The main categories that constitute cause lawyering – law and politics – remain under-theorised, giving the analysis a rather anthropological character. Essentially, the understanding of law and politics seems to be premised on a pluralist/liberal worldview that is neither developed explicitly, questioned, nor even acknowledged. Thus, the discussion of law, politics and their interrelations is settled before it begins; yet, the reality under examination throws elements of this exiled discussion pressingly to the fore on multiple occasions. It is at these moments that the underlying theoretical premises of cause-lawyering studies seem to restrict rather than deepen the analysis; and it is with this in mind that the present text suggests an alternative conceptualisation of the relation between law and politics, as a more fruitful way of understanding cause lawyering and its social context.

The article begins with an overview of aspects of the cause-lawyering literature, aiming to identify its underlying theoretical framework as a set of acute separations between the 'branches' of state power; law and politics; state and society; and liberal and non-liberal juridicopolitical frameworks. It then proceeds to the examination of a case study, the US 'resolutions movement': a wave of local- and state-level legislation, dictating that local agencies abstain from implementing federal counterterrorism measures. This case study is selected both for its sociopolitical importance as a symbol of popular opposition to aspects of counterterrorism policy, and because it tends to problematise any neat demarcation between legal and political action – and actors. Finally, the article notes that the theoretical premises underlying the cause-lawyering literature tend to limit the analysis of the resolutions movement, leading to certain omissions. As a possible remedy, it outlines the main elements of a different analytical framework for the conceptualisation of the relationship between law and politics in the form of a 'strategic-relational' approach to law.

Cause-Lawyering Studies and Its Underlying Dichotomies

The first, essential task the cause-lawyering literature accomplishes is to identify (or, possibly, construct) cause lawyers as a distinct professional category. Cause lawyers appear to constitute a case apart within the legal profession as their activity tends to reverse its priorities. Cause lawyers make their values regarding what is socially good and just the goal of their advocacy, rather than allowing the goals of the latter to be set out by another party (the client) that they serve independently of their personal value system. Serving their ethicopolitical commitments through their work constitutes cause lawyers as essentially political actors – albeit ones whose work involves doing law. The

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double nature of their activity is susceptible to tensions with their professional establishment and, possibly, political authorities.

Scheingold and Sarat provide a comprehensive general charting of the different varieties of cause lawyer. The main distinction is that between liberals and non-liberals. Liberal cause lawyers are characterised by a mistrust of the state and uphold the first generation of rights as necessary and sufficient protection against unwarranted state intrusion to individuals' private and social life. Liberal cause lawyers can be divided into three subcategories, according to the particular sets of rights that they emphasise. Thus, *neo-liberals* are almost exclusively concerned with (private) property rights; and *libertarians* put emphasis not only on property, but on all first-generation rights guaranteeing the private sphere as well. Both of these subcategories ignore political rights that are of primary concern to *left liberals*, who mainly advocate for rights that support a robust and inclusive form of citizenship. Left liberals seek to protect the democratic institutions, maintain the freedom of civil society, maintain the separation and balance of power between the different state branches, and provide fair treatment to individuals pressed by the coercive might of the state. The American Civil Liberties Union (ACLU) is a 'prototypical voice' of left-liberal lawyering. It claims that its client is the Bill of Rights. It opposes restrictions to private freedoms (religion, sexuality, drug use, abortion, etc.), mobilises to protect first amendment rights (especially, speech and assembly), and concerns itself with cases relating to the death penalty, police violence, immigration practices, employment discrimination and tenants' rights (Sarat and Scheingold, 2005; Scheingold, 2001; also Scheingold and Sarat, 2004: 15–17, 107–112).

The overall thrust of left liberals is to maintain the institutional shape of liberal democracy and maintain state intervention at some distance from civil society and the private sphere. The key characteristics of the democratic polity that liberal cause lawyers seek to protect are representative government; the rule of law; individual and property rights; and an autonomous, pluralist civil society. This political arrangement is instituted as a series of rights: private property, privacy, due process, freedom to speak, vote and run for office, and so on (Scheingold and Sarat, 2004: 102–103). Given that property, privacy, and civil rights are constitutionally guaranteed, liberal cause lawyers of all persuasions fashion their advocacy in terms of defending the Constitution. Accordingly, 'litigation is very much the hallmark of liberal-democratic cause lawyering' (Scheingold and Sarat, 2004: 112). They pursue their causes exclusively through the courts; while the triad of rights-legality-constitutionality provides both the means and goals of their advocacy. The compatibility of their activity and objectives with the established juridicopolitical order permits liberal cause lawyers elevated professional status, peer respect and good career prospects.

Alongside the liberal camp is another camp consisting of the diverse subcategories of social–democratic, emancipatory–democratic, and evangelical cause lawyers. The agendas pursued by these groups often exceed and/or present incompatibilities with the liberal legal framework. For them, legality is as restrictive as it is enhancing. Rather than defending the legal framework, they seek to alter it. Consequently, litigation is not the exclusive form of their advocacy but part of a range of tactics including lobbying, political organisation and mobilisation, protest, and civil disobedience (Scheingold and Sarat, 2004: 17, 102). Due to its explicit political commitment, this 'radical cause lawyering' is

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seen as destabilising liberal democracy (Scheingold and Sarat, 2004: 99–100). For this reason, non-liberal cause lawyers tend to maintain low professional status and their career paths are also restricted.

This examination provides a comprehensive categorisation of the different fractions of cause lawyers according to their commitments and the strategies they employ, a general description of these strategies, and a localisation of the cause-lawyering category and its different fractions in relation to law, politics and the state. This map, however, marks the borders among these different entities too rigidly.

To begin with, the institutional division among the three branches of the state (executive, legislative and judicial) is seen as necessarily leading to operational antagonism between them. Thus, 'legal institutions independent enough to constrain state power' (Sarat and Scheingold, 1998: 22) are invoked in the context of a 'confrontation between law and state power' (Abel, 1998: 69, 90). It appears that the 'state' and the 'legal system' are (or should be) two clearly distinguished, internally unified, mutually external and excluding entities locked into a relation of confrontation, the outcome of which is the cancelling out of the factor 'power'.

Second, the conceptualisation of the Judiciary as external and adversarial to 'the state' constructs a binary relation between the legal and the political. This dichotomy is the key formative feature of the cause-lawyering perspective. Law is seen as a (potential) counterforce to (political/state) power (Abel, 1998). Under this optic, the broader question that cause lawyering brings to the fore is 'whether, and to what extent law can ever trump politics' (Sarat and Scheingold, 1998: 8). In this struggle, some authors seem to attribute primacy to the political (Maiman, 2005; Sarat and Scheingold, 1998, 2006), while others tend to see law as the predominant force: 'Because law constitutes the state, law can reconfigure state power. Because the state usually acts through law, the state can be constrained by law' (Abel, 1998: 69). This binary relation can lead to the fetishisation of either entity. Statements such as '[. . .] the indignities that the law itself had heaped on African Americans [. . .] But *Brown* changed everything' (Sarat and Scheingold, 2006: 4–5); and '[i]t is one thing to ask the state to live up to its own ideals and quite another to pursue transformation of those ideals' (Scheingold and Sarat, 2004: 20) betray an understanding of law (first quote) and the state (second quote) as unified entities, having their 'own' interests, motivations, will, objectives, capacities and psychology, and producing their 'own' effects. Echoing political realism and/or state-centric approaches to state theory (e.g. Evans et al., 1985; Krasner, 1978; Nordlinger, 1981; Skocpol, 1979), this approach effects a radical concealment of the social. The state and law are seen as anthropomorphic subjects who may have an effect on society but whose existence, form and operation are independent from it.

One of the main tasks of the legal profession is to police the boundary between the two territories (Sarat and Scheingold, 1998: 10). Cause lawyers often function as watchdogs, impuning state agencies for breaching the law (i.e. acting with the law and against the state) or seeking their collaboration to compensate for wrongs imposed by other parties (i.e. acting with the law and with the state). Nonetheless, the most crucial outcome of the law–politics dichotomy is the cause-lawyer category itself. This is expressed with brilliant clarity when cause lawyers are said to 'construct and transform the boundary between law and politics, fabricating political action with legal tools and legal action that

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responds to political necessity' (Sarat and Scheingold, 2005: 9). Indeed, it would be difficult to sustain cause lawyering as a distinct type of practice, and cause lawyers as a special professional category, without the assumption of separation (and, possibly, antagonism) between law and politics. The specifying characteristic of cause lawyering is that it introduces elements of 'politics' into the legal epistemic area and thus challenges the self-referentiality of law. It is precisely this mingling of two spheres of activity, with clearly separated codes and referenda of practice that differentiates cause lawyers from conventional ones and constitutes them problematic, i.e. subject to special categorisation and study. The field of cause-lawyering studies is premised on the law–politics dichotomy (and, characteristically, in societies where the law–politics relation is not one of definite externality, the 'cause lawyer' category becomes elusive – see, e.g. Willemez, 2005).

At a programmatic level, there are attempts to negotiate the sharp divide between politics and law (McCann and Dudas, 2006; Sarat, 2001; Sarat and Sheingold, 2005), but most often concrete analyses subscribe to it and reproduce it. Furthermore, the character of the dichotomy is not only regional – where law and politics occupy and function within different institutional territories; it is also operational – informing a division of cause lawyer practice between legal and political strategies and tactics (Marshall, 2006; Meili, 2005; Sarat and Scheingold, 2006; Scheingold and Sarat, 2004: 113–122). Indeed, one of the main dilemmas that appears in accounts of cause lawyers in action is the choice between a legal or a political tactic in promoting their cause – with the former category consisting of litigation and legislation, the latter ranging from fraternal lobbying of political personnel to grassroots direct action (e.g. Kilwein, 1998; Sarat, 2001; Scheingold, 2001). McCann and Silverstein (1998), while upholding the distinction, investigate possible complementarities between tactics; and Morag-Levine (2003) produced a detailed account of how inner organisational dynamics largely dictate tactical choices.

Extracted from politics, law gains its conceptual autonomy as a distinct sphere of special procedure and technical expertise. From this perspective, politics is antithetical to law and threatens to destroy law's autonomy (Harlow, 2002). This division of social practice into distinct fields of technical competence has broad resonance in parts of the literature, where, for instance, social movements are understood as goal-oriented entities led by professionals, and/or as networks of organisations with different – legal, political, cultural – expertise (e.g. Levitsky, 2006; Marshall, 2006). The result of this technocratic–instrumentalist outlook is the disappearance of the 'social' as a prefix to the 'movement'. While considerable attention is given to 'leaders', its popular basis or mobilisation may be missing from the study (Levitsky, 2006); or from the 'movement' altogether (McCann and Haltom, 2005; Meili, 2006). The conceptualisation of social practice as the sum of developments in neatly demarcated spheres of technical expertise (the legal, the political, the cultural, the financial, etc.) causes important distortions in social analysis. It tends to exclude social dynamics and substitute 'goal-achievement' efficiency for sociohistorical processes. The view of the social as fiefdoms of expertise threatens to banish society from its own analysis.

Third, the division between politics and law arguably derives from an even broader dualism: that between the state and society. This dichotomy does not occupy a clear space

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within the cause-lawyering literature, nor is it expressed explicitly. It can be deduced from the 'watchdog' role attributed to cause lawyers in relation to state infringements, and from discussions of 'co-optation' whereby a social issue becomes politicised when its advocates approach state personnel (Scheingold, 2001). This tendency to separate the state and society is more pronounced in Ziv (2001), where, in a framework of insider/outsider distinction, the mere entrance of 'outsider' cause lawyers into the physical space of Congress and their collaboration with its personnel is seen as the co-optation of a social issue by the state. Similarly, seeing protesters who disrupted a formal policy-making meeting as participating in 'institutional' channels (Marshall, 2006) indicates heavy reliance on the juridical distinction between state and society (and reads somewhat like Gay Fawkes participating in parliamentary politics). More generally, cause lawyers' efforts are said to be 'more successful when a confident government is engaged in social change and more often frustrated when a frightened government is desperately scrambling to retain power' (Abel, 1998, quoted in Meili, 2006: 135). The explicit distinction between weak and strong state present in this statement hinges on the question: in relation to whom is the state weak/strong? The statement seems to be implicitly juxtaposing a unitary, self-motivated and power-possessing government to a similarly uniform society. The value of the state–society dichotomy lies not in its explicit presence in the literature, but on how it informs the other two dichotomies – bringing law as an external and countervailing force to power, and even the strange conception of the Courts as siding with society, outside, and against 'the state'.

This quintessentially liberal arrangement of representations of the social universe seems to permeate cause-lawyering studies and their approach to social phenomena. Thus, the liberal conceptualisation of the state–society relation is transplanted into the structure–agency discussion, forcing it to perpetually relapse to a polarity between the restrictiveness of (social) structures and the free-will voluntarism of (individual) agents. Despite the weariness of some authors with the structuralism vs. constructivism pendulum (Sarat and Scheingold, 2005), the discussion has nowhere else to go. Similarly, the discussion of social movements is conditioned by the state–society dichotomy, recognising a movement only inasmuch as it is an entity from 'society' placing some petition before 'the state'. Furthermore, 'movements' invariably have an organisational form that reproduces the model of liberal democracy at a microlevel: they always have 'leaders' and consist of 'representatives' representing certain 'constituencies' – with the latter typically ignored in the analysis.

So, rather unexpectedly, it seems that we can decipher a fourth distinction underlining the overall outlook of cause-lawyering studies: that between 'liberal' and 'other'. Michalowski is probably the only scholar in the field to acknowledge this and make it explicit. He notes that the cause lawyer ideal type is a thoroughly liberal construct presupposing (a) a structural and ideological arrangement between state and society that permits some development of social movements outside the state; and (b) a juridicopolitical construction of the category of 'rights' that permits lawyers to question their meaning and implementation. Thus, the typological construct of the cause lawyer assumes the structure and ideology of a liberal democracy (Michalowski, 1998).

Accordingly, liberalism is the main line of division among cause lawyers, even if this results in grouping together entities as different as the ACLU and pro-business lawyers, or social democrats and Christian right lawyers (Scheingold, 2001; Scheingold and

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Sarat, 2004). The distinction between 'liberal' and 'other' is mainly an effect of the strategic and structural bias of the legal system towards a liberal sociopolitical framework – of a 'good fit' (Harlow and Rawlings, 1992) between the two. Characteristically, lawyers operating strictly within this context (e.g. pro-business lawyers) seem unable and reluctant to understand their activity as motivated by a 'cause' (Hatcher, 2005; Heinz et al., 2003; Southworth, 2005). It is a symptom of this 'good fit' that liberal cause lawyers are more likely to undertake legal action – seeing that their causes are perfectly compatible with existing law and can therefore relatively easily be served through the legal system. On the other hand, non-liberal cause lawyers are likely to have to resort, fully or partly, to extra-legal tactics as their causes do not match the bias of the legal system (Scheingold, 2001; Scheingold and Sarat, 2004).

The overarching dichotomy between 'liberal' and 'non-liberal' comes to apply to entire states and legal systems within which some form of cause lawyering is undertaken. The liberal-democratic character of Western states is taken for granted and informs the distinction between 'rule of law' and 'authoritarianism'. It largely explains the difference in cause lawyers' practice – seen often as offensive when operating in liberal juridicopolitical contexts, and as defensive when operating in an authoritarian ones (Sarat and Scheingold, 1998). In this context, the United States is set as the yardstick against which the settings and activities in 'exotic' countries are measured: 'This kind of legal practice was pioneered in the United States and has been imported and marketed abroad along with American notions of rights and ideas about the need for an autonomous legal order' (reference to Dezalay and Garth, 2002; Sarat and Scheingold, 2005: 2). While the factuality of such spatiotemporal 'imperialism' had already been strongly rebuffed (see Harlow and Rawlings, 1992), its conceptual influence (even though never expressed as blatantly as in the previous statement) forces analyses of cause lawyering in other countries to take a 'comparative' hue (e.g. Meili, 1998, 2005; Willemez, 2005. For an important exception see Lev, 1998). This precludes 'non-liberal' cases from assuming an autonomous, self-luminous analytical status, and often results in an overly limited and rigid analysis.

Interestingly, the elevation of the United States as the universal standard regarding the study of cause lawyering does not help the analysis of the US-based cases either, since the nature of its juridicopolitical context is never questioned. Despite the historical fluctuations that are noted at several levels (from 'globalisation', to Legal Service funding, to electoral trends), the US political and legal frameworks are suspended in a self-evident, eternal liberal present. Thus, the possible disappearance of society from the analysis may be coupled with the disappearance of history from the analysis as well, threatening to reduce cause-lawyering studies to a static account of an anthropological peculiarity.

It may be noted here that, at approximately the same time (1998) that cause lawyering was first introduced as a descriptive and analytical category, there was a strong tendency in sociolegal studies of the profession to contextualise lawyers as ethical and political actors, heavily involved in sociopolitical struggles throughout the profession's history (Cain, 1994; Dezalay, 1994; Hanlon, 1999; McCahery and Picciotto, 1995; Sugarman, 1993, 1994, 1996; also, Abel, 1989, 1999; McEvoy, 2011). By comparison, it seems that, in order to constitute the 'cause lawyer' as a distinct object of study defined by the (personal) ethicopolitical motivation driving some lawyers' work, cause-lawyering studies silenced the ideological, ethical, and political dimensions inherent in *all* lawyers' work.

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It is precisely in the interrelation between legal and political activity that this article seeks to intervene by sketching a possible path out of the dichotomy between law and politics. This intervention is not arbitrary since, as I will argue in the final part of this article, cause-lawyering studies seems both to demand a way out of the bipolar divide and yet be unable to map one out. However, true to this type of literature, my analysis begins with the findings, difficulties, and aporias that an empirical case study poses – albeit, a case study that does not seek to account for the 'life and days' of the cause lawyers involved, but focuses on the social dynamics with which their activity is imbued.

Community Resolutions: Law as Popular Politics (or Vice Versa)

Unspectacular, silent, and neglected by analysts, community resolutions have been, alongside the movement against the Iraq war, the most widespread and important gesture of popular resistance against counterterrorism policy in the United States. The first resolution was passed in January 2002 but remained a rather peripheral occurrence during that year. They took off, however, in early 2003, and increased exponentially over the next 18 months. They started slowing down from mid-2004, were less prevalent during the next year, and had practically ceased by 2006 (Table 1).

Over 400 communities and seven states (Alaska, California, Colorado, Idaho, Maine, Montana and Vermont) have passed resolutions, encompassing about 30% of the US population. Regarding their geographical expansion, the most noticeable trend is that the larger the population of a locality, the more likely it is to have passed a resolution. The 15 largest US cities had all passed resolutions by late 2004. While there is a strong trend connecting large urban centres with Democrat majorities, the state-wide resolutions in Republican strongholds, such as Alaska, Idaho, Montana and Colorado, strongly mitigate any sense of party affiliation as a determining factor.

The resolutions are legal documents produced by local government and are binding on its agencies. They express a certain rationale and direct local institutions to act accordingly. Being local law, the resolutions can be overruled at any moment by federal legislation, such as the Patriot Act, or executive orders (ACLU 2003c; Michaels, 2002). Their significance, therefore, lies in their political value as a declaration of opposition to the prescriptions and practices of the federal state.

A resolution is usually divided into two sections. The first (the 'whereas' section) identifies the issues that the resolution addresses and explains its rationale. The second ('therefore') section provides guidelines of conduct to various agencies under the control of the resolving authority. While the legally binding part of the resolution is the 'therefore' section, the 'whereas' section is of equal importance since it identifies the legal provisions and policing practices causing concern. The variety of issues addressed by the resolutions can be broken down into nine categories.

Table 2 indicates four central areas of popular concern and opposition:

(a) The executive's surveillance powers, especially as they are unchecked by the judiciary, regarding electronic surveillance; secret searches and seizures; and access to records.

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Table 1. Resolutions per month/year.

	January	February	March	April	May	June	July	August	September	October	November	December	Total
2002	1	–	1	2	2	2	1	–	–	5	2	6	22
2003	10	22	25	22	27	15	10	10	25	21	13	12	212
2004	11	15	18	23	23	11	7	5	8	2	6	4	133
2005	1	4	3	3	7	2	1	1	1	2	2	2	29
2006	–	4	1	–	1	–	–	1	–	–	1	–	8

ACLU: American Civil Liberties Union.
Source: Compiled from data in the ACLU website (http://www.aclu.org/national-security/community-resolutions).

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Table 2. Content and targets of the resolutions.

Categories of issues	Practice and/or legal statute opposed	Communities resolving against (examples)
1. Erosion of the principle '*probable cause of suspicion*' of crime for police to initiate activity	Patriot Act, s.218[1]; Attorney General's Guidelines of 30 May 2002[2]	Berkeley, Seattle, Baltimore, Alaska, Anchorage, Austin, Chicago, LA, Washington, DC, Jerome
2. Erosion of '*due process*' on judicial proceedings	Patriot Act, s.412[3]; 13 November 2001 Military Order[4]; Justice Dept. treatment of the 11 September 2001 investigation detainees; interception of attorney-client communications	Denver, Berkeley, Seattle, Hawaii, Baltimore, Austin, Chicago, LA, Wendell
3. *Social profiling* in law enforcement practice	11 September 2001 investigation; 'special registration' FBI programme for US-based Muslims	Ann Arbor, Denver, Berkeley, Seattle, Vermont, Alaska, Philadelphia, Austin, Chicago, LA, Maine
4. Amplified powers for *electronic surveillance* and absence of judicial supervision	Patriot Act, sections: 206,[5] 214,[6] 207,[7] 201–202,[8] 216[9]	Berkeley, Seattle, Vermont, Philadelphia, Ann Arbor, Austin, Chicago, LA, NY, Maine, Syracuse
5. Secret *searches and seizures*	Patriot Act, sections: 206, 207; 213,[10] 219[11]	Denver, Berkeley, Seattle, Hawaii, Baltimore, Vermont, Philadelphia, Ann Arbor, Austin, Chicago, LA, NY, Maine, Syracuse
6. Enhanced access to 'personal' *records*	Patriot Act, sections: 358,[12] 507–508,[13] 215,[14] 505[15]	Berkeley, Seattle, Hawaii, Vermont, Philadelphia, Ann Arbor, Austin, Chicago, LA, NY, Maine, Syracuse
7. *Domestic terrorism*: concern that the overbroad 'definition' may include all sorts of public political expression, bringing groups and individuals under draconian surveillance and penalisation on grounds of political activity	Patriot Act, s.802[16]	Berkeley, Seattle, Baltimore, Vermont, Philadelphia, Ann Arbor, Austin, Chicago, LA, Maine, Syracuse
8. Reversal of the requirement for compliance with petitions under the *Freedom of Information Act*	Attorney General's FOIA memorandum (US Attorney General, 2001)	Berkeley, Austin, Chicago, LA
9. Any furthering of the executive's surveillance and coercive powers	In anticipation of Domestic Security Enhancement Act (DSEA)	Baltimore, Austin, NY, Syracuse

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(b) The criminalisation of public political expression codified in the definition of domestic terrorism, and practiced through surveillance of political activity.
(c) Ethnic profiling.
(d) The absolute, arbitrary, 'extraordinary' coercive powers of the executive.

While there is broad consensus among resolutions regarding the powers and practices targeted in the 'whereas' sections, the 'therefore' sections divide them into two large camps. Some are mostly oriented towards overview. A representative example here is the resolution of Eugene (Oregon). It petitions the local office of US Attorney, the local Federal Bureau of Investigation (FBI) office and the Oregon State Police to report to the City Council monthly and publicly on the extent and manner in which they implement the Patriot Act. It especially asks for information on detentions, searches under s.213, electronic surveillance, monitoring of political and religious activities, obtaining educational records under s.507, and of library records and bookstore purchases under s.215. Other resolutions – the majority – direct local agencies (mostly but not exclusively law enforcement) to decline to either act on their own initiative or comply with federal agencies' calls to implement provisions to which the community has objected (e.g. Seattle, Hawaii, Baltimore, Alaska, Anchorage, Washington DC, Montana and Berkeley). Detroit is a characteristic example here. Its City Council directs the police department to refrain from enforcement of federal immigration laws, surveillance of political and religious activities, and cooperation with federal agencies when they do so. It also instructs the director of the library commission to notify users of public libraries that their records might be obtained by the FBI.

Every resolution bases its authority on the Constitution and the Bill of Rights – and then finds that this or that provision or practice contradicts it. This is often coupled with state constitutions and sometimes international law (e.g. Berkeley invokes the UN Human Rights Charter). Only in extremely rare cases (Tonasket, WA; a community of approximately 1000 people), the authority of the Constitution is seen as intermediate, and the citizenry ('People') named as the ultimate source of authority.

The disregard of the popular will shown by a popular movement, and its emphasis on legal justification, is rather baffling. Moreover, the legal provisions targeted by the resolutions are precisely those that were opposed by civil-libertarian lawyers' organisations. Characteristically, provisions that could be of immediate concern to local communities – like those in the Homeland Security Act 2002 (s.212–215) that provide impunity to 'critical infrastructure' corporations, even if their plants pose serious risk to personnel and neighbouring communities – are completely ignored by the resolutions. This indicates that civil-libertarian lawyers were involved in the resolutions movement and that their involvement was decisive in identifying the issues of concern and the means for addressing them, and in constituting the prevailing justification. Indeed, the contribution of lawyers was important in both operational and formative terms. From early on, ACLU was heavily promoting the resolutions' tactic, its lawyers were at the centre of local efforts, and its local offices provided consultation and guidance throughout the process. It monitored developments closely, and taxonimised resolutions according to their (binding or not) character, the specific issues they addressed, the date they were passed, the name and location of the resolving

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community, its population size, and its representative or senator (spreadsheets archiving the period between mid-2002 and late 2004 were made available to the author by ACLU). Its local, regional, and national directors issued numerous press releases (over 40 between early 2003 and mid-2005), repeatedly stressing the rationale of the movement (protection of civil liberties and the Constitution), its non-partisan character, and its nationwide scope (e.g. ACLU 2003a, 2003f, 2004a, 2004b, 2004c, 2004d, 2005a, 2005b). A dedicated, prominently displayed section of the ACLU website monitored and reported on developments on the resolutions' front nationwide and featured relevant communiqués. These activities helped to galvanise the resolutions' (self-) perception as a singular, nationwide movement rather than a sum total of mushrooming localised singularities, and contributed to delimiting (defining and limiting) this movement within a legal framework. Finally, and crucially in terms of enhancing the tactic and settling its agenda, the ACLU (2003d) produced a model resolution, suggesting the issues to be addressed, the reasons for doing so, and the way to do it. From there on, community resolutions acquire a high level of coherence, indicating that the ACLU's model was indeed used as a platform. In another document 'How to pass a community resolution' (2003b), the ACLU instructs those interested to (a) scan for groups and organisations in their community that would support such effort; (b) scan for friendly representatives and get to know how local decision-making procedures work, and seek advice from nearby communities that have passed resolutions; then (c) draft a proposal for the resolution and inform and mobilise the community; and finally, (d) start informal lobbying of local representatives (ACLU, 2003b). This process leaves little doubt that we are dealing with a genuine popular mobilisation that starts with the networking of concerned groups of citizens, then opens to the population at large, and only at the final stage does it approach official channels. It also shows the important contribution of the ACLU seen as a 'collective' cause lawyer.

Finally, 'resolving' was taken up by the federal state. From early March to late October 2003, 10 bills appeared in Congress, aiming to restrict the Patriot Act or specific provisions therein. Despite widely varying scope, these bills display clear alignment with the resolutions regarding the Patriot Act provisions they target (see Table 3).

Besides the relative coincidence in content, the timing of the bills also indicates that Congress members were responding to the resolutions movement. The first isolated attempt was introduced when the movement was starting to make its presence felt, and when the bulk of much bolder proposals appeared in Congress, the movement was at its peak. A salutation by Senators Leahy and Kennedy to communities that had resolved (US Senate, 2003; cited in Scarry, 2004: 18) makes the connection between popular mobilisation and official motions explicit. Nonetheless, the congressional response seems to considerably dilute the force of the movement's demands. Some of the most central points of popular opposition – the presidential Military Order,[21] the Attorney General's Guidelines (US Department of Justice, 2002), the unlimited detention of aliens, and the 'domestic terrorism' definition – were never taken up by Congress's resolutions. Furthermore, while popular resolutions sought to *abolish* legal provisions, the congressional bills only sought to *amend*, so that legal standards and review were introduced. And, while all community resolutions that we know of succeeded in becoming local law, all congressional motions failed.

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Table 3. Proposals for amending the Patriot Act.

Title	Provisions	Chamber; sponsorship	Date
1. 'Freedom to Read Protection Act'	Adds standards and overview to Patriot Act, s.215[17] in relation to libraries and bookstores	House; Independent	6 March 2003
2. 'Library and Bookseller Protection Act'	Exempts libraries and bookstores from the provisions of Patriot Act, s.215; and libraries from s.505[18]	Senate; democrat	23 May 2003
3. 'Surveillance Oversight and Disclosure Act'	Enables oversight of the FISA process	House; democrat	11 June 2003
4. 'Reasonable Notice and Search Act'	Subjects Patriot Act, s.213[19] to judicial and legislature overview	Senate; Democrat	11 June 2003
5. 'Library, Bookseller and Personal Records Privacy Act'	Subjects Patriot Act, sections215 and 505 to legal standards and introduces overview closures	Senate; Democrat	21 July 2003
6. 'Protecting the Rights of Individuals Act'	Same as previous; plus limitations on Patriot Act, s.215 and on pen/trap provisions	House; Rep-Dem	31 July 2003
7. 'Benjamin Franklin true Patriot Act'	Repeals many of the surveillance provisions of Patriot Act, sections 213, 216,[20] 215 and 505	House; Rep-Dem	24 September 2003
8. 'Patriot Oversight Restoration Act'	Imposes oversight for the Act in its entirety and adds provisions to the sunset list	Senate; Rep-Dem	1 October 2003
9. 'Security and Freedom Enhanced (SAFE) Act'	Brings FISA under pre-Patriot standards; imposes limitations on roving wiretaps and secret searches; excepts libraries from National Security Letters	Senate; Rep-Dem	2 October 2003
10. 'Security and Freedom Ensured Act'	Imposes limits to executive powers relating to secret searches, record access, and roving wiretaps; amends the definition of 'domestic terrorism'; adds provisions in the sunset list	House; Republican	21 October 2003

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Towards a Strategic-Relational Approach to Legal Dynamics?

This final section outlines the main elements of a 'strategic-relational' approach to law and briefly considers their implications for the discussion of the resolutions movement *and* the cause-lawyering literature. Before that, I note how the underlying premises of the latter hinder the analysis of the former.

By identifying the sociopolitical position of the ACLU, cause-lawyering studies offer an important insight regarding the agenda of the resolutions movement. Being a left-liberal organisation, it makes sense that that ACLU exclusively targeted provisions pertinent to privacy and civil liberties, and ignored, for example, issues of corporate responsibility raised by counterterrorism legislation. The Constitution is silent on such issues that are, nominally at least, irrelevant to a civil rights agenda and therefore not a main consideration for a liberal organisation.

Nonetheless, the resolutions' story raises a number of interesting questions that, tackled from within the analytical framework of cause-lawyering literature as it now stands, remain unaddressed. First, the apparent discrepancy between local/regional legislatures and Congress regarding the quality of their challenge to counterterrorism policy cannot be explained in a framework where the state is understood as a unified entity with a clearly defined perimeter. Similarly, if the state is seen as a power-wielding subject tending to infringe on constitutional rights, it is impossible to explain the success of the resolutions' movement in dictating legislation at the local level. Second, it is impossible to explain the timing of the resolutions with reference to cause lawyers' motivations, calculations, or 'consciousness' – that is, the main explanatory platforms in cause-lawyering studies – within a given juridicopolitical framework. Third, the success of cause-lawyering studies in explaining the character of the ACLU advocacy gives rise to a new question: why did a liberal organisation like the ACLU adopt seemingly alien tactics and resort to grassroots political mobilisation? Finally, the crucial question regarding the reasons a popular political mobilisation took an exclusively legal form, cannot be addressed from within a framework that strictly separates law from politics.

Regarding the latter, the cause-lawyering literature often sees law and politics as interconnected entities. Contributors acknowledge the presence of a 'political' element in law, usually in the form of legal system bias (Abel, 1998; McCann and Silverstein, 1998). Still, it does not address the political *character* of law. For this to occur, it is necessary to conceptualise *both* law and politics (and the state) as *social* phenomena.

Thus, it is necessary for cause-lawyering studies to break free from their liberal-pluralist underpinnings and adopt an alternative approach to law, politics and the state. A 'strategic-relational' approach to law could be such a solution and has been developed for over three decades in relation (mainly) to the state (esp. Jessop, 1982, 1985, 1990, 2008; Poulantzas, 1976, 1978). I present here a brief sketch of my particular version of it.

In the first place, 'politics' does not refer to a specific expertise or profession but is the process of instituting, organising, directing, and administrating society. As such, the political process is co-extensive with society and involves everyone therein (Castoriadis, 1965: 187, 1980: 242, 1983a: 314, 1983b: 281–282, 1994: 332–333; Contogeorgis, 1985: 13–24). This involvement is highly differential as the state claims a monopoly over political functions. Political production is initiated in society as social forces engage in

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dynamic relations that aim to define social organisation according to their interests, morals, and worldviews. The state is a key entity in the field of social dynamics. It is the only entity that can formalise policies and render them obligatory. This makes it a key political agency but also a strategic terrain in social conflict. At the same time, struggles over policy contribute to the (re)shaping of the state's institutional materiality and the modalities of its power. The state is a social relation whose power is a condensation of social dynamics, mediated through the institutionality of the state mechanism (Jessop, 2008: 125–126; Poulantzas, 1978: 128–129).

Crucial in defining the specific form of the state in a particular period is the interrelation between:

1. The state apparatus and state power.

As an institutional ensemble, the state neither possesses nor generates 'its own' power. 'Power' refers to the capacity of social forces to advance their interests in opposition to the capacity of countervailing forces to advance theirs. Nonetheless, power can only exist insofar as it materialises in practices and institutions. Hence, state apparatuses are sites of contestation and the elaboration of power relations among social forces (Jessop, 2008: 45; Poulantzas, 1973: 129, 1978: 44–45, 147–152).

2. State structure and strategy.

State actors are essential in elaborating the political strategies of social forces, while at the same time the configuration of state structures favours some kinds of strategy and hinders others. Conversely, political strategies (re)shape the state's structural assemblage so that at any given moment state structure is the condensed outcome of past strategies in interaction with developing ones (Jessop, 1985: 124–125, 1990: 260–261, 2008: 44–45; Poulantzas, 1978: 136–142).

3. State and society.

Politics is the constitutive element of society inasmuch as it condenses the overall objective of communal living through an antagonistic process – a process whose content, meaning, and limits coincide with those of 'society'. The state signifies a differentiation between the political process and other social activities, circumscribing the former to the statal sphere of competence, thus rendering the state separate from society. Thus, statehood constitutes a radical division of political labour (Castoriadis, 1989: 408; Contogeorgis, 1985: 15–24, 2007: 26–28). Instituted as identical to the public sphere, the state is represented as the expression of the general interest, in juxtaposition to the individual interests that rule the private sphere of ('civil') society (Bratsis, 2007: 27–50). Its claim to monopolise institutive authority is based on the twin claim to both represent the 'general interest' and possess the knowledge of political science (Castoriadis, 1957: 51–52, 1983b: 274–277; Poulantzas, 1978: 218–219). On this basis, the state is paradoxically instituted through the claim to represent the whole of society, while being only a part of it. It thus has to synthesise the often conflictual demands, programmes, and strategies of different sectors of society as they enter its uneven institutional terrain (Jessop,

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2008: 7–8, 79). This constitutes the state as a terrain of social struggle, which in turn affects the lines of division between the state and its 'outside', (re)defining its jurisdictional limits and spheres of competence. It also precludes the state mechanism from becoming fully unified; and state power from becoming fully coherent.

The historically specific articulation among these relations constitutes the 'state form'.

In this context, law is neither separate nor external to the state or politics; it is rather a (doubly) codified expression of social dynamics. As it constitutes a central means by which society is instituted, organised, directed and administered, law is essentially political. Furthermore, law is not an independent force, but a work of the state. While it is only part of social practice, it, paradoxically, claims to embody the good of the entire society. This makes law a recipient of conflicting demands, hence the (uneven) terrain of social struggle. Importantly, while only a part of state activity, law largely sets out the architecture of state mechanisms, defines the modalities, scope and limits of state activity, thus codifying relations within the state and between the state and society. Thus, law can be seen as constituting a 'design' of the state mechanism and a blueprint for exercising state power.

In short, as state power is a condensation of the balance of social forces through the materiality of the state mechanism, and the process of legal production and distribution is monopolised by the state, law is a codification of *social* dynamics. Furthermore, by setting out the institutional design of the state, and the blueprint of its powers, law also constitutes a peculiar codification of *state* dynamics. Within the state, it forms a particular structure and logic, with distinctive institutional cultures, rituals, histories, jargons and biases and, of course, a distinct state 'branch' dedicated to its production, and another to its distribution. So, law is a political activity referring to the institution, organisation, direction and administration of society, *and* of the state. Certainly, as legal pluralism demonstrates, society 'outside' the state is capable of creating normative orders, possibly even ones that can be qualified as 'law' (e.g. Santos, 1991, 2002; Teubner, 1997; for a critical review of pluralist positions see Roberts, 2005). Nonetheless, this social law seems able to survive and flourish only to the extent that it is somehow sanctioned by the state: encouraged, exploited, co-opted, overviewed, guaranteed, or simply tolerated by it, according to strategic calculations of forces 'within' the state. Pluralist analyses provide a powerful reminder that law is primarily a specific form of organising the norms that bind communal living – that is, a quintessentially political work. Inasmuch the state (also, like law, a social production) monopolises the political process, it will also monopolise the legal one.

This conceptualisation of law has important implications for our understanding of cause lawyers and their activities.

1. All lawyers are political actors. Their activity pertains to the institution, organisation, direction and administration of society, and has differential impact on society, fostering both stability and change.
2. All lawyers' activity is conditioned by social dynamics since the latter is codified in the state form and the legal framework, and/or as it springs up in society outside the juridico-political institutional ensemble.
3. Cause lawyers differ from their more 'conventional' colleagues to the extent that their activity is conditioned by social, state and legal dynamics, while

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conventional lawyers' activity is conditioned almost exclusively by legal and state dynamics. This could help escape the conundrum of attributing decisive importance to cause lawyers' self-consciousness on the one hand (McCann and Dudas, 2006; Southworth, 2005), while, on the other hand, labelling them 'cause lawyers' even when they – self-consciously – reject the label (Southworth, 2005; Willemez, 2005).

4. Social dynamics not only provide the causes (and often the 'clients') for cause lawyers' advocacy, they also largely condition the extent to which cause lawyering will be taken up, and what political orientations will predominate in each conjuncture.
5. All lawyers are state personnel. Regardless of whether they are part of its formal structure; or where their specific affiliations within the formal system lay (these vary according to class, gender, age, race, etc.); their activity tends to maintain and reproduce the state relation. They participate in the statist ideology, hence they rarely question the division of political labour between rulers and ruled. They are prone to maintain the continuity of the state apparatus as they largely share statal notions of the common good, and are consequently suspicious of self-organisation and rank and file initiatives that refuse to enter the strategic terrain of the state (Jessop, 2008: 123–124; Poulantzas, 1976, 1978: 154–158). Perhaps this explains why, throughout the literature, the maximum aspiration of all movements that cause lawyers support is a more comfortable place within the given social order.
6. Moreover, lawyers are legal personnel. Their subscription to state ideology occurs through legal ideology. They tend to conceptualise the rights-bearing individual as predating the social world, with which it establishes contractual relations. Thus, however adversarial to the state their practices may be, their overall thrust is to promote legal rights – and, with them, a certain platform for the legitimacy of the social order. In this context, they conceptualise social conflict as legal dispute. Furthermore, they tend to conceptualise the process of social institution as determined once and for all by law (especially the Constitution).
7. The peculiar position of cause lawyers as political actors stems from their legal expertise, permitting them to translate the demands of different social forces into legal code and thus channel them into the institutional ensemble of the state. Their expertise is crucial not only in representing social demands in the state but also in articulating them in the first place, as they can calculate the opportunities and restrictions that the strategic selectivities of the legal framework will bring. Defining the demand might even constitute the client who makes it. Therefore, it is possible that a social cause – and even a subject – is largely defined through its 'representation' by cause lawyers within the legal system (see Meili, 2006; also Stein et al., 2010; Ziv, 2001).
8. The above points mean that lawyering is interwoven with the state form. First, cause lawyers pick their causes from the field of social dynamics, which is conditioned by the articulation between the state and its social 'outside'. The very possibility of articulating demands through the legal system means that the state acknowledges certain spheres as its competency. Second, the legal framework is

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also characteristic of the state form. It is co-determined by the codification of social dynamics into state dynamics, which then enter the legal structure. Thus, the legal framework displays strategic selectivities that largely define what causes and types of advocacy are privileged or marginalised. This informs lawyers' strategic calculations.

9. Its pertinence to the state form means that the co-determinants of lawyering are not suspended in an eternal liberal present, but are socio-historically specific. Together with the legal and state structures that condition them, they change according to shifts in social dynamics and their articulation in and through the state and law.
10. Finally, it should be obvious that since lawyers are political actors and not mere dupes of structures and dynamics, their activity affects the state form. While the advocacy of 'conventional' lawyers tends to preserve and galvanise prevailing social arrangements, the effect of cause lawyers is more varied. Their advocacy may be inscribed into, or seek to advance, a given state strategy by altering the content and/or texture of the legal framework (e.g. New Deal and social-democratic lawyering); or, it may do the opposite, using and maintaining the legal framework against an unfolding state strategy (e.g. human rights advocacy against authoritarian statism). By advancing the demands of different social forces and subjectivities, cause lawyers organise them into strategies addressed to the state. They introduce elements of social struggle into the uneven strategic terrain of the state, thus impacting the balance of forces in society. In doing so, they also alter the limits of what can be achieved through, and accommodated in, the legal framework. In short, lawyers' activity is inscribed within social antagonism and thereby affects the state form. Although these effects are largely preconditioned by the state form itself, they are often unintended, uneven, contradictory, or mutually cancelling. Their overall force depends on their co-option with prevailing state strategies and/or the ascendancy of forces in the field of social dynamics.

Through this lens, the resolutions movement is an instant in social antagonism and, as such, intrinsically related to the state form. The resolutions were a reaction to a sudden hardening of state coercive policy and a significant amplification of police powers over the population, as expressed in specific legal provisions. The 'enemy combatant' treatment, where the executive can do anything it chooses with the captured subjects; the Patriot Act provisions that inscribe the totality of the population as suspects of uncommitted crimes into a relation of surveillance targeting all its activities; the codification of practices like blanket surveillance and secret searches and seizures in the legal framework, all raise the question of whether the contemporary US polity can be adequately described by any combination of the terms 'liberal' and 'democratic' (Boukalas, 2008).

The adoption of the resolutions by local/state legislatures places them firmly 'inside' the state institutional ensemble, and indicates cause lawyering as conditioned by and implicating state dynamics. The situation here is puzzling: while a host of legislatures take up popular demands, they are watered down at the moment they enter the national

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legislature and are defeated therein. While the community resolutions ask Congress to repeal legal powers, the Congress resolutions seek only to amend them. Congress affirms the primary move effectuated in the legislation referring to the balance of power between the state and the population, and (partially) addresses the secondary move – the sharing of this augmented power by state apparatuses. Congress essentially seeks to incorporate draconian powers into the rule of law framework, with the underlying assumption that this would render them unproblematic. The watering down of popular demands as they climb up the institutional ladder can be seen as symptomatic of the rigid structural limitations that top-level state apparatuses impose on popular political strategies, and of the class affiliation of top state personnel and its incorporation within statist ideology. This indicates that a more nuanced approach to the state than that informing much of cause-lawyers literature is needed. Rather than an internal arrangement among three mechanisms cancelling each other out, its conceptualisation as an expression of social dynamics permits its understanding as a complex field, with multiple power centres that may often be pulling in different directions. Thus, both intrabranch division and interbranch synergy are possible. Furthermore, both the state mechanism and state functions apply to different scales of political geography, providing the possibility of clashes and alliances on different scales within and across different centres.

As to why a liberal organisation diverted its tactics, and resorted to popular mobilisation, the ACLU may not have opted for such strategy, but rather were forced to it, as the Courts were displaying an almost univocal reluctance towards challenges to counterterrorism measures and practices, thus restricting the ACLU's capacity to manoeuvre within the legal system. Until at least the July 2004 Supreme Court ruling (acknowledging *habeas corpus* for 'enemy combatants'), the ACLU's numerous motions against counterterrorism measures and practices (24 lawsuits between only September 2001 and October 2002) were typically failing in the courts. The few cases where District Courts vindicated the ACLU's motions (December 2003, New York and California District Courts) were struck down at the Court of Appeals. This indicates a synergy among state branches (executive and judiciary); and a 'hardening' of the state form, which seems intolerant even to liberal/systemic demands. Ironically, it seems to reverse the reason that forced ACLU, in the early 20th century, to adopt litigation instead of grassroots mobilisation (see Zackin, 2008). Paradoxically, since its involvement in building a grassroots movement, the ACLU can almost be seen as the party of opposition to 'homeland security', as the Democrats supported the regime – and still do. This poses more questions regarding the pluralism of the polity and affirms the possibility of interparty synergy to state strategy.

Whilst the above points to the importance of state dynamics in conditioning the activity of cause lawyers and its effects, state dynamics are a (central, particularly codified) expression of social antagonism, and this is the ultimate field of reference of cause lawyers' activity. Consistent with this, we note that the timing of the resolutions movement is strongly related to the movement against the Iraq war. Although the first resolutions were passed before the anti-war protests, it is clear that the latter gave momentum to the former by challenging the consensus on 'war on terrorism', revitalising social opposition, and providing it with a focal demand. Characteristically, the moment the resolutions movement took off (early 2003) coincides with the moment the anti-war movement broke through. Conversely, the resolutions decelerate dramatically at the moment of the democrat electoral defeat (late 2004).

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Similarly, in order to provide a tentative (and partial) answer to the question that has been nagging this essay, namely why a political protest was expressed exclusively in legal terms, we have to look outside the cause lawyers' activity as such, and into the broader field of social dynamics. The protest took this form because a related social mobilisation, the anti-war marches, had been outlawed by the courts and faced an intense police violence (pointing again to interbranch synergy and a hardening of the state form; e.g. ACLU, 2003e; ACLU New York, 2003). While the anti-war movement granted momentum to the resolutions, it may have also served as a warning, making popular challenges to counterterrorism opt for an institutional strategy, and avoid the high cost entailed in public demonstrations. In short, popular mobilisation had to be expressed in a context where street protest was forbidden.

To be sure, not much of this is completely foreign to the cause-lawyering literature or to sociolegal studies more broadly. Sociopolitical dynamics are often seen as conditioning cause layers' tactics, strategies, causes, the predominant kind of cause lawyering, and even its very existence – seen in the catalytic effect of the 1960s movements for the rise of left advocacy (Den Dulk, 2006; Kilwein, 1998; Marshall, 2006; Meili, 2006; Sarat and Scheingold, 2006; Scheingold, 1998); and the 1980s conservative institutional counterattack (Hatcher, 2005; also Heinz et al., 2003). Furthermore, it can be seen as overdetermining the legal process (Abel, 1998) and defining the platform for its legitimacy (Sarat, 2001). Similarly, state–political dynamics are seen as conditioning the (prevailing) kind of cause lawyering (Sarat, 2001); their tactics and the shape of their organisations (Zackin, 2008); and overdetermining the type of judicial personnel (e.g. through presidential appointments), and the shape of the professional structures within which cause lawyers operate (e.g. Legal Service/Aid) and, consequently, access to justice (Kilwein, 1998; Trubek and Kronsberger, 1998; also McVea, 2004; Sommerlad, 2004).

Regarding state dynamics, the possibility of interbranch synergy and intrabranch division is clearly acknowledged (Meili, 1998; for an excellent discussion, Tezcür, 2009). More importantly, the configuration of the state mechanism, the modalities by which it exercises powers, and its fields of competence (more or less what I would call the *state-form*) have been seen as affecting the overall position of the judiciary within the state system (Harlow, 2002; also Lev, 1998), and also the structure of lawyers' professional contexts and, through it, the possibilities available to cause lawyers (Cummings, 2006). In the most comprehensive relevant account, Michalowski describes a chain of determinacy from the state form to the 'law form' involving the content of law and also the position, role, structure, and practice of the legal system (on this point, see also Harlow, 2002; Scott, 2000; Williams, 2006); to the activity of lawyers, and even the status of specific sub-categories (Michalowski, 1998). Similarly, McCann and Dudas (2006) identify New Deal politics – with the associated expansion of the judiciary and state bureaucracy and the rise of progressive policy and social coalitions it effectuated – as the single most important factor underpinning the rise of cause lawyering and defining its preeminent form. Furthermore, the political implications of cause lawyers' activity is not left unnoticed, nor is their attachment to specific social forces – therefore mitigating the danger of their conceptualisation as an 'independent', professional category (Lev, 1998; Willemez, 2005).

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Moreover, the ultimate impact of cause lawyers' activity is conceived as an incorporation of social struggle into a legal technocratic framework (Sarat, 2001; Scheingold, 1998), having the overall effect of forging and maintaining the legitimacy of a specific type of social arrangement and integrating the population within it (Meili, 2005; Michalowski, 1998). While the latter points to my discussion of lawyers as state personnel, the observation – in relation to rights – that the principle of fundamental law is incompatible with that of popular sovereignty (Meili, 2005: 411) pertains to a discussion of legal ideology. Finally, the promotion of right-wing demands through a rights tactic (Den Dulk, 2006) may indicate the legal framework as a terrain of social struggle, whose unevenness becomes apparent in the discussion of neo-liberal cause lawyers (Hatcher, 2005; Southworth, 2005).

So, in many ways, cause-lawyering studies address most of the issues I have raised. Nonetheless, this occurs in a piecemeal and haphazard manner dictated by the actuality of case studies. It is often seen as relating to the peculiarities of 'non-liberal' countries. It is usually contradicted by, and subjected to, the dominant liberal conceptualisation. It needs to be extracted by interpretation as it is rarely theorised or developed analytically. When some serious attempt to that end is undertaken, the results can be disappointing (e.g. unable to distinguish between state form, strategic alliance of social forces, and the political scene McCann and Dudas (2006) collapse the 'New Deal' into a long-term 'electoral coalition'). In other words, the discussion of law as politics is scattered, and remains at the peripheral vision of cause-lawyering studies. Yet the urge to address it is strongly present: both the multitude of references and their scope leave little doubt of this.

It is for this reason that the present article attempts a 'strategic intervention' into the unfolding dynamics of cause-lawyering studies by suggesting a way of making sense of lawyering as an activity pertinent to the field of social dynamics and mediated by the materiality of the state and law. These are understood neither as subjects nor as separate institutional territories but as social relations – as differing institutional codifications of social dynamics. In response to some key analytical and conceptual implications of the resolutions movement, this article has opted for a strategic-relational approach that highlights the multiple and shifting relations of co-determination among politics and law, without collapsing them into one another. This perspective not only offers a way to a clearer understanding of the sociopolitical 'context' of cause lawyering but also, by doing so, could promote a much deeper understanding of cause lawyering, its conditions, and its implications at any given conjuncture. Possibly, it could help cause-lawyering studies map out the conceptual framework that it often seems to be striving for.

Author's Note

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Notes

1. Introduces Foreign Intelligence Surveillance Act 1978 (FISA) rules and standards of surveillance to domestic counterterrorism investigations.

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2. Encourage excessive surveillance and infiltration of political and religious groups and organisations.
3. Authorises indefinite incarceration of non-citizens at Attorney General's discretion.
4. Institutes a parallel, exclusively controlled by the executive, system of detention and justice for specifically designated (by the president) terrorism suspects.
5. Authorises roving search and wiretap under FISA rules for criminal cases.
6. FISA rules for pen/trap surveillance.
7. Time extension of FISA electronic surveillance.
8. Expand wiretap authority to broadly defined 'terrorism' and 'computer fraud', respectively; diminish legal standards and judicial overview.
9. Roving and Internet-applicable pen/trap surveillance; diminishes legal standards and overview.
10. Expands the authority to conduct secret search and seizure and diminishes standards and overview.
11. Provides for interjurisdictional search and seizures, with diminished standards and impossible overview.
12. Access to financial records.
13. Access to educational records.
14. FISA expansion to all records and 'tangible things'.
15. The National Security Letters (FBI self-issued subpoenas) provision.
16. Defines the (novel) crime of 'domestic terrorism'.
17. The 'access all records' FISA amendment.
18. s.505 expands the types of organisation from which record access can be sought on the basis of National Security Letters.
19. Permits searches at premises and seizures to be kept secret for a 'reasonable amount of time'.
20. Expands wiretapping powers in the Title III context.
21. Military Order: *Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism*, 13 November 2001 (66 Fed. Reg. 57,833).

References

Abel R (1989) Between market and the state: the legal profession in turmoil. *Modern Law Review* 52(2): 285–325.

Abel R (1998) Speaking law to power: occasions for cause lawyering. In: Sarat S and Scheingold SA (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 69–117.

Abel R (1999) The politics of professionalism: the transformation of English lawyers at the end of the twentieth century. *Legal Ethics* 2: 131–147.

ACLU (2003a) *Civil liberties protest resolutions reach milestone; ACLU Hails 50th City to Resist Intrusive Federal Actions. ACLU*, 28 February.

ACLU (2003b) *How to Pass a Community Resolution. ACLU*, 20 May.

ACLU (2003c) *Independence Day 2003. ACLU*, 3 July.

ACLU (2003d) *Draft Resolution. ACLU*, 14 July.

ACLU (2003e) *Freedom Under Fire: Dissent in Post-9/11 America. ACLU*, 25 August.

ACLU (2003f) *Pro-Civil Liberties Local Government Resolutions Now Top 200, Milestone Vote Comes on Eve of Patriot Act Second Anniversary. ACLU*, 24 October.

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ACLU (2004a) *Largest City to Date Passes Community Resolution; Los Angeles Rejects Bush's Call to Continue Civil Liberties Curtailment. ACLU*, 21 January.

ACLU (2004b) *Largest City in America Passes Pro-Civil Liberties Resolution; New York City Becomes 250th to Join Call to Keep America Safe and Free. ACLU*, 4 February.

ACLU (2004c) *ACLU Welcomes Maine Statewide Patriot Act Resolution; Becomes Fourth State to Vote for Civil Liberties. ACLU*, 23 March.

ACLU (2004d) *Pittsburgh City Council Rebuffs Bush Patriot Act Misinformation Tour; Pro-Civil Liberties Resolutions Now Cover 50 Million Americans. ACLU*, 26 April.

ACLU (2005a) *ACLU Applauds Colorado's Call to be Safe and Free; Nationwide Patriot Act Resolution Movement Still Gaining Momentum. ACLU*, 17 May.

ACLU (2005b) *Local Communities Join ACLU to Urge Patriot Act Reform in New Phase of National Campaign. ACLU*, 17 June.

ACLU New York (2003) *Arresting Protest. ACLU*, 28 April.

Boukalas C (2008) Counterterrorism legislation and the US state form: authoritarian statism phase III. *Radical Philosophy* 151: 20–31.

Bratsis P (2007) *Everyday Life and the State*. London, UK: Paradigm.

Cain ME (1994) The symbol traders. In: Cain ME and Harrington CB (eds) *Lawyers in a Postmodern World: Translation and Transgression*. Buckingham, UK: Open University Press, pp. 15–48.

Castoriadis C (1957) On the content of socialism. In: Curtis DA (ed) *The Castoriadis Reader*. Oxford, UK: Blackwell, 1997, pp. 40–105.

Castoriadis C (1965) Autonomy and alienation. In: Curtis DA (ed) *The Castoriadis Reader*. Oxford, UK: Blackwell, 1997, pp. 177–189

Castoriadis C (1980) From ecology to autonomy. In: Curtis DA (ed) *The Castoriadis Reader*. Oxford, UK: Blackwell, 1997, pp. 239–252.

Castoriadis C (1983a) The logic of magmas and the question of autonomy. In: Curtis DA (ed) *The Castoriadis Reader*. Oxford, UK: Blackwell, 1997, pp. 290–318.

Castoriadis C (1983b) The Greek polis and the creation of democracy. In: Curtis DA (ed) *The Castoriadis Reader*. Oxford, UK: Blackwell, 1997, pp. 267–289.

Castoriadis C (1989) Done and to be done. In: Curtis DA (ed) *The Castoriadis Reader*. Oxford, UK: Blackwell, 1997, pp. 361–417.

Castoriadis C (1994) Radical imagination and the social instituting imaginary. In: Curtis DA (ed) *The Castoriadis Reader*. Oxford, UK: Blackwell 1997, pp. 319–337.

Contogeorgis G (1985) *Political System and Politics*. Athens, Greece: Polytypo (in Greek).

Contogeorgis G (2007) *Democracy as Freedom*. Athens, Greece: Patakis (in Greek).

Cummings SL (2006) Mobilisation lawyering: community economic development in the Figueroa Corridor. In: Sarat S and Scheingold SA (eds) *Cause Lawyers and Social Movements*. Stanford, CA: SUP, pp. 302–335.

Den Dulk KR (2006) In legal culture, but not of it: the role of cause lawyers in evangelical legal mobilisation. In: Sarat S and Scheingold SA (eds) *Cause Lawyers and Social Movements*. Stanford, CA: SUP, pp. 197–219.

Dezalay Y (1994) The forum should fit the fuss: the economics and politics of negotiated justice. In: Cain M and Harrington C (eds) *Lawyers in a Postmodern World: Translation and Transgression*. Buckingham, UK: Open University Press, pp. 155–182.

Dezalay Y and Garth BG (2002) *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States*. Chicago, IL: UCP.

Downloaded from sls.sagepub.com at PENNSYLVANIA STATE UNIV on May 10, 2016

Evans PB, Rueschemeyer D and Skocpol T (1985) *Bringing the State Back In*. Cambridge, UK: CUP.

Hanlon G (1999) *Lawyers, the State and the Market: Professionalism Revisited*. Basingstoke, UK: Macmillan.

Harlow C (2002) Public law and popular justice. *Modern Law Review* 65(1): 1–18.

Harlow C and Rawlings R (1992) *Pressure Through Law*. London, UK: Routledge.

Hatcher L (2005) Economic libertarians, property, and institutions – linking activism, ideas, and identities among property rights advocates. In: Sarat A and Scheingold SA (eds) *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*. Stanford, CA: SUP, pp. 112–146.

Heinz JR, Southworth A and Paik A (2003) Lawyers for conservative causes: clients, ideology, and social distance. *Law and Society Review* 37(1): 5–50.

Jessop B (1982) *The Capitalist State: Marxist Theories and Methods*. Oxford, UK: Robertson.

Jessop B (1985) *Nicos Poulantzas: Marxist Theory and Political Strategy*. London, UK: Macmillan.

Jessop B (1990) *State Theory: Putting the Capitalist State in its Place*. Cambridge, UK: Polity.

Jessop B (2008) *State Power: A Strategic-Relational Approach*. Cambridge, UK: Polity.

Kilwein J (1998) Still trying: cause lawyering for the poor and disadvantage in Pittsburgh, Pennsylvania. In: Sarat A and Scheingold SA (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 181–200.

Krasner SD (1978) *Defending the National Interest: Raw Materials Investments and US Foreign Policy*. Guildford, UK: Princeton University Press.

Lev D (1998) Lawyers' causes in Indonesia and Malaysia. In: Sarat A and Scheingold SA (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 431–452.

Levitsky SR (2006) To lead with law: reassessing the influence of legal advocacy organisations in social movements. In: Sarat A and Scheingold SA (eds) *Cause Lawyers and Social Movements*. Stanford CA: SUP, pp. 145–163.

Maiman RJ (2005) Asylum law practice in the United Kingdom after the human rights act. In: Sarat A and Scheingold SA (eds) *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*. Stanford CA: SUP, pp. 410–424.

Marshall AM (2006) Social movement strategies and the participatory potential of litigation. In: Sarat A and Scheingold SA (eds) *Cause Lawyers and Social Movements*. Stanford, CA: SUP, pp. 164–181.

McCahery J and Picciotto S (1995) Creative lawyering and the dynamics of business regulation. In: Dezalay Y and Sugarman D (eds) *Professional Competition and Professional Power: Lawyers, Accountants and the Social Construction of Markets*. London, UK: Routledge, pp. 238–276.

McCann M and Dudas J (2006) Retrenchment and resurgence? Mapping the changing context of movement lawyering in the United States. In: Sarat A and Scheingold SA (eds) *Cause Lawyers and Social Movements*. Stanford, CA: SUP, pp. 37–59.

McCann M and Haltom W (2005) ATLA Shrugged: why personal injury lawyers are not public defenders of their own causes. In: Sarat A and Scheingold SA (eds) *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*. Stanford, CA: SUP, pp. 425–462.

McCann M and Silverstein H (1998) Rethinking law's 'allurements': a relational analysis of social movement lawyers in the United States. In: Sarat A and Scheingold SA (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 261–292.

McEvoy K (2011) What did lawyers do during the war? Neutrality, conflict, and the culture of quietism. *Modern Law Review* 74(3): 350–384.

Downloaded from sls.sagepub.com at PENNSYLVANIA STATE UNIV on May 10, 2016

McVea H (2004) Legal disciplinary practices – who needs them? *Journal of Law and Society* 31(4): 563–577.

Meili S (1998) Cause lawyers and social movements: a comparative perspective on democratic change in Argentina and Brazil. In: Sarat A and Scheingold SA (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 487–522.

Meili S (2005) Cause lawyering for collective justice: a case study of the amparo colectivo in Argentina. In: Sarat A and Scheingold SA (eds) *The Worlds Cause Lawyers Make – Structure and Agency in Legal Practice*. Stanford, CA: SUP, pp. 383–409.

Meili S (2006) Consumer cause lawyers in the United States: lawyers for the movement or a movement unto themselves? In: Sarat A and Scheingold SA (eds) *Cause Lawyers and Social Movements*. Stanford, CA: SUP, pp. 120–141.

Michaels CW (2002) The USA Patriot Act: one year later. *Truthout*, 14 November.

Michalowski R (1998) All or nothing: an inquiry into the (im)possibility of cause lawyering under Cuban socialism. In: Sarat A and Scheingold SA (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 523–545.

Morag-Levine N (2003) Partners no more: relational transformation and the turn to litigation in two conservationist organizations. *Law and Society Review* 37(2): 457–509.

Nordlinger EA (1981) *On the Autonomy of the Democratic State*. Cambridge, MA: Harvard University Press.

Poulantzas N (1973) *Political Power and Social Classes*. London, UK: NLB.

Poulantzas N (1976) Les Transformations Actuelles de l'Etat, la Crise Politique and la Crise de l'Etat. In: Poulantzas N (ed) *La Crise de l'Etat*. Paris, France: PUF, pp. 19–58.

Poulantzas N (1978) *State, Power, Socialism*. London, UK: NLB.

Roberts S (2005) After government? On representing law without the state. *The Modern Law Review* 68(1): 1–24.

Santos BDS (1991) The postmodern transition: law and politics. In: Sarat S and Kearns TR (eds) *The Fate of Law*. Ann Arbor, MI: University of Michigan Press, pp. 79–118.

Santos BDS (2002) Toward a new legal common sense: law, globalization and emancipation. London, UK: Butterworths LexisNexis.

Sarat A (2001) Cause lawyers, organised bar, and capital punishment in the US. In: Sarat A and Scheingold SA (eds) *Cause Lawyering and the State in a Global Era*. Oxford, UK: OUP, pp. 186–210.

Sarat A and Scheingold SA (1998) Cause lawyering and the reprodiction of professional authority: an introduction. In: Sarat A and Scheingold SA (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 3–28.

Sarat A and Scheingold SA (2005) The dynamics of cause-lawyering-constraints and opportunities. In: Sarat A and Scheingold SA (eds) *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*. Stanford, CA: SUP, pp. 1–34.

Sarat A and Scheingold SA (2006) What cause lawyers do for, and to, social movements: an introduction. In: Sarat A and Scheingold SA (eds) *Cause Lawyers and Social Movements*. Stanford, CA: SUP, pp. 1–34.

Scarry E (2004) Resolving to resist: local governments are refusing to comply with the patriot act. *Boston Review*. February/March (http://bostonreview.net/BR29.1/scarry.html; last accessed: 1 April 2013)

Scheingold S A (1998) The struggle to politicise legal practice: a case study of left-activist lawyering in Seattle. In: Sarat A and Scheingold SA (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 118–148.

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Scheingold S A (2001) Cause lawyering and democracy in transnational perspective. In: Sarat A and Scheingold S (eds) *Cause Lawyering and the State in a Global Era*. Oxford, UK: OUP, pp. 382–405.
Scheingold S A and Sarat A (2004) *Something to Believe in: Politics, Professionalism, and Cause Lawyering*. Stanford, CA: SUP.
Scott C (2000) Accountability in the regulatory state. *Journal of Law and Society* 27(1): 38–60.
Skocpol T (1979) *States and Social Revolutions: A Comparative Analysis of France, Russia and China*. Cambridge, UK: CUP.
Sommerlad H (2004) Some reflections on the relationship between citizenship, access to justice, and the reform of legal aid. *Journal of Law and Society* 31(3): 345–368.
Southworth A (2005) Professional identity and political commitment among lawyers for conservative causes. In: Sarat A and Scheingold SA (eds) *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*. Stanford, CA: SUP, pp. 83–111.
Stein MA, Waterstone ME and Wilkins DB (2010) Cause lawyering for people with disabilities. *Harvard Law Review* 123(7): 1658–1703.
Sugarman D (1993) Simple images and complex realities: English lawyers and their relationship to business and politics. *Law and History Review* 11(2): 257–301.
Sugarman D (1994) Blurred boundaries: the overlapping worlds of law, business, and politics. In: Cain ME and Harrington CB (eds) *Lawyers in a Postmodern World: Translation and Transgression*. Buckingham, UK: Open University Press, pp. 105–123.
Sugarman D (1996) Bourgeois collectivism, professional power, and the boundaries of the state. The private and public life of the law society, 1825 to 1914. *International Journal of the Law Profession* 3(1–2): 81–135.
Teubner G (1997) 'Global Bukowina': legal pluralism in the world society. In: Teubne G (ed) *Global Law Without a State*. Aldershot, UK: Dartmouth, pp. 3–28.
Tezcür GM (2009) Judicial activism in perilous times: the Turkish case. *Law and Society Review* 43(2): 305–336.
Trubek L and Kransberger E (1998) Critical lawyers: social justice and the structures of private practice. In: Sarat A and Scheingold S (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford, UK: OUP, pp. 201–226.
US Department of Justice (2002) *The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*, 30 May.
US Office of the Attorney General (2001) *Memorandum: The Freedom of Information Act*, 12 October.
US Senate (2003) *Hearing of the Senate Committee on the Judiciary on Criminal Terrorism Investigations and Prosecutions*, 21 October.
Willemez L (2005) A professional commitment? French workers' and unions' lawyers as cause lawyers. In: Sarat A and Scheingold S (eds) *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*. Stanford, CA: SUP, pp. 63–82.
Williams JW (2006) Private legal orders: professional markets and the commodification of financial governance. *Social and Legal Studies* 15(2): 209–235.
Zackin E (2008) Popular constitutionalism's hard when you're not very popular: why the ACLU turned to courts. *Law and Society Review* 42(2): 367–395.
Ziv N (2001) Congress as a forum for cause lawyering during the enactment of the Americans with disabilities act. In: Sarat A and Scheingold SA (eds) *Cause Lawyering and the State in a Global Era*. Oxford, UK: OUP, pp. 211–243.

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