



Judges under stress: Legal complexes and a sociology of hope

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Abstract

How does the sociology of legal complexes contribute to understanding of judges under stress in the shaping of legal-liberal political orders? First, the article proposes six distinctive meanings of judges and judiciaries. Second, it identifies stressors that erode the legitimacy and efficacy of different categories of judges. Third, illustrated by scholarship on Egypt, Pakistan, Taiwan and Hong Kong, it proposes that a theory of domestic and international legal complexes sharpens explanations of robustness of judges' ability to cope with stress. Fourth, it argues that evidence on legal complexes can move scholarship on judges under stress from static frameworks of social structures to the dynamics of a sociology of hope where structural resourcefulness and repertoires of action multiple the opportunities for resisting stress. Fifth, after identifying contingencies that can relieve stress on judges and judiciaries, the paper concludes points to a redemptive irony of repression by authoritarian rulers.

Key words

Lawyers; judges; legal complex; political liberalism; civil society

Resumen

¿Cómo contribuye la sociología de los complejos jurídicos a la comprensión de los jueces sometidos a tensión en la conformación de órdenes políticos jurídico-liberales? En primer lugar, el artículo propone seis significados distintivos de los jueces y los poderes judiciales. En segundo lugar, identifica los factores de estrés que erosionan la legitimidad y la eficacia de diferentes categorías de jueces. En tercer lugar, ilustrado con estudios sobre Egipto, Pakistán, Taiwán y Hong Kong, propone que una teoría de los

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complejos jurídicos nacionales e internacionales agudiza las explicaciones sobre la solidez de la capacidad de los jueces para hacer frente al estrés. En cuarto lugar, se sostiene que las pruebas sobre los complejos jurídicos pueden hacer que los estudios sobre los jueces sometidos a estrés pasen de los marcos estáticos de las estructuras sociales a la dinámica de una sociología de la esperanza en la que los recursos estructurales y los repertorios de acción multiplican las oportunidades de resistir al estrés. En quinto lugar, tras identificar las contingencias que pueden aliviar el estrés de los jueces y las judicaturas, el artículo termina señalando una ironía redentora de la represión por parte de los gobernantes autoritarios.

Palabras clave

Abogados; jueces; complejo jurídico; liberalismo político; sociedad civil

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1. Introduction

A fundamental issue of our times is the situation of the judiciary within the institutional framework of the state. What role does it play in the constitution of legal and political orders, most particularly, in the rise or fall of liberal-legal orders? These questions come sharply into focus when we narrow our concern to judges under stress (Graver and Čuroš 2021).

In this article I approach judiciaries under stress from the viewpoint of legal complexes, namely, the complex of practising legal professionals at a given time and place who may be activated on a given issue—private lawyers, judges, lawyer civil servants, prosecutors, legal academics, military lawyers (Karpik and Halliday 2011). Indeed, I have gone so far as to claim elsewhere that consequential courts simply cannot be understood, whether in abstract research or everyday practices, without understanding the sociology and politics of legal complexes (Halliday 2013). I advance here a similar claim for understandings of judiciaries under stress.

I begin by asking two seemingly ingenuous questions: what is our object of inquiry when we speak of “judges” and how shall we understand “stress”? For me these questions set begin a conceptual and theoretical journey to better comprehend social structures and dynamics that are integral to the good political society. My point of view is informed by scholarship on legal professions and political liberalism over the past twenty-five years and the writings of French sociologist Lucien Karpik,¹ Berkeley legal academic Malcolm Feeley,² and Terence Halliday in their collaborations with the more than thirty interdisciplinary scholars who have contributed to the body of work on legal complexes in the rise and fall of a distinctive form of political liberalism across the world since the 17th century (Halliday 2023, Halliday and Karpik 1997, Halliday *et al.* 2007a, 2012, Feeley and Langford 2021a). These separate studies by country specialists point the way to a new generation of research that might build multi-national quantitative models of legal complexes and political liberalism.

In this article, nevertheless, I shall illustrate my considerations on judges under stress with four examples: Egypt, Pakistan, Hong Kong and Taiwan. From 1970 to 2003 there emerged a “rebirth” of an Egyptian legal complex as it sought to break out of the bonds of a “profoundly illiberal political system” (Moustafa 2007a, 2007b). Between 2007 and 2009 Pakistan was the site of arguably the most extraordinary mobilization in modern times of lawyers and a legal complex for the defense of judicial autonomy and integrity, a mobilization that triggered regime change and opened a wider path to democracy and constitutionalism (Aziz 2012, Ghias 2012, Munir 2012). In 2019, Beijing pressed a National Security Law on Hong Kong, imposing a heavy hand of repression that brought to a near halt the twenty years of remarkable contention by legal complexes and publics for rule of law and independence of the judiciary (Tam 2013, Tai 2019, Liu *et al.* 2019, Ming-sho 2020, Tai *et al.* 2020). By so doing, Beijing sought to preempt a similar startling transition from an illiberal to a liberal political society that had dramatically taken place

¹ Notable writings on legal professions in France include Karpik 1985, 1988, 1997, 1999.

² See Feeley on judges, judiciaries and the legal complex in Feeley 2002, 2012, Feeley and Miyazawa 2007, Feeley and Langford 2021b.

in Taiwan, a transformation in which legal complexes were manifestly instrumental (Ginsburg 2007, Hsu 2021).

It is true these are radically different contexts, yet I will propose to you that they share challenges in common—judiciaries under stress—and thinking with them as counterpoints or variations on a theme may provide comparative insight for other regions, not least Central and Eastern Europe, Latin America and North America. Here I adopt the stance of Hans Petter Graver’s proposition that “instances of judicial resistance and opposition to authoritarian regimes, and how such regimes react to resistance are important topics for research. Insight into the conditions of opposition may enhance the possibility of future opposition” (Graver 2018, 849). As we observe at present, however, judges under stress have become immanent issues in long-standing rule-of-law democracies where authoritarian and populist tendencies in politics turn threatening forces into attacks on judiciaries and individual judges.

I proceed in four steps. First, I ask what it is that we mean when we speak of “judges”? Second, what “stressors” threaten particular categories of judges and judiciaries? Third, how do legal complexes come into play when the viability of robust, resilient and adaptive judiciaries come under threat? And, finally, how can we move from the cold frameworks of social structure and dynamics to the warmth of a sociology of hope?

2. Judges

Who are judges? On its face, this question seems bizarre, even misguided. Nevertheless, when we take a long historical and comparative view, this question compels us to think conceptually about the objects of pressure and stress. By designating more precisely the varieties of forms of judges, judicial collectivities and institutions, the better sense we can make of scholarship on lawyers, legal complexes and the historical struggles for a moderate state, in particular, and political liberalism, in general. For purposes of this conference, how we answer will inform where stress is directed and experienced, what stressors are associated with what variants of judges, and what capacities legal complexes can exercise to counter stress.

TABLE 1

	Judges as...	Attributes	Stressors	Repertoires of Contention by Legal Complexes	Comparative/ Historical Examples of Legal Complex Action
A	Singular person	The notable judge <ul style="list-style-type: none"> ○ Exuded charisma ○ Attributed charisma 	Intimidation & Attack: <ul style="list-style-type: none"> ○ Personal ○ Reputational ○ Situational ○ Physical 	Creating, finding heroes Awards, recognitions Keeping alive memories of notable exemplars Demonstrations & marches Media coverage International appeals Boycotts	Pakistan: Chief Judge Chaudhry defense by LC, 2007–2009 Pakistan Long Marches Pakistan: US tour
B	Conglomerations	Collection of persons, a gathering	<ul style="list-style-type: none"> ○ Atomizing judges ○ Mechanisms of disassociation ○ Eroding a common professional identity & values 	Forging collective action e.g., events – judges gathering on steps of a high court	Hong Kong: silent marches of private lawyers on behalf of rule of law, independent judiciary Pakistan: Supreme Court protests
C	Emergent social organization	A relational collectivity An association of like-minded judges Whole greater than the sum of its parts Formal association Voluntary association	<ul style="list-style-type: none"> ○ Groups monitored, threatened, dissolved ○ Leaders threatened, detained, imprisoned ○ Associations manipulated from outside, e.g., voting, factionalization ○ Insurgent networks and groups ○ Counter Quisling associations created 	Strong associational leadership Association hosts conferences, events Association speaks to publics Judges in an explicitly labeled group or association Judges Association (Egypt) Conferences Publications	Egypt: challenging attacks on legal syndicates Taiwan: forming alliances of private lawyers, judges, prosecutors, 1980s, 1990s Hong Kong: LC joining with civil society to create legal defense funds for detained protesters

D	The Judicial Institution	State-specified . . . “court system” “Constitutional Court” “Supreme Court” Courts of first instance Hierarchically organized, differentiated Principally comprised or staffed or led by legally-trained judges	Outside attacks: ○ Appointment of judges/court packing ○ Manipulation of resources ○ Assaults by other branches of the state, e.g., politicization ○ Dual state re-structuring ○ Security law, courts Inside stressors: ○ Marginalization, demotion dismissal, forced retirement of judges ○ Assignment of cases away from suspect judges	Mobilize legal complex resistance Mobilize civil society Initiate constitutional cases Invoke constitutional norms Invoke international law & standards Mobilize international legal complex Publicize Organize protests	Pakistan: 2007–2009 Lawyers’ Movement Hong Kong: mass public marches with LC leadership against repatriation of cases to PRC
E	Cases	Judicial decisions Judicial opinions	○ Criticized, overturned by higher courts ○ Party political attacks ○ Public outrage	Retired judge critiques LC affirmations Social media campaigns	Egypt: retired senior judge opinion Hong Kong: legal academic accountability
F	Symbolic	An ideal personified by the title of “judge” A collective representation of justice Meaning attributed to the judge’s role and the judicial institution	○ Dilution & impugning of the label/title/role (e.g., Judge Zabludowska: “Is a judge a “judge”? Or “citizens don’t know if a person presiding is a real judge” ○ Judiciary branded as a “conquering power” ○ Judiciary attacked as a “juristocracy” (Lukasz) ○ Judges construed as political partisans	LC formulating ideals of justice, independent judiciaries, rule of law LC educating publics on merits of judicial neutrality LC allying with media & civil society to underscore public interest in judicial ideals	Pakistan: visual images, media coverage Hong Kong: mass public marches Hong Kong: Bar Association news releases; defenses of judges & decisions

Table 1. Categories of Judges, Stressors and Repertoires of Contention.

Let me distinguish among six usages or manifestations of “judges.”

2.1. Singular persons

Here we identify single judges who exude Max Weber’s charismatic authority. A single person emerges from the anonymity of a general category, from being one of a three- or seven-person bench, from being more than a titular head, to become the recognizable personification of an entire institution for good or ill. This person exemplifies the best or worst of the judicial role and stands apart as a known name, face or voice. A potent charismatic figure may radiate out, through media, and across other institutions and into civil society and the public sphere. This person can become a figurehead, a moral leader, a catalyst for resistance or change.

Consider Chief Justice Chaudhry of Pakistan (Ghias 2012). Long known within political and legal circles for abetting a military takeover of government, his appointment as Chief Justice in 2005 surprisingly opened up a stream of judgments from Pakistan’s Supreme Court on construction safety, urban planning, price controls, privatization of public enterprises, illegal detentions and missing persons, and the prospect of decisions on whether President Musharraf could run for office while still holding the rank of general in the army. Led by Chaudhry, the Supreme Court’s “expanding virtuous cycle of judicial power and independence” not only engaged appreciative publics and expansive media coverage but also generated a backlash from an increasingly distrustful and wary political leadership.

Under threat, President Musharraf demanded on March 9, 2007, that Chaudhry resign. Chaudhry refused. “For the first time in Pakistan’s history a chief justice stared a general in the eye and did not blink.”³ Two days later, as Chaudhry left his home for a Supreme Judicial Council meeting, photo and video images flashed across Pakistan of the Chief Justice being humiliated by a mere police officer. When Chaudhry sought to travel in his official car, a police officer intervened, daring to place a police hand on the Chief Justice’s head when he was pushed into a waiting police car. This electrifying image “became the catalyst for summoning public opinion against the regime and mobilizing lawyers in support of the chief justice.” (Ghias 2012, 357). At that moment began a two-year struggle by a legal complex that led the nation in protest until Chaudhry was reinstated.

Consider a more diffuse charisma surrounding the two Turkish Constitutional Court judges who remain imprisoned after Erdogan’s purges following a failed coup that would have ejected Erdogan from power (Kurban 2022). Here it is not simply a single name in a single episode but several individuals in a continuing sore on the body of Turkey’s currently constricted constitutional order. Consider also Graver’s wider and deeper historical aggregation of “heroic judges” (Graver 2024).

2.2. Conglomerations

Here we can observe a collection of individuals, bearing the same title, “judge,” who have a diffuse identity in common, yet are amorphous, less than a collectivity, less than an organization, less than a social movement. It is as if they were persons independently answering a survey or sitting anonymously together in a gathering of their kind. This

³ Former speaker of the National Assembly, quoted by Ghias (2012, 356).

mass of individuals might be formed or mobilized or forged into a collectivity for a cause, but at this historical moment lie uncoordinated. This manifestation of judges as a pre-formation of an occupational collective agent likely represents a characterization of judges in most places and most times.

Consider judges in China, especially those trained and appointed after 2000. During our fieldwork on criminal defense lawyers and the fight for basic legal freedoms in China (Liu and Halliday 2016), it was said by lawyers, on occasion, that there were many, usually younger, judges who shared the values of rights defense lawyers and the wider international ideals of constitutionalism and rule of law. However, these judges had no real or safe way of knowing how widespread were fellow judges, not of being in communication with each other. In this way, we might consider such an anonymous conglomeration as a latent force, potentially emergent in different political circumstances.

2.3. *An institution*

Here we see judges in the forms that are customary in the traditional legal establishment of the state – the Constitutional Court in Egypt, the Supreme Court in Pakistan, the courts of first instance in Hong Kong. These are judges performing roles in Weber's bureaucratic organizations of justice, hierarchically structured with courts at different levels of jurisdiction and different kinds of jurisdiction.

2.4. *A collective actor*

In this guise, numerous judges come together as an emergent social entity. It is a relational collectivity where the *raison d'être* for relationships is a common cause. Almost always this is a subset of the population of all persons holding the title of "judge." Here the whole is greater than the sum of its parts. This collective actor can be observed in at least two different forms.

Consider a judges' syndicate or association—a self-governing body of judges purporting to represent the interests of judges and justice. Here a collection of judges join together as a standing voluntary association for reasons of conditions of work, resources, and institutional development or protection, among others. In Egypt, a judges' association in the 1980s and 1990s became a consistent advocate for reforms in the administration of the courts, an advocate for the rule of law, and a host for collective action by a wider legal complex (Moustafa 2007a, 2007b).

Consider a band of *insurgent judges* within an authoritarian regime, i.e., a subset of judges who come together in a common cause. In the mid-1960s, during Franco's fascist dictatorship in Spain, a group of oppositional judges and prosecutors formed a social movement called *Justicia Democrática*. Initially secretive and clandestine, the insurgent movement grew over time to attract substantial press attention and to reach wider publics. Among its accomplishments was a demonstration to the public that the judiciary was "no longer a monolithic, conservative body" (Hilbink 2007, 417). *Justicia Democrática* became one of the spearhead organizations in the democratic transition as it joined with civil society in a drive for legal and political reform.

2.5. *As cases*

Arguably, the most pervasive and consequential manifestation of “judges,” viz., the decisions they make and the opinions they issue. Graver (2018, 2021a, 2021b) points to numerous cases in Nazi Germany or occupied Norway and elsewhere (Graver 2024) when it is the conjunction of a given judge with a particular ruling that the reasoning and outcome of a case becomes a focal point of attention by critics or supporters. Often the case becomes the flashpoint that triggers action for or against judges.

2.6. *As symbolic figures*

In this representation, judges stand less for a role or an organization and more as a symbolic representation of a particular configuration of power in a society. “Judges” offer an ideal, such as a branch of the state more or less compliant with the executive branch, more or less able to check legislative power. We may see judges in this portrait less in terms of the buildings that sit grandly in city and town squares, less as titles or organizational hierarchies, and more as meanings attributed to what a judge, ideally, represents in the understanding of law, the distribution of power, the protections of vulnerable citizens in a society.

3. Stressors

By distinguishing among six categories of “judges,” I turn to stressors that are particularly corrosive and harmful to each of the six manifestations above of the judges or the judiciary. These will vary across time and context. They are incomplete and illustrative. Nevertheless, they might propel us toward an analytic, then action-oriented, basis for response. Future research and theory development will constructively proceed when particular stressors can be matched with respective manifestations of judges.

As *singular persons*, judges can be pressured by personal, physical and reputational intimidation and attacks. Here it is the person, herself or himself, who is singled out for *ad hominem* threats or abuses. The person is named, whether or not the threats are anonymous or directed by an identifiable figure. The firing of Pakistan’s Chief Justice Chaudhry, and the nationwide outrage that followed, is one of the most dramatic examples in recent times.

As a *conglomeration*, or collection of persons, stress can be intensified by individualizing judges, keeping judges disassociated and unable to mobilize collectively. Judges are treated more as a crowd by repressive forces rather than a collectivity which can come together for common cause. The stressors here seem to erode a common professional identity and values that would set judges apart from conventional groupings in political parties or religions or racial or gender groups (Graver 2021a).

As an *institution*, we are most familiar with judges in their formal, state-prescribed organizations of the judicial system. I find it useful to distinguish between stressors from outside the judiciary itself and those from within the judiciary as an operating organization. From outside, the stressors include appointments to the judiciary to selection of judges for particular cases, as we have seen recently in Hong Kong’s national security cases. They may include conditions of judicial service, ranging from length of appointments to salaries, facilities and staffing. Judges can be starved of resources and

judiciaries run down in capabilities, as we have often seen. Allegations of corruption undermine the institution, even though actuality of corruption may be subverting the institution from within. Then again there is the ultimate threat of parallel courts—military or security tribunals—set up to divide judicial power in the classic techniques of the dual state. From inside, judges confront stresses of demotion or marginalization, dismissal and forced retirement, deprivation of resources and poor working conditions. Transferring outspoken judges to obscurity in the provinces is a common expedient in research on legal complexes and political liberalism.

As *collective actors*, if judges have managed to unite in voluntary associations that share interests and are differentiated from the formal hierarchies in which their work is embedded, then they represent a threat to authoritarians. Authoritarians respond to such threats in several ways. One set of stressors arises when insurgent networks and groups of judges are monitored and threatened to restrict or refrain from actions. If associations or even networks of judges refuse, they may be dissolved or forced underground. Authoritarians can amplify stress on judges' voluntary associations by encouraging and resourcing counter associations. This is the equivalent for judges of Singapore's creation of a counter-law society that would conform more readily to one-party control (Rajah 2012b). We might think of these as quisling associations within the judiciary.

Judges, too, are *symbolic figures*, standing for a particular kind of legal system and political society. Assaults on this ideal come from several sides. Judges are impugned and maligned, less as a particular person, but more as a legal role. The earlier conferences in this series have documented public confusion over whether a person presiding in a trial is "a real judge." Judges may collectively be branded as "a conquering power" or a "juristocracy." They may be cast as too removed from the lives of ordinary people or too identified with this or that group within society. Their distinctive role and stature is sullied and they are brought onto other playing fields of politics or public opinion, where their singularity is diminished or denied. Pop culture, too, can portray judges as arbitrary or as political hacks or as incompetents.

There is too much to say about *cases, of judges as writers of opinions*, of judicial reasoning and pronouncements, and I am least equipped to elaborate upon them. But it is impossible to read the literature or the media without seeing controversies and *causes célèbres* over a particular ruling in a given case—either prospectively, i.e., how a judge should rule or the apprehension of how a judge will rule (as became apparent in President Musharraf's concern about being able to run again as president of Pakistan); or, retrospectively, i.e., why a judge should be criticized, as has been observed in notable cases in Nazi Germany (Graver 2021b).

4. Legal complexes

If we begin with a differentiated conceptualization of "judges", as they confront distinctive stresses, we cannot end there. The fortunes of judges, in any of its meanings, are always intricately bound with the fortunes of other practicing legal occupations. That is a central proposition of the comparative and historical scholarship on legal complexes (Halliday *et al.* 2007b, Karpik and Halliday 2011).

As Feeley and Langford (2021b, 16-19) rightly observe in their prelude to the volume on Nordic countries, the theory of the legal complex arose in reaction to three contexts. In contrast to materialist and economic models of lawyers' collective action, Lucien Karpik and collaborators demonstrated repeatedly that lawyers frequently mobilize in the vanguard of struggles for an ideal of political liberalism where the defense of basic legal freedoms, the viability of a civil society, and the valorization of a moderate state are integral values. In contrast to prevailing scholarship that isolates study of legal occupations into silos—either of lawyers or of judiciaries or of prosecutors, to name but a few—a theory of the legal complex insists that the fortunes of political liberalism depend on the structure and dynamics of all these occupations in relation to each other. And in contrast to deductive or normative theories, the framework of the legal complex is inductive—drawn from many sites of research—as an empirically observed regularity.

4.1. A Domestic Legal Complex

A legal complex (LC) has five properties:

1/ An LC comprises all currently practicing legal occupations, certainly including judges. It may also include private lawyers, prosecutors, legal academics, military lawyers, and lawyer civil servants. The framework of the legal complex sprang from studies of private lawyers in the emergence of political liberalism.⁴ Very quickly it became apparent that this was not only incomplete but inaccurate. Judges were integral to struggles in 18th century France (Karpik 1999), in the US during 1950s anti-Communist crusades, and in many other sites and places (cf. Feeley 2012). "Judges can form an important part of 'a legal complex' that can be effective in the struggle for political liberalism in authoritarian regimes" (Graver 2018).

We should be especially observant of legal academics, who often get forgotten in these studies. Yet time and again it is legal academics who provide the concepts, the force of legal argument, the grounding of their case for political liberalism in long traditions of thought and institutions. Sometimes the role of academics can be transformative. Manoj Mate has shown that it was the writings of a German legal scholar that provided the juridical underpinnings of the Indian Supreme Court's elaboration of the basic structure doctrine, which proved to be remarkably expansive in the reach of the court (Mate 2012). In other cases, legal academics can provide the authority, credibility and intellectual force to empower or critique developments that threaten the role of law or elements of political liberalism.

After Beijing imposed a National Security Law on Hong Kong in 2019, distinguished legal scholar Johannes Chan has responded with a string of writings to fortify a judiciary under stress. A longtime dean of the Law School at the University of Hong Kong, a senior barrister, and a leader in the Hong Kong Bar Association, Chan's credentials are unimpeachable. He has written boldly on "abusive judicial review" in the Hong Kong court (Chan 2022a, 2022b), where he not only appraises the contemporaneous "independence of the judiciary" but points explicitly to strategies that authoritarian regimes use to capture judiciaries. Chan exemplifies a legal academic, with high

⁴ Note that the term "political liberalism" utilized here refers *not* to political liberalism writ large, but to a lawyer's historically circumscribed concept of a legal-liberal political order comprising basic legal freedoms, civil society and a moderate state. It is reducible neither to democracy, nor to rule of law.

standing in the practicing bar and in Hong Kong's legal establishment, who can critique the court from a position of authority outside the judiciary, clarify the nature of challenges to the courts' independence, analyze the legislation that presents dangers to the rule of law, re-interprets the case law, and, not least, offers the courts ways out of the countervailing pressures of an authoritarian state in tension with a wider legal complex committed to basic legal freedoms, a vibrant civil society, and judicial independence. He also is an example of a single person who straddles various segments of a legal complex, benefitting from the confidence of each segment, who thus can bring into conjunction, even mobilize, otherwise siloed legal occupations. Chan points, at least implicitly, to the inter-mingling of the judiciary as an institution and judges issuing case opinions, arguing in effect that case law offers degrees of freedom from judges who might otherwise feel themselves unduly constrained by "judges as institutions."

In some settings, prosecutors, too, may be brought into a legal complex that is fighting for a moderate state in which judges are fortified by other legal occupations. Comparative cases include struggles against the dictatorships in Spain (Hilbink 2007), South Korea (Ginsburg 2007) and Taiwan (Hsu 2021).

2/ An LC is action-oriented. It does not refer to anyone with a legal education. The occupations in a legal complex are doing legal work – drafting, advising, representing, suing, prosecuting, teaching and writing law. And they are doing so individually and collectively through organizations, such as law firms, bar associations, courts, judicial networks, scholarly societies, NGOs, and military hierarchies.

3/ The actors and actions of a legal complex relate not to all issues at any moment but to a specific issue at a given moment. A legal complex changes in its composition and relationship as issues of legal change differ. A coalition among private lawyers, military lawyers and prosecutors may mobilize on one issue but dissolve on another, where the leading LC coalition comprises judges, legal academics and lawyer-civil servants. Today we ask – what do structures and dynamics of legal complexes look like when judges are under stress? This specific moment for judges may exhibit dynamics or structures that contrast with a legal complex mobilizing for or against a piece of commercial lawmaking or acting in societal debates over European norms for a particular human right.

4/ An LC involves a structure of relationships, often, perhaps usually, leading to collective action among its segments. It is essential to recognize that they may be relationships of cooperation or competition, of consensus or conflict. Our research shows there may be LCs at war with each – one for legal change of some kind, another against it. In our comparative and historical theory and research, an LC is not always fighting for political liberalism in the broader sense and, is not always in favor of the rule of law except perhaps in its narrowest sense.⁵ But different configurations of a legal complex could spring up around environmental problems or the problems of the elderly or the revision of constitutions or corporate bankruptcy, or shifts in gender relationships (Karpik and Halliday 2011).

5/ An LC acts at a particular moment in time. It is not static but highly dynamic. For instance, Ginsburg (Ginsburg 2007) shows that, whereas South Korean prosecutors and activist lawyers were locked in conflict in the early and mid-1980s, by the mid-1990s

⁵ See Table 1.1, p. 33, in Halliday *et al.* 2007b.

prosecutors effectively became allies particularly in bringing corruption cases against entrenched elites as they sought to redeem their earlier association with a repressive state. A new and excellent study of Taiwanese legal complexes shows that during the fight for political liberalism a legal complex of closely aligned lawyers, judges and prosecutors fought together in solidarity (Hsu 2021). But once rule of law, democracy or political liberalism was established, a previously unified legal complex began to fracture as each legal occupation focused on its particular interests and thereby came into conflict, or sometimes had disinterest, with those of other legal occupations. Ironically, as I shall emphasize again below, it was opposition, repression, and authoritarian behavior by political actors that forged solidarity in the legal complex and actually enhanced its efficacy and ultimate triumph.

It is important to reiterate three essential aspects of a theory of legal complexes. First, as Feeley and Langford rightly state, a legal complex does not inevitably or always mobilize for political liberalism, or on behalf of a judiciary under assault. Frequently judges and legal complexes capitulate to executive power, and any action out of step with authoritarian rulers is crushed, at least for a time.

Second, I have argued elsewhere with respect to constitutional courts that the configuration of a legal complex and the ways it mobilizes will differ across four moments: (i) agitating for constitutionalism; (ii) instituting constitutional courts; (iii) consolidating constitutional courts; and defending or protecting constitutional courts (Halliday 2013). I expect there will have been similar differences in the fight for judicial independence or autonomy or integrity in Central and Eastern Europe and in contemporaneous efforts to defend judiciaries and judges.

Third, because authoritarian leaders well recognize the threat to their repressive regimes not only by private lawyers, but even more of a legal complex, they work hard to dismantle, break up, or prevent the emergence of a cohesive and active legal complex. That was certainly the case in Singapore, as Jothie Rajah has documented in her superb study of Lee Kuan Yew and his dismantling of any part of a legal complex that could prevent his authoritarian rule of law (Rajah 2011, 2012a).

4.2. An international legal complex

We must widen the salience of legal complexes. Almost never is it the case in the 21st century that a legal complex *within* a state acts in isolation from legal complexes *beyond* the borders of that state. Repeatedly, empirical instances require that attention to a *domestic* legal complex must be accompanied by its relationships with an *international* legal complex. It has been recently proposed that an international legal complex (ILC) exists and acts when the following elements are present:

- (a) There are two or more classes of legal actors (e.g., private lawyers, international civil servants, bar associations, judges), who (b) are presently acting in legal roles and deploying the distinctive expertise and epistemologies of law and its institutions, and who (c) act collectively through (d) varieties of structures to (e) effect change through legal means to solve a particular problem or issue on which they share a common framing (Halliday *et al.* 2021).

More precisely, a legal complex becomes international when the classes of actors span one or more state boundaries; when they are collectively mobilizing as regional, transnational or global bodies or networks; and when they are proposing or resisting change from outside a given state.

Consider three manifestations of an international legal complex with strong European foundations that fights for judicial independence worldwide, each of these manifestations well known to you. The International Bar Association⁶ acts as a world peak association for 190 organizations of lawyers and barristers, among others. In many of those bar associations, including the American Bar Association, judges play prominent roles. The International Commission of Jurists,⁷ based in Geneva, brings together notable practicing lawyers with judges and legal academics, again with a pointed focus on independence of the bench and bar. Lawyers for Lawyers,⁸ an international NGO based in the Netherlands, while primarily directed at protection of private lawyers from state repression, nevertheless proceeds on a presumption that judicial independence is a critical condition for defense of the bar. Many other cases in point could be adduced, including the Council of Bars and Law Societies of Europe.

In the struggle for basic legal freedoms in China, research demonstrates that these bodies of an ILC join with like-minded other ILC organizations, and international NGOs and international governance organizations to hold China accountable to global norms which implicate judges in almost all respects (Halliday *et al.* 2021). Research on Hong Kong likewise finds evidence that an ILC brings a world of exterior and concerted mobilization to fortify the interior struggles within a country and, in some cases, becomes the voice of LCs silenced within a given country.

Legal actors of different kinds—international bar associations, networks of jurists, international NGOs of an LC—act singly and collectively, often reconfiguring themselves, depending on the harms they seek to mitigate. None of their structures is identical, which in itself may be a benefit that leads to diversity of approaches. They share common fundamental framings of rule of law and independence of the judiciary among others, but also configure themselves differently as frames of reference differ, e.g., between “disappearances” of leading lawyers⁹ versus calls for accountability in Beijing’s crimes against humanity in Xinjiang.

There is another way we can think about legal complexes, and it has proved valuable in my own research. We have argued that all segments of practicing legal occupation inside and outside a state are prospective elements in a legal complex that mobilizes on a given issue. This approach emphasizes roles and organizations. However, when we observe legal complexes in action we can also see that particular types of legal professionals have singular capacities to fuel action.

Consider generational differences—retired judges who can combine the authority and distinction of years on the bench, but in retirement are free to express views in ways that

⁶ <https://www.ibanet.org/>

⁷ <https://www.icj.org>

⁸ <https://lawyersforlawyers.org/en/>

⁹ For the activation of international legal complexes in the wake of the Party-state’s nationwide 709 Crackdown beginning on 9 July 2015, see Halliday 2019.

would be impossible while still sitting. Consider the international highly prestigious nonpermanent judges who sat on Hong Kong's Court of Final Appeal but resigned in protest for infringement of Beijing on the independence of Hong Kong courts.

By radical contrast consider the young, innovative lawyers who created the Progressive Lawyers' Guild in Hong Kong. Their sophistication in use of social media, often with daily and even more frequent posts and exchanges, their boldness of thinking about how to defend the many young people detained by police after demonstrations, revealed a courage unencumbered by many of the responsibilities that weigh upon older and more established lawyers.

4.3. *A toolkit for analysis*

I propose, therefore, that the framework of legal complexes provides a methodological toolkit with which to approach judges under stress and any given episode of struggle over legal and political ideals, such as rule of law, political liberalism, the autonomy of the bar or the independence of the judiciary. Systematic analysis of any episode of judges under stress might constructively proceed methodologically, and subsequently, empirically, by cross-classifying the six manifestations of judges (e.g., singular person, associations) with the multiple segments of a legal complex (e.g., private lawyers, legal academics). A rigorous analysis would identify which stressors and responses to stressors are evident in a given situation, between, for instance, a singular person and lawyer civil servants).

In every such occasion, I argue, the scholar or analyst should be treating entire legal complexes as a null hypothesis against which to discover who, when and how mobilization occurs by legal occupations for an ideal such as judicial independence. History and contemporaneous struggles should impel critical observers to proceed with the working hypothesis that both a domestic and an international legal complex are in play in any struggle over basic legal freedoms and in a moderate state where judiciaries retain capacities to temper state power. We shall see that this is more than a matter of scholarship. It is also a toolbox for activism.

5. A sociology of hope

In 2004 the American Academy of Political and Social Science published a special issue of its journal, the *Annals*, on the topic of "Collective Hope" (Braithwaite 2004a, 2004b). Quite recently an eminent international relations scholar, Martha Finnemore, and her colleague, Michelle Jurkovich (Finnemore and Jurkovich 2020) have proposed a turn in political science toward "a politics of aspiration." "Aspiration," they state, "is an essential component of political life. Aspiration shapes political action. It articulates goals, affirms identities and values" and is, "by its nature, a transformational future-oriented process (...)" (Finnemore and Jurkovich 2020, 1).

There is a theoretical conjunction between hope and aspiration in which the political sociology of legal complexes becomes salient. Its salience is intensified when both hope and aspiration are centered on an ideal of political society where judicial autonomy undergirds a moderate state. In this kind of political society, buttressed by a vibrant civil society and public sphere, the legitimacy and authority of judges is upheld, subject to

their accountability to ideals, and the fortification of their circumscribed role becomes a priority for the builders, maintainers and defense of this good society.

I have therefore come to the view that insofar as hope and aspiration are arenas of struggle over ideals, a social scientist may speak to hope not necessarily in *normative* terms, where most social scientists are not well trained, but in *contingent* terms. That is, if a certain hope or ideal is articulated, let us call it “z”, then realizing that hope depends on a contingent set of conditions, let us call them “x” through “y” in given contexts “k”, “l” and “m.” One of those sets of conditions for judges under stress is a legal complex, or, more properly, configurations of legal complexes, and accompanying the actors in those legal complexes are repertoires of contention. Together these offer grounds for a sociology of hope when judiciaries are under assault or when they are ripe for reform.

5.1. *Structural resourcefulness*

I propose that the framework of legal complexes can be understood as a springboard for hope. Why?

First, in any given context, England in the 1660s, France in the 18th century, South Korea in the 1980s, Egypt in the 1990s, Pakistan in the 2000s, Hong Kong in the 2020s, judges do *not* stand alone. Neither individual judges nor entire judiciaries are isolates. Even if the judges view themselves as a singular profession and institution, in social and legal history their fate lies with interdependencies among other segments of legal complexes.

Second, the findings of empirical research across time and place show that solidarity with judges in search or defense of an ideal may come from a variety of other practicing legal professions. That solidarity in one place may be obtained by some judges with some private lawyers and with some prosecutors. That solidarity in another place can bring an organized private bar into alliance with legal academics and government lawyers. In fact, with five or six segments of a legal complex potentially able to mobilize collectively, the prospective structures that impel a social movement of practicing legal occupations give a multiplexity to action, which in itself fosters hope. The recruiting grounds for activist defenders or proponents of a judicial ideal are multiplied. Potential combinations of segments proliferate.

In fact, the current situation in Hong Kong, insofar as we can understand its dynamic unfolding, does *not* involve mobilization by judges at all. Whatever defense is being erected for the rule of law in Hong Kong, it has come from other segments in a legal complex – before 2019 from the bar association and legal academics and after 2019 from an international legal complex. In other words, if judges cannot speak for themselves, they may obtain spokespersons in solidarity with other segments of legal complexes. International legal complexes proved themselves invaluable as allies, coalitional partners or spokespersons to global publics and policy makers in the struggles for judicial independence in Egypt and Pakistan, and they do so even more proportionately in Hong Kong.

I see this proliferation of possibilities as *structural resourcefulness*. It signals to judges and to all other legal occupations the richness of social resources potentially available in a given struggle, whether to obtain political liberalism or to defend against its enemies. Judges may enter the arena of struggle with an *a priori* hypothesis that many sorts of

combinations of legal occupations might be possible in the given context of a struggle in a particular time and place.

5.2. *Repertoires of action*

Hope inheres in more than structures. As we know from Max Weber's depiction of bureaucracies as potential "iron cages" which are rigid and constraining, structures also can be static, locking themselves into a path dependency or a liability of tradition and age. In my view, an unexpected finding from the literature on legal complexes is that their many structural configurations provide evidence of ever more creative repertoires of action.

If authoritarians in Singapore, Hungary or China have developed toolkits for inhibiting or deconstructing rule of law, if repressive regimes have displayed ingenuity in undermining a moderation of executive power, if one-party states have sought to perfect instruments of repression against lawyer-advocates for political liberalism, then, so too, have legal complexes displayed remarkable adaptability in the repertoire of actions in widely divergent situations.

Unfortunately, the scholarship on legal complexes has not yet produced the sort of typology that categorizes all the forms of action taken by legal complexes. Ideally, a typology of repertoires would match a given action to a specific type of assault on a judiciary or the attainment of a specific goal in the bid for rule of law or political liberalism. For the moment, consider again this repertoire displayed in the four cases I have featured –Egypt, Pakistan, Hong Kong and Taiwan (see Table 1).

With respect to singular persons, *individual judges*, the Chaudhry repertoire of action by a Pakistani legal complex appears quite remarkable because the individual judge came to stand for the *entire judicial institution* and the *symbolism* of who judges are and what they stand for. Ghias (2012) and Munir (2012) document how the several fronts of mobilization embraced the courts and bar associations, abetted significantly by the media and publics across the country. "The strategy was masterminded by an advance guard of lawyers," including the chair of the Pakistan Bar Association, a retired judge and former chair of the Supreme Court Bar Association, and activist lawyers. It counted on the presence of the second-most-senior judge sitting on the Supreme Court. The Chief Justice himself crisscrossed the country to address bar councils in regional centers. Despite the economic hardship to lawyers, bar associations boycotted lower courts, refusing to represent clients and bringing much of the justice system to a halt. Lawyers who failed to comply with the boycott were themselves shunned by bar associations and threatened with loss of practice licenses. Bar association leaders appeared on television and wrote opinion pieces to educate the public about this "miscarriage of Chief Justice" (Ghias 2012).

The bar associations orchestrated daily protests in the streets where "ranks of lawyers, marching solemnly in their black coats, gave the public perception that the protests were significant events" (Ghias 2012, 363). When the regime resorted to violence, "the media's live coverage of bleeding lawyers" heightened public consciousness and strengthened lawyer solidarity. Indeed Munir (2012) argues that Pakistan signaled a new approach by political scientists to middle class professionals in political transitions. Whereas professionals in the past had been thought to act principally as producers of "intellectual

authoritative discourse,” the repertoire of contention in Pakistan led to mass popular mobilization. Munir counts some 291 events associated with the lawyers’ movement on behalf of Chief Justice Chaudhry between March 2007 and March 2009 (Munir 2012, 390). The standout “long marches” brought lawyers on foot with their many thousands of citizen-supporters from the provinces into the great urban centers of Karachi and Islamabad.

Of course, lawyers paid a heavy toll. In addition to losing work in the boycotts, thousands of lawyers were arrested or detained, hundreds were physically assaulted, and leaders were jailed (Munir 2012, 394). In part because of these severe costs, widely publicized through TV, papers and radio, this legal complex prevailed. Chaudhry was reinstated, emergency rule was lifted, and the advance to democracy, while not an explicit aim of the movement, gathered impetus.

Authoritarians can tolerate *conglomerations* of judges so long as they are passive and atomized or are obediently ordered in strict hierarchies. Although the mechanisms to keep judges obedient or disassociated can be readily identified, the repertoires of a legal complex to counteract these stressors are seen in two ways. One is indirect and diffuse. Judges seldom march in the streets. This would seem to detract from the dignity of law as they, and perhaps the public, perceive it. When, however, other segments of a legal complex spring into action on behalf of a specific judge, or an institutional ideal such as a rule of law anchored by an independent judiciary, then a conglomeration implicitly is cast into the form of a collective identity. The individual judge is no longer the isolated and vulnerable individual but rather the constituent of a sacred collectivity where the individual judge stands for the whole.

Much more identifiable, however, are repertoires of action built on social organizations of judges acting for themselves, whether in formal or voluntary associations. These *emergent social organizations* repeatedly become fulcrums of action to resist authoritarian incursions on judicial independence and rule of law or to obtain or regain their relatively autonomy as an institution integral to the liberal-legal state. In Egypt the formal syndicate of judges used its conferences to bring together judges with private lawyers, legal academics, and sometimes civil society activists to plan joint actions, to forge strategy, and to inform publics. The Hong Kong Bar Association repeatedly took a strong public stand to defend judges and courts in the face of media criticism or when antagonistic lawmakers resisted judicial decisions. In effect, the Bar Association took upon itself to become a spokesperson for a liberal-legal complex and an educator of publics.

A quintessentially legalistic form of contention characterized struggles in Egypt and Pakistan. Egypt’s Supreme Constitutional Court struck down a law that would limit associational life in Egypt, thereby partially silencing civil society and professions (Moustafa 2007a, 208). Human rights NGOs strongly infused with LC personnel filed hundreds of cases that would affirm the authority of a judiciary over unbridled executive power. In Hong Kong, distinguished barrister and legal academic, Johannes Chan, not only critiqued the constitutionality of the National Security Law but explicitly offered Hong Kong judges means by which they could “mitigate the draconian nature of the national security offenses” (Chan 2022a, 91). He insisted that judges could manifest

“judicial creativity on procedural or evidential matters” and showed them how to do so (Chan 2022a, 92).

Repertoires of contention in each of the historical episodes I’ve covered are all marked by instances of outspoken calls to arms by leaders of legal complexes. These efforts to uphold and articulate the ideals and symbolism of a robust judiciary committed to the autonomy of law are well illustrated by retiring Hong Kong Chief Justice Geoffrey Ma’s retirement speech in which he railed against “intense attacks and scurrilous abuses” of the judiciary in recent years (Chan 2022a, 93, n.113). Senior respected figures in Hong Kong’s legal complex called upon the Secretary of Justice to speak up and for the Hong Kong Court of Appeal to be less deferential to Beijing, the National Security Law, and Hong Kong’s administration. When distinguished international judges withdrew from temporary assignments on Hong Kong’s Court of Appeal, it too sent ricochets of warning to the government and business sectors about the diminishment of the courts.

In short, we observe at least three classes of mobilization by legal complexes on behalf of judiciaries: (1) a legalistic internal recourse to the practices and institutions of law itself; (2) a call to varieties of popular and mass mobilization, including coordinated and parallel actions with supportive institutions of civil society; and (3) recourse, albeit a dangerous recourse, to alliances with political parties and oppositional figures.

6. Contingencies

In his compelling account of the unique struggle by Pakistani lawyers in 2007–2009, Munir proposes four conditions under which the lawyers’ movement achieved the success it did, both in reinstating Chief Justice Chaudhry and in contributing to regime transition.¹⁰ It is a bridge too far in this paper to offer a comparative theory of the conditions under which legal complexes will mobilize to protect judges under stress. Nevertheless, let me touch upon several conditions in brief.

6.1. Agency in constructing a legal complex

The emancipatory possibilities of structures and institutions to sustain judges under stress is contingent on individual and collective agents rising to lead resistance and change. To put it bluntly, legal complexes must be constructed. I say this not as a normative edict but as an observational constant. Institution-builders commonly arise from within the private bar and the legal academy. Sightings of institution-builders have been noted in the judiciary, civil service, and ministries of justice. A legal complex rises and falls dependent on the emergence of individual and collective leaders who consciously seek to build alliances, forge cooperation, and foster intense interaction across segments of a legal complex. This leadership can be associated with an individual, as it was with Hong Kong University law professor Benny Tai in the 2014 Hong Kong campaign, Occupy Central with Peace and Love, or with a purpose-built association of a legal complex, such as South Korea’s insurgent *Mincheon* in the 1980s.

¹⁰ The four conditions were: (1) embeddedness of lawyers’ organizations in the larger society independent of foreign support; (2) intimacy in the identification of ordinary citizens with ordinary lawyers who fought at considerable cost for fundamental rights; (3) urgency of legal work that was suspended for a higher cause; and (4) maintaining a narrow agenda substantially removed from party politics and issues (Munir 2007, 403–406).

Individual and collective agents of legal complex activism will foster hope by interrogating traditions, discarding outmoded features and appropriating now-relevant ideals; by surfacing taken-for-granted assumptions about what is a judge or how judiciaries engage with other branches of the state and civil society; by breaking out of institutional silos or isolated collectivities to recognize the possibilities of mutual interests and strength across segments of legal practice; by matching structures and repertoires with categories of “judges” and particular stressors; and by discerning cross-contextual affinities – what might work here and what will not. In almost every context this widening of imagination and exercise of agency opens up new terrain within a legal occupation and within a country. It compels actors to be adaptive to new exigencies in politics and society and to new understandings of every practicing legal occupation.

6.2. *Building a moral economy between the bench and bar*

In sites as different as mid-twentieth century U.S. and early twenty-first century Pakistan, the efficacy of a coalition between judges and lawyers can be enhanced by a moral economy that binds them together. Halliday (Halliday 1987) writes of a normative economy between bar and bench. On the one side the organized bar contributed to a *politics of affirmation*, in which it fought for improved conditions of judicial service, sought to relieve court congestion, and helped improve rules, procedures and organization of the court, all of this nested in wider efforts to purge the bench of party politics and to increase the autonomy of courts from executive control. On the other side, the bar engaged in a *politics of negativism*, holding judges accountable for their behavior, monitoring their demeanor on the bench, and screening judges for admission to the bench. The former essentially balanced the latter with the results of improved quality of judges on the bench, the administrative capacities of the courts and their relative autonomy, and the protection of the judiciary from either political or public pressures. In the case of Pakistan, for instance, the Supreme Court in particular had in previous years built up strong good will in the bar and with the clients of lawyers. That goodwill set the bench in good stead when it became vulnerable and needed allies in other segments of a legal complex brought together in a particular moment of threat.

6.3. *Activating interdependencies with civil society*

Pakistan, Egypt and Hong Kong all indicate the critical need for a legal complex to be embedded in a mutually supportive civil society. The centrality of civil society to judicial resistance has been well argued by Bojarski (2021) in his study of Poland from 1976 to 2020, where he documents how “CSOs [civil society organisations] play a significant role in the struggle for the rule of law and judicial independence.” Comparative research on legal complexes that reinforces the significance of a Tocqueville-like civil society is integral to political liberalism itself. It is not simply a space of social interaction beyond the state. Since many segments of the legal complex in many places reside within professional associations that themselves are constitutive of civil society, many legal occupations conjointly stand with one foot in the state and another in civil society. This gives such organizations a singularity that should not be underplayed.

Significantly, civil society associations may be seen as institutions of hope (Braithwaite 2004a, 2004b). That is not to venerate civil society as if this social space is always in favor of one juridical or political ideal or another. From Poland to the U.S. we know that is

simply not the case. Nevertheless, where freedoms of association, speech and movement still exist in practice, then civil society offers an extraordinarily powerful, often innovative, and sometimes more pointed ally for the legal complex. Indeed, one might argue that without an alliance between a vibrant civil society committed to these ideals and a judiciary open to partnership with it, the prospects of protecting judges or of creating and maintaining a politically liberal regime, might disappear entirely. Such an analysis requires also a careful and nuanced treatment of religion and its motivational and organizational power both for and against political liberalism in one or another context (Halliday 2010).

6.4. Acting as spokespersons for publics

We may do well to return to pre-Revolutionary France and 19th century French society, where Lucien Karpik's magisterial book on lawyers and political liberalism from 13th to 20th century France pointed to the singular role of lawyers speaking on behalf of publics when no other spokespersons for publics had emerged or were allowed to speak (Karpik 1988). Speaking to publics from the courts, or through the media via a convenience of mutual interests in publicity, and on behalf of publics as a kind of societal trustee, combined to fortify the best in judiciaries and to hold accountable the worst.

7. Conclusion: The redemptive irony of repression

What we observe in social organizations and institutions in general may be seen also in judiciaries and the institutions that construct and defend the rule of law and political liberalism. On the one side, sociologists repeatedly discover that institutions can grow stale and brittle, become irrelevant and outmoded. Contexts change but organizations don't keep pace. New challenges arise, new stresses are placed on old organizations, and legal orders become vulnerable to erosion and shock events (Halliday and Shaffer 2015). On the other side, the construction of a new legal or political order will inevitably render organizations subject to the "liability of newness," as sociologists have labeled them. They are not yet sufficiently entrenched, not yet surrounded by powerful actors who share their values, not yet fully understood by publics for their ideals.

Ironically, it is often threats that reveal hidden weaknesses, stressors that show vulnerabilities, attacks that point to faults that have been overlooked or uncorrected. Time and again, historical and comparative studies of legal complexes indicate that it is a rise of repression or the shock of a coup or the intensification of authoritarian erosion that compel segments of legal complexes to join forces and find new ways, appropriate to the time and place, that the taken-for-granted or the manifestly vulnerable aspects of a legal value such as the autonomy of law must be expressed.

In Taiwan's march towards rule of law and an open political society, Hsu (2021) ably shows that it was the authoritarianism of the regime, its repressive instincts and actions, that brought together a legal complex tightly focused on a common cause and bonded across its segments of private and academic lawyers, prosecutors and judges. When the common threat disappeared, this legal complex fractured and the solidarity-inspiring threats to rule of law dissipated.

In the past five years, Beijing's harshly repressive policies against Uyghurs and Muslims in China's northwest have had the ironic redemptive effect of bringing together silos of

legal occupations and international civil society groups that previously were scattered and disassociated. Tibetan Buddhists, Uyghurs, and Christian international NGOs, until recently proceeding along independent paths of resistance, have now found common cause with international civil society groups and an international legal complex. Xi Jinping has managed to produce a collective response to these abuses of global norms of law and politics that remained elusive before his increasingly totalitarian proclivities were revealed.

In sum, I propose that we will not understand either the theory or the pragmatics of judicial resistance or judges under stress unless we widen our frame of analysis to encompass entire domestic and international legal complexes and their failures or successes in mobilizing on behalf of a judiciary under fire.

References

- Aziz, S., 2012. Liberal Protagonists? The Lawyers' Movement in Pakistan. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds., *Fortunes and Misfortunes of Political Liberalism: The Legal Complex in the Post-Colony* [online]. New York: Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781139002981.013>
- Bojarski, Ł., 2021. Civil Society Organizations for and with the Courts and Judges—Struggle for the Rule of Law and Judicial Independence: The Case of Poland 1976–2020. *German Law Journal* [online], 22(7), 1344–84. Available at: <https://doi.org/10.1017/glj.2021.72>
- Braithwaite, V., 2004a. Collective Hope. *The ANNALS of the American Academy of Political and Social Science* [online], 592(1), 6–15. Available at: <https://doi.org/10.1177/0002716203262049>
- Braithwaite, V., ed., 2004b. *The ANNALS of the American Academy of Political and Social Science* [online], 592(1). Available at: <https://journals.sagepub.com/toc/anna/592/1>
- Chan, J., 2022a. National Security Law 2020 in Hong Kong: One Year On. *Academia Sinica Law Journal* [online], 2022, 39–101. Available at: <https://dx.doi.org/10.2139/ssrn.3956272>
- Chan, J., 2022b. Taking Rights Seriously – The Hong Kong Judiciary at a Challenging Time. *Hong Kong Law Journal* [online], 52(3), 937–64. Available at: <https://ssrn.com/abstract=4319985>
- Feeley, M., 2002. The Bench, the Bar, and the State: Judicial Independence in Japan and the United States. In: M.M. Feeley and S. Miyazawa, eds., *The Japanese Adversary System in Context*. Basingstoke: Palgrave Macmillan, 105–35.
- Feeley, M., 2012. Judge and Company: Courts, Constitutionalism and the Legal Complex. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds., *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* [online]. New York: Cambridge University Press, 493–522. Available at: <https://doi.org/10.1017/CBO9781139002981.019>
- Feeley, M., and Langford, M., eds., 2021a. *The Limits of the Legal Complex: Nordic Lawyers and Political Liberalism* [online]. Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780192848413.001.0001>

- Feeley, M., and Langford, M., 2021b. Nordic Exceptionalism and the Legal Complex. In: M.M. Feeley and M. Langford, eds., *The Limits of the Legal Complex: Nordic Lawyers and Political Liberalism* [online]. Oxford University Press, 13–67. Available at: <https://doi.org/10.1093/oso/9780192848413.003.0002>
- Feeley, M., and Miyazawa, S., 2007. The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds., *The Legal Complex and Struggles for Political Liberalism*. Oxford: Hart, 151–92.
- Finnemore, M., and Jurkovich, M., 2020. The Politics of Aspiration. *International Studies Quarterly* [online], 64(4), 1–11. Available at: <https://ssrn.com/abstract=3637566>
- Ghias, S.A., 2012. Miscarriage of Chief Justice: Lawyers, Media, and the Struggle for Judicial Independence in Pakistan. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds., *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*. New York: Cambridge University Press, 340–77.
- Ginsburg, T., 2007. Law and the Liberal Transformation of the Northeast Asian Legal Complex in Korea and Taiwan. In: T.C. Halliday, L. Karpik and M. Feeley, eds., *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Change*. Oxford: Hart, 43–64.
- Graver, H.P., 2018. Judicial Independence Under Authoritarian Rule: An Institutional Approach to the Legal Tradition of the West. *Hague Journal of Rule of Law* [online], 10, 317–39. Available at: <https://doi.org/10.1007/s40803-018-0071-8>
- Graver, H.P., 2021a. *The Legal Complex and the Rule of Law under Attack*. IILACE Conference. Copenhagen.
- Graver, H.P., 2021b. The Legal Complex: Denmark and Norway under German Occupation 1940–1945 In: M.M. Feeley and M. Langford, eds., *The Limits of the Legal Complex: Nordic Lawyers and Political Liberalism* [online]. Oxford University Press, 175–99. Available at: <https://doi.org/10.1093/oso/9780192848413.003.0006>
- Graver, H.P., 2024. *Valiant Judges, Iniquitous Law Thirteen Stories of Heroes of the Law* [online]. London: Routledge. Available at: <https://doi.org/10.4324/9781003395324>
- Graver, H.P., and Čuroš, P., 2021. Judges Under Stress: Understanding Continuity and Discontinuity of Judicial Institutions of the CEE Countries. *German Law Journal* [online], 22(7), 1147–58. Available at: <https://doi.org/10.1017/glj.2021.73>
- Halliday, T.C., 1987. *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment*. University of Chicago Press.
- Halliday, T.C., 2010. “The Conscience of Society?” The Legal Complex, Religion, and the Fates of Political Liberalism. In: S. Cummings, ed., *The Paradox of Professionalism: Lawyers and the Possibility of Justice*. New York: Cambridge University Press, 50–67.
- Halliday, T.C., 2013. Why the Legal Complex is Integral to Theories of Consequential Courts. In: D. Kapiszewski, G. Silverstein and R.A. Kagan, eds., *Consequential Courts: Judicial Roles in Global Perspective* [online]. New York: Cambridge

University Press, 337–48. Available at:

<https://doi.org/10.1017/CBO9781139207843.017>

- Halliday, T.C., 2019. The International Legal Complex: Wang Yu and the Global Response to Repression of China's Rights' Lawyers. In: R. Greenspan, H. Aviram and J. Simon, eds., *The Legal Process and the Possibility of Justice: Research in the Tradition of Malcolm Feeley* [online]. New York: Cambridge University Press, 289–313. Available at: <https://doi.org/10.1017/9781108234979.016>
- Halliday, T.C., 2023. Global Legal Change from Above and Below. *Journal of Law and Society* [online], 50(3), 1-27. Available at: <https://doi.org/10.1111/jols.12444>
- Halliday, T.C., and Karpik, L., eds., 1997. *Lawyers and the Rise of Western Political Liberalism: Europe and North American from the Eighteenth to Twentieth Centuries* [online]. Oxford: Clarendon Press. Available at: <https://doi.org/10.1093/oso/9780198262886.001.0001>
- Halliday, T.C., and Shaffer, G., 2015. Researching Transnational Legal Orders. In: T.C. Halliday and G. Shaffer, eds., *Transnational Legal Orders*. New York: Cambridge University Press, 473–528.
- Halliday, T.C., Karpik, L., and Feeley, M.M., eds., 2007a. *Fighting for Political Freedom: Comparative Studies of the Legal Complex for Political Change*. Oxford: Hart.
- Halliday, T.C., Karpik, L., and Feeley, M.M., 2007b. The Legal Complex in Struggles for Political Liberalism. In: T.C. Halliday, L. Karpik and M. Feeley, eds., *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Change*. Oxford: Hart, 1–42.
- Halliday, T.C., Karpik, L., and Feeley, M.M., eds., 2012. *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* [online]. New York: Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781139002981>
- Halliday, T.C., Zilberstein, S., and Espeland, W., 2021. Protecting Basic Legal Freedoms: International Legal Complexes, Accountability Devices, and the Deviant Case of China. *Annual Review of Law and Social Science* [online], vol 17, 159–80. Available at: <https://doi.org/10.1146/annurev-lawsocsci-111620-013613>
- Hilbink, L., 2007. Politicising Law to Liberalise Politics: Anti-Francoist Judges and Prosecutors in Spain's Democratic Transition. In: T.C. Halliday, L. Karpik and M. Feeley, eds., *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Change*. Oxford: Hart, 403–38.
- Hsu, C.F., 2021. The Legal Complex Fractured: Legal Professional Coalition and Collision in Taiwan's Judicial Reform. *Law & Policy* [online], 43(3), 262–84. Available at: <https://doi.org/10.1111/lapo.12171>
- Karpik, L., 1985. Avocat: Une Nouvelle Profession? *Revue Française de Sociologie* [online], 26(4), 571–600. Available at: <https://doi.org/10.2307/3321358>
- Karpik, L., 1988. Lawyers and Politics in France, 1814–1950: the State, the Market, and the Public. *Law and Social Inquiry* [online], 13(4), 707–36. Available at: <https://doi.org/10.1111/j.1747-4469.1988.tb01133.x>
-

- Karpik, L., 1997. Builders of Liberal Society: French Lawyers and Politics. In: T.C. Halliday and L. Karpik, eds., *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries* [online]. Oxford University Press, 125–66. Available at: <https://doi.org/10.1093/oso/9780198262886.003.0004>
- Karpik, L., 1999. *French Lawyers: A Study in Collective Action, 1274–1994*. Oxford University Press.
- Karpik, L., and Halliday, T.C., 2011. The Legal Complex. *Annual Review of Law and Social Science* [online], 7, 217–36. Available at: <https://doi.org/10.1146/annurev-lawsocsci-102510-105512>
- Kurban, D., Forthcoming. The dual impact of supranational regimes in authoritarian contexts: The Case of Turkey In: G. Shaffer and W. Sandholz, eds., *The Rule of Law Under Pressure*. New York: Cambridge University Press.
- Liu, S., and Halliday, T.C., 2016. *Criminal Defense in China: The Politics of Lawyers at Work* [online]. New York: Cambridge University Press. Available at: <https://doi.org/10.1017/9781316677230>
- Liu, S., Hsu, C.F., and Halliday, T.C., 2019. Law as a Sword, Law as a Shield: Politically Liberal Lawyers and the Rule of Law in China. *China Perspectives* [online], 2019–1, 65–73. Available at: <https://doi.org/10.4000/chinaperspectives.8798>
- Mate, M., 2012. “Priests in the Temple of Justice”: The Indian Legal Complex and the Basic Structure Doctrine. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds., *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* [online]. New York: Cambridge University Press, 112–48. Available at: <https://doi.org/10.1017/CBO9781139002981.006>
- Ming-sho, H., 2020. How Protests Evolve: Hong Kong's Anti-Extradition Movement and Lessons Learned from the Umbrella Movement. *Mobilization* [online], 25(S1), 711–28. Available at: <https://doi.org/10.17813/1086-671X-25-5-711>
- Moustafa, T., 2007a. Mobilising the Law in an Authoritarian State: The Legal Complex in Contemporary Egypt. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds., *The Legal Complex and Struggles for Political Liberalism*. Oxford: Hart, 193–218.
- Moustafa, T., 2007b. *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt* [online]. New York: Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511511202>
- Munir, D., 2012. From Judicial Autonomy to Regime Transformation: The Role of the Lawyers’ Movement in Pakistan. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds., *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* [online]. New York: Cambridge University Press, 378–411. Available at: <https://doi.org/10.1017/CBO9781139002981.015>
- Rajah, J., 2011. Punishing Bodies, Securing the Nation: How Rule of Law Can Legitimate the Urbane Authoritarian State. *Law and Social Inquiry* [online], 36(4), 945–70. Available at: <https://doi.org/10.1111/j.1747-4469.2011.01257.x>

- Rajah, J., 2012a. *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore* [online]. New York: Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511998201>
- Rajah, J., 2012b. Lawyers, Politics and Publics: State Management of Lawyers and Legitimacy in Singapore. In: T.C. Halliday, L. Karpik and M.M. Feeley, eds., *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex* [online]. New York: Cambridge University Press, 149–92. Available at: <https://doi.org/10.1017/CBO9781139002981.008>
- Tai, B., 2019. Stages of Hong Kong's Democratic Movement. *Asian Journal of Comparative Politics* [online], 4(4), 352–80. Available at: <https://doi.org/10.1177/2057891118815777>
- Tai, B., et al., 2020. Pursuing Democracy in an Authoritarian State: Protest and the Rule of Law in Hong Kong. *Social & Legal Studies* [online], 29(1), 107–45. Available at: <https://doi.org/10.1177/0964663919869725>
- Tam, W., 2013. *Legal Mobilization under Authoritarianism: The Case of Post-Colonial Hong Kong* [online]. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781139424394>