
Political Liberalism and Political Embeddedness: Understanding Politics in the Work of Chinese Criminal Defense Lawyers

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This article examines the meanings of politics in everyday legal practice using the case of Chinese criminal defense lawyers. Based on 194 in-depth interviews with criminal defense lawyers and other informants in 22 cities across China, we argue that lawyers' everyday politics have two faces: on the one hand, lawyers potentially can challenge state power, protect citizen rights, and pursue proceduralism in their daily work; on the other hand, they often have to rely on political connections with state agencies to protect themselves and to solve problems in their legal practice. The double meanings of politics—namely, political liberalism and political embeddedness—explain the complex motivations and coping tactics that are frequently found in Chinese lawyers' everyday work. Our data show that the Chinese criminal defense bar is differentiated along these two meanings of politics into five clusters of lawyers: progressive elites, pragmatic brokers, notable activists, grassroots activists, and routine practitioners. They also suggest that a principal manifestation of political lawyering is not merely short-term mobilization or revolutionary struggle against arbitrary state power, but also an incremental everyday process that often involves sophisticated tactics to manage interests that often conflict.

Politics is a natural battlefield for the legal profession. Across the world, lawyers are frequently observed fighting against arbitrary state power in the legislature, in the judiciary, and in many sectors of civil society (Halliday & Karpik 1997; Halliday, Karpik, & Feeley

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2007). Previous research on lawyers and politics has well documented various patterns of lawyers' collective action (Dezalay & Garth 2002; Halliday 1987; Karpik 1988, 1999; Sarat & Scheingold 1998, 2001), yet most studies focus on the macro-structural domains of the legal system, including national legislatures, supreme courts, bar associations, and administrative bureaucracies. Despite the strong sociolegal tradition of lawyers' professional work (Carlin 1962; Kritzer 1990; Mather, McEwen & Maiman 2001; Sarat & Felstiner 1995; Seron 1996), the everyday work in lawyers' workplaces has received much less attention as a potential source for political lawyering.

This article seeks to advance scholarship on lawyers and politics by examining the political motivations and coping tactics of lawyers in their everyday workplaces, most notably within the criminal justice system. We approach lawyers' everyday politics with the exceptional case of Chinese criminal defense lawyers. This approach makes possible, concomitantly, a refinement of current approaches to lawyers, politics, and work in China and a widening of the logic of inquiry in the comparative and historical theories of lawyers and politics. China presents a challenging case for political lawyering because Chinese lawyers have limited participation in national and local politics (Michelson & Liu 2010), and they face daunting difficulties and danger in their everyday work, particularly in criminal defense (Fu & Cullen 2008; Halliday & Liu 2007; Lu & Miethe 2002; Michelson 2007; Yu 2002). Under such circumstances, what motivates Chinese lawyers to persist in doing criminal defense work? How do they survive in the unfavorable criminal justice system? And, theoretically, what are the meanings of politics in lawyers' everyday work?

Based on 194 in-depth interviews with criminal defense lawyers and other informants in 22 cities across China, we argue that lawyers' everyday politics have two faces: on the one hand, by the nature of criminal defense, lawyers constantly challenge state power, protect citizen rights, and pursue proceduralism in their daily work; on the other hand, in their everyday criminal defense practice, lawyers often have to rely on political connections with state agencies to protect themselves and to solve problems in their legal practice. The double meanings of politics—namely, political liberalism and political embeddedness—explain the complex motivations and coping tactics that are frequently found in Chinese lawyers' everyday work. Our data show that the Chinese criminal defense bar is differentiated along these two meanings of politics into five clusters of lawyers: progressive elites, pragmatic brokers, notable activists, grassroots activists, and routine practitioners. They also suggest that a principal manifestation of political lawyering is not merely short-term mobilization or revolutionary struggle

against arbitrary state power, but also an incremental everyday process that often involves sophisticated strategies and conflicting interests.

Two Meanings of Politics in Lawyers' Everyday Work

One main legacy of law and society scholarship is the focus on what happens in the workplace of ordinary law practitioners. From solo practitioners (Carlin 1962; Seron 1996) to corporate lawyers (Flood 1991; Lazega 2001; Liu 2006; Nelson 1988), from divorce lawyers (Mather, McEwen, & Maiman 2001; Sarat & Felstner 1995) to criminal justice and ordinary litigators (Feeley 1979; Kritzer 1990), all aspects of the everyday work of lawyers seem to have been thoroughly studied. Yet the issue of politics in lawyers' workplaces has received relatively little attention from sociolegal researchers (but see Sarat & Scheingold 2005). This is particularly surprising given the political nature of much legal work and the normative epistemological foundation of the legal profession (Halliday 1985).

In the meantime, the political lawyering tradition (Halliday 1987; Halliday & Karpik 1997; Halliday, Karpik, & Feeley 2007; Karpik 1988, 1999), which centers on lawyers' collective action in the pursuit of political liberalism, has underplayed the workplace as an important site for observing and understanding the formation of lawyers' political values and individual actions. Most existing studies, despite their wide coverage across different countries, historical periods, and legal fields, adopt a macrostructural view of lawyers' politics and make collective entities in the legal system (e.g., the national legislature, the supreme court, bar associations, and the administrative bureaucracy) the primary domains of analysis. Even the cause-lawyering literature that claims to breach the "boundary between the political and the professional" (Sarat & Scheingold 1998: 10) defines itself by destabilizing the conventional understanding of lawyering (Sarat & Scheingold 2001; Scheingold & Sarat 2004). Although some recent studies in this literature (Sarat & Scheingold 2005) focus on lawyers' workplaces, the field's definition of politics is fluid, elastic, and almost equivalent to any form of "moral activism" (Sarat & Scheingold 1998: 3), which is far beyond the core elements of political liberalism: moderate state, civil society, and citizenship (Halliday & Karpik 1997).

It is the theoretical task of this article to explore the meanings of politics in lawyers' everyday work. In comparison to the broad definition of cause lawyering, we define lawyers' politics more narrowly in terms of their relationships with state power, civil society,

and citizenship. The first meaning of lawyers' politics is defined by their political values and motivation, particularly their commitments to elements of political liberalism. In their work, lawyers constantly have the capacity to check arbitrary state power, to pursue legal proceduralism, and to call for judicial independence. Concomitantly, they often mobilize and form alliances with the media and other sectors of civil society to protect the basic legal rights of citizens. Politically liberal lawyers often practice law to pursue justice and institutional change, and, in their work, they emphasize citizen and procedural rights more than substantive justice or crime control (Halliday & Karpik 1997; Halliday, Karpik, & Feeley 2007). In China's criminal justice system, this meaning of politics is exemplified by lawyers who openly or tacitly challenge state power and pursue proceduralism despite the difficulties and danger in their everyday criminal defense work (Halliday & Liu 2007).

It would be erroneous to assume that lawyers are always fighting excesses of state power, however. In reality, the shifting and sometimes antagonistic political connections between lawyers and other legal actors—including judges, prosecutors, and legal scholars—often shape the dynamics of the legal process in both lawmaking and the implementation of law (Liu & Halliday 2009). The second meaning of politics in lawyers' everyday work is defined by their career histories and social networks in relation to the state, which, collectively, are termed "political embeddedness" by Michelson (2007). Political embeddedness is a spatially bounded relational concept that emphasizes lawyers' proximity to the state as the way to get clients, to facilitate their practice, and to reduce difficulties in their everyday work. Politically embedded lawyers often (1) have previous work experiences in the state justice system, and this leaves an imprint on their subsequent careers, and/or (2) maintain strong institutional or personal structural ties with the state agencies and actors that hold power in the legal system. In the Chinese context, many politically embedded lawyers served as party cadres in the judicial or administrative bureaucracy, particularly the police, the procuracy, and the court.

Following this dual definition, we approach the politics of Chinese lawyers via their day-to-day interactions with other actors in the criminal justice system. We choose criminal defense as the research site for political lawyering because this is the area of law in which lawyers are the most proximate to the coercive power of the state. State power, civil liberty, and proceduralism are seriously contested in the daily struggles between law enforcement officials and criminal defense lawyers. It is through these everyday interactions that lawyers' motivations and coping tactics in criminal defense work are developed and their political values are trans-

Table 1. Five Types of Criminal Defense Lawyers

	Politically Liberal	Not Politically Liberal
Politically embedded	Progressive elites Location: Beijing and major cities Protection: PPC, bar association, media Mobilization: incremental reform from the inside	Pragmatic brokers Location: all cities Protection: PPC Mobilization: nonpolitical
Not politically embedded	Notable activists Location: Beijing Protection: media, international community Mobilization: confrontation from the outside Grassroots activists Location: all cities Protection: self and colleagues Mobilization: confrontation from the outside	Routine practitioners Location: all cities Protection: self and colleagues Mobilization: nonpolitical

NOTE: PPC refers to the police, the procuracy, and the court.

formed into concrete political actions. Criminal defense is an important political battleground in China and elsewhere.

In criminal defense work, both political liberalism and political embeddedness have multiple characteristics. A lawyer who prioritizes procedural rights over crime control in his or her work may not necessarily mobilize actively to pursue political goals through collective action. Meanwhile, a lawyer who has close connections with the local court or procuracy may not necessarily have a career history in the judicial system. In other words, both political liberalism and political embeddedness can be defined narrowly or broadly, incorporating different elements of lawyers' values and experiences. There are also many lawyers who are neither politically liberal nor politically embedded; they simply practice law for a living, and criminal defense is a necessary part of their legal practice.

Accordingly, we hypothesize that Chinese criminal defense lawyers are differentiated by their standing vis-à-vis two independent dimensions. Motivationally, lawyers differ by whether or not their practice is motivated by or embodies values that are politically liberal. Structurally, lawyers differ by whether they did, in their earlier careers, and/or do, currently, have strong relationships with the state justice system. When we combine these two dimensions with lawyers' geographical locations, five ideal types of criminal defense lawyers emerge (see Table 1).

The quintessential politically embedded lawyers, *pragmatic brokers*, refer to those lawyers who are embedded in the local criminal justice system but use their embeddedness only as brokerage to pursue economic gains, not as a means to political ends. The quintessentially politically liberal lawyers are those who articulate politically liberal values and maintain some social distance from the state justice system both in their careers and in

their current practices. These lawyers can be divided into two subtypes, depending on their geographical locations and notability in China's justice system.

Notable activists refers to a small group of criminal defense lawyers, concentrated in Beijing, who often come from humble professional and social backgrounds but proactively seek out politically sensitive cases and challenge arbitrary state power (Fu & Cullen 2008). *Grassroots activists* refers to the ordinary lawyers, all over China, who possess liberal values and motivations but do not mobilize collectively due to unfavorable structural constraints. They use their everyday criminal defense work only to pursue proceduralism and to protect basic legal rights of citizens.

Progressive elites are a mixed type. They refer to leading criminal defense lawyers, in Beijing and other major cities, who are deeply embedded in the justice system but also possess highly liberal values and seek to promote political change within the state apparatus. Finally, *routine practitioners* refers to the vast number of ordinary lawyers who are neither embedded in the justice system nor motivated by political liberalism, but merely practice criminal law to meet the basic needs of survival.

As our empirical analysis in the following pages will demonstrate, there is an inverse relationship between lawyers' political embeddedness in the justice system and their liberal political values and motivations to pursue the core elements of political liberalism. In their criminal defense work, politically embedded lawyers (i.e., progressive elites and pragmatic brokers) face less difficulty in meeting suspects, collecting evidence, accessing case files, and persuading judges in court than nonembedded lawyers do. In terms of coping tactics, progressive elites and pragmatic brokers often go directly to the police, the procuracy, and the court to solve their problems in criminal defense work, while notable activists rely mostly on the media, particularly the internet, as well as the international community for self-protection. Grassroots activists and routine practitioners who have no embeddedness within the justice system and little access to the media can rely only on themselves or their colleagues when they are in trouble.

In other words, the double meanings of politics have an inherent tension in the workplace, and law practitioners base their political motivations and coping tactics on their career history and daily work experiences in the criminal justice system. To borrow Pierre Bourdieu's (1987) terms, the five different types of criminal defense lawyers possess vastly different capital, habitus, and structural positions; therefore they use distinct approaches in their struggles for dominance in both the professional field and the larger political field. Those who have been part of and maintain

close ties to the state apparatus are likely to capitalize on this proximity for the benefit of their legal practices and less likely to urge restraints upon the state coercive apparatus. In both their work and their politics they are more likely to adopt an *inside* strategy vis-à-vis the state. In contrast, those who have never been part of the state apparatus are likely to find other ways to manage their legal practice and even more likely to seek restraints on arbitrary state power. In both their work and their politics, they are more likely to adopt an *outside* strategy vis-à-vis the state—for instance, when attempting to mobilize the media, the civil society, or the international community.

Data and Methods

This article is part of a large research project on criminal defense lawyers and political liberalism in China (Halliday & Liu 2007; Liu & Halliday 2009). While the project involves a combination of empirical methods, including interviews, media analysis, archival research, and online ethnography, for the present article we primarily draw on the interview data that we collected between 2005 and 2010. In this five-year period, we made four research trips to China (in September 2005, October 2007, March 2009, and August 2010) and personally conducted 82 semistructured interviews in seven major Chinese cities (Beijing, Shanghai, Hangzhou, Xi'an, Chengdu, Chongqing, and Kunming) and two smaller cities in Sichuan Province. Among them, 52 interviews were directly conducted with criminal defense lawyers. The remaining 30 interviews were with legal scholars, judges, procurators, bar association leaders, and staff in international organizations, all of whom were actively involved in criminal justice practice and the reform of the Criminal Procedure Law of the People's Republic of China. While the vast majority of the interviews were conducted with one respondent in his or her workplace, some interviews include multiple respondents and/or were conducted in restaurants or teahouses, where the interviewees felt most comfortable.

We adopted an inductive approach in the four rounds of research and shifted our emphasis in each round. The first round emphasized the revision of China's criminal procedure law and its consequences on lawyers' criminal defense practice; the second emphasized lawyers' coping tactics in their defense work; the third emphasized lawyers' political motivations and collegial activities; and the fourth emphasized their involvements in other areas of coercive social control, including the party disciplinary system, reeducation through labor, administrative detention, and state

security. While organized systematically, most of our questions were open-ended, and we adjusted the content of each interview according to the context of the conversation and the characteristics of the interviewee(s). It was a process not of affirming our presumptions, but of discovery.

Having assembled a basic blueprint of the criminal defense work of Chinese lawyers through rounds of interviews, we proceeded to collect more systematic data at sites less accessible to us. We trained 16 law students from China University of Political Science and Law (CUPL) to conduct systematic interviews with local criminal defense lawyers in their hometowns in May and July 2009. Among the 16 research assistants, 13 successfully completed their interviews strictly following our interview questionnaire and turned in 112 fully structured interviews with criminal defense lawyers in 13 medium-size and small cities across all major regions in China. Each research assistant interviewed five to ten lawyers from four to nine different law firms in the same locality. Given the fact that most Chinese lawyers in medium-size and small cities are general practitioners (Liu 2011; Michelson 2007), when selecting interviewees we asked the research assistants to prioritize lawyers who mainly specialize in criminal defense but also to include lawyers who handle a larger variety of cases, including criminal defense cases. For the sake of confidentiality and the protection of the respondents, the names of the 13 cities in which our CUPL research assistants conducted interviews are omitted in the article, but the provinces in which the cities are located are reported.

We analyzed the 112 interviews both qualitatively and quantitatively. Among the 112 lawyers, 17 are female (15 percent), nearly two-thirds were born in the same city where they practice, and 95 percent were born in the same province where they practice. The gender proportion and highly local character of our sample correspond well to the general demographic patterns of Chinese lawyers who practice in medium-size and small cities, according to national statistics and earlier surveys (All-China Lawyers Association 2003; Liu 2008; Michelson 2003). The youngest lawyer in the sample was 27 years old, while the oldest lawyer was 72. Nearly 80 percent of our respondents were between 30 and 49 years old. Given the relatively recent history of the Chinese legal profession, the age distribution of our sample appears approximately representative.

Generally speaking, the educational level of the 112 lawyers in the sample is lower than that of lawyers in the major Chinese cities where we personally conducted interviews. Half of the lawyers have at least one degree from Project 211 universities in China, which are roughly similar to doctorate-granting universities in the United

States.¹ Only 5 percent of the respondents have a graduate degree. Seventy-one percent of the respondents hold a law degree,² but many acquired their degrees through self-study or distance learning. In terms of specialization in criminal defense, 25 percent of the respondents reported that at least half of their cases were criminal cases, while 37 percent reported that less than 10 percent of their cases were criminal cases.

Overall, we believe our sample well represents ordinary criminal defense lawyers in smaller Chinese cities. Many of them are general practitioners with limited or low-quality legal education. However, as we do not have a random sample in the statistical sense, we restrict the quantitative analysis to basic descriptions of the 112 interviews and do not seek to make any statistical inference beyond this sample of lawyers. In the following pages, we use the quantitative and qualitative results from these 112 interviews to explore the meanings of politics in ordinary Chinese lawyers' workplaces, but we also draw on our 82 personal interviews as a frame of comparison for understanding the variations of criminal law practice in large and small cities in China, as well as the two distinct strategies of political mobilization by progressive elites and notable activists.³

Difficulties and Danger in Criminal Defense Work

Anyone unfamiliar with the Chinese criminal justice system would be surprised by the daunting difficulties and danger that criminal defense lawyers face in their everyday practice. While the 1996 Criminal Procedure Law of the People's Republic of China granted lawyers procedural rights in the phases of investigation,

¹ Project 211 universities refer to those Chinese universities that were included in the "21st century, 100 universities" project, a national university development project funded by the Ministry of Education of China. Note that two major Chinese law schools, Southwest University of Political Science and Law (SWUPL) and East China University of Political Science and Law (ECUPL), are not officially Project 211 universities, but we coded them as such because of their elite status in legal academia.

² According to China's Lawyers Law, no law degree is required to take the National Judicial Examination. Anyone with a college degree, regardless of major, can obtain the lawyer qualification certificate by passing the exam.

³ In the following text, we use two separate formats to number our interviews and the interviews by our research assistants. The interviews we personally conducted are coded as B0501, in which *B* refers to the location of the interview (*B* for Beijing, *C* for Chengdu, *H* for Hangzhou, *K* for Kunming, *S* for Shanghai, *Q* for Chongqing, *X* for Xi'an, and *G* and *M* for the two smaller cities in Sichuan Province); 05 refers to the year of the interview; and 01 refers to the number of the interview under the time and location. The interviews conducted by the research assistants are coded as GDD0901, in which *GD* refers to the province (i.e., Guangdong), *D* refers to the city, and 0901 refers to the year and interview number, as in our personal interviews.

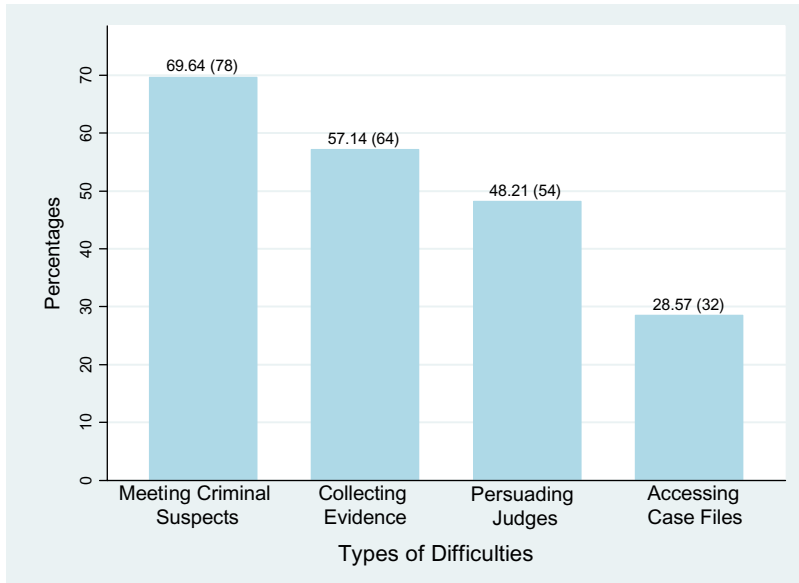


Figure 1. Percentages of lawyers' assessments of the four major types of difficulties in their criminal defense work.

prosecution, and trial, in reality lawyers complain vehemently about their difficulties in all three phases of the criminal process. The term *three difficulties* (*san nan*), originally referring to the difficulties in meeting suspects, collecting evidence, and accessing the procuracy's case files, has become a popular term in the lawyer community to characterize all the procedural problems they encounter in criminal defense work. The legislative origins and workplace demonstrations of those problems have been well documented in our previous work (Halliday & Liu 2007; Liu & Halliday 2009). This section provides a more systematic overview of the procedural difficulties based on our 112 fully structured interviews conducted in the 13 medium-size and small cities.

In the interview questionnaire, we asked lawyers to identify the most serious problem(s) among the four major difficulties in their practice: meeting suspects, accessing case files, collecting evidence, and persuading judges in court. As Figure 1 shows, meeting criminal suspects during police investigation remains the most problematic issue in the criminal process—nearly 70 percent of the respondents reported it as one of the most difficult issues. Meanwhile, 57 percent reported difficulty in collecting evidence, and 48 percent reported difficulty in persuading judges. In contrast, only 29 percent of the respondents selected accessing case files as one of the most difficult issues in the process. A lawyer from Shandong Province provides a good overview of the situation:

Meeting is very difficult. In the phase of investigation usually the lawyer can only meet [the suspect] once and is not allowed to ask about the content of the case, just telling the suspect some legal rights. In the phase of the procuracy's prosecution, the lawyer can see the case files, but usually only the procedural evidence and materials. Only when the case reaches the phase of trial is it possible for the lawyer to touch on the substantive evidence and materials. Moreover, in terms of collecting evidence, the lawyer's rights cannot be guaranteed. So to protect ourselves and to prevent additional problems, lawyers often do not collect evidence. Also, the lawyer's defense opinions are not useful. After the police and the procuracy have gone through the case, it is more or less decided, and the role of the lawyer is limited, only providing some opinions on the reduction of the sentence. . . . I usually do not collect evidence, perhaps only do so in one percent of my cases. (SDY0901, Shandong Province)

Among the 112 respondents, only three lawyers reported that none of the four issues were difficult for them. Two of them (in Hubei and Sichuan Provinces, respectively) had previous work experiences in the judiciary, and less than 10 percent of their cases were criminal cases. The third lawyer, a middle-aged female lawyer in Hunan Province, specialized in juvenile delinquency cases. But even she complained that in her cases collecting evidence was "none of the lawyer's business" and the police often postponed the meeting with suspects until they had completed the interrogation process (HNY0907).

To further investigate what kinds of lawyers face fewer difficulties in their criminal defense work, we ran cross tabulations among the four types of professional difficulty and other social and legal characteristics of the respondents, including gender, age, education, number of years of practice, case types, and political connections. The difficulties do not seem to vary much with the lawyer's gender, age, or number of years of practice, except that female lawyers (41 percent) were significantly less likely to report the difficulty in meeting suspects than were male lawyers (75 percent). In our fieldwork in a medium-size city in Sichuan Province, a local lawyer told us that one female lawyer in his firm even specialized in meeting suspects—she had an office right outside the local detention center and had established a good relationship with the officers there by giving them cigarettes and small gifts (M0904).

Both educational level and case types seem to have some effects on criminal defense lawyers' professional difficulties. Lawyers with at least one degree from a Project 211 university are less likely to report difficulties in all four categories than are lawyers without a Project 211 education. Lawyers who specialize in economic or white-collar crimes face more difficulties in accessing case files and

Table 2. The Association between Lawyers' Professional Difficulties and Abilities to Seek Help from the Police, the Procuracy, and the Court

PPC Help	Most Serious Difficulties Encountered				N
	Meeting	Case Files	Evidence	Proceedings	
Yes	26 (65.00%)	8 (20.00%)	20 (50.00%)	11 (27.50%)	40
No	52 (73.24%)	24 (33.80%)	44 (61.97%)	42 (59.15%)	71

NOTES: The percentages in the table are row percentages. PPC refers to the police, the procuracy, and the court.

collecting evidence than lawyers who mainly handle violent crimes do. Because economic and white-collar crimes often involve higher-status defendants (e.g., government officials and business executives) and sometimes contain a higher degree of political sensitivity, the justice agencies are more cautious toward defense lawyers who handle these cases. Interestingly, lawyers who specialize in economic and white-collar crimes reported less difficulty in persuading judges than other lawyers did. This is because lawyers who have access to these profitable cases are usually more experienced and more embedded in the state apparatus than other lawyers are.

Based on our typology (Table 1), it should follow that politically embedded lawyers who signal that they are close to the police, the procuracy, and the court by indicating that they would go to these bodies for help when facing problems in their criminal defense work would be less likely to face difficulties with justice-system officials in the course of their everyday practice than would other lawyers. Table 2 provides support for this hypothesis: lawyers seeking help from the police, the procuracy, and the court reported less difficulty in all problem areas. Most notably, the number of well-connected lawyers who reported difficulty in persuading judges is half that of lawyers without connections. In other words, lawyers who are more politically embedded in their everyday practice appear to have advantages over other lawyers in criminal defense work. This finding confirms Michelson's (2007) earlier argument that political embeddedness reduces professional difficulties in Chinese lawyers' work. Meanwhile, in their 2009 China Legal Environment Survey, Michelson and Liu (2010) find that Chinese lawyers with high degrees of vulnerability in their work possess significantly more liberal values regarding political rights and democracy than lawyers with low degrees of vulnerability do. Taken together, these preliminary results suggest that Chinese lawyers' professional difficulties are negatively associated with political embeddedness but positively associated with political liberalism.

Among the four types of professional difficulties, the difficulty in collecting evidence deserves special attention because it is closely related to the effect of Article 306 of China's criminal law, which Chinese lawyers have often called "Big Stick 306" or a "sword of Damocles" (Halliday & Liu 2007). According to this article, any defense lawyer who falsifies evidence or induces witnesses to change their testimony is subject to criminal investigation. While the article itself does not necessarily lead to wrongful prosecution against lawyers, in practice the police and the procuracy have often used it to retaliate against defense lawyers who dare to challenge their evidence and prosecution. Since Article 306 was added to the criminal law in 1997, hundreds of Chinese lawyers have been detained, arrested, or prosecuted for perjury (see Halliday & Liu 2007 for details). Although the majority have received not-guilty verdicts, the process itself has already been a substantive punishment (Feeley 1979), and it has had a chilling effect on the entire legal profession. It is the most important reason why the vast majority of Chinese lawyers do not collect their own evidence in criminal cases.

When asked about this punitive measure, which specifically targets defense lawyers, 62 percent of our respondents knew of cases of local lawyers who were detained or charged for violating Article 306, and 31 percent felt that the article substantially affected their criminal defense work. Another 42 percent reported that the article has a modest impact on their work. For example, a lawyer in Liaoning Province said that he suspended his practice from 1996 to 2000 precisely because a senior lawyer in his firm was charged with violating Article 306 and he felt that the risk of legal practice was too high (LNP0903). Another lawyer from Shandong Province elaborates on the negative effects of this article on lawyers' defense work, particularly with regards to collecting evidence:

Yes, [because of Article 306] now many lawyers do not dare to collect evidence. In many criminal cases, there are no witnesses present at the court proceeding. To be honest, those testimonies are all unstable, the prosecutors often just casually bring some paperwork, which you cannot question or refute, and the court would confirm them directly. In criminal cases, the power of the lawyer is too weak. The state agencies sometimes do not care about you at all, and they won't even look at the stuff you got after so much trouble. You go to the witnesses and they do not want to appear in court either. So it is not only useless, but also dangerous, and smart lawyers would not do any work in this area. (SDZ0902, Shandong Province)

Not surprisingly, the most significant factor in reducing the impact of Article 306 is previous work experience in the police, the

procuracy, and the court. Twenty-two percent of lawyers in our sample used to work in these three agencies in their earlier careers. Among them, only 12.5 percent reported that Article 306 had a major impact on their work, 50 percent felt it had a modest impact, and 37.5 percent said the article had no impact on their work at all. This is in sharp contrast to the opinions of lawyers without such experiences, 35 percent of whom felt a major impact of Article 306. Similarly, 46 percent of the lawyers who used to work in the police, the procuracy, and the court reported difficulty in collecting evidence, compared to 61 percent of the lawyers without such experiences. Evidently, earlier careers in the criminal justice system, which is the most direct source of political embeddedness, provide defense lawyers with substantial protection from retaliation and persecution within the system, as a lawyer in Anhui Province who used to work in the municipal procuracy comments:

With my experiences I do not worry about this. Because I have work experience in the procuracy, at least in this city, I don't worry about my ability in self-protection and in making personal connections. Actually it is good to have some limit, but it cannot be used as a means to strike [on lawyers]. I don't think Article 306 should necessarily be abolished. Everything needs supervision, but now this [article] is improperly used in some places. (AHH0904)

The advantage of the politically embedded lawyers who either worked in the three justice agencies or have close connections with them is not limited to collecting evidence and protecting themselves from potential official retribution; it is found in most areas of the criminal process. When asked to what extent previous work experience in the police, the procuracy, and the court is helpful to a lawyer's criminal defense work, 45 percent of our respondents selected "very helpful," 50 percent selected "somewhat helpful," and only 5 percent selected "not helpful at all." When asked a similar question about previous work experience in other party or government agencies, only 16 percent of the respondents selected "very helpful," while 61 percent selected "somewhat helpful." This suggests that, although career history in the state sector is generally helpful for criminal defense work, direct work experience in the criminal justice system is considered the most valuable asset for criminal defense lawyers.

Motivations and Political Values

The importance of political embeddedness in criminal defense work poses a challenging question for the politics of Chinese

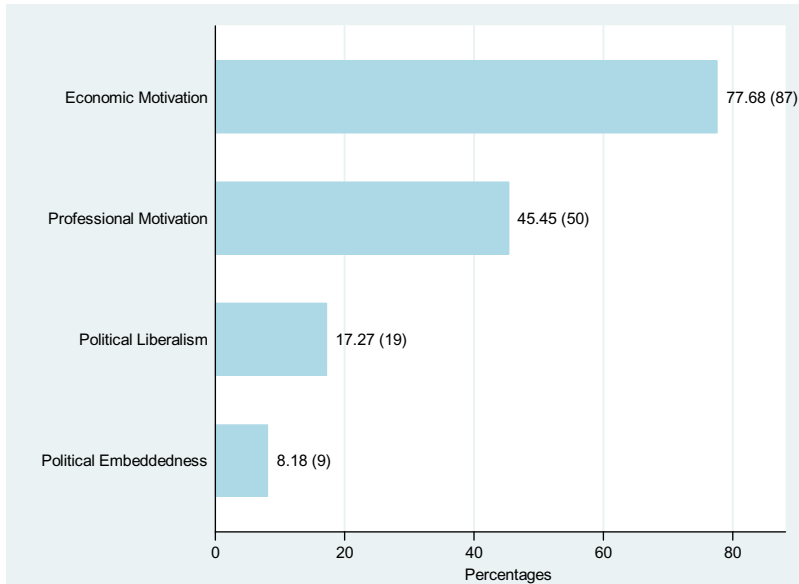


Figure 2. Percentages of lawyers' motivations in doing criminal defense work.

lawyers: how could lawyers effectively push for institutionalization of the values of political liberalism if their own survival is dependent on the system that they seek to change? This section sheds light on this question by first examining the political values and motivations of criminal defense lawyers in medium-size and small cities, most of whom are pragmatic brokers, grassroots activists, or routine practitioners. The analysis will show that there is an inverse relationship between political liberalism and political embeddedness in ordinary Chinese lawyers' political orientations. Then we proceed to discuss the different patterns of political motivation for progressive elites and notable activists in major cities.

In our 112 structured interviews in 13 medium-size and small cities, we asked the following open-ended question: "Why do you still do criminal defense work despite all the difficulties and danger?" We coded the responses according to four categories: economic motivation, professional motivation, political liberalism, and political embeddedness. The four categories are not mutually exclusive, and the answers of some respondents fall into multiple categories. Figure 2 presents the descriptive results of this analysis.

More than three-quarters (78 percent) of our respondents indicated that they did criminal defense work because of economic reasons and self-interest. Many indicated that they could not pick and choose cases, however. Work was thrust upon them as a con-

dition of practice and survival. This is not surprising given the fact that all respondents practice in medium-size and small cities where the degree of specialization is relatively low. Meanwhile, some respondents said that they work on criminal cases because of the referrals and requests from their friends and old clients. In smaller cities, where social connections are important and often intimate, it is hard for law practitioners to refuse help to close friends or old clients. In addition, some respondents admitted that making a profit was a major concern in doing criminal defense, or they considered criminal cases conducive to developing their professional and social reputations.

But economic considerations are not the only driving force behind lawyers' motivations to do criminal defense work. One striking result in our respondents' answers to the motivation question is that 45 percent reported that they did criminal defense because criminal cases were professionally challenging. By "professionally challenging" the lawyers meant that criminal cases often involve more rigorous procedures than civil or administrative litigation does, so they feel a strong sense of achievement when they win a case against the powerful police and procuracy. A lawyer in Hubei Province explains why criminal defense work is particularly challenging and valuable for lawyers:

Doing criminal cases is the best test for the lawyer's ability in using the law to solve practical problems. Its requirements for understanding the law, using statutes, oral skills, and comprehensive quality all exceed those in civil litigation. It trains the lawyer's legal reasoning better than civil cases. And the lawyer must also have passion. . . . Your understanding of civil law could be ambiguous, but it would not be a problem for you to handle a civil case well. But the understanding of criminal law is very strict. It is not only related to the defendant's rights, but it is also required that the lawyer supervises [the implementation of] the law. Sometimes your understanding of a principle or value could determine whether a person is guilty or innocent. (HBX0901, Hubei Province)

While nearly half of the respondents emphasized the rigorous procedural training and strong sense of satisfaction that lawyers can derive from their criminal defense work, professional challenge as a motivation for doing criminal cases seems to diminish with a lawyer's number of years of practice. In our sample, more experienced lawyers were significantly less likely to emphasize the professionally challenging aspect of criminal defense than less experienced lawyers. As a matter of fact, many Chinese lawyers who practice criminal law in their early careers switch to civil and commercial cases after they have established a professional reputation

and reached a certain income level. For them, criminal defense is merely an interim exercise in professional training and reputation building. As a lawyer in Sichuan Province comments,

[Doing criminal defense] is particularly helpful for new lawyers. . . . Criminal cases can reflect the lawyer's professional ability. You did well in one criminal case, and the client highly praised your work, then he would naturally introduce you to other people. This is a good opportunity for new lawyers to develop a clientele. That's why many senior lawyers would tell young lawyers to do more criminal cases. It can expand your social network. (SCN0902, Sichuan Province)

But this is not to say more experienced criminal defense lawyers do not care about the law and legal rights. On the contrary, lawyers' motivation in pursuing justice and constraining state power increases with years of practice. Our analysis shows that lawyers who had practiced for more than 20 years were significantly more likely to identify justice, proceduralism, and constraint on state power as their motivations for doing criminal cases than were less experienced lawyers. This finding not only shows the attrition of the less politically motivated lawyers from the criminal defense bar, but also suggests that lawyers' liberal political motivation is partially the product of their legal practice: the longer they practice criminal defense and the more difficulties and problems they have experienced, the more salient is their political motivation. In contrast to the large number of lawyers who switch to commercial cases after establishing themselves professionally, those lawyers who do criminal cases for a long time are the real vanguards of political liberalism in China.

Altogether, 17 percent of our respondents suggested that they persisted in criminal defense because they wanted to pursue justice, to reform the legal system, and to constrain the power of the law enforcement agencies. In comparison, 8 percent of our respondents admitted that they did criminal defense because of their political embeddedness with the criminal justice system; previous work experience or current connections with the police, the procuracy, and the court not only reduced their professional difficulties, but also gave them more case sources and better means to achieve favorable outcomes in their cases. It is not surprising that the percentages in these two categories are much smaller than those in economic and professional motivations; on the one hand, politically motivated lawyers are generally the minority in the legal profession, in China and elsewhere; on the other hand, even if a larger percentage of lawyers were to benefit from political embeddedness in their work, not all of them would explicitly attribute their motivations for practicing law to such connections to the state apparatus.

Table 3. The Association between Lawyers' Politically Liberal Motivation and Their Previous Work Experience in the Police, the Procuracy, and the Court

PPC Experience	Politically Liberal Motivation	No Politically Liberal Motivation	N
Yes	0 (0.00%)	24 (100.00%)	24
No	18 (21.18%)	67 (78.82%)	85

NOTES: The percentages in the table are row percentages. PPC refers to the police, the procuracy, and the court.

Furthermore, a striking result from the analysis of motivations is that none of the 18 lawyers who were motivated by politically liberal values had any previous work experience in the criminal justice system (see Table 3). In other words, none of the lawyers with previous work experience in the police, the procuracy, and the court reported that they did criminal cases to pursue justice and to reform the legal system. This contrast reinforces the difference in practice orientations between pragmatic brokers and grassroots activists. The former are well connected to the justice system, where they usually start their careers, and therefore have little inclination to reform it. The latter are motivated by their ideals of legal liberalism to practice criminal defense and to pursue justice despite the personal dangers that their dealings with the state agencies may pose. For instance, a lawyer in Sichuan Province says he only does criminal cases that involve “serious injustice” (SCL0907); another Sichuan lawyer in a different city says criminal cases “let lawyers develop a strong sense of justice” (SCN0909); a lawyer in Liaoning Province says he hoped to do criminal cases to “improve the [practice] environment” (LNP0907); and a veteran lawyer in Hubei Province replies with only one short phrase when asked his motivation for doing criminal defense: “Because I believe evil cannot crush justice!” (HBX0903). Another middle-aged lawyer in the same city explains his motivation in more detail:

Only by doing criminal defense can lawyers learn legal reasoning and show our expertise in the competition with the three agencies, to make them improve too. You do criminal defense, do your best to write the defense opinion, and if the opinion is adopted, the client would also appreciate our work. This helps the police, procuracy, and court to improve their work, to enhance their qualities. It is also helpful for the progress of the rule of law in our nation. (HBX0907, Hubei Province)

The approach that this and many other ordinary criminal defense lawyers adopted is different from the “heroic lawyering”

Table 4. The Associations between Lawyers' Political Values and Their Previous Work Experience in the Police, the Procuracy, and the Court

PPC Exp.	Priorities of Criminal Procedure Law				Importance of Justice			
	Strike Crimes	Both	Protect Rights	N	Substantive	Both	Procedural	N
Yes	1 (4.17%)	16 (66.67%)	7 (29.17%)	24	6 (25.00%)	12 (50.00%)	6 (25.00%)	24
No	17 (19.54%)	24 (27.59%)	44 (50.57%)	87	19 (21.84%)	29 (33.33%)	39 (44.83%)	87

NOTES: The percentages in the table are row percentages. PPC refers to the police, the procuracy, and the court.

approach of the small number of Beijing notable activists who often appear in the Western media (Halliday 2011). Instead of openly confronting the party-state and its judicial agencies, these grass-roots activists seek to reform the system through everyday defense work, by incrementally improving the work of the police, the procuracy, and the court and spreading the ideas of the rule of law, locality by locality, across the vastness of China. For instance, when we interviewed a Chongqing lawyer in March 2009 (Q0910), he insisted on giving us a copy of his defense opinion for a murder case in 2007. We were perplexed at first because the defendant in that case had already been executed, and there could be no possible legal remedy. But the lawyer said emotionally that he still hoped to restore justice for his deceased client someday, because he firmly believed that it was the wrong verdict. This strong sense and persistent pursuit of justice in ordinary cases is the essence of everyday political lawyering in the Chinese criminal justice system.

This leads us to the analysis of Chinese lawyers' political values, particularly the values regarding basic legal rights and procedural justice. In the interview questionnaire, we asked each respondent to evaluate the relative importance of two conflicting goals of China's criminal procedure law, namely, "striking crimes" (a Chinese term for crime control) versus "protecting citizens' legal rights." As Table 4 shows, lawyers who used to work in the police, the procuracy, and the court were significantly less likely to prioritize protecting legal rights over striking crimes than other respondents were; instead, the majority of them gave the official answer in Article 2 of the criminal procedure law: the two goals are equally important. Similarly, these politically embedded lawyers were more likely than other lawyers to emphasize the importance of substantive justice over procedural justice. These results strongly suggest an inverse relationship between political liberalism and political embeddedness—that is, previous work experience in the criminal justice system has negative effects on lawyers' political motivations

and liberal values, at least in smaller cities. An earlier career in the police, the procuracy, and the court reduces the likelihood that criminal defense lawyers will adopt legal and constitutional values that restrain the institutions of social control in which they previously worked.

In Beijing and other major cities, however, lawyers' political values appear to display some different patterns. While pragmatic brokers, grassroots activists, and routine practitioners still constitute the vast majority of lawyers in the metropolitan areas, there are two small anomalous groups: progressive elites and notable activists. The politically liberal motivations of these two types of lawyers are evidently stronger than those of ordinary practitioners. Progressive elites and notable activists adopt two distinct strategies in their criminal defense work to pursue political change in China.

The first anomaly occurs at the very top of the criminal defense bar among those we call progressive elites. All leading criminal defense lawyers whom we interviewed in the seven major cities are politically embedded: most of them hold important positions in bar associations, many had previous work experience in high-level agencies of the police, the procuracy, and the court, and some are even part-time law professors who teach a large number of judges, procurators, and police officers. Nevertheless, these prestigious lawyers disproportionately displayed highly liberal values and motivation in their work. For example, a senior criminal defense lawyer in Hangzhou told us the following in a 2007 interview:

There are two types of lawyers in China. The first type is career-driven. They want to survive and make money. The second type is lawyers with conscience, they want the rule of law, democracy, want China to change. To some extent I belong to the second type. Because I had been a public official in the police, court, and provincial government, so my choice in becoming a lawyer is to promote social justice, to pursue the highest level of human beings, of humanity, social justice and equality. I had been a judge for eight years. But then finally I left the court because as a judge I could not make decisions in my own cases. Within this system if you have a strong sense of justice and equality you cannot be a judge. Only if you are very loyal, listen to others, can you be a good judge and you can rise to the division head, become court president, etc., and, within this bureaucratic judiciary, lawyers cannot play a big role. Their priority is to protect the interests of the state machinery like the police and procuracy. But they do not have to consider the preference of the public, the facts of the case, or the truth of the law. . . . In China we have a saying: public justice lies in people's hearts (*gongli zizai renxin*). I think I maintained the essence of the law, that is, social justice. But for Chinese lawyers to stick to their sense of justice has a limit. Some lawyers

like Gao Zhisheng, Guo Guoting stuck to their sense of justice too much and destroyed themselves. They are lawyers with conscience. But within the Chinese system you cannot rely on your personal will alone. You must tolerate some imperfections of the society. Only if we can protect ourselves can we make a difference. (H0701, Zhejiang Province)

The complexity of politics for Chinese criminal defense lawyers is well embodied in this quotation, as well as in this senior lawyer's approach to promoting institutional change. Unlike the two activist lawyers he mentioned, who bravely fought against state power in politically sensitive cases and then were persecuted by the Chinese government, this lawyer sought to use his high political status in the criminal justice system to change the system from within. He is an external expert for the Zhejiang Provincial Public Security Bureau and holds a high position in the municipal bar association. Hence, he is able to exert influence on the provincial justice system from both the inside and the outside of the criminal process. For him, the only feasible path to change in China is to work inside the system and to promote the rule of law from within the party-state (H0701). Accordingly, he writes frequent essays both on the internet and in the official media, which include the official newspaper of the Central Party School, which trains high-level party cadres. Through his essays he seeks to change Chinese people's conceptions of the law and justice.

This Hangzhou lawyer is not alone. Across China, bar association leaders and distinguished criminal defense lawyers write extensively and speak openly about their problems in criminal defense. For instance, the Criminal Law Committee of the All-China Lawyers Association (ACLA), composed of several prominent defense lawyers in Beijing, Shanghai, and other cities, has organized many conferences related to the three difficulties and Article 306 in recent years and proposed its own draft when the Lawyers Law was being revised in 2007 (Liu & Halliday 2009). Even in the provinces, we often find leading criminal defense lawyers to be more liberal and to take stronger stands on the problems in the criminal procedure than ordinary practitioners do (X0505; S0703; C0708; C0709; Q0911; M0901).

But how could these leading lawyers be so liberal in their values and motivations if they are so politically embedded in the criminal justice system? One likely reason is that many of these lawyers graduated from elite Chinese law schools and received a relatively liberal legal education and training in their early careers. Yet a more important reason we find in our fieldwork is that these progressive elites usually practice beyond their local cities; therefore, they have encountered more difficulties in the criminal process than do other practitioners who mostly practice locally. This suggests that political

embeddedness is a spatial and relational concept—it only works well in the local context. It is not incidental that several distinguished criminal defense lawyers in Beijing complain bitterly about the difficulties in handling out-of-town cases (B0502; B0510; B0515). Even a nationally renowned criminal defense lawyer advises his or her out-of-town clients to use local lawyers in the phases of investigation and prosecution, when local connections are most important (B0515). The wider scope of practice only aggravated the professional difficulties of these prestigious defense lawyers and, in turn, strengthened their liberal values and motivations.

In contrast to this inside strategy of pursuing political liberalism adopted by progressive elites, the small group of notable activists in Beijing uses a more confrontational outside strategy to defend the basic legal rights of Chinese citizens and to constrain the arbitrary power of the state. These notable activists, often labeled as human rights lawyers or *weiquan* (right-protection) lawyers (Fu & Cullen 2008; Human Rights Watch 2008), come from professional and personal backgrounds that are very different from those of the prominent bar leaders. Many of them graduate from nonelite universities and begin their legal careers in relatively obscure places (B1003; B1005). Although most notable activists now practice in Beijing, many were migrant lawyers who used to work in other provinces and moved to the capital only in the past decade.

Lacking political embeddedness in the Beijing bar, these activist lawyers usually do not have access to profitable cases such as those involving economic crimes and white-collar crimes, most of which go to progressive elites and pragmatic brokers (B1001; B1003; B1005). To a large extent, their choice of becoming activist lawyers and specializing in politically sensitive cases is shaped by their life histories and career trajectories, or what Bourdieu (1987) would call “habitus.” Many of these lawyers had traumatic experiences in their early lives because of the Cultural Revolution, the 1989 Tiananmen student movement, or other political incidents and have become politically active as a result. For instance, a notable activist in Beijing who grew up in northeast China during the Cultural Revolution became interested in defending political dissidents such as Falun Gong practitioners:

I do this kind of case because of my life experience as a child. In my childhood we didn't have a good family background. At that time, my father was persecuted whenever there was a political campaign. As a child I often had the sense of loneliness, insecurity, and helplessness. At that time, my heart warmed whenever anyone gave him a little care or understanding, but I got very little. Now I have the opportunity to use my legal skills to help these people. When they come to me, I cannot refuse them. Before I got involved in these cases I wasn't aware of these serious

problems. After I got involved I realized it is a human rights disaster. I cannot stand aside. (B1005, Beijing)

Another important element in the habitus of notable activists is their religious beliefs. It is a striking fact that a significant proportion of activist lawyers in Beijing is Christian, and their criminal defense careers often began by defending other Christians or house churches against state oppression (B0901; B1001). An activist Christian lawyer in Beijing, for example, specialized in criminal defense and human rights work only after handling several cases involving house churches in various parts of China (B1001). For him, there is an inherent affinity between Christianity and human rights lawyering:

There are a lot of weiquan lawyers [in Beijing] and many are Christians. I believe there is an inner connection between the work we are doing and the belief we have. The Christian values are confirming what we are doing: freedom, equity, justice. . . . The role of weiquan lawyers is not just to work on single cases, defending our clients. Our work has a very important constitutional meaning or impact. (B1001, Beijing)

While life and career history and religious beliefs comprise the primary sources of political motivation for many notable activists, their main strategy for pursuing political change is to defend politically sensitive cases concerning the basic legal rights of marginalized populations in China in order to get the attention of the international media, foreign donors, and human rights organizations (B0901; B0902; B0906; B1005). According to the Christian lawyer quoted above, 20 to 30 activist lawyers in Beijing meet regularly to discuss cases and to conduct training programs for new members (B1001). Besides doing everyday criminal defense work, whenever there is an influential legal case, they speak collectively through the internet by using blogs and Twitter to voice their opinions to the public sphere (B1002; B1003). By resorting to forces in the Chinese civil society and the international community, these notable activists seek to build an alternative path to political reform from the incremental road paved by the Chinese government and the bar leaders.

Overall, the analysis in this section has demonstrated that, in terms of motivations for adopting the values of political liberalism, the Chinese criminal defense bar incorporates two types of lawyers with competing strategies of political mobilization. Notable activists often display sophisticated techniques and extraordinary bravery, yet their blunt opposition to the authoritarian state sometimes results in relentless repression against both their clients and themselves without immediate and ostensible substantive change to

either the criminal justice system or the political regime behind it. Progressive elites, by contrast, seek a more pragmatic strategy to reform the authoritarian state from within, by strategically turning judges, procurators, and even police officers from enemies to allies in their everyday work. For these politically embedded yet highly liberal lawyers, the battle for political liberalism is a long and incremental process, in which survival and self-protection are more important than short-term sacrifice for drastic change.

Coping Tactics in the Workplace

If the five types of criminal defense lawyers' relations with the state and motivations differ systematically as shown in the previous section, it should be expected that their coping tactics when confronting difficulties in everyday practice would also vary. This leads to another crucial question for understanding lawyers' everyday politics: how do Chinese lawyers survive in a criminal justice system that poses so many risks to their practice and persons? Lawyers who persist in criminal work often need to find ways to reduce the difficulties and dangers of legal practice. Our research shows that potential channels include colleagues, bar associations, the media, personal connections, and contacts inside the judicial agencies. We have found initial evidence, which requires further confirmation, that indeed the five types of lawyers differ in the ways in which they protect themselves.

In our 2009 interview questionnaire in the 13 medium-size and small cities, we asked the lawyers to state whether or not they used each of the above channels to solve problems in their criminal defense work. Figure 3 summarizes their responses.

As a matter of fact, the vast majority of Chinese lawyers work individually (Liu 2008; Michelson 2003; Michelson & Liu 2010), although until recently all lawyers were required to join a law firm under the Lawyers Law. There are very few case referrals, and very little substantive cooperation, even among lawyers from the same firm. Lawyers doing criminal defense work, especially in smaller cities, are no exception (JXN0903; SCL0907). Compared with other legal fields, criminal defense in particular is a solo field for Chinese lawyers because of its difficulties and risks. Accordingly, nearly two-thirds of our 112 respondents, most of whom are ordinary practitioners, reported that they mainly relied on themselves when facing problems in the criminal process.

Besides practicing self-reliance, half of the respondents reported that they would seek help from their colleagues. The collegial help among lawyers mainly works in three ways. First, many law firms and local bar associations require two lawyers to

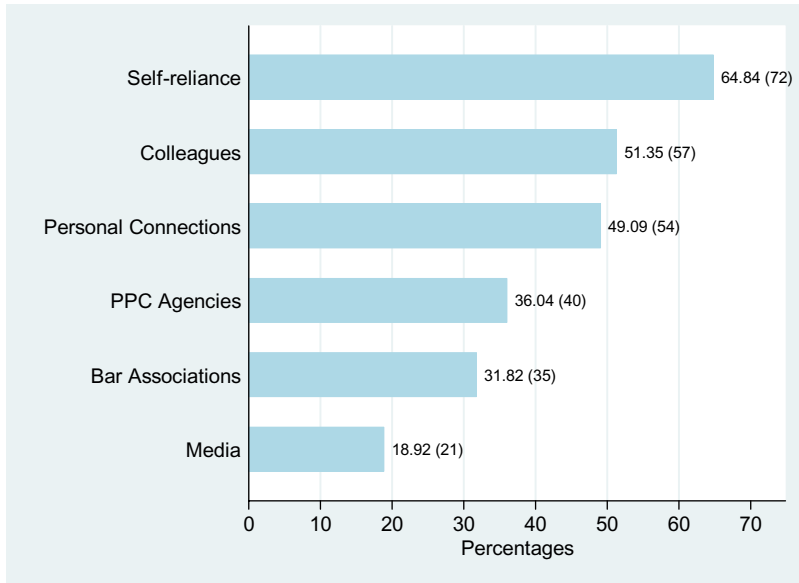


Figure 3. Varieties of lawyers' coping tactics when facing difficulties and danger in criminal defense work.

work together when meeting suspects or collecting evidence for purposes of mutual protection (e.g., GDD0901; AHH0903; HNZ0905; JSD0905; SDY0904). Second, for important and difficult cases, some of our respondents, particularly those who are younger and less experienced, seek advice from their senior colleagues (e.g., GDD0907; JXN0905; AHH0910; JSD0901; SDZ0902). Some well-managed law firms also organize informal discussions among lawyers handling such cases (C0709; LNP0904; LNP0910). Finally, lawyers sometimes ask their colleagues who have connections in the police, the procuracy, or the court for help in contacting the relevant agencies (JXN0905; HNZ0901). For example, a Shandong lawyer says that once he faced potential procuratorial investigation because the evidence he collected was different from the police evidence, but another lawyer in the firm had close connections with the local procuracy and persuaded the procurators to give up the Article 306 charge (SDY0902).

Meanwhile, almost one-third of the respondents indicated that they would seek help from bar associations and justice bureaus when facing difficulties in criminal defense work. Although bar associations in China are often considered merely an extension of justice bureaus and mainly serve regulatory functions, in recent years both the ACLA and local bar associations have shown occasional signs of becoming more active in protecting lawyers, particu-

larly those were detained or prosecuted under Article 306 (B0507; S0703). In a nationally reported case, for instance, the Inner Mongolia Lawyers Association (IMLA) appointed two lawyers to defend Ma Guangjun, a defense lawyer who was charged by the county procuracy with perjury and was detained for 210 days in 2003 to 2004 (Halliday & Liu 2007). Furthermore, IMLA organized nearly a hundred lawyers from all over Chifeng city to attend Ma's trial. Ma was finally cleared of all charges.

Yet bar associations were not as influential in other cases of lawyer persecution. The higher the political stakes and the more powerful the counterpart state agency, the less likely it is that the bar associations' support of defense lawyers will influence the outcomes of lawyer persecution cases. A good case in point is the persecution of Zhang Jianzhong. Once one of the officially selected "ten best lawyers" in Beijing, Zhang was prosecuted for perjury in 2002. Before his arrest, Zhang vigorously defended several corrupt central government officials such as Cheng Kejie and Li Jizhou. His prosecution was regarded by many criminal defense lawyers in Beijing as a political retribution by the central party leaders rather than a purely legal action by the local procuracy (B0508; B0510). During the criminal process, more than 500 lawyers signed a petition in Zhang's support, and the ACLA published legal analyses to help his defense (Human Rights Watch 2008: 56–57). Nevertheless, because the political stakes were too high, none of these measures worked. Zhang served two years in prison and lost his lawyer license permanently.

Given its weak political status, the bar association's limited ability to protect lawyers is not surprising. After all, as a criminal defense lawyer in Shanghai comments, "the bar association is also a weak party in China" (S0704). It is not an official part of the state apparatus and has only indirect influence on case outcomes through the justice bureau, which is a much weaker agency than the police, the procuracy, and the court in China's legal system (HBX0901; SDY0902). In smaller cities, the role of the local bar association is weaker still. Several respondents in our interviews indicate that the main task of the local bar association is to collect fees from lawyers (HNY0902; SDY0907), and it would offer assistance only when lawyers were facing Article 306 charges or other forms of serious persecution (AHH0901; AHH0906; SDY0908).

As "weak parties" in China's political and legal systems, both individual lawyers and bar associations sometimes rely on the media to expose lawyer persecution cases. Even for ordinary cases, some lawyers might go to the media to seek public support of their defense work. This is particularly common for progressive elites and notable activists. Nevertheless, media in different regions of China vary markedly in their coverage of lawyers' criminal defense

work. In Beijing, Shanghai, and other major cities along the east coast, it is relatively easy for defense lawyers to gain access to the media. In smaller cities and the western provinces, by contrast, it is uncommon for defense lawyers to get media exposure, and the effect of media reports on case outcomes is minimal, if not negative. As Figure 3 shows, among our respondents in 13 smaller cities, only 19 percent reported that they would use the media to help solve problems in their practice, and many were doubtful of the media's impact on case outcomes.

Because of the political sensitivity involved in many criminal cases, the Chinese media are usually cautious when reporting on the plight of defense lawyers, especially when the case is related to local leaders or powerful state agencies. To publicize their cases, therefore, lawyers use the media from localities outside the case's jurisdiction—for example, another province or another city in the same province (S0704; H0703; B1003). This is often the case when progressive elites and notable activists in Beijing and other major cities handle cases in other provinces. If there is trouble at the local level, they are able to use the national media to expose their problems with local judges and law enforcement officers, and this could lead to inspections from higher-level state agencies (B0510; S0704). For highly sensitive cases (e.g., Falun Gong cases and freedom-of-speech cases) on which no Chinese media would report, some notable activists in Beijing would use internet blogs and Twitter or go directly to the international media (B1003; B1005).

The media are not only good outlets for influencing public opinion and restoring a defendant's reputation in society (H0701), but also channels for generating potential intervention from local leaders or higher-level state agencies. At each level of the party-state apparatus, there is a research office in charge of collecting media reports and writing briefs for the government leaders. The leaders then express their opinions and address the relevant state agencies, including the courts (S0702). If the case is significant enough, this official mechanism of media reporting could go all the way to the central leadership. For many lawyers, getting the leadership's attention on a case is far more important and effective than winning public support, as the police, the procuracy, and the court are all subordinate to local or provincial leaders. An experienced lawyer in Zhejiang Province describes the relationship between media reports and political intervention in his criminal cases:

For example, in certain locations there are local leaders who influence the verdicts and make unfair decisions. In this situation we would use the media to just arouse the public concern for the case. Usually the local media is useless, [so we] have to use the media from other places. There are two aspects: locally, if a case is

reported in the media, some black boxes are opened, so they cannot act in certain ways anymore; also, if it reaches the upper-level leaders they will have opinions that could influence the outcome. It also happens that for some cases, local lawyers won't accept the case but go to lawyers in other places, maybe more famous, so that they will not offend local leaders. I often handle cases from other counties. For example, for county-level corruption cases they come to the provincial capital for a lawyer. . . . In fact the media cannot directly influence the case, but can shape [public] opinions. In China the circumstances are different—my strategy is that if I don't need the media, I don't use them. Because media exposure could make the lawyer famous but it is not for the good of the case. (H0703, Zhejiang Province)

Apparently, this lawyer uses the media as merely an intermediary for accessing political power and constraining the behavior of local judicial agencies. Yet this intermediary is not always effective; in the western provinces, where local political control is stronger and exposure to international norms is more limited, the media are far less useful to criminal defense lawyers than the urban media on the east coast. In Sichuan Province, for example, although the media are relatively developed and they report on many criminal cases (C0707), few criminal defense lawyers use newspapers or TV programs to publicize their cases. Many lawyers believe media intervention during case trials might have a negative effect on their defense work, because it could irritate the procurators and judges (C0704; C0706; C0709).

In smaller cities, pragmatic brokers, routine practitioners, and even grassroots activists are cautious in using the media because they do not want to offend the local justice agencies, with which they must maintain a good relationship for the sake of their work (FJN0904; AHH0908; JSD0902; SDZ0902). Nonetheless, a consensus across different regions is that the state holds the ultimate power in deciding case outcomes as well as the effectiveness of other means of protection for lawyers. Therefore, using the media becomes a political process as well, and lawyers must walk a fine line between the state and the public when they make alliances with the media. This is a particularly subtle issue for notable activists in Beijing, many of whom have developed sophisticated tactics in using the internet and the international media to mobilize without being disbarred or heavily sanctioned by the Chinese government (B0901; B1001; B1003).

When the media and bar associations are not very helpful, lawyers may go directly to the relevant judicial agencies for support. Thirty-six percent of our respondents in smaller cities reported that they would seek help from the police, the procuracy, the and court to solve problems in criminal defense work, and 49

percent reported that they would rely on personal connections—all of these lawyers are mostly pragmatic brokers who are embedded in the local justice system but are not politically liberal. The irony here, however, is that the agencies that lawyers often rely on for protection are precisely the ones they are supposed to challenge in the criminal process.

This brings us back to the issue of political embeddedness and the double meanings of politics for Chinese criminal defense lawyers. The most obvious type of political embeddedness is that involving previous work experience in one or more of the three agencies, and the higher the administrative level, the more advantages and fewer difficulties the lawyer experiences in his or her practice. For example, the senior progressive elite in Hangzhou quoted above gives the following answer when asked how he deals with the three difficulties and “Big Stick 306”:

I am different from ordinary small lawyers. I am a member of the Legal Expert Committee of the Zhejiang Provincial Public Security Bureau. I used to work in the provincial high court as a secretary for the court president so police officers do not dare to cause me trouble. That is the first reason. . . . Once I went to a detention center to meet a suspect, the police put a glass window between us. I protested. I cannot meet a suspect that way. I went to their leaders and finally they removed the window. I solved the problem for defense lawyers that had existed for 20 years. After that the glass window was removed, the local lawyers were very grateful. This is because of my prestige, reputation, and social status. I just went to the head of the local bureau because I am a provincial-level supervisor of the Public Security Bureau. (H0701, Zhejiang Province)

Arguably, former and present connections with the provincial state agencies made a significant difference in this lawyer’s practice. While local lawyers struggled with the glass window issue for two decades without any success, this elite lawyer solved the problem at once by going directly to local leaders, whose administrative rank was lower than both his former rank in court and his present supervisory position in the provincial police. For such a well-embedded lawyer, contacts in the police and in court can help him solve almost any work-related problem within the province. In the meantime, as long as he practices according to the law and within his comfort zone—that is, the province—“Big Stick 306” will never fall upon his head.

This pattern of political embeddedness is also observed in the work of progressive elites in other regions. For instance, in contrast to the negative responses from most of our interviewees regarding the three difficulties, two prominent defense lawyers in Beijing and

Table 5. The Association between Lawyers' Politically Liberal Motivation and Their Coping Tactics in Criminal Defense Work

Politically Liberal Motivation	Coping Tactics				Bar Association	Personal Connection	N
	Self	Colleagues	Media	PPC			
Yes	13 (72.22%)	6 (33.33%)	5 (27.78%)	7 (38.89%)	6 (33.33%)	6 (33.33%)	18
No	58 (63.74%)	49 (54.44%)	16 (17.58%)	32 (35.56%)	29 (31.87%)	48 (53.33%)	91

NOTES: The percentages in the table are row percentages. PPC refers to the police, the procuracy, and the court.

Xi'an, respectively, gave quite positive answers (B0508; X0505). They claimed that they had little problem in meeting suspects, collecting evidence, or even calling witnesses to court trials. The reason is simple: the Beijing lawyer worked in the municipal public security bureau for ten years before becoming a lawyer, and the Xi'an lawyer also has very close connections with the provincial procuracy—in fact, his office was even located near the provincial procuratorial building. Both lawyers admitted that their connections with the police and procuracy significantly reduce the difficulties in their work.

Therefore, among all the coping tactics for criminal defense lawyers, political embeddedness with state agencies is the most effective means and, in a sense, the ultimate source of protection. In the political context of China, the influence of bar associations, the media, or even public opinion has to work through the political system to have any substantive effect on the criminal justice system. It should follow from the logic of our typology that lawyers with different motivations and different structural locations have recourse to different tactics of self-defense in their everyday practice. Our extensive interviews provide support for this hypothesis. Among the five types of lawyers, progressive elites and pragmatic brokers are politically embedded and therefore more likely to use their connections with the justice system to cope with problems in criminal defense work. In contrast, notable activists usually do not have the embeddedness but instead rely on the media, the internet, and the international community for self-protection. And routine practitioners, who have direct access to neither the media nor the justice system, mostly rely on themselves or their colleagues when handling criminal cases.

Finally, as Table 5 shows, if we contrast grassroots activists—lawyers who are not politically embedded but express politically liberal motivation (Table 2)—with other lawyers in the medium-size and small city sample, we find some corroboration of our qualitative fieldwork to show that activist lawyers must use alternative tactics to

defend themselves and their clients. These grassroots activists tend to rely less on colleagues and personal connections but to use the media more often than pragmatic brokers and routine practitioners. In other words, they appear to be more isolated from other lawyers and are compelled to pursue the outside strategy in their work, most notably by employing the media and thereby indirectly engaging civil society or the public. On using the police, the procuracy, the court, or bar associations, however, there is no significant difference between grassroots activists and other lawyers.

Conclusion

This article seeks to answer a basic question for the sociology of law: what is the meaning of politics in lawyers' everyday work? By closely examining the motivations and coping tactics of Chinese lawyers in their criminal defense work, we have shown that politics has two meanings in everyday legal practice. On the one hand, many lawyers pursue justice and legal proceduralism by checking the power of the state and its judicial agencies in their everyday work; on the other hand, to solve problems in their practice and to mount a good defense, lawyers often have to rely on political connections with the agencies they are attempting to challenge. This juxtaposition between political liberalism and political embeddedness characterizes the nature of lawyers' criminal defense work and perhaps more generally the work of many politically motivated lawyers who use their everyday work to pursue the moderate state, civil society, and citizenship.

In terms of orientation toward political liberalism or toward the institutional values of the party-state, we observe five types of criminal defense lawyers: progressive elites, pragmatic brokers, notable activists, grassroots activists, and routine practitioners. Both progressive elites and pragmatic brokers are politically embedded lawyers who have past careers as cadres in the justice system or current close connections with the police, the procuracy, and the judiciary, but their political values differ significantly: unlike progressive elites, pragmatic brokers do not seek to reform the legal system incrementally but merely to take advantage of their embeddedness for economic gain. In contrast, activist lawyers, whether notable or grassroots, are not embedded in the justice system but vocally press for basic legal freedoms and not infrequently cross the red line to call openly for fundamental regime changes in China. Finally, the vast number of routine practitioners all over China are neither politically embedded nor motivated by high ideals of political liberalism, but their sense of justice, fairness, or professionalism may still press them to demand in their everyday work exactly the

kinds of protections for their clients and themselves that are integral to politically liberal regimes.

Does the struggle for political liberalism occur incrementally, locally, and case by case, as well as dramatically, nationally, and legislatively? The extensive comparative and historical scholarship on lawyers and political liberalism has emphasized the latter. This article shows that a complementary process can also be observed in an authoritarian country as a class of criminal defense lawyers fights for basic legal freedoms case by case, locality by locality, across the vast landscape of China's heterogeneous regions. This struggle is not simply the terrain of progressive elites and notable activists whose bold efforts make headlines in national Chinese media or the foreign press. It is also the terrain of lawyers unknown outside their localities and not courted by national or international observers. To shift the metaphor, it is an undercurrent scarcely observable but nonetheless potentially threatening to political illiberals and the champions of "strike hard" campaigns that are careless of procedural rights. The ever-present danger that a vigilant and bold criminal defense lawyer poses to an authoritarian state engenders a powerful political response that seeks to teach, yet again, a hard lesson to lawyers who believe that "evil cannot crush justice" (HBX0903).

For research on the Chinese legal profession, we have found a logic and some empirical evidence for lawyers' work and politics: that a small yet significant number of progressive elites and notable activists are motivated by liberal legal values and seek to advance political liberalism in their everyday work in contemporary China. While the vast majority of lawyers simply do their criminal defense work to earn a living, we also find a significant number of grassroots activists who believe their everyday work is about something bigger and more institutional. There are indications that politically liberal lawyers pay a price for their ideological commitments and thus must rely on different tactics to protect themselves and their clients. In fact, this suggests that both practice and politics in everyday work proceed through two contrasting methods: (1) the inside strategy for those close to the state, and (2) the outside strategy for those who turn to the media, the public, and civil society.

Fundamental shifts from politically illiberal to politically liberal systems of law and justice have frequently been observed throughout history and across regions of the world. These shifts have entailed an institutionalization of basic legal rights, a development of a civil society in which the organized bar often takes a leadership role, and a moderate state in which relatively autonomous courts dare to check executive power (Halliday & Karpik 1997; Halliday, Karpik, & Feeley 2007). These shifts in the institutions of power and justice are not simply the result of macrostructural engineering

through revolutionary moments, constitutional conventions, and dramatic political transitions. The fight for political liberalism is also a local fight, often invisible, imperceptible, and uncelebrated. It occurs in everyday lawyering, especially in criminal defense work that is championed by experienced practitioners who take mostly manageable risks to fight for protections against arbitrary state coercion. The practical consequences of this everyday political lawyering await the verdict of history in China and elsewhere. The theoretical consequences lead us to imagine a convergence of focus between scholars who have enriched our knowledge of lawyers' professional work and those who have sought to explain the institutional parameters of politics that shape lawyers' everyday practice. This article offers an invitation to a theoretical encounter between researchers of lawyers' professional work and researchers of political liberalism, between scholars of China and those of everywhere else.

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