"Closeted" Cause Lawyering in Authoritarian Cambodia

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ABSTRACT

Using Cambodia as a case study, this article examines cause lawyering in a repressive political environment. It focuses on 'closeted' cause lawyering, a practice that we define as the intentional pursuit of change through the legal process that is concealed for strategic purposes. Situated within the wider scholarship on (cause) lawyering in general and authoritarian Southeast Asia and China in particular, the article draws upon interviews conducted over seven years in Cambodia with 37 lawyers and human rights defenders working in practice areas considered politically controversial by the authoritarian state. We identify how closeted cause lawyers operate in such a way as to ensure professional and personal survival while quietly advancing their goals across three settings, including dignity restoration work with clients, legal professionalism in court and sustaining a moral community of like-minded lawyers. The article underscores the ongoing relevance of cause lawyering even where intentionality must be hidden, as well as the enduring importance of cause lawyers' efforts to preserve an ideal of the rule of law. We conclude by suggesting that the authoritarian turn in a range of democracies, including the Unites States, suggests that closeted cause lawyering may be required to defend democracy even among conventional lawyers.

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INTRODUCTION

Lawyers working in areas considered contentious to an authoritarian regime – such as freedom of assembly, freedom of speech, land rights, and representing political opponents and activists in the criminal courts – often face overwhelming opposition from the state. In some such contexts, simply representing a civil society or political activist, a land reform advocate or a journalist accused of criminal defamation, can result in the lawyers themselves being disbarred, threatened, imprisoned or even killed (Fu 2018, Krause 2020; Nah 2020). This article considers how lawyers in the authoritarian regime of Cambodia – specifically cause lawyers – respond to such challenges while maintaining their commitment to social justice, democracy or human rights. As a highly contingent and often individualised process (Batesmith and Stevens 2019; Pils 2015; Kisilowski 2015; Cheesman and Kyaw Min San 2013; Tam 2012), we identify the necessity for these lawyers to engage in a concealed – or 'closeted' – practice.

As is well established, cause lawyers practise law for purposes beyond purely client-driven service, usually entailing some form of "moral activism" (Sarat and Scheingold 1998, 2001, 2006, 2008; Scheingold and Sarat 2004; Marshall and Hale 2014), with a sense of "agency and consciousness, political identification, social solidarity and goals" (Hajjar 2005: 154). Within certain authoritarian contexts, lawyers may have little space for the more public or performative variants of cause lawyering, such as public protests or deliberately transforming high profile cases into political spectacles. In such settings, cause lawyering is not an overt practice, but a closeted one, where practitioners conceal, down-play or even disavow their intended causes for reasons of professional (and personal) survival.

Over recent years a rich field of research has developed exploring diverse sites of legal contestation in authoritarian settings (McEvoy et al. 2022). This scholarship includes a focus on increasingly powerful political and economic entities such as China and Singapore (Pils 2015, 2021; Liu and Halliday 2016; Rajah 2012) as well as how lawyers work in military-governed or military-dominated regimes like Thailand and Myanmar (Munger 2012a; Cheesman 2015; Dawkins and Cheesman 2021). We situate our case study of closeted cause lawyers in Cambodia within this broader literature on lawyering in authoritarian settings in Asia.

This article is the first to focus exclusively on cause lawyers in Cambodia, and how such lawyers are navigating their country's descent into unchecked one-party rule and increasing authoritarianism (Un 2019; Lawrence 2020 and 2021; Morgenbesser 2019, 2020). We do so by presenting original qualitative data from semi-structured interviews conducted between 2014 and 2021 with 37 lawyers and human rights defenders working on politically contentious issues in Cambodia. We focus on one broad research question: how do cause lawyers operate in an authoritarian state? To address this question, we propose the notion of hidden or closeted cause lawyering. We identify three different relationships or 'sites' through which the Cambodian lawyers we spoke to undertook closeted cause lawyering. Firstly, through their *relationship with their clients* (specifically their efforts to restore their clients' dignity); secondly, through their *professionalism within the courtroom* (in particular, seeking to uphold some variant of the rule of law and legality); and thirdly, through the cultivation and maintenance of a *moral community* of like-minded cause lawyers.[1]

Among the Cambodian lawyers we interviewed, we found an intentional commitment to classic causes, such as social justice, human rights, and fidelity to the rule of law. As in other authoritarian regimes, we identified the role such lawyers were playing in upholding their clients' dignity (Batesmith and Stevens 2019; Vischer 2011) and in opposing the "dignity-takings" inflicted by the state (Atuahene 2014; Pils 2016; Halliday and Liu 2021). However, as a result of the increasingly draconian political climate in Cambodia – where opposition is crushed, lawyers are intimidated, arrested and imprisoned, and the language of rights is undermined and abused – our interviewees worked differently than cause lawyers in other settings. We style their work as closeted cause lawyering, a practice that we define as the intentional pursuit of change through the legal process that is concealed from others for strategic purposes.

The implications of this study go beyond the specific case of Cambodia and classically authoritarian regimes in general. There are instances where, even in democratic countries, lawyers may conceal the fact that they have motives beyond the traditional lawyer client relationship (e.g. Huckerby and Knuckey 2023; Dudai 2017). Our study of closeted cause lawyering helps us to understand the challenges and choices faced by cause lawyers more generally who have reason to disguise their intentions. For lawyers operating in constrained or highly repressive environments, the particular significance is that such intentional albeit hidden work should properly be acknowledged as cause lawyering. To do so, we argue, is to help to keep alive the ideas of dignity and the rule of law as psychological and future-facing social resources for societies experiencing the grinding reality of authoritarianism.

The article begins by drawing upon the relevant literature on cause lawyering and authoritarianism which informs our analysis, situating our inquiry within the regional context of Asia. We then introduce the Cambodian case study and the research question it generated. Next, we discuss our research methodology, data analysis and how we addressed the ethical and security challenges of working within an authoritarian setting, before detailing our findings and discussing how they demonstrate the processes of closeted cause lawyering. The article concludes by exploring the significance of our findings for cause lawyers in other authoritarian regimes as well as in traditionally democratic societies currently struggling with authoritarian impulses.

CLOSETED (CAUSE) LAWYERING IN AUTHORITARIANISM

Within authoritarianism – a system of government in which the rulers seek 'unlimited power' (Merriam-Webster 2025) – law is often a key delivery mechanism for the state to shut down political opposition or civil society. Law can facilitate the use of coercive security or military powers, remove checks on executive power and render the judiciary more supine (Ellmann 1992; Ginsburg and Moustafa 2012, Ginsburg & Simpser 2013). The challenges for lawyers in such circumstances are obvious (Kisilowski 2015). They must choose whether to dilute or even abandon their sworn professional principles to fit in with the arrangement of state power, or to persevere with their role as 'guardians' of the rule of law and attempt to challenge such power (Cheesman and Kyaw Min San 2013: 705).

For some lawyers in authoritarianism, their confrontations are in the courtroom; they may, for example, seek recourse to international human rights standards or local domestic legal remedies (to the extent that they exist) to try to uphold some fidelity to

the rule of law before the judiciary (Sfard 2018). Others may choose public activism, taking to the streets in their robes deploying the cultural capital of the profession in public demonstrations beyond the court, as has happened in Pakistan, Tunisia and elsewhere (Berkman 2010; Faqir 2014, Gobe and Salaymeh 2016, Bryson et al. 2022). In other contexts, such as during Apartheid-era South Africa, lawyers may fuse legal and political advocacy, transforming courtrooms into sites of high-profile political and legal contests before the media, often deliberately attempting to put the regime itself on trial in such highly charged legal sites (Allo 2010).

Lawyers and their clients are frequently required to confront violence, harassment and pervasive humiliation in authoritarian states. Harassment of lawyers may encompass a broad spectrum of activities including arbitrary disbarment, surveillance, politically motivated prosecutions, disruption and obstruction, through to intimidation, death threats, and murder by the state or proxy actors (van der Vet 2018, Cameron 2023). Humiliation – of both clients and lawyers – may include public shaming and attacks by the regime, defamation and degradation, and the unchecked application of arbitrary state power (Pereira 2005, Applebaum 2012). Under authoritarianism, what Margalit (1996) termed "institutional humiliation" by power holders often becomes normalised so that the basic rights and dignity of people are routinely and flagrantly ignored (Fraenkel 2018 [1941]). These experiences align with Atuahene's (2014) concept of *dignity-takings* – which involve an overwhelming combination of dehumanizing, silencing, infantilizing, terrorizing and degrading people who are dispossessed – which in turn requires lawyers to be involved in *dignity restoration* work designed to affirm human dignity and reinforce agency (Atuahene, 2016). All these generic aspects of authoritarianism feature in Cambodia, as we will discuss.

In addition, the experiences of authoritarianism in Asia are also of direct relevance to our case study. A miscellany of different Asian regime types – from clientelist autocrats, military strongmen, single-party states to longstanding monarchies – have provided political scientists with rich case studies for analysing authoritarianism (Morgenbesser 2020; Slater 2010; Springer 2009). Similarly, socio-legal scholars with an interest in lawyering have found the region particularly fruitful (e.g. Liu and Halliday 2016; Pils 2015; Dezalay and Garth 2010; Santos and Garavito 2005; Sarat and Scheingold 2001). Much of this latter scholarship discusses the space for mobilization of the law for social justice and the rule of law in such contexts (see in addition Munger et al. 2013). While a granular analysis of the complexities of diverse Asian case studies is beyond the scope of this paper, it is possible to identify a number of additional themes that, whilst not unique to Asia alone, are particularly relevant for current purposes.

One obvious issue that affects many authoritarian contexts in Asia is state domination over legal institutions. By way of illustration, criminal courts in China dealing with issues of civil and political rights are typically tightly controlled and often function as extensions of the regime (Clarke 2008). The Communist Party exercises control of the courts through both formal and informal channels, both via direct oversight by Party committees but also through the legal and cultural requirement for judges to align with party policies (He 2024; Liu and Halliday 2016). In a similar fashion in Myanmar, after the military took power in 1962, the junta progressively brought the court system under full executive control through a series of special courts and other measures designed to

weaken judicial independence; they also sought to ensure the full compliance of the legal profession (Dawkins and Cheesman 2021; Aung 2021; Cheesman 2011).

Another prevalent Asian theme is the re-purposing of rule of law as rule *by* law. As noted, in authoritarian regimes like Myanmar (Cheeseman 2015) or Singapore (Rajah 2012, 2024) rule by law is the norm wherein the appearance of legality is maintained through procedural laws that are disconnected from substantive justice, or only selectively enforced for the benefit of those in power. Such variants of "authoritarian rule of law" make rights-based advocacy extremely challenging (Curley et al. 2018).

As elsewhere, the harassment and repression of lawyers is often common in authoritarian Asian states. Vaguely worded laws on state security and *lèse-majesté* have been used to silence critics of the state and to criminalise lawyers who represent such critics in China (Fu and Cullen 1998; Pils 2015; Liu and Halliday 2016), Hong Kong (Fu and Cullen 2001), Myanmar (Cheesman 2015), Singapore (Rajah and Thiruvengadam 2013) and Thailand (Streckfuss 2019). Lawyers across these sites face varying personal as well as professional risks including different levels of surveillance, intimidation (including through social media), disbarment, the use of criminal defamation prosecutions, and physical violence (Pils 2018).

As in other contexts, state humiliation of legal professionals is also a frequent tactic in Asian authoritarianism. This may include the public shaming of human rights lawyers through televised confessions, as seen in China (Pils 2018) and more recently in Vietnam (Safeguard Defenders 2020). Additionally, China (Halliday and Liu 2021), the Philippines (Chua 2024), Thailand (Sombatpoonsiri et al. 2025), and Vietnam (BBC 2018) have all sought to discredit activist lawyers by publishing defamatory stories and editorials, often impugning their motivations as mercenary or treasonous. Relatedly, in Singapore, humiliations framed as public "pedagogical exercises" have included live-broadcast cross-examination of Law Society officials (Rajah 2012). Moreover, in many such authoritarian contexts, lawyers are subject to everyday "petty indignities", including being required to plead for court documents to which they are legally entitled, and being forced to endure long delays to or arbitrary denial of access to their clients (Halliday and Liu 2021).

Across all of these settings, lawyers are forced to adapt their tactics and strategies to challenge authoritarianism. Depending on local circumstances, lawyers use a wide variety of approaches including: deploying political affiliations or good links to more tolerant components of the state (Liu and Halliday 2016, 2011); developing relations to local social movements (Munger 2012b) or international organisations (Munger 2008); seeking support from domestic bar associations (Crouch 2011); or relying on particularly courageous leadership in the legal profession (Rajah and Thiruvengadam 2013). As authoritarian regimes adapt and evolve over time (Morgenbesser 2019, 2020; Rajah 2024), lawyers are also often required to work on what Chua (2014: 17) described in the related context of Singapore as "the edge between dissent and compliance".

In seeking to better understand the actions of Cambodian lawyers analyzed below, one way to frame their actions is as a variant of "political lawyering", understood as the specific practice of lawyers mobilising on behalf of political liberalism.[2] Drawing originally upon the US context and then from a range of rich comparative and historical studies (e.g. Minow 1996; Halliday et al. 2007; Karpik 2007; Archer 2018), this

literature examines how lawyers deploy law in defence of the fundamental rights on which a liberal state is founded. Halliday and colleagues examine the diverse and interdependent collective actions of what they term the legal complex (all legally trained actors), including the role of bar associations in either resisting or acquiescing to state power (Karpik and Halliday 2011: 27; Halliday and Karpik 2015). While this framework is relevant for our discussions on the limitations of the Cambodian Bar Association, its relatively narrow focus on political liberalism and sometimes public expressions of dissent and contestation does not capture the essence of Cambodian lawyers' activities we discuss below.[3]

As a result, like others who have analyzed lawyering in authoritarian Asian contexts (e.g., Munger 2012; Cheesman and Kyaw Min San 2013; Rajah and Thiruvengadam 2013; Tam 2012; Kwong 2024) we were more drawn towards the cause lawyering scholarship. Cause lawyering is often defined in contrast to conventional lawyering, the latter being understood as lawyers exercising technical legal skill for the client, providing zealous representation and objective, dispassionate advice, working within established professional ethics and with no expectation of broader moral or political purpose (Freedman 1975; Berenson 2008: 507, Scheingold and Sarat 2004: 2). In contrast, cause lawyering eschews such distance from the client and assumes law is deployed "in furtherance of the lawyer's moral and political commitments" (Goldfarb 2008). Cause lawyers use their legal skills "to pursue ends and ideals that transcend client service," (Luban 1988) in search of "the good society" (Sarat and Scheingold 1998: 3), negotiating the boundaries between "lawyering and social action" (Hilbink 2004: 658). Cause lawyering is a conscious and overt endeavour (Sarat and Scheingold 1998; Scheingold and Bloom 1998) that is intended "to pursue social change" (Etienne 2005: 1200).

Cause lawyering research originally focused primarily upon broadly rule of law compliant liberal democracies where there were varying levels of tolerance towards lawyers who used law as an "assertive political weapon" (Farid 2013: 428). However, in recent decades there has been an increased interest in cause lawyering in authoritarian regimes that are explicitly intolerant of such legal activism (Bisharat 1989; Sarat and Scheingold 2001; Hajjar 2005; Halliday et al 2007; Stern 2017, McEvoy et al. 2022). In some such contexts, cause lawyering includes high profile *public* refusals to acquiesce to the power of the authoritarian state (Shafqat 2018; Gobe and Salaymeh 2016; Abel 1995). In others, including Cambodia, there is little space for overt public challenges, and legal resistance to arbitrary state coercion is instead "often invisible, imperceptible, and uncelebrated" (Liu and Halliday 2011: 863). It is precisely because of the increasing impossibility of publicly contesting state power in Cambodia that we posit the notion of *closeted* cause lawyering to those who seek to quietly challenge authoritarianism.[4]

'Closeting' refers to the process by which individuals or groups navigate what to reveal or conceal about their personal life, professional identity or other issues (McDonald et al. 2020). The term closeted has been historically linked to queer studies scholarship and the concealment of LGBTQ sexual identities (Jagose 1996; Adams 2011). In that literature, the closet was often framed as a figurative space that allows those within the LGBTQ community to avoid the social, political and indeed legal consequences of their identity being discovered (Sedgwick 1990: 68).

The closet may be viewed as a metaphor for invisibility, isolation and oppression – a confining space frequently defined by the relative powerlessness of those trapped therein (Sedgwick 1990). From such a perspective, it is often framed as the result of exclusionary political, social or economic impulses from those with power deployed against those deemed deviant or other (Brown 2000; Seidman 2002). For those within, it is often frequently described as a place "to come out of" or to be "liberated from" (Sycamore 2008; van den Berg 2016).

Alternatively, it is also possible to see the closet as "a protective place" (Yoshino 1996:1796-97), a locus of mutual support and place from which rhetorical and practical resistance to exclusion, stigma or discrimination is organised (Grindstaff 2014). Ostensibly closeted people may be able to create their own social realities and networks of relations that are mutually reinforcing in a social and physical space where people can be safer precisely because of their lack of visibility (Schweighofer 2016). Although a "restoration of dignity" is normally associated with exiting the closet (Cooper 2015), in fact the support of others in the closet may itself be an important source of dignity, courage and resilience (Boucai 2022:590).

Being closeted also inevitably requires what is sometimes referred to as a "passing strategy" (e.g., Renfrow 2004) – to 'pass' as someone or something that one is not. This may be viewed as a version of "the management of undisclosed discrediting information about the self" (Goffman 1963: 4). Passing can also be framed as a variant of what Chua (2014: 17) has discussed (with regard to gay rights activism in Singapore) as synchronistic adaptation, shifting from gentle "boundary-pushing" to "toeing the line", attempting to "stay alive and advance with skirmishes rather than court demise by declaring open warfare". Thus 'passing' may mean that one shifts in and out of the closet, performing different versions of conformity to the normative requirements of a particular society in different personal or professional circumstances but not in others (MacLachlan 2012).

While the notion of the closet was originally linked primarily to queer studies, the term has been increasingly deployed across a broader range of contexts. For example, it has been used to discuss experiences as diverse as: the status of undocumented immigrant or migrant workers (Villazor 2013); health conditions (Myers 2004); drinking or not drinking alcohol (Romo et al. 2015, 2016); ethnic or religious identities (van Nieuwkerk 2018; Fader 2020). As detailed below, we use the term to analyse the work of those Cambodian lawyers who are forced to hide their professional inclinations towards justice and human rights but who nonetheless seek to maximise their clients' dignity, to uphold some variant of legality within the courtroom and to nurture a moral community among likeminded lawyers.

CAMBODIA'S CAUSE LAWYERS: NAVIGATING AUTHORITARIANISM

For our case study, the context for researching Cambodian cause lawyers is dominated by two interlinked factors: the consequences of and responses to the devastating crimes of the Khmer Rouge in totalitarian Democratic Kampuchea ('DK') between 1975-1979 (Etcheson: 2005, 117-119; Kiernan: 2002, 456-465), and the subsequent rise of the Cambodian People's Party ('CPP') and autocratic consolidation through its longstanding leader Hun Sen (Strangio 2014).

The impact of the DK regime on every aspect of Cambodian political, social, economic, and cultural life was and remains destructive (Williams 2021; De Walque 2004; Gottesman 2003; Becker 1986). Insofar as the legal profession is concerned, only a handful of lawyers survived the DK purges (Neilson 1996; Dunlap 2014), leaving behind a "complete legal vacuum" (Vickery 1986). The demolition of Cambodia's legal system was compounded by subsequent events in the post-DK years, from government by executive decree (Lao 2006; Coghill 2000: 53), through a resumption of political violence and instability (Buckley 2002), to an eventual peace settlement in 1991 implemented by the United Nations (United Nations 1991). Although rebuilding the legal system was secondary to the wider goal of bringing peace (Hughes 1996: 36), since the mid 1990s, Cambodia has had one of the highest concentrations of NGOs in the world, including many linked to law and justice (Barter 2024).

Vast sums of international aid poured into Cambodia, often premised upon a domestic commitment to the rule of law (Godfrey et al. 2002; Sato et al. 2011; Ear 2013). The most high-profile of legal development projects was the establishment of the Extraordinary Chambers in the Courts of Cambodia ('ECCC'), a 'hybrid' international criminal tribunal established by the United Nations and the Royal Government of Cambodia.[5] The ECCC's mission was to prosecute the surviving senior Khmer Rouge leaders and others most responsible for crimes of the DK era (Scheffer 2008; Etcheson 2019).[6] Operational between 2006 and 2022, UN-appointed judges, lawyers and investigators worked in tandem with their Cambodian counterparts. A key justification for situating the ECCC in Cambodia was the capacity-building effect of such a court on the Cambodian legal system (Killean 2019; Coughlan et al. 2012; Hinton 2018). Notwithstanding a slew of parallel development projects – including the creation of new codes for domestic criminal and civil jurisdictions, an influx of advocacy training for lawyers and countless other rule of law projects (Sato 2018; DeFalco 2018; Morris 2016) – the purported capacity-building benefits did not materialise.

Hun Sen was Prime Minister of Cambodia from 1985 to 2023 before handing over office to his son Hun Manet. During his period in power Hun Sen steadily eroded democratic freedoms, curtailed the independence of the media and consolidated control over all state institutions including the judiciary (Strangio 2014; 2017; Sutton 2018). The CPP has won every election since it regained sole control of Cambodia in a violent coup in 1997 (Adams 1997) and has suppressed opposition, including dissolving the main opposition party in 2017 (Chum and Heiduk 2018). Repressive laws, securitization, and a lack of press freedom have created a stifling environment for legal and political activism (Loughlin 2021; Hyde et al 2022) and transformed Cambodia into a fully authoritarian state (Un 2019; Lawrence 2020 and 2021; Morgenbesser 2019). In 2024, Cambodia was ranked 141 out of 142 countries surveyed by the World Justice Project in terms of its lack of commitment to the rule of law.[7] The CPP has also targeted NGOs, the media, and civil society organizations, imposing laws that curtail their ability to challenge the state (Coventry 2016; Curley 2018; Strangio 2024). For example, the 2015 Law on Associations and Non-Governmental Organizations ("LANGO"), imposed strict registration and reporting requirements and mandated "political neutrality", seeking in effect to silence civil society dissent (UNHCHR 2015).

The legal profession, regulated by the Bar Association of the Kingdom of Cambodia (BAKC), is similarly compromised. Established in 1995, the BAKC is nominally tasked with safeguarding the independence of lawyers (Kong 2012: 15). In practice, it

has been criticized for widespread corruption and political interference. Bribes for entry to the legal profession are common, and many lawyers have close ties to political leaders or state institutions (IBAHRI 2015). Historically, the BAKC limited the number of new lawyers joining the Bar (Dunlap 2014: 2). More recently the numbers qualifying have quadrupled - with 2,789 certified members of the BAKC in 2023 (Kim 2023) compared to a mere 725 in 2014 (Goles 2021) – still an extremely small number for a country of nearly 17 million people.

Such rapid growth (in relative terms) in the legal profession has, it would seem, been in the service of conventional transactional lawyering. Some observers have noted a skewing of the ethical orientation of the profession, with prominent lawyers explicitly affiliating themselves with political leaders and state institutions, in an overt focus on "political and commercial objectives" over "professional virtues" (Ly 2020).

Despite anti-corruption laws, there is a pervasive culture of bribery, with facilitative payments made in all areas of the law from commerce to criminal justice to secure the appropriate verdict – if litigants can afford it (IBAHRI 2015; United Nations 2019: 15). The BAKC is largely controlled by the CPP, and its leadership has been accused of prioritizing political loyalty over professional independence (Dunlap 2014; Morris 2016). Former President Hun Sen and other senior members of the CPP were made honorary members of the Bar in 2004, and subsequent BAKC Presidents have either been full members or required to show loyalty to the ruling CPP. The International Bar Association's Human Rights Institute has condemned the BAKC as overly politicized and incapable of protecting lawyers from government interference (Pech and Turton 2015; IBAHRI 2015).

In this environment, cause lawyering is fraught with additional challenges. Lawyers working on politically sensitive cases or representing opposition figures risk harassment, surveillance, disbarment and prosecution (Lawrence 2021; Human Rights Watch 2015; International Commission of Jurists 2014). Cambodia's criminal defamation laws, among the strictest in the world, are frequently used to silence critics of the regime (Norén-Nilsson 2021). Similar broad sweeping powers to criminalise the political opponents resulted in the prosecution of members of the former opposition Cambodia National Rescue Party ('CNRP') (The Guardian 2019) and as noted, its dissolution by the Supreme Court in the run up to the 2018 elections (Lawrence 2021: 240). High-profile cases – such as the mass trials of opposition activists and the conviction and eight-year sentence of imprisonment for prominent U.S./Cambodian lawyer and NGO activist Theary Seng for "treason" – highlight the risks faced by lawyers perceived as critical of the government (Human Rights Watch 2022). In the context of this broader culture of intimidation and repression, some prominent human rights lawyers and activists have issued public apologies for their previous work and have joined the CPP as a way of resolving charges of criminal defamation against them or to fend off disbarment or criticism from the regime (Nop 2023; Phonn and Runn 2023).

Many lawyers in Cambodia have historically worked within NGOs, focusing on issues like land rights or providing legal aid to marginalized communities. Previously, these lawyers often had ties to opposition movements, but the government's increasing restrictions on NGOs have significantly reduced their numbers (Bunthoeurn 2011). The 2015 LANGO and related laws, such as the 2015 Telecommunications Law, have

granted authorities sweeping powers to monitor, deregister, and prosecute NGO workers and activists (LICADHO 2016: 2-4). This crackdown has further limited the space for cause lawyering, as has the government's broader culture of intimidation, repression, arrest and detention of civil society activists who are critical of the regime on social media or journalists who report on political issues (OPHRD 2020; Human Rights Watch 2023).

In summary, the authoritarian Cambodian state has systematically shut down the space for human rights and social justice lawyering and imposed a system of 'rule by law'. Under repeated and sustained attack from the government and with no support from their professional body, the challenges faced by lawyers working on issues deemed controversial in Cambodia are considerable. This highly constrained environment motivates our central research question: how do cause lawyers operate in such an authoritarian state? Before discussing our findings in answer to this, we briefly set out our methodology.

METHODOLOGY AND DATA ANALYSIS

The primary data upon which this article is based was collected as part of a larger comparative project exploring the role of cause lawyers in six different jurisdictions, of which Cambodia was one.[8] We were interested in exploring the role of lawyers in societies emerging from conflict or authoritarianism, and their response to violence, their contributions to the rule of law, their litigation strategies and their broader social and political mobilisation where relevant. Cambodia was chosen for a number of reasons including that: it was a civil law jurisdiction; it had endured the genocidal regime of the Khmer Rouge which had involved the murder of most of the country's lawyers; it had the experience of hosting a hybrid international criminal tribunal; and it is an increasingly authoritarian regime. Although the legal and political institutions in Cambodia have been subject to particular and unique historical stressors, we were interested in exploring the distinct commonalities with other authoritarian states in Southeast Asia and elsewhere, as well as the strategies lawyers have adopted to negotiate these.

Fieldwork in authoritarian contexts presents a range of ethical and practical challenges for researchers and are often case study specific (Koch 2013; Good and Ahram 2016). While one of the authors has significant research experience of what is usually termed "dangerous fieldwork" in diverse live conflict sites (e.g. Lee 1995; Sluka 2020), the challenges in Cambodia were different, where the security risks to the researchers were entirely manageable. The key challenge in "navigating authoritarianism in the field" in Cambodia (Morgenbesser and Weiss 2018:3) was to reduce the risk of exposure of interviewees. The project's institutional research ethics application included a detailed research safety plan for researchers and interviewees and a similarly detailed data management plan, both of which were implemented.[9] In the field, further precautions were taken to protect interviewees including describing the research to officials as focused on the ECCC (rather than the domestic legal system),[10] meeting interviewees in locations of their choice, not sharing information with anyone about who we interviewed, and avoiding speaking about the research in public places. Interviews and field notes were recorded on a password-protected master recorder and back-up device, with the audio files uploaded each evening onto a laptop, backed up to an external hard

drive both of which were password-protected and encrypted and then uploaded onto a secure encrypted Active Data Service from the University of the Principal Investigator (Queens University Belfast, McEvoy). Moreover, the meta-data retained excluded information (e.g. date of birth, educational institutions attended) which would have made it easier to identify interviewees.

To inform the fieldwork, we undertook a broad review of the literature from various disciplines, encompassing law, sociology, anthropology, political science, and history as well as site specific literature and policy materials. For Cambodia, this entailed an extensive review of relevant academic literature on the country's political and legal history and culture, as well as relevant international and national NGO materials. Where necessary, key documents were translated from Khmer (the Cambodian language) by local researchers. One Cambodian and one international researcher (with extensive experience of working in Cambodia) were recruited through the first author's existing Cambodian human rights networks. These researchers undertook a desk-based analysis of NGO and media reports concerning Cambodian lawyers. This included, where necessary, the translation into English of Khmer-language materials. These researchers played no role in conducting the interviews or analysing the interview data. The research team conducted the first phase of fieldwork in Cambodia in March 2014, a second phase in September 2016, and a third and fourth in May 2019 and October 2021 respectively.[11]

Most interviews were audio recorded and transcribed, but given the sensitivity of the issues discussed, some preferred not to be recorded and for these interviews we took simultaneous notes. 22 interviews were conducted in Khmer and simultaneously translated into English by a native Khmer speaking freelance interpreter, who was chosen because of their extensive prior experience at the ECCC (including with the first author) and in the national legal system working on legal issues with both national and international lawyers and researchers. The remaining interviews were conducted in English.

In pursuing our inquiry into cause lawyering in Cambodia we used semi-structured interviews to explore lawyers' motivations, roles, and challenges. As discussed below, cause lawyering is not a well-known term of art in Cambodia, either in the local literature or in practice. There did not appear to be an exact analogue of cause lawyering in the Khmer language either; the closest our participants came to articulating broader social and political causes was some form human rights lawyering. However, in explaining the concept of cause lawyering to local lawyers, we drew upon its essential features – moral activism, making a difference, and "using legal skills to pursue ends and ideals that transcend client service" (Sarat and Scheingold 2005: 3-4) – which certainly resonated with participants. Given that neither of us are Khmer speakers, there may have been additional semantic or cultural particularities, but these are beyond the scope of this paper.

Through our questions we explored a range of topics including: aspects of local legal culture including the lack of resonance with the term cause lawyering; influences that shaped career choices; the political pressures and risks associated with human rights advocacy and political defense work and how interviewees navigated these; relations with legal institutions like the BAKC; and hopes for the future of the legal profession and the rule of law.

In a handful of cases, participants wished to remain entirely 'off the record', and such discussions are used as background material only. Given the nature of the authoritarian regime, all interview data has been anonymised including the specific dates and locations when interviews took place – these are referred to only by month to maximise the protection of the interviewees. In addition, no organisational affiliations (e.g. NGO or law firm names) are included.

Once transcribed, all interview data was thematically coded in English and analysed using NVivo software, using a fusion of inductive and deductive approaches (Corbin and Strauss 2014). In practice, this meant that we developed a thematic codebook drawn initially from the generic sociology of the legal profession and cause lawyering literature, adapted it to include particular questions on the local Cambodian context (e.g. the after-effects of the genocide, impact of the ECCC, impact of the authoritarian regime on legal practice) and then adapted it further as the fieldwork unfolded. Ultimately it contained over 30 discrete major codes and over 200 minor codes. As illustrated below, the most frequent codes were the rule of law, authoritarianism, cause lawyering, legal culture, human rights discourses, the role of the BAKC, litigation strategies, and notions of professionalism.

We deployed a purposeful sampling methodology, deliberately seeking to interview those with knowledge or experience of our "phenomenon of interest" rather than generating a random sample of Cambodian lawyers across diverse areas of legal practice (Patton 2014; Cresswell & Plano Clark 2011). Our sample of 26 Cambodian interviewees included: five staffers who worked for local or international human rights NGOs, principally on land rights, human rights and other social justice issues who focused on the field of interest for their respective organisations; 19 lawyers who worked in private practice, who were generalists across the human rights spectrum, including general criminal defence and representing activists and opponents of the government in cases of 'criminal defamation' and 'incitement' charges (although some of these private practice lawyers undertook more transactional or commercial cases to supplement their income); one lawyer who worked at the ECCC; and one law professor at a Phnom Penh University. We also interviewed 11 non-Cambodian lawyers (or 'international' lawyers, as we describe them in our data), seven of whom worked within the ECCC and four who worked on internationally funded advocacy and justice projects with local Cambodian lawyers. Ideally, we would also like to have spoken to judges or to lawyers working on politically non-contentious issues to provide a contrast to our closeted cause lawyers. However, we took the view that this potentially risked drawing attention to the nature of our research. Of the 37 people we interviewed in Cambodia, 29 were men and 8 women.[12] Again, most were chosen because they worked in areas that we understood might be considered as sensitive or contentious by the authorities. Like most lawyers in Cambodia, all interviewees were based primarily in Phnom Penh.[13] However, 15 interviewees worked for organisations that also provided legal services in rural communities beyond the capital.

In terms of the authors' positionality, in addition to being an academic, the first author lived and worked in Cambodia for three years as a UN prosecutor and then subsequently as a legal consultant. As well as practical knowledge and experience of the Cambodian legal culture and a range of contacts in the local legal community, that affiliation was key to establishing the bona fides of the research. In addition to being an academic, the

second author has decades of practical experience of human rights activism in Northern Ireland which was again useful in building trust and rapport with interviewees.

FINDINGS: THE SITES OF CLOSETED CAUSE LAWYERING IN CAMBODIA

While there have historically been some limited examples of overt cause lawyering in Cambodia, the increasingly repressive environment is not conducive to such public defiance of the regime.[14] Additionally, as we noted previously, the term is not generally used in local political or legal discourse. Only one of the lawyers we interviewed self-identified as a cause lawyer, the rest were understandably very wary about such labels when asked if the term could be applied to them or their work. However, once the interviews shifted onto their views on the rule of law, the nature of the work and the challenges they faced, it was clear that our interviewees were doing something more than merely serving their clients. Our interviewees had clear intentions, articulating a justifiable need for lawyers working towards wider causes beyond simple client representation – the classic definition of a cause lawyer (Sarat and Scheingold 1998; 2001; 2004). As one NGO lawyer told us, "I'm not just a technical lawyer – I want to represent a client to fight and demand freedom of the people, the rights of the people" (Cambodian lawyer I, Sept. 2016).

As we suggested above, *closeted* cause lawyering may be viewed as a practice that we define as the intentional pursuit of change through the legal process that is concealed from others either for strategic purposes or as a means of professional survival. The causes for the lawyers we interviewed typically fell into recognisable categories of cause lawyering elsewhere, including fighting for the rule of law and legality, promoting human rights and social justice and educating the public. However, of particular interest to us were the ways in which our interviewees chose to conceal these broader objectives in an increasingly hostile authoritarian climate.

Below we explore three sets of relationships or 'sites' of closeted cause lawyering in which the practice is found. These sites we identified as: firstly, the lawyer-client relationship – by engaging with and representing their clients in ways that are designed to restore the dignity of their clients who often face daily humiliation; secondly, the lawyer-court interaction – by 'passing' as conventional lawyers and performing professionally in ways designed to uphold some variant of the rule of law and legality; and thirdly, in lawyer-lawyer engagements – through sustaining and supporting a moral community of like-minded lawyers while navigating relations with conventional lawyers, particularly the local Bar Association. Across these settings, the lawyers we interviewed largely kept their views on broader struggles for social justice or human rights closeted as they went about their daily work.

(i) Lawyer-Client Relations: Empathy, Dignity-Taking and Dignity Restoration

We previously identified how the relationship between closeting, humiliation and dignity is a theme of particular importance in the literature on closeting. Lawyers in Cambodia were all too familiar with not only the more obvious threats to their own lives, risk of imprisonment and professional disbarment, but also the daily 'institutional humiliation' of their clients by the authoritarian state. Our interviewees detailed these humiliations to us, but also their attempts to counter them through treating their clients

with respect, their efforts to encourage others to do the same and their pursuit of the occasional 'dignity restoring' material victory.

The pervasive bureaucratic dignity-takings in Cambodia which affected both clients and lawyers were evident in the difficulties associated with ensuring clients received a fair hearing. Lawyers repeatedly told us that they were refused any sight of the case file in advance of court hearings, given minimal time to prepare their arguments and often experienced manifest bias on the part of judges (Cambodian lawyers T, Sept. 2016; U, Sept. 2016; V, Sept. 2016; X, Oct. 2021; and Y, Oct. 2021). As one interviewee who principally worked on human rights and social justice cases summed up:

> We cannot prepare properly, there are delays, blockages, papers missing…then judges never listen to our arguments…it's very hard to get justice and fair trials for the defendants (Cambodian lawyer T, Sept. 2016).

Another interviewee who worked for an NGO explained the frustrations of trying to navigate such corruption and partiality in the judicial system:

> I continue doing my work, representing and supporting the victims of land grabbing, big infrastructure projects… the judicial system is not really working and is really corrupt and most of the time powerful individuals in the government are aligned with the businesspeople and most of the time they are working together (Cambodian lawyer V, Sept. 2016).

Faced with perennial bureaucratic humiliation and judicial bias, our interviewees stressed the importance of quiet human empathy and decency towards their clients as a route to dignity restoration. The material interaction with clients was something over which they had humanitarian agency. Precisely because they were invested in the broader aims of their work, and because they were confronted by the daily realities of authoritarianism and the limited space for legal agency, their response to such conditions was to place significant emphasis on compassion towards their clients. As one lawyer explained:

> You're stuck with lots of suffering of your client….and the suffering of your client becomes your own suffering (Cambodian lawyer L, Mar. 2014).

Another interviewee described empathetic conscientiousness with the plight of their clients in the following terms:

> Despite the fact that there's only a 1% chance of success in courts, we can't surrender ourselves… we need to do the right thing for our clients in how we deal with them, in how we represent them. (Cambodian lawyer M, May 2019)

As in other authoritarian contexts (Batesmith and Stevens 2019), a focus on the dignity of clients is an important part of what Luban has termed the moral dimension of lawyering: treating clients as people with a story, listening to that story, translating that story into legal terms and presenting the law in an intelligible form to the client (Luban 2007: 159-160). While some of these interactions occurred in the privacy of lawyer/client consultations, an insistence on such treatment by others beyond the

confines of that relationship was also an important feature of such dignity restoration work. This was described by a Cambodian NGO lawyer in the following terms:

> Some will take their client's case because they want to change things, right? … For me, my commitment is, the way to change social justice is not just the institution, but it is also about how I treat the client, how I try to get society to treat the client including the judge and the legal system, that's how I defend human rights. (Cambodian lawyer K, Sept. 2016)

Such an instinct of compassion towards their clients was a feature noted by an international lawyer of his Cambodian colleagues:

> It teaches you some humility, the conditions under which my Cambodian lawyer friends work… They face risks to their own personal safety and to their own ethics and morality, I could not function as a lawyer in this environment where the legal system is so stacked against you…Even when they know they have little chance of getting justice in the end, they listen to their clients, they hear their story. They insist on people being treated with respect by the police, by the prosecutors, by the judges – that itself is a really important thing, regardless of the result, because they are all too aware of the vagaries of this corrupt and authoritarian regime. (International ECCC lawyer A, Mar. 2014)

While legal victories appeared increasingly scarce, a couple of lawyers pointed out that even in such dire circumstances they were occasionally able to win social justice related cases. One lawyer told us that, every once in a while, "we can win one battle. but then we lose the next three battles" [laughs] (interview with Cambodian Lawyer L, March 2014). Another lawyer who previously worked for a now-defunct major NGO told us:

> I was with [organisation name] for 18 years and I have had many thousands of cases. At one time years ago my win rate was 32% but right now, no, we have no funds, wins are much rarer... If it's a political case, if the client is a politician or a human rights activist, we simply cannot win, the judge will always listen to the government. But sometimes, rarely, if there is no corruption and it's not a political case, sometimes we are able to give the client some hope that they will get justice (Cambodian Lawyer Y, October 2021).

To summarise, in a context where public cause lawyering is impossible and the odds are so stacked against both lawyer and client, the closeted cause lawyers we interviewed understood the humiliation of their clients, dealt with them with empathy and compassion, tried to persuade officials to do the same and persevered in seeking the occasional win. Similar to Atuahene's (2016: 796) analysis of land reform litigation concerning Apartheid-era South Africa's injustices, dignity restoration in such contexts requires an approach to work that seeks to "affirm people's humanity and reinforce their agency." Cambodia's closeted cause lawyers demonstrated through their efforts that humiliation does not have to be the norm – a variant of what Bolton (2007: x) has referred to as "dignity in and at work." In the next section we will examine further how lawyers engaged with the courts, seeking to retain some fealty to the rule of law, regardless of its persistent failure to deliver.

(ii) Lawyer-Court Relations: 'Passing', and the Performance of Professionalism

A second theme we examined concerning closeted cause lawyering was what we term their 'passing strategies' when engaging with those more aligned to the authoritarian regime. As discussed above, 'passing' in this context meant representing a version of themselves that superficially posed no threat to the established order, and performing in ways deemed acceptable in these social or professional situations (Tyler 1994; Renfrow 2004) – what Neuberger et al (2023) referred to as a "protective disguise" or the 'cloaking' of broader interest in rights and social justice.

Interviewees told us of a number of passing strategies that enabled them to frame their work exclusively as lawyers doing their jobs as legal professionals without any broader human rights or social justice agenda. These included: adherence to strategic legal formalism; demonstrating political independence (particularly from opposition groups); avoiding public critique of the regime; and maintaining a clear-eyed view of the audience for the performance of legal professionalism.

Our interviewees continuously stressed that they operated strictly according to the rules. As one lawyer explained, "to do my job properly, I just follow the rule of the court, of the law, that's it." (Cambodian lawyer Q, Mar. 2014). Some lawyers working in private practice deliberately recruited fellow lawyers "who have strong commitment to the system" in order to publicly and privately (within the office) demonstrate their political "neutrality" (Cambodian lawyer N, Mar. 2014). Precisely because they were working in areas deemed controversial by the state, the lawyers we interviewed were scrupulous both in adhering to the professional rules and codes of conduct overseen by a Bar Association in which they had little confidence, and also by behaving in as non-threatening a fashion as possible – a meticulous focus on what one lawyer described as being "careful that I'm doing it the right way" (Cambodian lawyer M, May 2019).

Another interviewee described this public performance of detached professionalism in the following terms:

> In the courtroom I try to talk only law, not politics…OK, this is the evidence, this is what the law says, so what do you decide? In trials, lawyers should act as a 'neutral' professional, not try to defend [too] hard the client… but be a neutral lawyer, a man who wants to know the truth from their client (Cambodian lawyer Y, Oct. 2021).

One interviewee with long experience of working on land grabbing and other sensitive topics also emphasised the importance of caution, of being professionally strategic, both in terms of the cases fought but also making judgements about how far to press the judge or the regime while keeping an eye on the 'big picture'. The key they said was "safety first":

> I say to my colleagues, we can't just think about this one battlefield, we are trying to change a whole society, and this takes time…if there are no human rights NGOs here in Cambodia [because lawyers are in prison] more people will lose their land…so that is important (Cambodian lawyer G, Mar. 2014).

For this lawyer and many others we interviewed, this meant making clear they were not affiliated with the opposition parties nor criticising the current regime. To do otherwise

would be fatal to their chances of passing as a 'regular' lawyer of no threat to the authorities.

In addition, many of our interviewees identified the importance of using the right language, both in the courtroom and outside. This involved the need to "speak carefully" in order to avoid suspicion (Cambodian lawyer M, Oct. 2021). As in any judicial context, this may involve making prudent choices about which arguments to present. In an authoritarian setting such choices have potentially existential dimensions. To avoid unduly irritating the judges (with the implication of being marked as a troublemaker), one lawyer explained how they would never "prioritise" international human rights instruments over indigenous Cambodian laws in their legal arguments (Cambodian lawyer B, Mar. 2014).[15]

In a similar vein, another NGO lawyer explained how "soft power" was more effective in Cambodia than "suing the government" (Cambodian lawyer N, Mar. 2014). In this way, legal arguments could be presented as ameliorative, as helping to making government more effective or efficient in achieving its aims, rather than as directly confrontational. Similarly, when advertising a workshop on human rights and democracy, the 'safer' way to describe such an event was with a more anodyne formulation such as "teaching on the Constitution" (Cambodian lawyer M, Oct. 2021). Such linguistic presentations are instrumental not accidental: lawyers committed to broader causes beyond mere client service are making conscious choices to conceal their intentions.

Closely linked to this careful use of language was a broader culture of 'quietism' (McEvoy 2011) in terms of public critique of the regime. We specifically asked our interviewees whether they would choose to be involved in publicly challenging the government, in the way lawyers in other authoritarian settings in Southeast Asia and China have staged demonstrations, joined protests or participated in other direct action. The answers we received were very clear. As one NGO lawyer told us:

> If you expect the lawyer wearing a black robe walking in the street, taking the banner of social justice: it's impossible! You could be fired from the Bar. (Cambodian lawyer U, Sept. 2016)

Drawing attention to themselves in this way was viewed by almost all our interviewees as inconceivable. An international lawyer with longstanding experience working with Cambodian colleagues explained how if they were to "stand up and fight for a particular cause" they would "most likely…end up in prison" (International lawyer C, Mar. 2014).

Equally, lawyers were also very reluctant to engage with the media, perhaps unsurprisingly given how the regime has systematically closed down critical media outlets. Such reticence was augmented by the risks discussed above of being prosecuted for defamation or sanctioned by the BAKC for breach of confidentiality. Talking to the press was clearly identified as leaving lawyers vulnerable so that the BAKC could use it "as a pretext…there is a clear threat of disbarment" (Cambodian lawyer E, Mar. 2014). There are therefore powerful disincentives to overtly self-present as a cause lawyer in Cambodia: passing as a conventional, regular lawyer prolongs professional survival.

Despite the necessity of adhering strictly to legal formalism, the careful use of language, and the avoidance of direct confrontation with or public criticisms of the regime, our interviewees still took pride in their work: a version of what Hodgson terms "performing like a professional" (2005: 57). Interviewees often stressed the importance of their legal professionalism as key to how they approached work in and out of court. Their core out-of-court functions of collecting evidence, interviewing witnesses, and advising their clients were key to presenting arguments in a professional manner in the courtroom. Legal professionalism and an insistence on legality in accordance with Cambodian domestic law were taken very seriously, despite the frequent lack of legal substance to the proceedings. As one lawyer told us:

> We do all of this even though we know that corruption and the culture of impunity exist in Cambodia and has done for a long time (Cambodian lawyer A, Mar. 2014).

The importance of procedural probity was, in particular, an area of a lawyer's professional responsibility that interviewees felt sufficiently emboldened to insist upon. One interviewee underlined the importance of the perception as well as the reality of due process:

> My role is balancing my duty in being active in ensuring the procedure is fair and *looks* fair [in the courtroom]" (Cambodian lawyer U, Sept. 2016).

Even if a judge interrupted his argument in court, another defence lawyer explained:

> We always tell them of the defendant's right to representation, to be heard, and remind them of the importance of the independence of judges in Cambodia (Cambodian lawyer I, Sept. 2016).

This clever inflection of a due process argument exemplifies a normative appeal to legality framed within the lawyer's professional remit that is difficult for the judge – and the state – to question. Although the court may often refuse their argument, legalism becomes the shield that protects the lawyer from criticism. Talking law – and not politics – in the courtroom ensures there is no reason for the judge to become aggrieved with the lawyer, or as one senior lawyer expressed it, by sticking to legal argumentation, "we give the burden [to be fair] to the judge" (Cambodian Lawyer Y, Oct. 2021).

Lawyers also had a clear view as to the audience for this performance of professionalism. In the absence of juries in their civil law system, and where public access to the courtrooms is also significantly restricted, especially for cases deemed sensitive (Human Rights Watch 2020; LICADHO 2024), the key audience for Cambodian lawyers were the judges themselves. Pointing out that sometimes judges were less knowledgeable on the law than he was, one experienced lawyer explained that very occasionally he could:

> Change the judge's mind, with my legal brief, with my motions you know…I very clearly indicate the law to them…it is the way that I … 'teach' the judge (Cambodian lawyer Y, Oct. 2021).

Viewed in isolation, a relatively narrow emphasis on professionalism, crafting legal arguments that are more likely to find judicial favour, thinking strategically about litigation and avoiding media engagement would resonate with the work of many conventional lawyers in any settled democracy (Vandevelde 2011). By performing their duties in court in a 'business as usual' fashion, Cambodian cause lawyers could be accused of legitimating the regime – what Sfard (2005) has referred to as the 'existential dilemma' for progressive lawyers working in unfair legal settings. The Cambodian lawyers we interviewed were well aware of that dilemma. Most responded that despite the typically slim chance of a just outcome, they continued to have legal and professional responsibilities to their clients, and that if they did not take on such work, other lawyers would. These lawyers had to make a living, but we also argue that in passing themselves off as 'regular' lawyers, and in articulating to us their broader aims and intentions beyond the immediate client, they were in fact acting as closeted cause lawyers engaged in keeping alive the aspiration of a substantive rule of law. This leads us to our third and final site in which our interviewees revealed their cause-ist nature: the relations between themselves, as we shall now discuss.

(iii) Lawyer-Lawyer Relations: Fostering Moral Community Within the Legal Profession

The third locus of closeted cause lawyering that we examined was how such lawyers who were involved in areas of work deemed controversial by the regime related to each other and the Bar Association. In other closeted contexts, those who are forced to conceal aspects of their personal or professional identity may find the support of others in a similar position an important source of mutual reinforcement, courage and resilience (Boucai 2022: 590). Drawing upon Durkheim ([1912], 1995), McEvoy (2019) has used the term 'moral community' elsewhere to examine how a sub-set of cause lawyers working in conflicted or authoritarian contexts can support each other, relate to the mainstream profession, maintain fidelity to the rule of law and create their own organic codes of conduct when local bar associations have lost credibility. This idea seemed to capture well the lawyer-lawyer dynamics of Cambodia's closeted cause lawyers. As detailed below, the maintenance of this moral community involved practical legal as well as moral support to other lawyers including promoting collective self-discipline, developing clandestine forms of communication with each other, and helping each other navigate relations with the BAKC.

In terms of solidarity with other cause lawyers, one obvious practical way to support colleagues is to represent them before the courts. As Norén-Nilsson (2021) has argued, Cambodia has increasingly been recognised for developing a range of 'authoritarian innovations', including against lawyers. As one defence lawyer explained:

> We sometimes represent lawyers who are being prosecuted while practicing their profession. Lawyers who come into conflict with powerful people can be sued by these powerful people or have criminal charges brought against them. For example, it can be falsified documents, it can be defamation, it can be being an accomplice, something like that. We work on trying to get these criminal charges thrown out arguing that they should be dealt with by the procedures of the Bar Association (Cambodian Lawyer B, Mar. 2014).

Practical support took other forms. For example, at an NGO involved in legal advocacy on women and children's rights, one lawyer told us about the importance of working in an organisational culture that was in effect practising what they preached – being sympathetic to balancing work and family commitments while also litigating on such issues (Cambodian lawyer F, Mar. 2014). Another interviewee described practical assistance between closeted cause lawyers in the following terms:

> Lawyers can support each other, like I do every day. We can support activists, provide free legal defending, discuss legal challenges with each other, help each other with legal analysis…also work closely with more junior lawyers (Cambodian lawyer U, Sept 2016).

Others talked about the importance of collective self-discipline amongst lawyers working in controversial areas in order not to fall foul of the regime. As one senior lawyer working at a local human rights organisation explained:

> We don't allow our lawyers to do something outside of their discipline, you see. We ask them to behave strictly according to the [rules of the] Bar (Cambodian lawyer G, Mar. 2014).

Developing closeted forms of communication amongst lawyers working on controversial cases was another interesting feature of the moral community. Our interviewees spoke of the absolute necessity of discretion and the careful use of language. As one lawyer put it, "we cannot be careless in communications with clients where phones are being tapped or recorded by people" (Cambodian lawyer X, Oct. 2021). Similarly, an experienced lawyer with decades of experience taking human rights cases told us:

> Even when talking with our friends, we have to be careful what to say, how to speak. Don't use the word 'democracy', don't use the word 'human rights', you know. Instead, say 'the rights in our Constitution' – even outside the courtroom, just the same as inside it (Interview Lawyer Y, October 2021).

Another lawyer described what was termed "whisper culture", where lawyers use subtle gestures to discuss strategy and tactics on particularly sensitive topics, fearful that they will be seen or overheard by supporters of the regime:

> We end up whispering all the time. I never speak on the phone about sensitive cases, I also try not to talk in public about cases. If I have to talk with a colleague and there are people around, if it's a land grabbing case [mimics hugging gesture], or a criminal prosecution case [mimics turning key] or a highly political case [points upwards] this is what we do (Cambodian lawyer I, Sept. 2016).[16]

In terms of navigating relations with the Bar Association, it is perhaps unsurprising that the BAKC had little standing amongst our interviewees, with most confirming the critiques of its lack of independence and corruption. One interviewee described the BAKC's role as bowing to political pressure from the government or powerful economic actors to intimidate rather than trying to protect lawyers, as well as ensuring that only those sympathetic to the government achieve high office within the Association:

> I got into trouble because I spoke to the media about a case. I was sued for defamation by the government. Then the Bar were trying to discipline me because of course they were under pressure from the government to do so… When I asked to see the case against me to answer them, the Bar Association President told me I couldn't for reasons of confidentiality… [laughs] (Cambodian lawyer D, Mar. 2014).

Another Cambodian practitioner said that "good lawyers are kept poor" by the BAKC (Cambodian lawyer E, Mar. 2014) – a theme echoed by an international lawyer working in Cambodia:

> The political interference [in the BAKC] stops socially committed lawyers building capacity, because if they started to build capacity then it might actually get quite dangerous…if they get too smart then there will be a small revolution, and they don't want that (International lawyer A, Mar. 2014).

The BAKC appears to play a particular role in instilling fear amongst lawyers about speaking publicly on human rights matters or being openly critical of the regime. Another Cambodian lawyer stated:

> If you talk to the press, they [the BAKC] may use this as a pretext, claiming that you are in breach of confidentiality owed to your client, so there is a clear threat of disbarment. In our project we tried to establish a lawyers' working group to discuss land and reform issues. Some lawyers joined but because it's not supported by the Bar Association they pulled out for fear of disbarment or disciplinary sanction against them (Cambodian lawyer E, Mar. 2014).

Some lawyers who talked of being 'targeted' by the powerful and well-connected suggested that the attitude of the BAKC is often that such troublemakers bring it upon themselves (Cambodian lawyer M, Oct. 2021). One lawyer spoke of having received anonymous death threats, being under intrusive surveillance from the security services for having represented members of the opposition – and again receiving no support from the BAKC (Cambodian ECCC lawyer C, Mar. 2014).

Despite their strong criticisms of the BAKC, interviewees nonetheless told us about their tactical efforts to shift the point of pressure on fellow lawyers away from the courts (e.g. from criminal defamation prosecutions and civil actions) and towards the internal disciplinary processes of the BAKC. Interviewees suggested that despite its manifest weaknesses, once a case was the subject of the Bar Association's disciplinary apparatus it was sometimes possible to mobilise less supine lawyers within its structures, to appeal to the professionalism of fellow lawyers or to negotiate the sanctions downwards, such as offering an apology to the Bar Association President (Cambodian ECCC lawyer B, Mar. 2014).

In sum, when Durkheim first deployed the term moral community, he suggested that it required not only shared 'modes of action' but also a set of shared beliefs in what is deemed 'sacred' (Durkheim [1912] 1995: 34; see also Horgan 2014). In Cambodia, there were clearly groups of lawyers who had developed cause-orientated modes of action including providing practical and legal support to one another, discussing tactics

and strategies (albeit often in coded language) and managing relations with a flawed Bar Association. These cause lawyers were by necessity closeted but their sense of belong to a community of like-minded lawyers was clear. Moreover, in terms of the moral dimension of this community, we also saw clear evidence of Durkheim's 'sacredness', in this instance a shared belief in the rule of law which required preserving as an ideal: if necessary, a long term, even inter-generational, project – a theme we return to in the conclusion.

CONCLUSION: CLOSETED CAUSE LAWYERS AND THE RULE OF LAW

In this article we sought to explore how cause lawyering in a closeted form is practiced in an authoritarian state. We are aware of the lively definitional debates on what constitutes cause lawyering (e.g., Hilbink 2004: Boukalas 2013; McEvoy 2019). For us, Scheingold's (2005: xvii) discussion of cause lawyers as lawyers who "act as effective agents of rights by utilizing them in a politically savvy fashion on behalf of meaningful social change" captures the essence of the work of most cause lawyers. While some commentators argue that cause lawyering must involve public challenges to the established order otherwise it risks "compliance if not complicity" with the regime (Rajah & Thiruvengdam 2013:647), we took a different view.

In circumstances such as Cambodia where it is effectively impossible for lawyers to publicly criticise the authoritarian regime, we argue that providing lawyers are engaged in the intentional pursuit of change through the legal process, their closeted work should properly be viewed as cause lawyering. In examining how such closeted work is manifested in authoritarian Cambodia through cause lawyers' relations with their clients, the court and each other, we argue that such work helps retain an attachment to the rule of law, notwithstanding the obvious risks of legitimizing an illegitimate regime. The challenges for closeted cause lawyers in Cambodia are significant: all lawyers working on issues deemed politically sensitive face imprisonment, harassment, intimidation, surveillance, and threats of arbitrary disbarment or politically motivated prosecutions, as well as related professional humiliations and the difficulties of working in a deeply flawed justice system. Moreover, in conducting our interviews at different junctures since 2014, it is clear that the Cambodian government has become progressively more authoritarian over that relatively short period of time.

However, even in such an objectively bleak legal context as Cambodia, it is still possible to discern grounds for hope. Regardless of the oppressive conduct of the legal and state authorities, through dignity restoration work with clients, the professional performance of legal responsibilities and sustaining moral communities of like-minded cause lawyers, Cambodian lawyers are engaged in variants of moral activism (Luban: 1988 xxii). Such actions may appear "common-place or ordinary" (Rochat and Modiglandi 1995, Hollander and Einwohner 2004:539), "low profile" (Scott 1986: xvi), do not generally "make headlines" (Scott 1986: xvii), and rarely morph into a "public performance of resistance" (Scott (1990: 2; 1989). Even when it does – such as during legal challenges to the power of the state in controversial arenas like land rights or the trials of regime opponents – the 'public transcript' of that performance is framed in respectful terms. It all constitutes resistance, nonetheless.

Closeted cause lawyers engage in a range of passing strategies which conceal their broader commitments to human rights and social justice. Similarly to how other

'disguised' cause lawyers practice – such as those operating within the state (NeJaime 2012; Berenson 2008) – self-preservation, mutual support and keeping causes alive are all assisted by this closeting. They are 'passing' as professional lawyers because they *are* professional lawyers – representing the interests of their client and adhering to and upholding the laws of Cambodia and the rules of the Bar Association – but saying little in public about their commitment to human rights or social justice. There is still resistant cause lawyering at work behind and beyond these public transcripts for what is in reality "an ideological debate about justice and dignity in which one party has a severe speech impediment induced by power relations" (Scott 1990: 138).

Moreover, we argue that in an authoritarian context, there is an intrinsic value in continuing to act as if the rule of law had substance. As Scheingold has argued, "the myth of rights" remains a "kind of resource" (Scheingold 2005: xix). Although law inevitably "posits an ideality that it can never realise" (Butler 1988: 18), in an authoritarian context, repetition – the "forced reiteration of norms" (Butler 1993: 94) or continuing to perform professionally as if the rule of law was real – may itself be viewed as an act of subversion. It represents a sort of "citation" (Derrida 1992: 18) to a substantive rule of law which is otherwise absent. The work of cause lawyers in particular represents "a constitutive voice of law's idealised vision and its institutional practices" (Scheingold and Sarat 2004: 141).

In reflecting on the broader significance of our study, while every country has its own peculiarities in legal and political culture, unfortunately Cambodia is not an outlier in a world that is becoming increasingly authoritarian (Hussain and Ahmad 2020). Authoritarian regimes are also becoming more "sophisticated" (Morgenbesser 2020), "borrowing" from each other's populist discourses to rationalise illiberal constitutions, passing repressive legislation to silence dissent, stifle human rights and control the courts (Lawrence 2021). Across Southeast Asia and China as we discuss above, but also in Russia, India, parts of Africa and Europe, the rise of authoritarian rule is a political reality (International IDEA 2024: 13). Such tendencies are no longer limited to traditionally autocratic states. As we write, the populist and autocratic shape of the second Trump Presidency in the United States is crystallizing. It includes stigmatization of and attacks upon the most vulnerable, sustained efforts to hollow out democratic institutions and accountability, and threats and smears on judges who rule against the President's wishes or lawyers who represent his political opponents (Moynihan 2025; Scarcella 2025; Hesson and Hals 2025; Levitsky and Way 2025). Resisting authoritarianism – wherever it exists – will require judges and lawyers to take a public stance in defence of basic human rights: this has already begun in America, both from civil society (Democracy Forward 2024) and within the Supreme Court itself (Chung and Kruzel 2025). Such resistance in the United States and elsewhere will also necessitate relentless litigation by traditional cause lawyers and advocacy groups *publicly* doing their work where there is still space to do so without existential risk. It will also entail a quiet realisation among the entire legal complex, regardless of their political affiliations, that they are each at some level a closeted cause lawyer – bonded by a shared responsibility to uphold the rule of law and a duty to behave accordingly.

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[1] This draws upon the broad typologies of cause lawyering in post-conflict and transitional settings discussed elsewhere (McEvoy 2019).

[2] Halliday et al (2007:10-11) define political liberalism as the protection of basic freedoms, a ‘moderate’ state (distinguished by its internal and systemic fragmentation of power and autonomous judiciary) and the presence of a civil society which is independent from the state.

[3] For these reasons, we tend to agree with one of the anonymous reviewers of an earlier draft of this article that political lawyering is rather the ‘obverse’ of our concept of closeted cause lawyering.

[4] A concept of ‘masked’ cause lawyering is mooted (and rejected) by Jothie Rajah and Arun Thiruvengadam in the Singapore context (2014), who argue that cause lawyering must be ‘done in public’. This might be arguable in Singapore, which has a sophisticated legal system and a tradition of skilled and highly trained lawyers, some of whom, as Rajah and Thiruvengadam note, still advance their causes very publicly. However, in more repressive regimes such as Cambodia where there are no such traditions, any variant of ‘public’ cause lawyering would be unthinkable and both professionally and personally dangerous.

[5] Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea Vol 2329, I-41723, 6 June 2003, https://treaties.un.org/doc/Publication/UNTS/Volume%202329/Part/volume-2329-I-41723.pdf, accessed 18 March 2025.

[6] The ECCC completed three trials to final judgment against two of the original five indicted accused since it began work in 2006 (two accused died whilst their cases were ongoing, one was found unfit to stand trial). The full procedural history and the judgments of the cases can be located at https://www.eccc.gov.kh/en, accessed 18 March 2025.

[7] The World Justice Project’s Rule of Law Index provides independent data on the rule of law: www.worldjusticeproject.org, accessed 18 March 2025.

[8] The other jurisdictions studied were Chile, Israel/Palestine, South Africa, and Tunisia. See further (McEvoy et al 2022) and https://lawyersconflictandtransition.org/, accessed 18 March 2025.

[9] The project required prior institutional research ethics approval by Queen’s University Belfast. Institutional approval was identified via the grant funding reference ES/J009849/1.

[10] Given its prominence, the Cambodian authorities are used to international researchers coming to examine the ECCC and are perhaps less suspicious of researchers focused on the rule of law or human rights in the domestic legal system.

[11] 28 lawyers were interviewed in 2014; six lawyers were interviewed in 2016, one in 2019 and two in 2021.

[12] Although we had originally hoped to achieve a better balance in terms of male and female interviewees this did not prove possible. Recent statistics reveal that women make up approximately 24% of registered lawyers in Cambodia and 14% of the judiciary (Bar Association of Cambodia, as translated and reported in Bunthan 2021).

[13] Approximately 90% of Cambodia’s lawyers are based in Phnom Penh (Open Development Cambodia 2021).

[14] For example, the one-time self-identified human rights lawyer Sam Sokhong has defended many of Hun Sen’s political opponents, especially ex-CNRP members in the crackdown following the party’s dissolution in 2017. Sokhong has previously argued in court and to the local and international media that the mass ‘treason trial’ of the opposition is politically motivated and lacks due process, condemned the prison conditions of his clients and publicly criticised disproportionate sentences handed out by judges

sympathetic to the regime (Tith 2020; Mech and Wright 2021). However, more recent reports in the Cambodian media have described how Sokhong has joined the Cambodian People's Party (Nop 2023).

[15] This need for 'strategic' 'careful' language mirrors what Chua (2014: 157 and 163) found in relation to gay rights activists – "you have to speak multiple language in Singapore, right?"

[16] This echoes Chauncey (1994) cited by Chua (2014: 15) on how gay men "resisted anti-gay policing by communicating with one another in public with their own cultural codes".