The Political Uses of Law

by Pierre Auriel

From the landmark Bobigny abortion trial to the Affaire du Siècle climate justice campaign, can the law serve as an effective political tool for social struggles? Countering the image of a fundamentally conservative law, the sociologist Liora Israël looks back at the strategic uses of the law by the French left after 1968.

Reviewed: Liora Israël, *À la gauche du droit. Mobilisations politiques du droit et de la justice en France (1968-1981),* Éditions EHESS, 2020. 346 pp, €25.

Liora Israël is a director of studies at the School for Advanced Studies in the Social Sciences (EHESS) and a sociologist in the field of law and justice. For several years, she has been studying the strategic and political uses of law. In her book *L'Arme du droit*, first published in 2009, she explained how the law can be used as a tool by those seeking to remedy an injustice[1]. Thus, the protest against racial discrimination in the United States, the defense of Palestinians against the Israeli occupation, the campaigns for environmental protection in Europe — particularly since the Urgenda cases in the Netherlands — and the fight to protect abortion rights, have taken place at least partly in legal arenas.

Her new book, *À la gauche du droit*, completes this overview with an in-depth analysis of the ways in which left-wing political movements mobilized the law between 1968 and 1981. The author makes thematic studies of different groups of jurists in France — students, researchers, lawyers, magistrates, the *Groupe d'information*

1 L. Israël, *L'arme du droit*, 2nd edn, Paris, Les Presses de Sciences Po, 2020.

et de soutien des immigrés (GISTI, an information and support network for immigrants), etc. — to explore how the law was used to defend the right to abortion, to protect foreigners' rights, or to defend left-wing activists. She successfully shows how a particular conception of law emerged, reflecting on the professional practices of jurists during this crucial period for the French left.

A particular conception of law

The author focuses on what she calls "the left of the law" (*la gauche du droit)*, i.e., "jurists and non-jurists claiming to be from the left or the far left" (p. 19) who challenged the conservative dimension of the law in order to make it a vector for "openly progressive, even radical causes" (p. 20). This definition is somewhat vague and largely negative. In general terms, leftist jurists would appear to be those who did not identify with the dominant values of their professional order, although this makes it difficult to establish a homogeneous or even clearly defined group. Instead, Israel's studies focus on a scattering of more or less related individuals and movements. For these people and groups, "the law [is] not only the language of the State or of those in power: it can be spoken by others and compel those who claim to be its guarantors to respond" (p. 25). The law can become a vehicle for denouncing and remedying injustices. In particular, because judicial institutions are required "to hear all claims and give reasons for their decisions," they are seen as a potentially crucial space for political struggles.

Left-wing jurists did not, however, have a homogeneous conception of law in the period between 1968 and 1981. At least two relationships with the law and the judicial system coexisted within these groups. From the first, more radical, perspective, the law and especially the judicial system were perceived as nothing more than a "*protocol"* (p. 25) that could be used as a stage for political condemnation. The law continued to be seen as a tool to serve the interests of the dominant classes, but one whose principles of coherence, equality or publicity could be redirected. This strategy originated in a letter written in the late 1920s by Marcel Willard concerning Lenin's defense strategy. Willard was a communist lawyer who saw the court, especially the criminal court, as "a political arena" that made it possible to "exploit all the means of expression offered by the guarantees associated with the rights of the defense" (p. 49). The "rupture defense" (or "rupture strategy") used by Jacques Vergès and theorized in his work *De la stratégie judiciaire* in 1968, is the best-known expression

of this. Vergès believed that the trial was only a "potential space for questioning and sensitizing [...] public opinion to the political cause" (p. 46). During the trial, the defense had to utilize all the weapons at its disposal, even if that risked increasing the sentences, in order to highlight the political cause underlying the offence committed. This was, for example, the strategy he adopted to defend Algerian activist Djamila Bouhired, who had planted bombs in Algeria. Vergès's multiple interventions questioning the very legitimacy of the court made the trial impossible and gave it considerable resonance, turning it into a symbol of the Algerian National Liberation Front's cause.

However, this strategy also hastened the death sentence of the accused — who was later pardoned following the Evian Accords of 1962 — and had no impact on positive law. Because positive law and the judicial system were perceived as illegitimate, there was no point in trying to correct it or expecting a favorable solution. This radical method was emulated in the period studied by Liora Israël, for example during Alain Geismar's trial before the State Security Court in 1970 and 1971. This leader of the Maoist left, prosecuted for his part in publishing the newspaper *La Cause du Peuple*, organized his trial to gain the media's attention and even had the minutes published (pp. 258-260).

Less subversive but more widespread, the second perspective involved adhering to the basic principles of the legal system that could protect groups currently excluded or suffering injustice. The law and the judicial system were analyzed as a "space within which social conflicts can be redirected and even resolved" (p. 26) in accordance with the requirements of justice. For example, the young graduates of the École National d'Administration who established the GISTI wanted to enable immigrant workers to assert their rights (p. 214 et seq.). The aim was not to radically challenge the State's migration policy, but to guarantee its transparency by forcing the authorities to publish the circulars that formed the basis of administrative decisions. This publicity was intended to enable immigrant workers to assert their rights, to challenge unlawful decisions and ultimately have them corrected when the decisions taken infringed the rights recognized by the legal order. In other words, the objective of the GISTI group was to put an end to the lawless situation in which foreigners found themselves, as the legal framework was supposed to protect their rights effectively.

Similarly, the strategy developed by the defense lawyers during the 1972 Bobigny trial, studied in detail by the author (pp. 261-282), illustrates this relationship to the law. The Bobigny trial involved a minor accused of having an abortion after

being raped, and the four women who assisted her. It was used as a platform by members of the association *Choisir la cause des femmes,* founded by Simone de Beauvoir and Gisèle Halimi, to defend women's right to abortion. Halimi, who was one of the defense lawyers, took advantage of all the tools of criminal procedure to publicly challenge the criminalization of abortion. However, the purpose of the trial was primarily to obtain an acquittal for the defendants and to secure a change in the law on abortion by highlighting its injustices and inconsistencies. From the defense perspective, the law and the judicial system could effectively safeguard women's rights. There was clearly a difference with the rupture defense strategy: the law was perceived as a legitimate and effective weapon to remedy injustices and not as a simple vehicle for challenging public opinion[2].

Rethinking professional practices

In rethinking their relationship to the law, these left-wing jurists could not be satisfied with existing professional practices, which they perceived as going against their obligations. From that point on, they tried to challenge them. Thus, several initiatives were launched to "desacralize" the legal professions. In their language, it was about breaking with a bourgeois conception of these professions. For example, the creation of the Syndicat de la magistrature and the Syndicat des avocats de France marked a departure from the legal professions, particularly because of the use of the term "Syndicat" (p. 111). This choice was intended to underline the quality of the magistrates and lawyers as workers of the law, not as revered public figures. The creation of the Mouvement d'action judiciaire, an interprofessional initiative that tried to place magistrates, lawyers and social workers (p. 129) on the same level, was motivated by the same idea.

Along similar lines, several projects were created to give disadvantaged people access to these legal professions. A variety of associations created multiple legal advice centers, the most significant of these being the Cabinet d'Ornano. Taking advantage of the legislative changes that made it possible for a collective of several lawyers to

2 Gisèle Halimi, who was also a lawyer for activists fighting for the Algerian cause, clearly broke with the rupture defense theorized by Vergès on the occasion of the Jeanson trial of 1960, a trial involving members of the underground network known as the "suitcase carriers" (S. Thénault, "Défendre les nationalistes algériens en lutte pour l'indépendance. La 'défense de rupture' en question ", *Le Mouvement social*, 2012, no 240, pp. 121-135).

establish a law firm, in 1972 Henri Leclerc and Georges Pinet set up a firm aiming to provide the most disadvantaged people with access to high-quality legal defense, following a reevaluation of the pricing and organization of lawyers' work (p. 145-157). The boutique law offices, in which free legal advice could be provided, also gave people a more universal access to the law (p. 159).

Israël notes, however, that this inventive approach encountered obstacles. The collective law firms based on the Ornano model required its members to make an "all-consuming professional investment" (p. 156), partly depriving them of family life and pushing many lawyers to abandon the initiative prematurely. Similarly, the associations' legal advice centers were of questionable effectiveness, and while the GISTI's activity certainly led to improvements in immigration policy, it failed to challenge it in any meaningful way[3]. In general, the reflections and developments that the author highlights had little impact after 1981. *À la gauche du droit* indeed paves the way for further investigations of the way in which left-wing jurists' relationship to the law evolved after that date.

Moreover, one question remains unanswered for the period the author has already examined. In analyzing the left's relationship with the law, the author seems to believe that there is a "[specific] link between progressive causes and uses of the law"[4]. This specificity could be questioned and clarified by comparing it with the political uses of the law at the other end of the political spectrum[5]. In France, it would be interesting to analyze the numerous appeals filed by the association *Promouvoir* or the cases brought before the European Court of Human Rights by the European Centre for Law and Justice (ECLJ). *Promouvoir* aims in particular to challenge the classification of films considered pornographic, while the ECLJ focuses on the presence of crucifixes in classrooms, the opening of medically assisted procreation to homosexual couples, and the banning of artists whose works are considered blasphemous. The two groups rely on strategies that are in some respects similar to those of the left-wing jurists studied by Israël. An analysis of this similarity, but also of the differences between the two groups — for example the absence of any practice aimed at democratizing access

[3] For a broader analysis of the effectiveness of law as a tool of political struggle, see L. Israël, *L'arme du droit, op. cit.* pp. 20-28.
[4] *Ibid*, p. 94.
[5] For an example of such a study, see K. den Dull, "Purpose-Driven Lawyers: Evangelical Cause Lawyering and the Culture War," in A. Sarat and S. A. Scheingold (eds.), *The Cultural Lives of Cause Lawyers*, Cambridge; Antwerp ; Portland, CUP, 2010, pp. 56-78.

to the law — would be a useful addition to the already rich analyses included in this book.

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