Lawyer-Client Relations: What Goes on and Who's in Charge?

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Introduction

One dimension of law that all practising lawyers must face is handling relationships with clients. Traditionally this was not considered as something that could or should be researched. Recently, however, sociologists, linguists and other social scientists working within the area of socio-legal studies have paid a lot of attention to lawyers' interactions with their clients. Their studies highlight important aspects of the processes involved, particularly the relationship between power and representation. Yet they also suffer from deficiencies, which partly derive from their hidden theoretical and methodological assumptions. This paper aims to review and critique these studies, in the hope that the resulting insights may stimulate more reflection by the profession on this important aspect of advocacy.

Lawyers as "One-Way" Translators

Many of these studies focus on the way in which lawyers transform disputes, through their representation of clients. For instance, in their analysis of the way in which American divorce lawyers interact with their clients, Sarat and Felstiner (1986) emphasise the different agendas of both parties. Lawyers view the dispute in terms of its monetary consequences, while clients are often more interested in other matters, such as emotional vindication. Lawyers must therefore invest a lot of time in schooling their clients to accept their view of what the really important issues at stake are. In the process, they try to lower clients' expectations, re-defining both the dispute and even clients' selves so as to exclude those aspects

which cannot easily be inserted into the legal categories. Clients react to lawyers' efforts to narrow and re-define their cases by trying to obtain their lawyers' support for their own claims. They attempt to create emotional ties with their lawyers, who are wary of this. Clients persistently try to introduce the history and moral implications of their marriage relationships into their conferences with their lawyers. Lawyers in turn respond by partially legitimating their clients' stands, but do not in practice act on them. The effect of lawyers' attempts to separate the emotional aspect of the divorce from the material aspect, leaves clients feeling ambivalent and schizoid. They tend eventually to accept their lawyers' settlement of the dispute; but they feel angry and mistrustful of lawyers and the legal system.

Sarat and Felstiner have further developed these themes in two other articles. In one, they look at the effect of these processes on clients' views of the legal system (Sarat & Felstiner 1989). They observe that while American divorce lawyers do act as intermediaries between the legal system and their clients, their brokerage activities are restricted to the sort of transformation of clients' lives and expectations which they discussed in the previous article. These lawyers do not, however, attempt to translate legal rules into concepts which their clients can handle. Consequently lawyers operate so as to translate clients' lives in order to be able to describe them in terms which mesh with legal categories; but they do not translate these legal categories so as to render them comprehensible to clients. This 'one-way translation'[533] of lawyers enables them to prevent clients from gaining independent access to (and knowledge of) the public discourse of the law. Such independent access could undermine lawyers' claims to specialised expertise and their control over the case. Instead lawyers propagate cynicism about the system, suggesting that it does not work in terms of the legal rules. In this way, they imply that their own usefulness lies less in their knowledge of the law, which a well-

[533] Lawyers' brokerage is 'one-way' according to this model, since it departs from a particular interpretation of the legal rules and attempts to translate clients' experiences to fit into this interpretation. Such a model does not envisage the rules themselves changing in response to clients' stories.

educated client might acquire, than in the insider contacts and connections which they possess.

In the second article, (Sarat & Felstiner 1988), these issues are explored from the perspective of C. Wright Mills' analysis of 'vocabularies of motive'.[534] They show how American divorce clients resort to vocabularies of motive in an effort to explain their own behaviour and that of the other spouse. While clients are very concerned to explain the motivations of their spouses' *past* activities, lawyers consider these to be legally irrelevant and do not really support their interpretations. However, when they attempt to impute the *present* actions of their spouses to negative traits in their characters, lawyers intervene in order to promote an alternative interpretation. They suggest instead that these actions are situationally determined by the stage which the divorce has reached. Through ensuring clients' agreement with their vocabulary of motive, lawyers obtain authorisation to take the legal steps which they perceive as necessary. Thus lawyers' transformation of clients' understandings of their disputes extends to persuading them to re-interpret the behaviour of their own spouses.

The ultimate dominance of the lawyer's view of the dispute is an assumption which underlies all the articles reviewed so far. This 'one-way translation' model of lawyers' brokerage ensures that they are always seen as the active agents who transform and re-phrase disputes against the backdrop of the impotent resentment of their clients. In this model, the legal rules constitute an unalterable backdrop, conditioning lawyers' interactions with clients, while themselves remaining unaffected by these processes. This assumption also pervades other studies.[535] Thus Blumberg (1975) observes that the American criminal defence lawyers he studied are embedded within networks of organised complicity linking them

[534] Mills argued that that distinct vocabularies of motive characterise different social strata and are utilised in different social situations (Mills 1940: 904).

[535] Ingleby (1988) confirms many of the observations of Sarat and Felstiner, showing how English divorce lawyers transform the way their clients view their cases so as to push them towards a mediated settlement and away from litigation.

up to prosecution lawyers, judges and administrative personnel within a closed court community. These social networks are a strategic response to the organisational problems of the criminal courts and lawyers find that forming part of them is a necessary condition for success. However, the other side of the coin is that through these networks lawyers come to be more responsive to the needs of the court community than to those of their clients and they therefore become "double agents" (Blumberg: 1975: 328) who seek to persuade their clients to plead guilty and have a vested interest in limiting the scope and duration of the case. In this context, clients experience legal representation as a 'confidence game' played at their expense.

Bogoch and Danet (1984) also adopt a 'one way translation' model of brokerage in order to make sense of the interaction between an Israeli legal aid lawyer and her client. They analyse this encounter in great linguistic detail so as to show the strategic way in which this lawyer used language in order to assert control over the conversational agenda, suppressing her clients' views so as to ensure the domination of her interpretation of the dispute.[536] Through these tactics this lawyer managed to acquire power at the expense of her client. They were so blatantly employed because they occurred in the context of a legal aid case. This lawyer was a member of a bureaucracy and did not stand to gain through being more responsive to her client. A private practitioner might be expected to show more understanding of clients' perceptions of the case.

This conclusion indicates a significant problem with many of the studies which have been reviewed. It seems that most of the proponents of the 'one way translation' model of legal representation have not been sufficiently sensitive to the context in which their own studies have been carried out. In the research of Sarat and Felstiner, for example, it is initially stated that American

[536] Thus they show how she interrupted her client frequently, especially when he was in the middle of an utterance; used directives, coercive requests and formal language; questioned the client's own knowledge; asked apparently random questions and laid claim to an intimate knowledge of her client's background.

divorce lawyers are the subject of research. However there is little attempt to relate the conclusions reached to the specific context in which research was carried out. Rather their conclusions, although based on the observation of a few cases, are often presented as iconically encapsulating general truths about lawyers and the law. Yet context clearly *does* explain many of the observations which are made, entering into the picture in various ways. To put it succinctly, there can be many different types of lawyers, a great diversity of cases and clients and broader cultural and social variations which might explain observed behaviour.

A related criticism is the conspicuous absence of the lawyer's point of view from these studies. We hear a lot about the clients' emotions and very little about those of their lawyers. However attention to the practical constraints under which lawyers labour might expose important contextual factors affecting the quality of legal representation. Exploring lawyers' perspectives might also reveal short-comings in the 'one way translation' model of legal brokerage.

Modifications to the Model

These points are brought home if one considers other studies, such as the one carried out by Flood on corporate lawyers in Chicago. His approach is characterised by its greater sensitivity to the practical dilemmas lawyers must face. He argues that from the perspective of the lawyers he studied, the management of uncertainty is the most prominent feature of legal work (Flood 1991). Corporate lawyers feel uncertain due to a variety of factors, which range from their own subservient position within large law firms dominated by a few senior partners to the ambiguity of the legal rules themselves.

An important cause of uncertainty is the behaviour of large business clients, who may withhold important information from their lawyer, leaving him in the dark as to the real issues which are at stake in business negotiations. This is consistent with the attitude such clients adopt during conferences with their lawyers, when

they often question their expertise and assert the primacy of knowledge of the marketplace over knowledge of the law. In this context, lawyers have to struggle to assert themselves and resort to various tactics to reduce uncertainty. They do not always succeed in imposing their definition of the situation and often have to accept that of their clients.

Flood's research depicts lawyers in a very different way from the articles previously reviewed. Stressing lawyers' vulnerability to client pressure raises doubts about the universal validity of the 'one way translation' model of legal brokerage, since it suggests that lawyers' perceptions of the issues at stake will not necessarily prevail over those of clients. Griffiths's (1986) research on Dutch divorce lawyers also departs from this model. In fact, he goes even further than Flood in claiming that lawyers are not only subject to clients' pressures, but may also transform their explanation of the legal rules in order to cope with these pressures. His thesis is that lawyers are best viewed as 'double intermediaries', who not only transform clients' stories so as to engage with legal categories, but *also transform the legal rules when they explain them to their clients.* This process of transformation can occur in very subtle ways.[537]

However, while Griffiths accepts that lawyers may modify their *explanation* of the obtaining legal position in response to clients' pressure, neither he nor Flood go quite so far as to state that lawyers' *interpretation* of the legal rules may change in response to clients' pressures. Consequently although Griffiths describes lawyers as 'double intermediaries', he does not completely depart from the 'one way translation' model of their activities. In his scheme the legal rules themselves remain largely uninfluenced by lawyers' interactions with clients. At best, these interactions may condition the type of legal advice lawyers might give to clients. But they could have no impact on the way in which lawyers interpret

[537] For instance, lawyers can change the law simply by remaining silent about legal possibilities, or by presenting their opinion as the attitude of the courts. In this way lawyers actually exert influence by effacing themselves.

the legal rules when representing these clients during court litigation.

Is Power Involved?

Despite their differences, the studies reviewed reflect a broad consensus of opinion that lawyers are best described as mediators between their clients and the legal system. They derive the theoretical interest of studying lawyer/client interaction from the way the power struggle between lawyers and clients illuminates the wider issue of the social impact of legal systems. At this stage it is useful to consider the recent research of Travers, who adopts a polemical attitude towards these assumptions on the basis of his field research with a firm of criminal defence solicitors in the North of England (Travers 1991). His arguments can be summarised as follows:

1) Conventional sociological studies of lawyer-client interaction have overly theorised the subject. A preoccupation with grand sociological themes exoticises the subject unnecessarily, leading researchers to ignore the practical, improvisatory, character of the actual work involved. He sought to remedy this in his own research through adopting an ethno-methodological approach to observe the daily work of a legal firm.

2) On the basis of his fieldwork, he concludes that accounts such as that of Blumberg (1975) are wrong in presenting a cynical view of lawyers as 'double agents' engaged in a 'confidence game'. He gives a detailed analysis of a case he witnessed in which a lawyer persuaded a client to plead guilty, overcoming her client's initial resistance to this plea. This analysis shows how the lawyer's advice was motivated by the desire to obtain the best possible deal for her client in a context where the outcome of the case was never in any doubt and where a guilty plea enabled the lawyer to minimise the adverse effects her client would face (Travers 1992).

3) Travers also attacks the claimed significance of power for understanding lawyer/client interaction (Travers 1994). His

argument is that lawyers *are* in a position of interactional dominance vis-à-vis their clients, but that there is nothing surprising or sinister about this, since it is a natural result of the fact that they are legal experts, possessing more knowledge of the law then their clients do. An analytical focus on power obscures the practical features of legal work and adds nothing to our understanding of it. Moreover, clients do not normally see themselves as involved in a power struggle with their lawyers. Finally, the interactional dominance of lawyers is variable, diminishing in proportion to clients' intelligence and experience of the system.

These arguments directly attack the consensus of opinion underlying the other studies reviewed. If correct, the theoretical significance of studying legal representation is considerably reduced. A critique of them will therefore provide the basis on which to develop our understanding of legal representation.

My assessment of Travers's ideas will depart from a re-evaluation of his use of ethnomethodology. It seems that he sees ethnomethodology as something more than a technique for social investigation focusing on the micro-processes through which everyday reality is constructed. He argues that while conventional sociological accounts over-theorise the subject, ethnomethodology allows direct observation of the practical basis of everyday decisions. Thus it can be used to rebut 'ironical' accounts of lawyer/client interaction such as Blumberg's (*op.cit.*). This approach is more sympathetic to lawyers' perspectives; exposing the practical constraints they face and the hidden work performed for clients. Yet the argument is fundamentally flawed in suggesting that it is possible to observe any human activity without recourse to some implicit theory regarding the purpose of that activity.

The ethnographic truism that perception is always mediated by culture is confirmed by Travers's own resort to an explanatory theory for the actions of one lawyer he observed. He claims that she: "had to make the best she could out of a situation where the ultimate outcome for the defendant was at no time in doubt"

(Travers 1992: 35). Similarly his caution against undue exoticisation of lawyer/client interaction must be seen against the background of his own research, where words like 'mundane' and 'boring' are bandied around until they acquire an exotic halo.[538]

The problems with this approach become clearer when looking at the practical examples given. Travers cites Sarat and Felstiner's work as an example of an overly theoretical approach. Yet their conclusion that American divorce lawyers try to persuade their clients to abandon emotive discourse surely identifies a practical concern which forms part of their everyday work. Even more telling is the example of lawyer/client interaction which he provides when criticising Blumberg's description of such encounters as 'confidence-games'. He argues that this case confirms the superiority of an ethnomethodological approach, since it shows that lawyers may persuade their clients to plead guilty without betraying professional ideals of defending them to the hilt. However a close analysis can easily account for the differences between his conclusions and Blumberg's. Indeed, Travers's rebuttal of Blumberg depends on exposing the *hidden* work lawyers do for their clients, thus confirming Blumberg's argument that legal work leaves room for suspicion in clients' minds that confidence games are being played at their expense. Moreover Travers admits that he studied a firm of solicitors whose distinguishing characteristic is unusual sympathy towards their clients' point of view, evoking the possibility that Blumberg's insights might apply to the way *most* criminal defence lawyers handle their clients.

Ultimately the deficiencies of Travers's analysis of legal representation derive from his conception of power. Here his argument revolves around the related claims that (a) focusing on power adds nothing to our knowledge of legal representation and

[538] Indeed some degree of exoticisation seems indispensable if socio-legal studies are to fulfil their critical potential. This is because, as Bourdieu (1977) observes, the ultimate disguise of processes of domination are precisely notions of what is 'ordinary' and 'natural'. In this context the only way to expose hegemonic power structures may be through questioning what is 'ordinary' and 'taken for granted'.

(b) there is nothing sinister about lawyers' power, which is a natural outcome of their knowledge of the law. This last claim can usefully be approached from the standpoint of Sherr's research (1986), which set out to assess the quality of lawyers' communicative skills by testing the ability of a set of graduate lawyers to interview clients during their first meeting. Sherr makes practically no reference to power in his analysis, preferring to refer to an idealised model of how lawyer/client interaction should proceed to ensure optimal communication between the two sides. As a result, he can only interpret many of his findings as a failure in communication on the part of lawyers, while they would be perfectly intelligible as attempts to acquire power vis-à-vis clients by withholding information.[539]

Once one accepts that power is an important feature of legal representation, this raises the second issue of the way in which to conceive power. Hannerz (1992) also derives lawyers' power from their legal knowledge. Unlike Travers, who sees this as natural and reassuring, Hannerz suggests that the routine, systematic and unintentional qualities of professional power are *the* factors which ensure domination. On the one hand Travers argues that there can be nothing sinister about a power which is so routinely exercised that most clients do not consider themselves to be involved in a power struggle with their lawyers. On the other, Hannerz points to the contrast between the insecurity of clients, whose contact with lawyers is generally a 'one-off' experience, and the routine character of legal work for lawyers. The latter unintentionally dominate their clients while maintaining a view of their work as simply part of the division of labour (Hannerz 1992: 121).

Hannerz's conception of power corresponds to that underlying much contemporary social research. Lukes, for instance, describes power as the ability to shape the mental landscape of the dominated by making certain possibilities unthinkable and thereby imposing misunderstanding of the objective situation (Lukes 1993). Bourdieu

[539] Sherr observes regretfully that the lawyers he studied do not inform their clients of the work they intend to do for them, that they tend to exercise excessive control over the conversational agenda, often cross-examine clients and use difficult language.

also portrays symbolic power as an invisible power which can be exercised: "only with the complicity of those who do not want to know that they are subject to it or even that they themselves exercise it" (Bourdieu 1992: 164). As opposed to a hierarchical view which identifies power with legitimate authority, this conception emphasises the fact that power is exerted over human beings (Aron 1964) and is therefore socially negotiated (Simmel 1978). For this reason, power is primarily seen not as an object to be possessed; but rather as something which must be communicated through cultural media like discourse (Foucault 1990), or even silence.[540] This stress on the communicative nature of power intersects with the work of linguists and other cultural analysts who have also emphasised the power-laden nature of communicative relations (Bakhtin 1994).[541] The resulting perception of power foregrounds rhetoric and persuasion more than imperative commands and authority.

In this context, it is interesting to note that Travers's own case-studies are replete with instances of discursive struggle, in which lawyers try to persuade their clients to follow their advice against the resistance of the latter. However, rather than describing these as attempts to exert power, Travers prefers to write about the: "interactional pressure" (1994: 24) exerted by lawyers, who are in a position of: "interactional dominance" (*ibid*: 26). A close reading of his writings reveals two further reasons for this careful avoidance of the descriptive terminology of power. The first relates to the way in which a power analysis tends to shift from the study of lawyer-client interviews to: "that of law as a macro-institution" (*ibid*: 28). He argues that moving from one to the other is incorrect, not least because it gives a distorted characterisation of lawyers and legal work.

The problem with such reasoning has been identified by Bourdieu, who observes that one cannot understand the form of small-scale

[540] As in Lukes's (1993) conception.
[541] Here I have in mind Bakhtin's focus on the way speakers compromise between what they would like to convey through their words and what is realistically possible given the linguistic effects of existing power relations.

linguistic exchanges (such as those between lawyers and clients), if one does not take into account larger structural discrepancies in power:

That is what is ignored by the interactionist perspective, which treats interaction as a closed world, forgetting that what happens between two persons –between an employer and an employee or, in a colonial situation, between a French speaker and an Arabic speaker-- derives its particular form from the objective relation between the corresponding languages or usages, that is, between the groups who speak those languages (Bourdieu 1992: 67).

This integrative capacity of power, which connects minor events to larger social forces constitutes the most important objection to Travers's attempt to detach research on the everyday business of legal representation from the study of larger social power relations. By contrast, a more fruitful way of exploring legal representation is provided by Johnson (1972). In his study on the sociology of the professions, he argues that the increasing specialisation brought about by the division of labour also increases the social distance between lawyers and clients and gives rise to uncertainty as to how legal needs are to be determined and catered for. This uncertainty may be resolved in favour of the lawyer or his client depending on larger power relationships between lawyers and different categories of clients.

Comparing Johnson's approach to Travers's brings out the second reason for the latter's avoidance of power. In fact, while Johnson sees uncertainty as a central feature of lawyer/client interviews, Travers emphasises that the outcome of these interviews is never in any doubt. This is because the lawyer's perception of the issues at stake and the necessary legal response must necessarily prevail over that of the client, given the lawyer's greater knowledge of the legal rules. Like the previously reviewed studies, Travers therefore promotes a 'one-way translation' model of legal representation; in which the lawyer translates his client's story to fit into unchanging legal descriptive categories. Johnson's analysis compels us to

explore the other possibility: what if uncertainty is also resolved in favour of the client; so that it is the lawyer's interpretation of the legal rules which alters to accommodate the client's perception of the issues involved and the necessary legal response? In this 'two-way' model of legal brokerage, neither the distribution of power between lawyers and clients nor the interpretation of the legal rules are seen as fixed *a priori* by the legal system. Rather, both are socially negotiated between particular lawyers and clients in a manner which reflects broader power relationships.

Lawyers as "Two-Way" Translators

To comprehend the practical processes to which the 'two-way' model of legal representation refers, it is useful to refer to the analytical framework constructed by Mather and Yngvesson (1981). They identify two ways in which the linguistic description of a dispute can be transformed after it has been brought before a third party to be resolved.

The first, which they call 'narrowing', is fundamentally a conservative act, occurring when the dispute is re-phrased in terms of established linguistic categories. This process of narrowing is equivalent to the sort of changes which lawyers must bring about to clients' perceptions of their cases in terms of the 'one-way translation' model.

The second type of dispute transformation is 'expansion'. This is a radical phenomenon, occurring when a dispute is re-phrased in terms of categories which were not previously accepted by the third parties hearing the dispute.

It corresponds to the reinterpretation of legal rules which can occur when, in response to client pressure, lawyers are led to regard laws in terms of clients' stories, rather than translating clients' stories in legal terms. Table one illustrates these divergent models of legal representation:

Table one

First Scenario: 'One-way Translation'
(The model of Sarat & Felstiner) **Legal Rules → Lawyer → Client's Story**
(Unchanged) (Dominates) (Translated)

Second Scenario: Modified 'One-way Translation'
(The model of Griffiths & Flood) **Legal Rules → Lawyer ↔ Client's Story**
(Unchanged) (Tries to control) (Translated)

Third Scenario: Two-way' Model
(Johnson's model) **Legal Rules ↔ Lawyer ↔ Client's Story**
(Reinterpreted) (Tries to control) (Translated)

In Table One, the First Scenario presents the 'one-way translation' model. Here the legal rules are seen to determine lawyers' relations with their clients. Lawyers' power is based on their knowledge of the rules. They intervene to transform, by a 'narrowing' translation, clients' perceptions of the case. The interpretation of the legal rules is uninfluenced by lawyer/client interactions.

The Second Scenario maintains, but modifies, this model. Here it is accepted that clients may also put pressure on their lawyers, leading to changes in their explanation of the legal position. However lawyers' interpretation of the legal rules remains unaffected by this process. By contrast, the Third Scenario accepts that both 'narrowing' and 'expansion' may occur. Lawyers may also change their interpretation of the legal rules so as to accommodate clients' stories. This 'two-way' model envisages that clients may also exercise a cultural power of persuasion over their lawyers.

Additional confirmation of the utility of the "two-way" translation model is provided by a recent article by Miller (1994), which applies narrative analysis to the study of legal representation. Here she follows in the footsteps of Cunningham (1989); who views legal representation as an act of translation by which lawyers try to translate their clients' stories into the conceptual categories of the laws and vice versa. However Miller attempts to move beyond these studies because the metaphor of translation suggests that lawyers mediate between two completely different languages which do not intersect and limit themselves to explaining words in one language in terms of the other. Since neither of the languages is altered by the translation, this metaphor does not allow for the possibility that the legal rules themselves might be reinterpreted in response to clients' stories. Also, it naively assumes that clients are always powerless, that their stories must always diverge from those of lawyers and that clients want lawyers to tell their versions. Most damagingly, the translation metaphor obscures the way: "legal story-telling, at its best, is more than either lawyer or client story-telling" (Miller 1994: 527).

Miller's own description of legal representation rests on the insight that stories bridge the gap between clients' perceptions and the legal rules. Because stories create a discursive continuum between these two poles, they can be a vehicle for the expression of clients' power; enabling them to appropriate the meaning of the legal rules in their own interests.[542] Clients' narratives have the potential of enriching legal doctrine by providing a different perspective on the legal categories. This in turn affects the role of lawyers, who can no longer assume that their interpretative outlooks will necessarily prevail over those of their clients and must now view legal representation as a process for which clients are co-responsible. By explicitly linking the rule/story dialectic to what I have called a 'two way' conception of legal representation, Miller highlights the

[542] She illustrates this by referring to a case she defended, showing how attention to the clients' story meant giving the client more power to participate in the decisions that were taken in regard to his case and also led her to view both the legal rules and the factual evidence in a new light.

uses of narrative analysis to explore the way lawyers and clients negotiate power in specific cases of legal representation.

Conclusion

It is clear in this context that the greater analytical usefulness[543] of the 'two-way' model lies in the way it avoids prejudging the outcome of lawyer-client interaction. Since power is not considered as the exclusive possession of those who know the legal rules, our attention is directed to the cultural power which may be exerted by clients and through language. Here the analytical tradition which detaches the study of lawyer/client interaction from the wider process of legal representation, can be seen to perpetuate a view of the legal rules as an inflexible backdrop determining the outcome of such interaction. Only by making the interpretation of the legal rules part of the analysis of lawyer/client interaction can we avoid the limitations of the 'one-way translation' model. It is therefore necessary to explore the interaction between the interpretation of legal rules and that of clients' stories throughout the entire process of legal representation. Research in this field should be holistic: relating lawyer/client interviews to the drafting of judicial acts, court litigation and adjudication.

To conclude, it appears from this analysis that lawyer/client interaction is an important indicator of the way in which law is made socially present and applicable in a particular setting. Research in this field should aim to contextualise particular observations within a more holistic understanding of the way legal processes and institutions operate in a specific society. One must

[543] As confirmed by its ability to explain aspects of Travers's own analysis which he left in the dark. In fact, the case-study which he used in order to attack Blumberg's description of law as a confidence game was clearly a case of dispute expansion. Travers notes that the client in this case resisted her lawyer's attempts to persuade her to plead guilty and that the lawyer did not advise her to plead guilty to the facts as presented by the prosecution, but to a similar set of facts which only constituted a technical offence. He also observes that this offence was one which the Magistrate's Court had not encountered before and there was some initial confusion as to whether to allow it. Here the client's resistance to the insertion of her case into narrow legal categories can be seen to have led to a change in the legal categories, towards a closer match with the client's understanding of her case.

keep in mind that both lawyers and clients are themselves theorising agents. So as to avoid reproducing traditional professional assumptions about the lawyer/client relationship, one should avoid using a legalistic terminology and conceptual frameworks to underpin research. In particular, one should avoid assuming that lawyers are/should be in charge of the relationship because they (should) know the law.

Select Bibliography

Aron, Raymond 1964. "Macht, power, puissance: prose democratique ou poesie demoniaque?" *European Journal of Sociology*, Vol. 1, pp. 27-51.

Bakhtin, Mikhail 1994. *The Dialogic Imagination*, Texas, University of Texas Press.

Bogoch, Bryna and Brenda Danet 1984. "Challenge and Control in Lawyer -Client Interaction: A Case Study in an Israeli Legal Aid Office," *Text*, Vol.4, Nos. 1-3, pp. 249-275.

Bourdieu, Pierre 1977. *Outline of a Theory of Practice*, translated by R. Nice. New York: Cambridge University Press. 1992. *Language and Symbolic Power*, translated by G. Raymond and M. Adamson, Cambridge, Polity Press. 1997. *The Logic of Practice*, translated by R. Nice, Cambridge, PolityPress.

Blumberg, Adrian 1975. "The Practise of Law as Confidence Game," in Aubert, V. (ed.), *Sociology of Law*, U.K., Penguin Books Ltd.

Cunningham, Clark D. 1989. "A Tale of Two Clients: Thinking About Law as Language," *Michigan Law Review*, Vol. 87, pp. 2459 – 2494

Flood, John 1991 "Doing Business: The Management of Uncertainty in Lawyers' work," *Law and Society Review*, Vol. 25, No. 1, pp. 41-72.

Foucault, Michel 1977, *Discipline and Punish: the birth of the prison*, U.K., Penguin Books Limited.1980. *Power/Knowledge: Selected Interviews and other writings of Michel Foucault (1972-1977)*, Colin Gordon (ed), Brighton, Harvester Press. 1990. *The History of Sexuality, Vol. 1*, U.K., Penguin Books.

Griffiths, John 1986. "What do Dutch lawyers actually do in divorce cases?," *Law and Society Review*, No. 20, pp. 135-175.

Hannerz, Ulf 1992. *Cultural Complexity: Studies in the Social Organization of Meaning*, New York, Columbia University Press.

Ingleby, Ronald 1988. "The Solicitor as Intermediary," in Dingwell, R. & Eekelaar, J. (ed.), *Divorce Mediation and the Legal Process*, Oxford, Clarendon Press.

Johnson, Terence 1972. *Professions and Power,* UK, Macmillan.

Lukes, Stephen 1993. *Power: A Radical View*, U.K., Macmillan, 1994. *Power*, Oxford, Blackwell.

Mather, Lynn and Barbara Yngvesson 1981. "Language, Audience and the Transformation of Disputes," *Law and Society Review*, Vol. 15, pp. 775 - 821.

Miller, Binny 1994. "Give Them Back Their Lives: Recognizing Client Narrative in Case Theory," *Michigan Law Review,* Vol. 93, pp. 485 - 576

Mills, C.W. 1940. "Situated Actions and Vocabularies of Motive," *American Sociological Review*, p. 904.

Sarat, Austin and William Felstiner 1986. "Law and Strategy in the Divorce Lawyer's Office," *Law and Society Review*, Vol.20, No.1, pp. 94-134; 1988. "Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction," *Law and Society Review*, Vol.22, No.4, pp. 737-769. 1989; "Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office," *Yale*

Law Journal, Vol.98, No.8; 1995, *Divorce Lawyers and their Clients: Power and Meaning in the Legal Process*, New York and Oxford, Oxford University Press.

Sherr, Avrom 1986. "Lawyers and Clients: The First Meeting," *Modern Law Review*, No.49, pp.323-357.

Simmel, Georg 1978. *The Sociology of Georg Simmel,* Kurt H. Wolff (ed.), U.K., The Free Press, Macmillan.

Travers, Max 1991. The Reality of Law: An Ethnographic Study of an Inner-City Law Firm, *Unpublished Ph.D. thesis, University of Manchester; 1992. "Persuading the client to plead guilty: an ethnographic examination of a routine morning's work in the magistrates' court,"* Occasional Paper Number 23, *Department of Sociology, Manchester, University of Manchester Press; 1994. Taking instructions and giving advice: a preliminary examination of some routine aspects of legal work, Paper presented at the World Congress of Sociology, July 18-23, Bielefeld, Germany.*

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