

The Legal Profession in Battle: Cause Lawyers Versus State-Embedded Lawyers in Hong Kong's Democratization

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journals.sagepub.com/home/sls**Ying-ho Kwong** *The Hang Seng University of Hong Kong, Hong Kong*

Abstract

The existing literature has long recognized that cause lawyers play important roles in fighting for political justice. However, the implications of how the state responds to these lawyers have yet to be comprehensively explored. This article argues that the state in Hong Kong has co-opted “state-embedded lawyers” against cause lawyers for the counter-mobilizing of public opinion. Thus, both cause lawyers and state-embedded lawyers engage in political battles with polarized objectives, either for democratic reform or regime stability. Theoretically, this paper contributes to analyzing the state’s response to cause lawyering and its counter-mobilization actions by developing state-embedded lawyers. Empirically, the case of Hong Kong helps enrich the existing literature by exploring the confrontational relations within polarized legal professions. The conclusion shows that such tensions can stimulate further polarization with different business paths between lawyers, consumption patterns among citizens and understanding of the rule of law and responses from mainland China.

Keywords

Cause lawyers, state-embedded lawyers, legal profession, democratization, Hong Kong

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Introduction

The existing literature has long recognized that cause lawyering is an activity for the legal profession to use legal actions to fight for human rights, democratic values, and political justice (Sarat and Scheingold, 1998, 2006). The mainstream discussion fundamentally focuses on two major aspects: (1) how cause lawyers in democratic regimes use legal actions to defend marginalized groups (e.g. Ahmed and Stephan, 2010; Woods and Barclay, 2008), and (2) how cause lawyers in authoritarian regimes have faced political repression (e.g. Alford, 2007; Munger, 2010). From this perspective, the implications of cause lawyers in hybrid regimes have yet to be thoroughly explored. By definition, a hybrid regime refers to a political regime with both democratic and authoritarian elements (Diamond, 2002). Comparative political studies have long agreed that an inherent source of political conflict usually exists in hybrid regimes because people are generally allowed to exercise a certain level of electoral rights and civil liberties (Levitsky and Way, 2002). In theory, cause lawyers are mostly permitted to exist, which challenges the authorities, whereas massive repression is not expected. Thus, this article aims to examine how a state under a hybrid regime adopts strategies to accommodate the challenges from cause lawyers.

This paper argues that states under a hybrid regime have co-opted “state-embedded lawyers” to counter-mobilize public opinion against cause lawyers. In recent years, an increasing number of studies have focused on the rise of cause lawyers in Hong Kong in order to pursue democratic reforms (e.g. Tam, 2013), take part in civil disobedience campaigns (e.g. Lee, 2017a), and make use of professional networks for mobilization (e.g. Ma and Cheng, 2021). This paper moves beyond from how cause lawyers defend human rights to how the state responds to those challengers. By adopting the case of Hong Kong, this paper explores the rise of “state-embedded lawyers” who aim to protect the state’s interests against cause lawyers. The paper enriches the existing literature on cause lawyers by developing a new theoretical perspective and offering an interesting case of “the legal profession in battle.”

Cause Lawyers and State-Embedded Lawyers in Different Regime Types

Cause lawyers refer to legal professionals who use legal actions, including legislation, litigation, and mobilization, to defend marginalized groups against state repression (Sarat and Scheingold, 1998, 2006). The key difference between “conventional lawyers” and cause lawyers is that the former applies their professional practices to serve their clients while the latter adopt their professional skills to improve the political and legal status of people in society (Hajjar, 2001). From this perspective, the existing literature has long recognized that the objectives of cause lawyers are to promote liberal legalism and democracy (Munger, 2010), encourage community empowerment (Shamir and Ziv, 2001), challenge the existing law (Woods and Barclay, 2008), pursue political liberalism (Halliday and Karpik, 1997a, 1997b), and defend basic human rights (Dotan, 2001). Sarat and Scheingold (1998: 3) summarized that the ultimate purpose of cause lawyering is to take legal actions to practice with “a vision of the

good society.” It is important to note that some scholars adopt different terms, such as critical lawyers (Trubek, 1996), *weiquan* lawyers (Nesossi, 2015), human rights lawyers (Pils, 2015), political lawyers (Karpik, 2007), and right-protection lawyers (Fu and Cullen, 2008), to describe such kind of legal professionals. For the purpose of this paper, “cause lawyer,” the most common academic term, is adopted to classify lawyers who challenge the existing law, protect human rights, and promote the rule of law and democracy.

Indeed, cause lawyers accept “intersecting identities” (Sarat and Scheingold, 2006). On the one hand, they hold “professional identities” and utilize their legal skills to protect the interests of marginalized groups. On the other hand, they have “social movement identities” in their mobilization of public opinion against political injustices. In this connection, cause lawyers have traditionally been viewed as occupying an oppositional position to the state (Woods and Barclay, 2008). However, how the state responds to cause lawyering depends on its regime type. In democratic regimes, which refers to regimes with civil liberties and competitive elections, cause lawyering mostly operates in regard to nondemocratic issues such as the rights of ethnic minorities, women, and immigrants, and in fields such as environmental protection and police violence (Scheingold and Sarat, 2004). Citing the case of the United States, Munger (2010) argued that cause lawyers in democracies are generally respected and considered to bring social change under free political participation, the autonomy of the bar, and political mobilization. The ultimate outcome is to facilitate liberal legality and democracy.

Comparatively, in authoritarian regimes, which refer to regimes with neither civil liberty nor competitive elections, cause lawyering, which fights for democratic reform and political freedom, is considered a challenge to their legitimacy (Marshall and Hale, 2014). However, under the limited space for political participation, the autonomy of the bar, and mobilization, authoritarian regimes which engage in widespread human rights violations are sometimes only responsive to cause lawyering episodically (Sarat and Scheingold, 1998). Those cause lawyers who assist state criminals or marginalized groups are likely to face heavy repression (Halliday, 1999). By adopting the case of China, Nesossi (2015) found that the state has taken both direct actions to charge, arrest, and jail cause lawyers and indirect actions to threaten their employers, law firms, and family. Alford (2010) also explored that the Chinese authorities revoked cause lawyers’ licenses due to their involvement in taking right-oriented cases. Imprisonment, the intimidation of their relatives, and the disqualification of professionals are common practices adopted in authoritarian regimes.

The mainstream discussion mostly focuses on the two above aspects of (1) how cause lawyers in democratic regimes use legal actions to defend marginalized groups and (2) how cause lawyers in authoritarian regimes face political repression. The implications of cause lawyers in hybrid regimes have yet to be comprehensively explored. Following Robert Dahl’s classical theories of polyarchies, a hybrid regime is classified as two opposite poles of full democracy and full authoritarianism and defined as a political regime with limited, but not all or nothing, elements of competitive elections and civil liberties (Diamond, 2002). Comparative political studies have long recognized that this kind of regime has an “in-between status” and would usually be an inherent source of political conflict within its territory (Levitsky and Way, 2002). In this connection,

cause lawyering legally exists but massive repression is not expected. Thus, some studies explore how hybrid regimes accommodate the challenges from cause lawyers. Dezalay and Garth (2010), for example, adopted the case of Singapore and argued that the People's Action Party, i.e. the ruling party, offered special loans for housing to lawyers in order to encourage them to fall in line with the state and discourage them from taking "sensitive cases" from laborers and ethnic minorities.

On the contrary, Marshall and Hale (2014) importantly pointed out that lawyers do not necessarily commit to the principle of political liberalism against injustice. Some lawyers choose to stay close and even support the state's interests. In the context of a hybrid regime, states tend to co-opt a number of lawyers to provide a legal façade to legitimate the regime (Dezalay and Garth, 2010). These co-opted legal professions then defend state decisions drawing from their professional qualifications and legal knowledge. In return, the state provides such co-opted lawyers with better business opportunities and privileged positions.

Indeed, studying this kind of co-opted legal service is not a novel idea. Liu and Halliday (2011) adopted the concept of "political embedded lawyers" to refer to legal professionals who maintain strong institutional connections with state agencies. Halliday and Karpik (1997b: 351) used the term "confronted lawyers" to refer to legal professionals who operate against the principle of legal liberalism. For the purpose of this study, the term "state-embedded lawyers" is adopted to define legal professionals who are embedded by the state to legitimate state decisions and overcome challenges from cause lawyers. To sum up, hybrid regimes shape legal professionals to either fight for human rights or accept state embeddedness (Marshall and Hale, 2014). On the one hand, legal professionals can mobilize support for the state while others can pursue political justice and democratization. They compete with each other in order to gain more support from society.

Theoretical Framework

With reference to the concept of a hybrid regime, this study attempts to provide a theoretical framework to examine the battle between legal professionals which includes the counter-mobilization stage (Stage 1), battle stage (Stage 2), and intensive polarization stage (Stage 3). Figure 1 gives a summary. In Stage 1, under the setting of a hybrid regime, political polarization allows the rise of cause lawyers to make use of their professional knowledge for promoting political liberalism (Munger, 2010). In response, the state adopts state-embedded lawyers to defend the interests of the state (Halliday and Karpik, 1997b). Existing studies have recognized the rise of cause lawyers and counter-mobilization by state-embedded lawyers while the significance of this study is to move beyond to the next stages.

Stage 2 enters the battle stage. In regard to the analysis of the tensions between legal professionals, Karpik (2007) summarized that locations are mostly divided into three battlefields: (1) lawyers competing for incorporation into professional bodies (battle in professional bodies), (2) lawyers competing to be the main builders of the state (battle in the legislature), and (3) lawyers competing to construct collective representation through

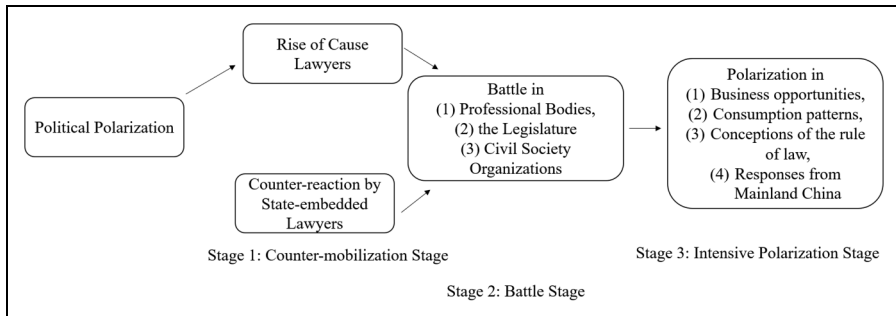


Figure 1. Theoretical Framework.

Source. Author's analysis.

civil society and social movements (battle in civil society). The competition focuses on how to frame the support for or dissatisfaction with government authorities.

Stage 3 is the intensive polarization stage. The battle among legal professionals results in the further polarization of (1) business opportunities, (2) consumption patterns, (3) conceptions of the rule of law, and (4) responses from mainland China. This theoretical framework with three stages was originally adopted in this study for further analysis.

Data and Method

In order to study the competition between cause and state-embedded lawyers, semistructured interviews and content analysis were adopted. A total of 22 interviews were conducted with three state-embedded lawyers, four cause lawyers, and 15 rights activists and legislators. All the interviews lasted from half an hour to two hours in a face-to-face mode or by telephone, depending on the interviewee's preference. The interviews were conducted in Chinese and the translation thereof was performed by the author. All the interviewees are depicted anonymously whereby only their affiliations are revealed, with permission. The interviewees are listed in Appendix 1. To supplement the interview data, content analysis was carried out in relation to the background analysis of members in legal associations, commentaries from lawyer-legislators and counter-mobilization from lawyer-led civil society associations.

Counter-Mobilization Stage: The Rise of Cause Lawyers and State-Embedded Lawyers in Hong Kong

Since the transfer of sovereignty from the United Kingdom to China, Hong Kong has retained a hybrid regime status while a certain level of electoral rights and civil liberties has been maintained. Nowadays, under the new electoral system of May 2020, 20 seats (22.2%) in the Legislative Council are selected by popular election with political screening while the Chief Executive, the head of Hong Kong, is handpicked by a 1,500-member Election Committee dominated by the Chinese government. However, civil liberties are

protected under the Basic Law while the new National Security Law was implemented in July 2020 with increasing restrictions. According to the principle of “one country, two systems,” “Hong Kong people ruling Hong Kong,” and “a high degree of autonomy,” Hong Kong constitutionally is a Special Administrative Region under Chinese sovereignty. Therefore, Hong Kong can be classified as having a “hybrid regime” (Fong, 2017; Kwong and Wong, 2017).

Based on this feature, cause lawyering is legally allowed to exist. The existing literature has recognized that cause lawyers in Hong Kong can be traced back to the Sino-British negotiations in the 1980s (Tam, 2010). The British colonial government had a long tradition of building “legal accountability” in Hong Kong (Jones, 2007). An independent judiciary, comprehensive common law training, and a well-established legal aid system were traditionally developed, creating a favorable ground for cultivating independent legal professionals. The negotiation process provided political opportunities to encourage some lawyers to engage in cause lawyering and legal mobilization in the pursuit of democratization (Tam, 2013). Nowadays, cause lawyering has shifted from defending basic rights to pursuing political liberalism such as democratic reform and fighting against intervention by the Chinese government (Lee, 2017b).

Although cause lawyering is legally allowed, the authorities have enlisted state-embedded lawyers to counter-mobilize public opinion in support of the government. In the eyes of the authorities, co-opting state-embedded lawyers is a reliable strategy to fend off challenges by cause lawyers, by securing support for government policies and building community trust. Based on the interview data, the first reason for the rise of state-embedded lawyers is as a counter-reaction to cause lawyers.

Hong Kong is a diversified society. We cannot tolerate on one side voices from the pro-democracy camp, especially from lawyers. I, as a lawyer from the pro-Beijing side, should stand up to show that the voices from the prodemocracy camp are not the mainstream. Pro-Beijing voices are also influential in our community. (Interviewee 2)

Since the 1980s, cause lawyers have been involved in promoting fast-paced democratization with support for democracy having long been a tradition in Hong Kong. Also, a strong sense of hostility against the Chinese government has developed especially after the Tiananmen Incident in 1989. By taking the position of pro-regime lawyers, state-embedded lawyers attempt to indicate that they disagree with the advocacies and practices of cause lawyers. Democratic reform needs to consider the interests of the Chinese government instead of being “too progressive” (Interviewee 1).

Second, professional qualifications are persuasive in providing counter-legal arguments. Since the handover in 1997, cause lawyers have played important roles in the political campaigns against the state such as the interpretations of the Basic Law by the Standing Committee of the National People’s Congress (SCNPC) in 1999, national security law legislation in 2003, the Umbrella Movement in 2014 and the Anti-Extradition Bill Movement in 2019. In defense, state-embedded lawyers have provided counter legal explanations to legitimate the repression by the authorities. By emphasizing the identity of legal professionals, state-embedded lawyers argue that their opinions can provide an alternative way to oppose cause lawyers.

Cause lawyers in the prodemocracy camp are good at mobilizing illegal actions by using legal terms. Thus, pro-Beijing lawyers should also provide alternative legal perspectives to counter their 'illegal' or 'unconstitutional' viewpoints. The key is to promote the notion that every action should comply with the law. (Interviewee 3)

Third, it is easier for community services supported by legal professionals to mobilize pro-regime supporters. Cause lawyers have a long tradition of assisting citizens through providing legal advice (Interviewee 4). Through providing regular legal services, cause lawyers make use of this opportunity to promote democratic values and build strong connections with the community. In recent decades, providing legal consultations has become a common community service delivered by legislators, district councilors, and district offices. State-embedded lawyers have an advantage in offering professional legal advice while many citizens also find their comments more reliable. Through legal consultations, state-embedded lawyers can help the authorities to promote proregime values and resist opposition.

Neighbors believe that we are a professional team when they discover that I am a lawyer. This qualification helps us to build better community networks and convince neighbors that we are capable of providing helpful advice that they cannot easily access in other places. Many of them are willing to vote for me because of this qualification even though they may not understand me well. (Interviewee 1)

Battle Stage: Legal Professionals in Battle

In the following sections, three battlefields in the competition between legal professionals as proposed by Karpik (2007) are adopted to examine how cause lawyers defend rights and how state-embedded lawyers defend government interests.

Battle in Professional Bodies

In Hong Kong, the autonomy of the legal profession is emphasized by the state while professional self-government bodies are established to deliver their professional insights. Although the autonomy of the bar is respected, it can be used to defend civil liberties or protect the state's interests (Halliday and Karpik, 1997a). Following the British tradition, the legal professionals in Hong Kong comprise barristers and solicitors. The Hong Kong Bar Association (HKBA) as a professional body represents barristers whereas the Law Society of Hong Kong (LSHK) represents solicitors. Under the Legal Practitioners Ordinance, the two professional bodies have certification roles in their admission procedures and hold the legal autonomy to speak on social issues. It is these circumstances that cause lawyers and state-embedded lawyers to compete with the leadership of these associations.

Since the handover, Beijing has used privileged membership of the NPC, Chinese People's Political Consultative Committee (CPPCC), and other pro-Beijing institutions for the incorporation of Hong Kong's legal professionals. Figures 2 and 3 compare the political affiliations of all the council members of these two professional bodies from 2000 to 2020. On average, more than 35% of the council members in the LSHK are former or existing members of the NPC, CPPCC, and other proregime associations while members with

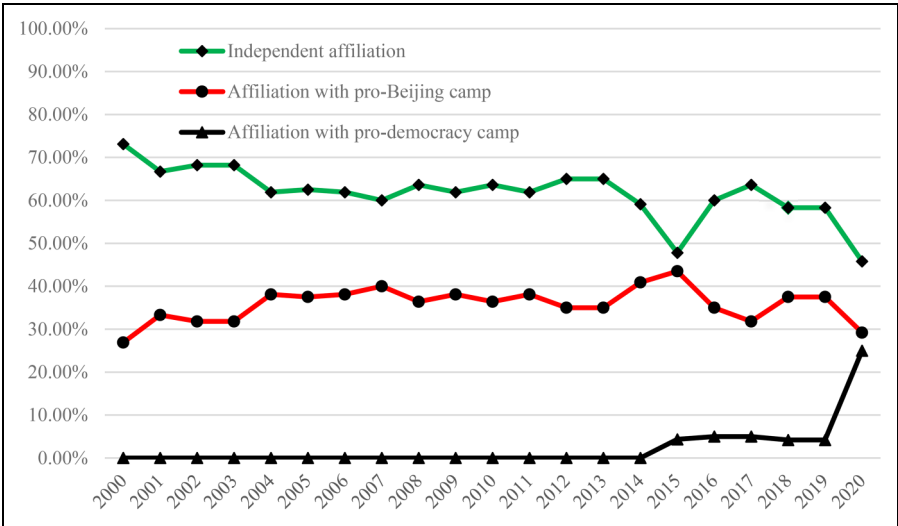


Figure 2. Background Analysis of Council Members of The Law Society of Hong Kong from 2000 to 2020.

Source. Author’s analysis; the name lists are based on Annual Reports of the Law Society of Hong Kong (2000–2020). Note Figure 1: The author incorporates the names of all council members (including both leaving and joining members within that year) into these sources, including the official websites of (1) Friends of Hong Kong Association (<http://www.fhka.com.hk/zh-hans/>), (2) National People’s Conference (<http://www.npc.gov.cn/>), (3) Chinese People’s Political Consultative Conference (<http://www.cppcc.gov.cn/>), (4) Wisenews search engine (http://wisenews.wisers.net/wisenews/index.do?sessionId=3C2FE2BD294185862D6DFDB475939F19.wise18?_), and (5) CNKI systems (<http://big5.oversea.cnki.net/kns55/brief/result.aspx?dbPrefix=CJFD>), to check whether they have political affiliations or not and evaluate their political stances. “Pro-Beijing affiliation” refers to members of the National People’s Conference at different levels, the CPPCC at different levels, parties, and civil society organizations, while “prodemocracy affiliation” refers to members of prodemocracy parties and civil society organizations. “Independent affiliation” refers to members with neither pro-Beijing nor prodemocracy affiliations. CPPCC: Chinese People’s Political Consultative Committee.

prodemocracy affiliations account for around 2%. Independent members with neither pro-Beijing nor prodemocracy affiliations represent around 61% (Figure 2). In general, state-embedded lawyers have long held the leadership of the LSHK.

Regarding the HKBA, members who have prodemocracy affiliations comprised more than 20% in the early stage in 2000 but incrementally decreased to 0%. Starting in 2018, members with prodemocracy affiliations increased to around 8%. On average, members with prodemocracy affiliations comprised around 4% while pro-Beijing affiliations accounted for around 3.7%. Both cause lawyers and state-embedded lawyers could not be considered as holding significant leading positions whereas independent members were the dominant player within the HKBA accounting for more than 92% (Figure 3).

It is under this circumstance that the stances of these two professional bodies have been affected by the leadership of lawyers with different affiliation backgrounds. More comprehensive examples are adopted to compare the different responses of the HKBA and LSHK to critical political incidents. In June 2014, the State Council in China released

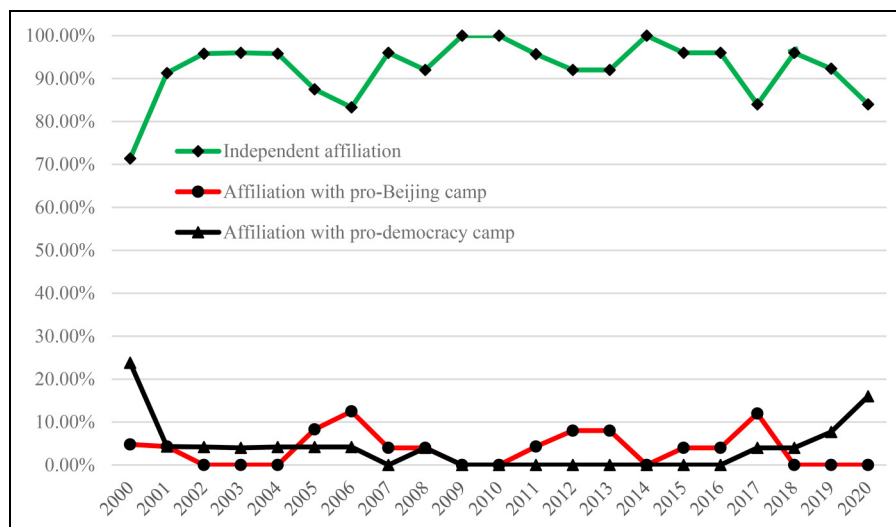


Figure 3. Background Analysis of Council Members of The Hong Kong Bar Association from 2000 to 2020.

Source. Author's analysis; the lists of bar council members are based on the Bar List published by the Hong Kong Bar Association (2000–2020). See Note Figure 2.

a White Paper which urged all judges to correctly understand the Basic Law and safeguard the Chinese sovereignty. The HKBA pointed out that the document was misleading, saying that judges were not part of the governing machines. The LSHK emphasized that the courts should be free from interference. But, Ambrose Lam, the President of the LSHK, openly supported the document which was aimed not to affect judicial independence. During the Umbrella Movement in 2014, in another example, the HKBA criticized the use of tear gas by the police but the LSHK declared that any noncompliance (civil disobedience) with court orders threatened the judicial system.

As the LSHK is comparatively dominated by state-embedded lawyers, their autonomy tends to be low and aims to justify state decisions such that civil disobedience violates the rule of law (Interviewee 7). However, the domination of independent members in the HKBA is relatively high so they are outspoken in defending civil liberties and supporting democratization with fewer political concerns (Interviewee 5). The HKBA enjoys higher autonomy and explained that civil disobedience can legally be acceptable when offenders admit their legal responsibility.

Battle in the Legislature

Since the handover, electoral rights have been expanded in the Legislative Council, i.e. the legislature in Hong Kong, giving more opportunities to voters to elect their representatives. Before the implementation of the new electoral reform in May 2020, a number of studies explored the fact that although popular elections are allowed through

geographical constituencies, election interventions are still obviously employed to control the election results (e.g. Fong, 2017; Wong, 2014). One of the usual practices used by the Liaison Office of the Central People’s Government, the official representative body of China, is making use of state resources to mobilize votes for pro-Beijing candidates (Wong and Kwong, 2020). Thus, the key question is who can be entrusted to be pro-Beijing legislators? In recent years, more state-embedded lawyer-legislators have been selected and some media reports have demonstrated that the Liaison Office mobilizes pro-Beijing voters to support them.

Table 1 compares the number and distribution of cause lawyer-legislators and state-embedded lawyer-legislators from 2000 to 2020. Starting from 2000, the number and proportion of cause lawyer-legislators exceeded state-embedded ones. Until 2016, the number and proportion of cause lawyer-legislators decreased sharply due to retirement or defeats in elections. On the contrary, the number and proportion of state-embedded lawyer-legislators have incrementally increased and even exceeded the number of cause lawyer-legislators. There are seven state-embedded lawyer-legislators from the pro-Beijing camp with only four cause lawyers from the prodemocracy camp. Based on the interview data, the selection of state-embedded lawyers because of their “legal knowledge” and “professional qualifications” can attract many pro-Beijing middle class and grassroots voters (Interviewees 1 and 3).

Under the constitutional arrangement, Article 74 of the Basic Law forbids legislators from proposing any private member’s bill which is related to public expenditure, political structure, and the operation of the government. This imposes limits on the formal power of legislators. Thus, the most important function of the Legislative Council is to question government performance (Ma, 2016). This questioning is mostly adopted by cause lawyer-legislators to criticize government officials but state-embedded lawyer-legislators mostly make use of this opportunity to support state policies.

The most important platform for lawyer-legislators’ battle is the public commentaries in newspapers. Both cause and state-embedded lawyers have a long tradition of making use of their “dual identities” as legal professionals and legislators to gain public exposure and express their stance on political affairs. Different from media reports which are supposed to be “objective,” commentaries are less tied by the norm of objectivity and are used for participating in public debate (Le, 2004). Based on the interview data, lawyer-legislators on polarized sides have agreed that writing commentaries in newspapers is important for raising public concern (Interviewees 2 and 4).

Table 1. Distribution of state-embedded and cause lawyer-legislators in the legislative council (2000–2020).

Years	State-embedded lawyer-legislators (No./%)	Cause lawyer-legislators (No./%)
2000–2004	1 (1.60%)	6 (9.50%)
2004–2008	2 (3.28%)	8 (13.10%)
2008–2012	3 (5%)	8 (13.30%)
2012–2016	3 (4.20%)	6 (8.50%)
2016–2020	7 (10%)	4 (5.70%)

Source. author’s analysis; data based on the public information available on the official website of the legislative council.

Since citizens are not interested in watching such long meetings in the Legislative Council, the circulation of newspaper commentaries is even higher. We can provide a short summary and quick response to particular policies. After that, we can take videos and upload them to social media. (Interviewee 4)

The key themes of commentaries raised by cause and state-embedded lawyer-legislators are the political affairs between 2000 and 2020 (the details are in Appendices 2 and 3). The most popular theme for cause lawyer-legislators is the promotion of the rule of law and democratization (40.3%), followed by criticizing the HKSAR authorities (29.4%) and the Chinese authorities (13.6%). On the other hand, the primary theme for state-embedded lawyer-legislators is to legitimize policy decision-making (37.7%), followed by criticizing the opposition (32.1%) and supporting the authorities (12.0%). This comparison reflects the cause lawyer-legislators' emphasis on the importance of the rule of law as protection of the people but the state-embedded lawyer-legislators emphasize that the spirit of the rule of law means complying with the government.

Battle in Civil Society Organizations

The final battle within the legal profession is in civil society associations. Since the hand-over, the prodemocracy camp has frequently organized different campaigns to mobilize support for democratization (Kwong, 2018; Yuen and Cheng, 2017). In particular, cause lawyers have organized several "silent marches" and mobilized legal professionals, including barristers, solicitors, law professors, and students, to fight against the decisions made by the authorities at critical political moments. There were five important incidents, including the right of abode issue in 1999, interpretation of the Basic Law on political reforms in 2005, the White Paper from the Beijing government in 2014, interpretation of the Basic Law on oath-taking in 2016, and Anti-extradition Bill Protests in 2019. The largest event was on 6 June 2019 and 7 August 2019 when Dennis Kwok, the legislator in the legal sector, called for a march against the government's controversial extradition bill and urged the establishment of an independent commission of inquiry. Three thousand lawyers joined the events to show their dissatisfaction (South China Morning Post 7 August 2019). These events were organized in the name of "legal professionals" and had symbolic significance in society in that lawyers stood up to Beijing's intervention.

In recent years, state-embedded lawyers have become increasingly active in supporting the government through pro-regime legal associations. Starting from 2012, several organizations, namely The Small and Medium Law Firms Association of Hong Kong, Asia Pacific Law Association, and CA Legal Exchange Foundation, have been active against cause lawyers. These organizations hold a number of high-profile events such as attending conferences and participating in assemblies and petitions in order to mobilize pro-regime opinions. The objective of these counter-mobilization activities is to counter the voices of cause lawyers who oppose the legislation (Interviewees 20 and 22). The most significant example is The Small and Medium Law Firms Association of Hong Kong which was founded in 2012. The President openly showed support for the police

repression against the protesters during the Anti-extradition Bill Protests in June 2019. After that, the President, who is a Hong Kong deputy of the NPC, directed a motion to the NPC to enact the National Security Law for Hong Kong which was implemented in June 2020.

Intensive Polarization Stage: Consequences for Legal Professionals in the Battles

This paper examines the political battle between cause lawyers and state-embedded lawyers. The confrontation cannot legitimate the political stance of either side but further stimulates polarization in society. Several consequences can be found in this paper, including business opportunities, citizens' consumption patterns, conceptions of the rule of law, and the responses from mainland China.

Polarization in Business Opportunities

The key difference between cause lawyers and state-embedded lawyers is that the former fight for political justice while the latter aim to protect the state's interests. In the context of hybrid regimes, the consequence is that cause lawyers are considered to be challengers of the state and state-embedded lawyers can gain greater business opportunities and prestige (Karpik, 2007). In 2003, the signing of the Closer Economic Partnership Arrangements between China and Hong Kong provided new opportunities to the legal sector in Hong Kong. On the one hand, many Chinese state-owned enterprises extended their business in the real estate, financial, and banking sectors in Hong Kong, demanding more legal services to be rendered. On the other hand, more law firms in Hong Kong extended their business into China, especially in Guangdong Province. Figure 4 indicates the increasing number of Hong Kong's representative offices of firms in China. Based on the interview data, two consequences can be found:

On the one hand, a state-embedded lawyer explained that:

Many Chinese enterprises are worried about having business connections with lawyers in the opposition camp. Thus, they may choose my company with a firm stance of 'loving the country and Hong Kong.' I need to emphasize that I do not intend to expand my legal business with Chinese companies but I admit that they are quite keen to do business with my firm. (Interviewee 3)

As explained by a state-embedded lawyer (Interviewee 3), political connections can facilitate the business selection of some Chinese corporations. It is admitted that the interviewee did not openly say that some Chinese companies do business with them due to their progovernment stance directly. But, the Chinese companies tend to work with them as their political stance was relatively safe on their side.

On the other hand, a cause lawyer remarked that:

Originally, Chinese enterprises were not very sensitive. You cannot believe that I have business cooperation with a Chinese bank. However, with more criticisms in China's media, they

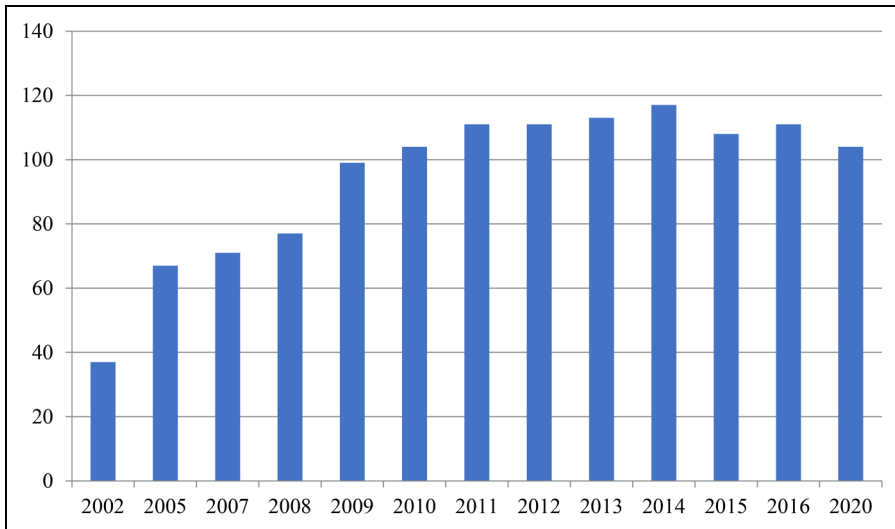


Figure 4. Number of Hong Kong representative offices of firms of solicitors in China.

Source. Author's analysis; the author counted the available number of contacts of representative offices of firms of solicitors in the mainland which is provided by The Law List (various years). Representative offices refer to (1) Representative Offices of Hong Kong Solicitors Firms in the mainland (registered at the Law Society of Hong Kong) and (2) Hong Kong Solicitors Firms with Mainland Representative Offices registered at the Ministry of Justice as Representative Offices of Law Firms from Foreign Countries. The data of 2015 and 2016 are provided by the Law Society of Hong Kong.

tend to be conservative. Some of us have long been placed on a blacklist and state-owned enterprises no longer employ us for work. (Interviewee 5)

Aside from Interviewee 5, most cause lawyers (i.e. Interviewees 4 and 6) have had similar experiences. Not only Chinese state-owned enterprises, but also some Hong Kong corporations reject having business relations with lawyers from the prodemocracy camp. The reason is that those enterprises are worried that they may be accused of being “disloyal” by the authorities which may affect their business in both China and Hong Kong (Interviewee 6). Thus, cause lawyers, especially those who are high-profile legislators, face more business restrictions when doing business in China and Hong Kong. However, state-embedded lawyers have more advantages to have business connections with Chinese companies. Many lawyers “keep silent,” especially in political affairs, due to the consideration of business opportunities (Interviewee 7). The tensions between legal professionals not only suppress cause lawyers but also create more business opportunities for state-embedded lawyers.

Polarization in the Consumption Patterns of Legal Services

Several critical political events led many lawyers to show their political stance in front of the media which affects citizens’ consumption patterns in regard to legal services.

Political consumption is defined as “market-oriented engagements emerging from societal concerns” (Boström et al., 2019: 2) when customers select products according to their political preferences. This concept is applicable in Hong Kong. The existing literature (e.g. Dezalay and Garth, 2010; Lee, 2017b; Sin, 2001) shows that the Law Society of Hong Kong focuses more on the business opportunities in China, and its leaders sometimes side with the state at critical moments. Intensive polarization exists in the Law Society of Hong Kong in the form of proregime leaders and prodemocracy members. One significant case took place in June 2014 when Ambrose Lam, the President, openly supported the controversial white paper on Hong Kong which insisted that judges should be “patriotic” and called the Chinese Communist Party “great.” In response, a group of members brought a motion of noconfidence in the president with more than 60% of votes cast in favor of it. Then, Ambrose Lam resigned (South China Morning Post 20 August 2014).

A cause lawyer, a core member of the motion, pointed out that:

After this event, we received some job enquiries from new customers. Most of them were ordinary citizens. They came to know us from the media. (Interviewee 7)

These political conflicts also led to the polarizing perception within society. After several political events, some ordinary citizens selected their lawyers (e.g. property and financial management) in light of their political stance (Interviewee 20). Prodemocracy supporters chose cause lawyers while progovernment supporters selected state-embedded lawyers. Political consumption in legal services has become a new phenomenon.

Polarization in the Conceptions of the Rule of Law

Scholars have long argued that people tend to believe that lawyers, who have a relatively high social status, should bear “professional responsibility” to defend the rule of law (Sarat and Scheingold, 1998). The battle between lawyers has resulted in the conceptions of the rule of law becoming polarized. For cause lawyers, the rule of law’s purpose is to serve and protect people and strive for a better life.

A cause lawyer explained that:

It is the textbook definition for me that the rule of law should follow the European Convention on Human Rights which states that the law should be used to protect human rights and limit the power of the government. The principle of the Basic Law should comply with this. (Interviewee 5)

They emphasize that Hong Kong’s constitutional system should fulfill an international standard. The Basic Law should support the equality of citizens, ensure democratic reforms to limit the government and prevent its abuse of power.

On the other hand, a state-embedded lawyer explained that:

I need to emphasize that the principle (of the rule of law) pursued by cause lawyers is too ideal. For me, the core of the rule of law is about being law-abiding and democratization should put the national interest above any international standard. (Interviewee 1)

They claim that Hong Kong's constitutional system should strictly follow the national interests of the mainland Chinese government. Under the Basic Law, the power of amendment is vested in the NPC. The rule of law should also consider the reality of Hong Kong (Interviewee 3).

Given that the rule of law is debated in a polarizing way, society may find that explanations of the rule of law "differ." Ultimately, citizens select their "preferable" understanding of the rule of law based on their own political orientation (Interviewee 15). Prodemocracy supporters tend to be liberal and support the protection of human rights and freedom while progovernment supporters tend to be conservative and emphasize being law-abiding and national interests. The debate of the rule of law is still ongoing.

Polarization in the Responses From Mainland China

The Chinese government adopts polarizing attitudes toward these two types of lawyers. Cause lawyers who frequently show their opposing stance are considered as the opposition. In recent years, some pro-China media and social organizations have become active in attacking prodemocracy figures, especially cause lawyer-legislators, with a view to counteracting their speeches (Fong, 2017). The media frequently sent paparazzi to capture their life, and social movement organizations protested outside the Legislative Council to pressure them.

A cause lawyer explained that:

It was within my expectation that such a threat could arise when I was stepping up to be a legislator. I don't have much feeling about their acts but my worry is the disturbance to my family as they are not public figures. I feel sorry when their life is disturbed. Therefore, for their safety, it is better for them to keep a low profile. (Interviewee 4)

Apart from the lawyer-legislators, some professional organizations also faced political pressure. The announcement of the enactment of the National Security Law also threatened a lot of cause lawyers to stay away from public debates. The Progressive Lawyers Group, an organization run by cause lawyers, which was vocal on legal and political issues at several political events was disbanded due to their potential legal responsibility.

On the other hand, some state-embedded lawyers received better rewards from the Chinese government. With their good performance in defending the authorities, state-embedded lawyers were co-opted by the Chinese government as representatives in the national legislature. Maggie Chan, for example a state-embedded lawyer, represented the minibus company during the Umbrella Movement in 2014 to prohibit protesters from blocking a protest site in Mong Kok. This court injunction ended the Movement. After that, she was elected as a Hong Kong deputy to the NPC in 2017 and was also the key member for directing the National Security Law in Hong Kong. Another example was Priscilla Leung. Leung has been a lawyer-legislator since 2008 and was active in opposing the Umbrella Movement in 2014 and Anti-extradition Bill Movements in 2019. Leung was appointed to be the delegate of the HKSAR Basic Law Committee of the SCNPC in 2018. This Committee is authorized to give comments to the SCNPC while all members are appointed by the Chinese authorities. Therefore, the tensions created a threat to the cause lawyers but brought opportunities for the state-embedded lawyers to gain connections with the national government.

Conclusion

The existing literature has long recognized that the important functions of cause lawyers are to defend human rights and pursue democratic values (Sarat and Scheingold, 1998, 2006). However, the mainstream discussion has focused on democratic regimes, which refer to regimes in which cause lawyering is legally allowed, whereas authoritarian regimes refer to regimes in which cause lawyers face heavy repression. From this perspective, this paper has proposed an interesting case study to enrich the emerging literature, namely the subnational hybrid regime in Hong Kong. In this regime type, cause lawyers are mostly allowed to exist but massive repression is not expected. This paper argues that the state has co-opted “state-embedded lawyers” to counter-mobilize public opinion and enhance its legitimacy against cause lawyers.

In Hong Kong, empirical studies have argued that the rise of cause lawyers can be traced back to the 1980s. The Sino-British negotiation provided important opportunities to cultivate a number of lawyers wishing to pursue democratization and the rule of law (Tam, 2013). Given the autonomous status of Hong Kong, cause lawyers do not only fight for democratic values, but also for autonomy against intervention by the Chinese government. With the rise of cause lawyers, the implications of the state’s response deserve new exploration. The state has co-opted some lawyers to offer alternative legal arguments in public debates. By adopting Karpik’s analytical framework, this article compares the legal–political competition in professional bodies, the legislature, and civil society associations. The important function of state-embedded lawyers is to justify the government’s decisions and oppose the actions by cause lawyers.

The findings are consistent with Karpik’s argument that lawyers are not necessarily interested in pursuing political liberalism. In the case of Hong Kong, some cause lawyers who fight for democratization are considered as the “state’s challengers” and face political prosecutions and economic penalties while state-embedded lawyers can gain more business opportunities and prestige and access the state’s resources. The battles result in intensive polarization of business paths, consumption patterns, conceptions of the rule of law, and responses from mainland China. Theoretically, this paper makes an original contribution by analyzing the state’s response to cause lawyering and exploring counter-mobilization by state-embedded lawyers. Empirically, the results reflect the innovative dynamics within the polarized legal profession with the new case of Hong Kong. While Hong Kong is not the only case of having a hybrid regime with battles between cause and state-embedded lawyers, there are still many cases (e.g. Malaysia (Moustafa, 2013) and Thailand (e.g. Lorch, 2021)) in which cause lawyers are competing for civil liberties and electoral rights. This topic deserves our long-term concern and exploration. This paper is the first attempt to enrich our understanding of the battle among legal professionals with new theoretical and empirical insights. Why some cause lawyers insist on their duties and how the state responds to intensive polarization deserve more exploration in the future. More importantly, this research mainly adopts interview data for explanation whereas a quantitative method (e.g. surveys) is still important to understand people’s perception of legal professionals and other political values in the future.

After the outbreak of the Anti-Extradition Bill Protests in June 2019, the Chinese government extended more constitutional arrangements to limit Hong Kong’s civil liberties and electoral rights. Since July 2020, the NPC has passed the National Security Law

which criminalizes any actions of secession, subversion, terrorism, and collusion with foreign organizations. By doing so, it firstly weakens the freedom of the press in Hong Kong (Kwong, 2023; Lee et al., 2023). Also, in March 2021, the NPC passed the Decision on Improving the Electoral System of Hong Kong in order to implement more electoral screening. The result has been a decline in the electoral rights of the people. Hong Kong is expected to face democratic backsliding (e.g. Kwong and Wong, 2023; Lee, 2023; Lee and Chan, 2023). This paper provides an analysis from the handover in July 1997 to 2020. Whether the authorities intensify their efforts to suppress cause lawyers, whether more state-embedded lawyers are co-opted for the purpose of legitimating the state, and whether competition within the legal profession is dissolved remain important matters for the future.


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Appendix

Appendix I. List of selected interviewees.

Code	Position	Affiliation
1	State-embedded lawyer	Pro-Beijing party 1
2	State-embedded lawyer	Pro-Beijing party 2
3	State-embedded lawyer	Pro-Beijing party 3
4	Cause lawyer	Prodemocracy party 1
5	Cause lawyer	Prodemocracy party 1
6	Cause lawyer	Prodemocracy party 2
7	Cause lawyer	Civil society 1
8	Legislator	Prodemocracy party 2
9	Activist	Civil society 2
10	Activist	Civil society 3
11	Activist	Civil society 4
12	Activist	Civil society 5
13	Activist	Prodemocracy party 3
14	Activist	Prodemocracy party 4
15	Legislator	Prodemocracy party 3
16	Activist	Prodemocracy party 5
17	Activist	Prodemocracy party 6
18	Activist	Prodemocracy party 7
19	Activist	Prodemocracy party 8
20	Activist	Civil society 6
21	Activist	Civil society 7
22	Legislator	Prodemocracy party 1

Appendix 2. Content analysis of the key themes of commentaries raised by cause lawyer-legislators from 2000 to 2020 ($N = 2729$).

	2000–2004	2004–2008	2008–2012	2012–2016	2016–2020	Total
Promoting the rule of law and democratization	138 (44.4%)	265 (49.4%)	164 (36.3%)	243 (34.0%)	289 (40.4%)	1099 (40.3%)
Criticizing the Hong Kong authorities	95 (30.5%)	123 (22.9%)	127 (28.1%)	207 (29.0%)	250 (35.0%)	802 (29.4%)
Criticizing the Chinese authorities	39 (12.5%)	51 (9.5%)	86 (19.0%)	116 (16.2%)	80 (11.2%)	372 (13.6%)
Mobilization for protests and elections	25 (8.0%)	33 (6.2%)	29 (6.4%)	80 (11.2%)	56 (7.8%)	223 (8.2%)
Supporting advocacies of the opposition	8 (2.6%)	48 (9%)	23 (5.1%)	26 (3.6%)	20 (2.8%)	125 (4.6%)
Others	0 (0%)	16 (3.0%)	23 (5.1%)	43 (6.0%)	20 (2.8%)	108 (4.0%)
Total	311 (100%)	536 (100%)	452 (100%)	715 (100%)	715 (100%)	2729 (100%)

Source. Author's analysis; cause lawyer-legislators refer to all lawyers in the Legislative Council who are affiliated with prodemocracy parties. The full list of lawyers includes Tanya Chan, Andrew Cheng Kar-foo, Albert Ho Chun-yan, Audrey Eu Yuet-mee, Dennis Kwok Wing-hang, Martin Lee, Alan Leong Kah-kit, Margaret Ng, James To Kun-sun, Ronny Tong Ka-wah (2000–2012), and Alvin Yeung. The author input all their names into the Wisenews search engine under the "author" item and located all commentaries written by them respectively for classification and analysis purposes.

Appendix 3. Content analysis of the key themes of commentaries by state-embedded lawyer-legislators on political affairs from 2000 to 2020 (N = 848).

	2000–2004	2004–2008	2008–2012	2012–2016	2016–2020	Total
Legitimizing policy decisions	31 (50.8%)	75 (44.6%)	38 (23.3%)	59 (32.1%)	117 (43.0%)	320 (37.7%)
Criticizing the opposition	15 (24.6%)	34 (20.2%)	61 (37.4%)	76 (41.3%)	86 (31.6%)	272 (32.1%)
Supporting the authorities	6 (9.8%)	30 (17.9%)	20 (12.3%)	5 (2.7%)	41 (15.1%)	102 (12.0%)
Criticizing liberal studies	0 (0%)	0 (0%)	4 (2.5%)	25 (13.6%)	9 (3.3%)	38 (4.5%)
Criticizing the authorities	3 (4.9%)	4 (2.4%)	14 (8.6%)	2 (1.1%)	14 (5.1%)	37 (4.4%)
Promoting the basic law	3 (4.9%)	9 (5.4%)	7 (4.3%)	2 (1.1%)	3 (1.1%)	24 (2.8%)
Others	3 (4.9%)	16 (9.5%)	19 (11.7%)	15 (8.2%)	2 (0.7%)	55 (6.5%)
Total	61 (100%)	168 (100%)	163 (100%)	184 (100%)	272 (100%)	848 (100%)

Source. Author's analysis; state-embedded lawyer-legislators refer to all lawyers in the legislative council who are affiliated with pro-Beijing parties. The full list of lawyers includes Horace Cheung Kwok-kwan, Holden Chow Ho-ding, Junius Ho Kwan-yiu, Miriam Lau Kin-ye, Priscilla Leung Mei-fun, Li Kwok-ying, Martin Lao Cheung-kong, Jimmy Ng Wing-ka, Paul Tse Wai-chun, and Yung Hoi-yan.