

And Justice to All – On Community Lawyering

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Any lawyer representing disempowered communities is aware that a great paradox currently exists within the modern legal system. For, whilst the concept of equality before the law has supposedly gained universal acceptance, with the poor and the rich alike ascribing to the same, classless, normative systems, at the same time, justice and legal protection have become increasingly inaccessible for growing sectors of society. This holds true for American society, British society and even more so for the Israeli legal system.

Experience gained in the field of lawyering against poverty, termed "poverty lawyering" in the United States and "progressive lawyering" elsewhere, indicates that the law has become a pawn in the hands of those who possess power and wealth, to be used against those who do not. The former control both the apparatus which operates the legal system and its content. Their voice is heard when norms are established, in decisions over their mode of administration and at the time of legal enforcement. By contrast, the voice of the poor, which is already stifled, is rarely heard in the Knesset, where norms are legislated, or in court, where they are exercised, or during their implementation and enforcement.

The fault lies with all players in the Israeli legal system, from the legislators, to the courts, and finally the lawyers. They have all, separately and collectively, created a barrage of obstacles, which make it difficult for disempowered citizens to make their voice heard through the legal system, and to draw upon it as a means of protecting their rights as human beings. In other words, in order to obtain the protection of the law, they must overcome the obstacles of raising sufficient funds for legal advice and/or representation, and additional legal fees; the obstacles of knowledge and comprehension, for understanding the workings of the system and how to communicate with it; the obstacles of language and culture, which are particularly challenging for disempowered communities in an immigrant state; and the obstacle of trust, to name but a few.

These obstacles are a result not only of the actions or failings of the most influential members of the legal system, but also of lawyers' own self-perceptions. One such perception generally recognizes the legal professional as a service provider, rather than a person with a social role. It is this point I would like to expand upon in this article.

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Five years ago, at the beginning of 1998, when the legal department of 'Yadid' (The Organization for Mutual Assistance for the Advancement of Social and Community Activities) was established, we were asked to assess the relationship, if one such existed, between lawyers and disempowered communities. We attempted to ascertain the degree to which these communities make use of lawyers, and the factors which prevent them from doing so. We undertook this task after conducting several surveys amongst target communities with legal needs in almost all areas of law. These included incidents of various authorities violating social rights, such as housing and employment rights, family issues, mainly concerning domestic violence, as well as infringements of basic civil liberties on the part of the enforcement agencies, namely the police.

Unsurprisingly the survey, which was based on personal interviews and conversations held with the target groups, revealed that only very few, a tiny percentage, had employed a lawyer on more than one occasion. Moreover, these few who had sought the services of a lawyer in the past had not returned for a second consultation or further handling of their case. The survey, whose findings were verified by a series of additional surveys which we have subsequently conducted, revealed a number of causes for this unwillingness to use lawyers. In general, these causes fall into three main categories: economic, cultural, and geographical.

The latter cause stems from the geographical gap between the legal necessities of these communities, who tend to reside in peripheral areas, and the legal services, which are principally available in the larger cities in Israel. This gap makes traveling to lawyers' offices inconvenient, thereby preventing people from seeking legal services. For example, a resident of Netivot (a small town in the south of Israel), wishing to consult with a lawyer must travel to Be'er Sheva (the largest city in the south of Israel). The immediate ramifications of this geographical gap are the expenditure of scarce financial resources to finance travel, and, since lawyers' offices are open only during the day, the loss of working days. This in turn can lead to loss of livelihood, as taking a day off in areas suffering from high unemployment, such as Netivot, can lead to immediate dismissal. In simple terms, it is difficult to fathom how a disadvantaged citizen, who struggles daily to make ends meet, can manage to secure a lawyer in order to receive initial legal counsel.

The geographical gap is accompanied by economic issues. These same citizens were under the impression that any approach to a lawyer, even for an initial consultation, is extremely costly. They were unaware of the fact that, in reality, there are a significant number of lawyers who provide initial legal consultations free of charge, and that there are many areas of law, such as *torts suits*, in which payment is deducted from the final settlement at the end of the legal process. In any event, for these people, who feel that they always have a hole in their pockets, financial pressures resulted in their reluctance to consult lawyers.

These objective causes came alongside cultural and subjective ones. During the interviews, the cultural gap between lawyers and those in need of their services was raised time and again. Much has been written about the link between culture and cultural codes, and the law. This link was largely apparent in courts, which do not always know how to interpret these codes, and also in lawyers' offices. The interviewees repeatedly expressed feelings of distress and alienation upon their contact with lawyers, even public interest lawyers wishing to assist them.

This link was also evident in the physical appearance of lawyers' offices, and their work culture. On a physical level, the elegant décor of lawyers' offices suggested prestige, but the disempowered clients interpreted this prestige as costliness. The large number of files piled on lawyers desks testified to the abundance of their work, but also led to the conclusion that their time is limited and expensive. The disempowered translated these signs in ways which caused them to speak briefly, often in a state of confusion. Members of communities suffering from an array of problems do not always differentiate between the more and the less important aspects of the case, and sometimes struggle to express themselves clearly. As such, this shortage of time resulted in an incomplete presentation of the problematic situation, which in turn adversely affected the quality of legal advice provided.

Regarding the issue of work culture, the actual experience of approaching a lawyer also proved problematic. Beyond the obvious tension between clients in need of sufficient time and a sensitive ear in order to fully present their claims, and there is a greater and far more testing problem: the legal profession is a non-empowering profession. It is constructed upon disempowering assumptions, which attempt to create a relationship of dependency between the lawyer and the client, and more specifically, the paying client. One might say that a lawyer's worst nightmare is that a wealthy client will one day realize that he no longer needs the lawyer's legal services. This fear has given birth to an entire professional approach, which erects a barrier between the client and his problem, and the lawyer, who alone has access to potential solutions. Thus, by constructing the client's dependency, the power of the lawyer is safeguarded. Naturally, these approaches are not appropriate when working with disempowered communities.

Community lawyering is designated to overcome these barriers and transform the prevailing perceptions of the law from being prestigious, intimidating, and accessible to the very few, to more popular and approachable. Community lawyers, working in towns and neighborhoods with a large concentration of disadvantaged communities, fulfill a function similar to that of family practitioners in the local family health clinic; they are close at hand, available, familiar, and can be approached even on minor issues. In many ways, community lawyers are the link between disempowered communities and the legal system. Generally, the offices of community lawyers can be found in a central location, close to other community services such as the local shopping center. In this way, a couple traveling to the local shopping center to do their grocery shopping, or to the pharmacy, can "shop" for legal advice in the community lawyer's "store". There is no need to dress smartly for the occasion, and no need to take a

day off work; thus, meeting with the lawyer should not entail any undue stress. Rather, it rather becomes a part of daily routine, akin to buying aspirin in the local pharmacy.

I use the term “store” instead of “office” intentionally. The work space of community lawyers are designed so as to appear familiar and easily comprehensible, much like any other store. This design lessens the feelings of alienation and intimidation which at times deter people from approaching lawyers, and benefiting from their services. Solutions to other problems which interfere with the capacity of these communities to obtain assistance are also provided, including supervised crèches where children can play while their parents receive legal council. The décor of community lawyers' offices is also designed in a specific manner; the large desk separating the lawyer from the client, the problem from its solution is gone, and instead the lawyer sits alongside the client. They both share the problem and its solution.

Within this description lies the main therapeutic approach to community lawyering: legal empowerment. In short, empowerment is a process which aims to transform the situation of the disempowered from one characterized by helplessness and a lack of resources, including knowledge, skills, self-confidence, and money, into one in which they exert a degree of control over their lives, and in which the problem of lack of resources is minimized. Through the process of empowerment, individuals gain skills, insights, faculties and knowledge, which alter their feelings, especially feelings of lack of self-worth and helplessness, transforming them into individuals capable to a greater degree of influencing their own lives. Community lawyers operate so as to incorporate client into the solutions to their problems, in a way that helps them to acquire knowledge, skills, and faith in his their ability to confront those infringing upon their rights, without external assistance.

In order for this process to succeed, community lawyers must speak the local language. Thus, they walk around the community ("outreach"), learn to recognize its common cultural codes, and act in accordance with them, or in an attempt to change them. Community lawyers are able to approach those who are unable to approach them, and become acquainted with their potential clients' way of life. Furthermore, they gain the trust of the local people, as they begin to see lawyers as an integral part of the community, which in turn facilitates communication between them.

It is in this way that the law becomes an integral part of the lives of those who are most in need of it. This is a first step, and naturally the most difficult and most important one, but further steps are also necessary to make the system accessible to all, steps which must be taken by the other members of the legal system, and especially its most influential elements. Only then will the vision of equality before the law be realized.

References:

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