Political Reliability and the Chinese Bar Exam[1]

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Abstract

This article uses the case of contemporary China to explore an understudied type of political socialization: the bar exam. Content analysis of 3,996 exam questions from 2002-2014 shows a turning point in the mid-2000s, when the test became explicitly political. The newly political exam is now a site of political learning where tomorrow's lawyers, judges, and prosecutors perform loyalty by exchanging politically correct answers for points. Viewed from this perspective, the Chinese bar exam has much in common with demands for public displays of correct behavior in other authoritarian states. This adds a fresh, political layer to our understanding of whose interests bar exams serve, and why they take the form they do.

Introduction

One strand of the growing literature on law and courts in authoritarian states explores how leaders maintain control over the legal profession.[2] In many parts of the world, legal professionals have banded together to demand first-generation civil rights, including freedom of speech, association, and belief as well as protection from tyranny (Halliday and Karpik 1997; Halliday, Karpik, and Feeley 2007). This history of activism, which spans centuries and continents, has left many contemporary authoritarian leaders alert to the possibility that judges, lawyers, and even legal academics could challenge their control. They have uncovered many ways to guard against this scenario, from hidden threats to high-profile show trials of those who prove unruly. The quiver of control strategies includes different types of retaliation as well as ex-ante socialization meant to render coercion unnecessary.

[2] For an overview of this literature, see Moustafa (2014).

This article uses the case of contemporary China to explore an understudied type of socialization: the bar exam.[3] Though socio-legal scholars have long known that legal education shapes the worldview of legal professionals, and can reinforce an authoritarian status quo (Hilbink 2007), less attention has been paid to how bar exams transmit political values and promote a state-sanctioned vision of professional identity. In China, political overtones are particularly easy to see. Starting in 2002, aspiring judges, lawyers, and prosecutors have been required to pass a joint exam that includes questions about the ideas that underpin socialist rule of law and the role the Chinese Communist Party (CCP) should play in the legal system. Although Chinese scholars tend to dismiss these questions as a minor, normal part of a long test, they are part of a broader effort to cultivate a legal profession that is both knowledgeable and politically reliable.

Twenty-first century China exemplifies the authoritarian dilemma over courts: leaders' desire to capitalize on the advantages of a competent legal system while simultaneously maintaining political control. A well-functioning court system can help solve a range of problems, from easing economic growth to fortifying the regime's popularity (Moustafa and Ginsberg 2008, 4-11). There is always a danger, however, that circumscribed legal claims could evolve into a broader political agenda. In China, where CCP efforts to build a functioning legal system are now entering their fourth decade, official vigilance shows little sign of slacking. Some observers saw a "turn against law" in

[3] A bar exam refers to the test that serves as a prerequisite to practicing law. In China, a single test known as the *sifa kaoshi* controls entry to the judiciary, the procuratorate, and the bar. I have generally chosen to translate *sifa kaoshi* as bar exam, rather than judicial exam, to make the article accessible to a broader audience.

the mid-2000s (Minzner 2011), accompanied by refreshed emphasis on mediation and ideology, and a crackdown on outspoken lawyers. Against this backdrop, the bar exam (*sifa kaoshi*) offers a window onto the politicization of the Chinese judiciary. Empirically, is a turn against law visible in the content of the exam? And conceptually, what do political questions reveal about the Chinese state's vision of what it means to be a politically correct legal professional?

This article draws on computerized content analysis, Chinese sources, and interviews with test-takers and exam-writers to explore the political function of the bar exam. In addition to serving long-standing CCP efforts to inculcate true believers, the exam also serves a subtler, symbolic function. It is a place where test-takers learn to navigate the gap between personal beliefs and public expression, an act the political scientist Timur Kuran calls "preference falsification."[4] The exam calls on test-takers to demonstrate political loyalty in exchange for points and, in so doing, teaches the benefits of public support for the Party. For anyone who harbors a dissenting private view, the bar exam becomes a site where preference falsification is learned and practiced. This political learning takes place during the fevered run-up to the exam as well as on exam day itself. Weeks of studying give test-takers a chance to brush up on the correct bywords and, during this time, teachers and classmates promote preference falsification by spreading the message that political questions are easy points that can be won with little effort.

[4] Kuran defines preference falsification as "the act of misrepresenting one's genuine wants under perceived social pressures" (1995, 3). Here, I focus on the difference between inner belief and public expression, a subset of Kuran's more expansive definition.

Viewed this perspective, China's bar exam has much in common with other ritualistic demands for performances of political loyalty. Like parades demonstrating support for President Asad in 1990s Syria (Wedeen 1999) or a Communist slogan placed in the window of a Czechoslovakian greengrocer (Havel 1986), the bar exam shores up the status quo by reminding tomorrow's lawyers, judges and prosecutors that dissent is best kept private. The exam illustrates the Chinese state's symbolic power, expressed through one of many rituals that "reinforce and assert state control, often invisibly over, over people's everyday lives" (Hassid and Watson 2014, 169). Like other types of symbolic power, the exam gives "the appearance that no power is being wielded at all," while pressing a vision of how the relationship between legal professionals and the state should unfold (Loveman 2005, 1655).

Bar Exams in Comparative Perspective

In comparison to the scholarly attention paid to the development of law schools and the legal profession, much less has been written about bar exams. Inside American law schools, discussions about the bar exam tend to be practical. The debate is over whether a standardized test is a good idea[5] and, if so, how to test real competence rather than rote memorization.[6] The growing literature on lawyers and courts in China,

[5] For contrasting articles that lay out some pros and cons of bar exams, see Griswold (1974) and Green (1939).

[6] For example, some critics question whether the bar exam focuses enough on practical skills (Glen 2002). There is also a debate over whether the test exacerbates class inequality or disadvantages minorities (Clydesdale 2004; Kidder 2004).

meanwhile, usually mentions the bar exam only in passing.[7] The conventional wisdom is that China's bar exam ensures a baseline of legal expertise in a system where formal legal education is still not required for a career in law (Lubman 1999, 156). A standardized exam guarantees a minimum level of legal competence and, in so doing, protects the public from shysters.

In addition to improving legal knowledge, some legal sociologists have pointed out a second, economic function of bar exams: to control the supply of lawyers and limit competition (Berlant 1975; Larson 1977; Abel 1989/2005; Kidder 2004). This line of argument is inspired by the German sociologist Max Weber's notion of social closure. Faced with competition, Weber suggested groups construct social and legal barriers to close off entry to outsiders. Often, restrictions are accompanied by attempts to burnish claims to expertise, so that customers interpret high prices as a sign of quality rather than price gouging (Weber 1922/1978; Weeden 2002).

This article adds a third, political layer to our understanding of bar exams. This political function is especially clear in authoritarian states where bar exams are often used to help purge lawyers loyal to earlier administrations or pack the field with supporters.[8] In 1990s and 2000s Sudan, for example, the Bashir government flooded the legal marketplace with "young loyalists" trained in law schools teaching regime-approved shari'a law (Massoud 2014, 141). The glut of new lawyers led to sharp competition, leaving few lawyers with the energy or financial flexibility to pursue

[7] Two notable exceptions are Ahl (2006) and Minzner (2012). Michelson (2003) also discusses trends in pass rates over the earlier 1988-2000 period (87-89).
[8] Lawyer purges often follow regime change. Lawyers from the Nazi regime were expelled from the bar following the establishment of the German Democratic Republic, for example, and lawyers' ranks were purged again following the reunification of Germany (Michelson 2003, 98-99).

political causes. In China, in contrast, the authorities have taken a different approach. Rather than treating the bar exam as a stamp of approval for stalwarts, it is treated as an opportunity for political socialization. Like many subtle forms of control, political exam questions put test-takers in a position where they "must take account of what it is they imagine the party-state expects" (Alford and Winston 2011, 16).

Elsewhere in the world, where social control is not necessarily an ever-present preoccupation of government, one implication of this article is that bar exams deserve to be taken seriously as a reflection of the beliefs and interests of the gatekeepers who write them. Like many standardized tests, bar exams are high-stakes events, where passing wins access to a valuable opportunity and fear of failure inspires frantic preparation. In addition, bar exams influence legal education as law schools shift curriculum to teach to the test. For students of law and society, a close look at bar exams can surface the values implicit in correct answers, or even in the types of knowledge tested. There is room for more work that takes testing seriously and investigates why bar exams look the way they do, and the role of political and economic elites in shaping them.

To be sure, bar exams play a more important role in some legal systems than others. Chinese scholars often compare the bar exam to a bridge separating a pool of aspirants from a cadre of legal professionals. In China, where anyone with an undergraduate degree can take the bar exam, the pool of hopefuls is vast and the bridge narrow—just 11 percent of test-takers passed the 2013 exam. In contrast, American requirements for sitting the bar vary by state, and the bridge is much wider. Nationwide, the bar pass rate reached 68 percent in 2013 (National Committee of Bar Examiners 2014). Jurisdictions with a low pass rate that allow people without formal legal education to take the bar are exactly where exams shoulder the most responsibility for teaching the content of the law, and setting expectations about how legal professionals should act. China is one such place. Studying takes on renewed importance when there is no guarantee of learning the law elsewhere, and a stringent exam encourages preparation.

The Chinese Bar Exam

The history of China's bar exam reflects the country's ambitious effort to build a legal system nearly from scratch. China embarked on a historic project of legal construction after Mao's death that involved writing new laws, popularizing legal knowledge, and strengthening the courts. Before the mid-1990s, however, there were no absolute requirements for becoming a judge, lawyer, or prosecutor.[9] Once hired, many legal professionals learned on the job. "This [system] was very dangerous," Tsinghua law school Dean Wang Zhenmin writes, "one cannot become a doctor first and then receive on-the-job medical training afterwards" (2002, 1208). Criticism continued even after legal reformers launched separate tests for the judiciary, the bar, and the procuratorate. In the late 1990s, for example, the lawyers' exam was sufficiently

[9] There were many routes into legal profession. For example, anyone with a junior college degree and at least two years of work experience in a law-related job was eligible, as was anyone with a university degree who underwent legal training and could demonstrate legal ability. Those who already had work experience in the courts or the procuracy were also allowed to stay (Michelson 2007, 366).

stringent to raise concerns about judges and prosecutors lagging behind (Huo 2010, 489).[10]

In 2001, the Ministry of Justice, the Supreme People's Procuratorate and the Supreme People's Court jointly announced the creation of a national, unified bar exam. Concurrent revisions to the Judges' Law, the Lawyers Law, and the Prosecutors Law required fresh recruits to pass the new test, and the first unified state bar exam was held in 2002 (Huo 2010, 489). The change followed the recommendation of an internal report that distilled lessons from a government study trip to South Korea, Germany, Japan, and the United States. Inspired by Japan, in particular, China set up a national test, limited the pool of test-takers to those with a university degree, and aimed for a threshold high enough to improve expertise.[11] Xiao Yang, the President of the Supreme People's Court in 2002, reflects in his memoir that "[the exam] established an objective standard" (Xiao 2012, 469).[12]

In the years since 2002, the bar exam has settled into a standard format. The written, closed-book examination takes place each year during two days in September,

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[10] In addition, only civil servants were eligible to take the internal test to become a judge or prosecutor. A driver for the court could qualify, for example, but not someone with a PhD in law (BJ11; Ahl 2006, 173).

[11] BJ7 and BJ11 both discussed Japanese influence. When this study tour visited Japan in the late 1990s, only about three percent of test-takers passed the Japanese bar (Miyazawa et al 2008, 341). Japan reformed its bar exam in the mid-2000s in a bid to raise pass rates and mint 3,000 new lawyers a year by 2010. By 2011, however, it was still the case that only 25 percent of examinees passed (Tanikawa 2011).

[12] Concurrent revisions to the Judges' Law, the Lawyers' Law, and the Prosecutors' Law in 2001 also raised the formal education requirements for those three jobs. At least in principle, new entrants needed to be university graduates (Ahl 2006, 173). As the then-Minister of Justice, Zhang Fusen, said at the time, "the establishment of the judicial exam…will be crucial in guaranteeing the quality and proficiency of people in law enforcement" (quoted in Wang 2002, 1212). A secondary goal was to build a common legal culture to unify lawyers, judges and prosecutors, especially after the privatization of the Chinese bar weakened ties between the three groups (Ding 2009; BJ2). Most Chinese lawyers were state employees until a state-led "unhooking and restructuring" drive around 2000-2001 popularized private practice (Liu, Liang and Michelson 2014, 166). By 2003, only 14 percent of law firms were state-owned, down from 98 percent in 1990 (Zhu 2007, 332).

and consists of three multiple-choice sections of 100 questions and a seven-question essay section. The content covers all law school "core courses" (*hexin kecheng*) designated by the Ministry of Education, a choice that forestalled a great deal of possible conflict inside the Bar Exam Coordination Committee over what to test (BJ8).[13] In addition to criminal, administrative and civil law, major topics include international law, legal history, jurisprudence, legal ethics, the structure of the judiciary, and the constitution. Test-takers need 360 points to pass, or 60 percent of 600 possible points.[14] In 2008, a policy change also allowed university students to sit for the exam during their fourth year. [15] Many undergraduate students now choose to take the bar exam before graduation, a shift that has placed pressure on lower ranked law schools to teach exam material in class (Minzner 2013, 362-363; BJ5; BJ7).

Academics shoulder most of the responsibility for writing the test. The Bar Exam Office (*Sifa Kaoshi Bangongshi*) under the Ministry of Justice (MoJ) handles nuts-and-bolts administration, and the State Bar Exam Question Writing Committee (*Guojia Sifa Kaoshi Mingti Weiyuanhui*) drafts the content. Most committee members are Chinese law professors and, though the committee list is not publicly released, many names are common knowledge. An Internet search in the summer of 2014 turned up 32 Chinese

[13] The Bar Exam Coordination Committee (*Sifa Kaoshi Xietiao Weiyuanhui*) is the advisory board that makes policy recommendations. About twenty to thirty people sit on the committee, including representatives from the Supreme People's Procuratorate, the Supreme People's Court, and leading law schools.

[14] In 2004, the total number of points rose from 400 to 600 and the number of points on each section increased from 100 to 150 (Zhu 2012, 501). There are lower passing scores in areas of the country were legal professionals are scarce. See Appendix A for details.

[15] The first decade of the 2000s also saw an expansion of the pool of eligible test-takers outside Mainland China. The 2003 Closer Economic Partnership Arrangement (CEPA) opened up the exam to residents of Hong Kong and Macau, followed by Taiwanese citizens in 2008. In 2010, 351 Hong Kong residents, 50 people from Macao, and 556 Taiwanese took the test (Zhu 2012, 501).

scholars publicly linked to the question-drafting committee. Nearly all were men (96 percent), with the vast majority born in the 1950s or 1960s (87 percent) and based at a Beijing university (84 percent). This analysis (although partial) suggests the test is written by the top echelon of Chinese legal academics: well-established men employed by China's top universities.[16]

Question drafting proceeds in three rounds.[17] During the first round, which casts the widest net, dozens of experts across the country contribute questions to a database. Next, over the summer before the test, small groups of subfield experts review submissions and accept, discard, or revise each question. This meeting is held in a secure location, with all revisions typed directly into an onsite computer to prevent leaks. Experts must also sign a confidentiality agreement, and agree not to participate in the exam preparation industry.[18] Finally, an even smaller band of experts picks questions for the year's exam.[19] Participation is seen as an honor and a form of public service. As one scholar involved with writing the bar exam since 2002 explained, "the country needed me, and I went to help out….I felt I should" (BJ14). Although the MoJ provides token compensation,[20] another professor described it as "carfare" (*chefei*)

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[16] In recent years, the MoJ has made attempts to recruit younger scholars to participate in the exam drafting process (BJ4).

[17] This description of the question-drafting process draws on conversations with current and former members of the question drafting committee (BJ2, BJ6, BJ7, BJ8, BJ9, BJ13, BJ14). All details in this paragraph were confirmed by more than one source.

[18] Cheating on the exam is a perennial problem. According to Chinese media reports, the exam is kept in a secret location under twenty-four hour surveillance once printed (Sun 2009). Many test-taking centers use jammers to block mobile phone signals and, in 2012, Henan became the first province to use fingerprints to verify the identity of test-takers (Li 2012).

[19] Questions are not repeated from year to year. One trend is replacing questions that test memorization with alternatives asking how the law applies to a specific case (BJ4; BJ6; BJ7; Zhu 2012, 501).

[20] One scholar reported that MoJ offers 10,000RMB in compensation (about 1,600 USD), compared to just 2,000 RMB in the early 2000s (BJ4).

compared to how much an experienced lecturer at an exam preparation school can earn (BJ7). The MoJ oversees this process and furnishes “macro-guidance” (*hongguan de zhidao*). Officials neither dictate which laws to test, nor edit individual questions. The MoJ does set the point allocation for each subfield, however, and tracks the success rate for each question.[21]

From a policy perspective, setting an appropriate pass rate is one of the trickiest parts of administering the exam. Table 1 shows how the pass rate rose over the first twelve years, with a jump in 2007 into the 20 percent range. Scholars close to the MoJ say the shift reflected a policy decision that China needed more legal professionals, especially in rural areas and in the Western part of the country (BJ7; BJ6; BJ14, see also Legal Daily 2011 and Minzner 2013, 379).[22] Though judges and lawyers are certainly in short supply in many Chinese counties, concerns about unemployment also likely played into the decision to expand the legal profession. Law majors ranked dead last among university graduates looking for a job between 2008 and 2010 (Minzner 2013, 352) and, as some point out, an impossible bar exam is a recipe for protest (BJ6). Online commentators called 2007 and 2008 the years of “turning on the tap” and noted the exam’s reputation as one of China’s hardest tests was fading.[23]

[21] Some of this data is shared with the following year’s question-drafting committee to help them better calibrate difficulty. The MoJ also runs a complaint hotline for test takers who feel a published answer is wrong. Academics typically adjudicate complaints (BJ2).
[22] BJ7 traced the decision to the Central Commission for Political and Legal Affairs (*Zhongyang Zhengfa Weiyuan Hui*), the Party committee that oversees the security apparatus and the legal system.
[23] Although the jump in pass rate was undoubtedly a policy decision, some natural rise over time would also be expected as the exam became more consistent and clear, and students acclimated to studying for it.

Inside China, conversations about the pass rate often circle back to a discussion of societal needs (*shehui de xuqiu*), a phrase that illustrates the ongoing importance of centralized planning. Rather than letting the market dictate supply, there is faith that the state can—and should—set an optimal number of new entrants. As one Chinese academic put it, the goal of the test is "to help the country select talented people (*rencai*)" (Pan 2003). Although the MoJ's control over the pass rate is limited by a fixed passing score and the predominance of multiple-choice questions, some adjustment is possible. Strategies include altering grading standards (BJ7),[24] adjusting raw scores to grade on a curve (BJ5), and instructions to the following year's exam-writers to make the exam harder or easier. Today, some law professors advocate returning to a pass rate as low as 7 percent.[25] Rather than deflating the pass rate, other scholars champion limiting the pool of test-takers to those who have formally studied law.[26] Certainly, it has been galling for legal educators to see law majors and non-law majors pass the exam in equal proportion. 21.21 percent of undergraduates majoring in law passed the bar exam between 2005 and 2011, compared to 20.46 percent of test-takers with a different major (Li 2014, 238).

[24] Law professors and graduate students at three universities grade the essays. The participating universities are: Zhongnan University of Economics and Law in Wuhan (Zhongnan Caijing Zhengfa Daxue), Southwest University of Political Science and Law in Chongqing (Xinan Zhengfa Daxue), and East China University of Political Science and Law in Shanghai (Huadong Zhengfa Daxue) (Zhu 2012, 515).

[25] The 7 percent suggestion comes from Wang (2014). For a sampling of other articles advocating a lower pass rate, see Sun (2014), Wang and Zhu (2010), and Xu (2008).

[26] For a sample of articles advocating this point of view, see Fu (2014), Han (2013), and Wang and Zhu (2010).

Table 1: Test-Takers and Pass Rate (2002-2013)

Year	No. Registered	No. Test Takers	Pass Rate[27]
2002	360,000	320,000	6.94%
2003	197,000	167,000	9.64%
2004	195,000	178,000	11.28%
2005	240,000	222,000	12.92%
2006	280,000	240,000	13.21%
2007	290,000	261,000	20.00%
2008	370,000	330,000	21.62%
2009	410,000	360,000	19.51%
2010	395,000	345,000	20.25%
2011	415,000	n/a	16%
2012	400,000	n/a	12%
2013	436,000	n/a	11%

Source: Zhu (2012, 519) for 2002-2010. Data for 2011-2013 comes from China Education Online (2014).[28]

Cram schools, known in Chinese as “training schools” (*peixun xuexiao*), are a final, critical piece of the ecosystem surrounding the bar exam. Eight to ten percent of test-takers sign up, typically paying 8,000-10,000 RMB (roughly 1,200-1,600 USD) for a face-to-face class.[29] There are many options, including programs run through universities and private companies such as Zhonghe, San Xiao Ming Shi, and Wanguo. Though some students move to Beijing to live in dorms and take advantage of an atmosphere conducive to intensive study, most attend lectures in a big city near their homes.[30] The majority are students at second or third tier law schools (BJ1, BJ9, BA9), though every

[27] This is the pass rate for the total number of people who registered for the test. Note that some registrants sacrifice the 30 RMB registration fee (approximately 4.80 USD) and do not show up for the test.
[28] China Education Online is an educational website managed by China Education and Research Network, under the Ministry of Education. Data on the pass rate for the bar exam is not systematically published in any of China’s statistical yearbooks.
[29] The 10 percent estimate comes from my interview with the founder of a well-known private training school (BJ1), while the more conservative 8 percent estimate appears in Yi (2014). Most schools offer a range of price points. Some students opt to pay more, for example, so they can re-take the class for free if they fail the first time.
[30] Online instruction remains a small percent of the market. At Zhonghe, one of the biggest training schools, online products account for only 10 percent of revenue (Chen 2014). Fears of illegal downloads have left some training programs reluctant to invest in growing their online business.

training class also includes a share of older attendees looking for a second career. In academic circles, cram schools' popularity has prompted criticism of a "dual school phenomenon" where students invest more energy in exam preparation than at university (Zhang 2012, 121). Especially at lower-ranked law schools, there are concerns about outsourcing legal education to commercial test preparation outfits.[31]

All of this—the growth of cram schools, the elaborate question-drafting process, numerous policy tweaks along the way—point to an eddy of activity trailing the 2001 decision to revamp the bar exam. More than a decade later, the bar exam is an authoritative fixture of China's legal infrastructure, and a source of pride for many who produce it. Though there is no shortage of suggestions for further improvement, the test is viewed inside China as a success story, an intervention that improved knowledge of the law. This is true, and this achievement would not have been possible without committed effort from many public-spirited scholars and policymakers. At the same time, however, the bar exam is more than an apolitical exercise in learning the law. Law and politics are never far apart in contemporary China and, as the next section shows, the content of the bar exam became much more political in the mid-2000s.

[31] In addition to their importance as a source of legal knowledge, training programs are also a significant employer. The top private companies employ both full-time and part time teachers, largely drawn from the ranks of Beijing academia. There is a bias toward PhD students and young faculty, with a handful of older, distinguished professors also involved. The lure of the job is mostly financial—exam preparation can be a lucrative sideline in an expensive city—though the work is grueling. The business model is to fly Beijing-based lecturers around the country to teach their specialty to audiences ranging from several dozen to over a thousand. Classes are held during the day so that lecturers can board nighttime flights to their next destination. Over the summer, when preparation for the September test is in full swing, teachers often grab a day or two of rest on the road rather than flying home.

The Politicization of the Bar Exam

Much of the bar exam's early history overlaps with the Hu Jintao-Wen Jiabao administration, which lasted from 2003 to 2013. After the duo had been in power for several years, accounts of China's "turn against law" started surfacing in the mid-2000s.[32] Observers linked a number of signs, including renewed emphasis on mediation and a crackdown on activist lawyers, to broader efforts to shore up Party control over the legal system. Fading interest in law became part of the mainstream Western narrative about China, reinforced by the voices of some outspoken Chinese scholars and lawyers.[33] Was this shift in official attitudes visible in the content of the bar exam? And if exam content did sway with the political winds, how big was the change? All 3,996 questions that appeared on the bar exam between 2002 and 2014 are publicly available, which makes it possible to empirically investigate these questions for the first time.[34]

To start, computerized content analysis shows the emergence of socialist rule of law as an exam topic. Socialist rule of law education campaigns swept the Chinese

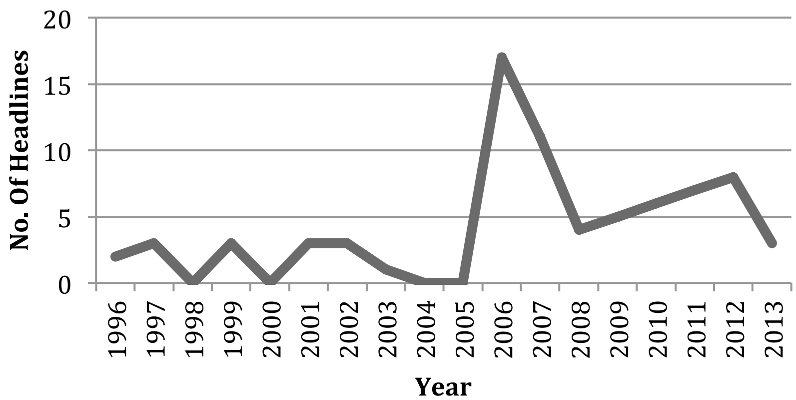
[32] American law professor Carl Minzner coined the phrase "turn against law" (Minzner 2011). This became the mainstream understanding toward the end of the decade, though some observers saw political space shrinking as early as 2004 (Lynch 2014).

[33] Jiang Ping, the former President of China University of Political Science and Law who resigned over his support for student protestors in 1989, was one of these voices. In 2010, for example, Jiang gave a speech entitled "China's Rule of Law Is in Full Retreat" (Jiang 2010).

[34] Minzner noted the politicization of the bar exam in a 2012 blog post (Minzner 2012). To the best of my knowledge, however, this article presents the first formal content analysis. I collaborated with software developer Jon Whitney to build a computer program capable of scanning all questions for key phrases in Chinese. My research assistants helped me download and format the full text of all bar exams. The years from 2006 to 2014 are available on the MoJ website, along with the official answer key. We downloaded the 2002-2005 exams and answer key from an online law library (http://www.law-lib.com/sk).

government starting in 2006 alongside a spike of headlines in *People's Daily*, the state-run newspaper that serves as the weathervane of official Party discourse (Figure 1).[35]

Figure 1: Number of Headlines Including the Phrase "Socialist Rule of Law," *People's Daily* (1996-2013).

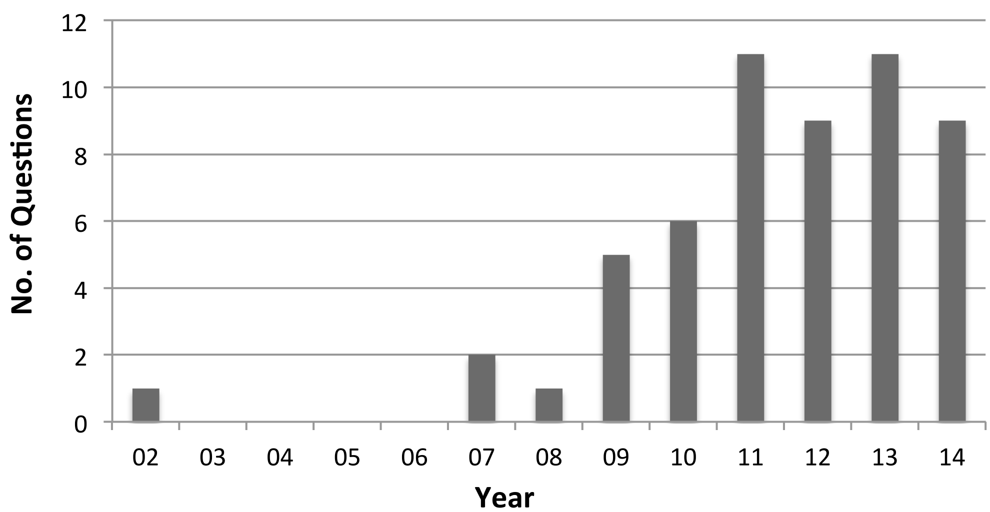


Sometime in 2006, or early in 2007, there was a high-level decision to include socialist rule of law on the bar exam.[36] The new policy was hardly a secret. The official study guides—known as the "three big books" (*san da ben*)—issued by the MoJ started listing socialist rule of law in the table of contents as a major topic area after 2007.[37] In 2007, questions containing the phrase "socialist rule of law" (*shehui zhuyi fazhi*) began appearing on the test, and in particular on the first essay question (see Figure 2). That first year, essay writers were asked for at least 400 characters explaining "the main content of our country's socialist rule of law ideology as well as the principal essence of

[35] One way to trace the evolution of the education campaign is through state-published study guides on socialist rule of law. The first study guides appeared in 2006 (see CCP Party School Press, Fangzheng County), followed by many more between 2009 and 2012. This later group includes guides edited by the Political Legal Committee (2009), and state news agencies (2009).
[36] BJ7, BJ11 and BJ9 traced the decision to the Political Legal Committee.
[37] The table of contents for the 2003, 2004, 2005, and 2006 editions of the National Bar Exam Study Guide (*Guojia Sifa Kaoshi Fudao Yongshu*) do not include socialist rule of law. Copies of the study guides are on file with the author, and also available from China Law Press.

socialist rule of law."[38] Nor was socialist rule of law a flash-in-the-pan political campaign. A 2011 joint opinion from the Ministry of Education and the Central Party Politics and Law Committee cited insufficient socialist rule of law education as an ongoing problem (Minzner 2013, 372), and socialist rule of law questions stayed on the bar exam through the start of the Xi Jinping-Li Keqiang administration in 2014.

Figure 2: Questions on Socialist Rule of Law (2002-2014)



What exactly is socialist rule of law? Despite the pages devoted to the topic in every study guide, this is a hard question. Studying CCP ideology is out of fashion among Western scholars, and little has been written about the historic evolution of the concept. Though such an investigation is beyond this the scope of this article, a basic starting point is the observation that many 20th century socialist regimes treated law as a political tool to serve state interests (Michelson 2003, 94). In today's China, accounts of the origins of socialist rule of law describe a self-conscious effort to cherry-pick insights from ancient Chinese philosophy, past CCP leaders, Marxism, Leninism, and Western

[38] 2007 Bar Exam, question 1, section 4. Copies of all exam questions are on file with the author.

legal theory. Socialist rule of law is also clearly meant as an alternative to the Western strain. A 2012 editorial in the *Legal Daily* spells out the dangers of Western influence and China's need to forge a its own path:

> Over the thirty years of promoting rule of law in China, there has been a negative social manifestation of steadily increasing litigation and efforts by citizens to contest their interests and rights. Absent an understanding rooted in the overall situation (*daju*), the national character, and the interests of the nation, a value system based on "equality," "justice," and "rights" will frequently have negative consequences for overall social stability and the direction of social values (quoted in Minzner 2013, 395).

One way to think about socialist rule of law as a political concept, then, is as shorthand for an indigenous vision of how to combine fair, efficient dispute resolution with social stability and continued CCP control.

However, the politicization of the bar exam extends beyond socialist rule of law rhetoric. In order to track politicization more broadly, I created a definition for a "highly political question" that includes any question containing:

- the name of any individual associated with Communism or the CCP,[39]
- the word Party (*dang*),[40] **or**
- a political slogan from the 2002-2014 period.[41]

Although this definition errs on the side of being restrictive, and may overlook more nuanced questions that feel political to Chinese test-takers, the advantage is a high level

[39] Names are only come up in laudatory reference to people who are worth emulating, or theorists whose ideas merit study. The following names appeared on the bar exam between 2002 and 2014: Deng Xiaoping, Hu Jintao, Zhou Yongkang, Xi Jinping, Ma Xiwu, Karl Marx and Fredrich Engels. All are luminaries of CCP history.

[40] Three questions were thrown out where the word "Party" referred to a political party in another country rather than the CCP.

[41] A research assistant with native-language Mandarin went through the full text of the Supreme People's Court Work Reports from 2002 to 2014 to identify political slogans. I defined a political slogan as a phrase used repeatedly in political speech that, often in shorthand, expresses a vision of how the China's legal or political system should function. Two experts in Chinese law contributed additional slogans to create a working dictionary of political slogans for the 2000-2014 period. A list of all political slogans that appear on the 2002-2014 bar exam appears in Appendix C.

of confidence that all questions captured are explicitly political.[42] For example, here is a political question with the word "Party" from the 2012 exam:

> Since reform and opening up, China's judicial system has always actively carried out its activities around the central work activities of the Party. In recent years, in particular, all levels of the judiciary have self-consciously and successfully served the overall work of "ensuring economic growth, the people's livelihood, and stability." In regards to how the rule of law can serve the overall picture, which of the following statements is not correct?
>
> A. Serving the overall picture (*fuwu daju*) is the result of establishing socialist rule of law.
>
> B. Serving the overall picture is the central task of rule of law and the Party, as well as a major policy.
>
> C. Serving the overall picture is the only way to use law to resolve social conflicts in a period of social transition.
>
> D. Serving the overall picture reflects the political attributes of socialist rule of law, as well as its important mission."

Even in translation, the stilted, heavy-handed quality of the question comes across. Repetition of the slogan "serving the overall picture" and the reference to the CCP alert the reader that the question is entering political territory. (The correct answer is C, as it turns out).

Using the above definition for a highly politicized question, then, Figure 3 shows the politicization of the exam over time. An average of 2.8 highly political questions appeared on the exam between 2002 and 2008, compared to 16.8 highly political questions between 2009 and 2014. A two-sample t-test assuming unequal variance

[42] 2012 Bar Exam, Section 1, Question 6.

shows that this is a statistically significant difference (p=.003).[43] This five-fold jump in political content indicates a turning point around 2008 when the exam became much more politicized,[44] a finding that supports the observations of scholars and journalists who have noted the rising importance of ideology.

It is also clear that politicization extended beyond a socialist rule of law promotion effort: 38 percent of highly political questions in the 2008-2014 period do not mention socialist rule of law at all. More recently, the sway of socialist rule of law rhetoric also seems to be fading a bit as new leaders look to leave their mark with fresh material. Between 2012 and 2014, 55 percent of highly political questions do not mention socialist rule of law. Yet Figure 3 shows little sign of a return to an earlier, less political period. New catchphrases, such as "ruling the country according to law" (*yifa zhiguo*), have moved quickly into any space vacated by socialist rule of law. This new rhetoric seems to mark a re-packaging rather a change in direction. Even if references to socialist rule of law are slightly less frequent, or less prominent, the leadership's commitment to developing an indigenous alternative to Western rule of law remains strong.

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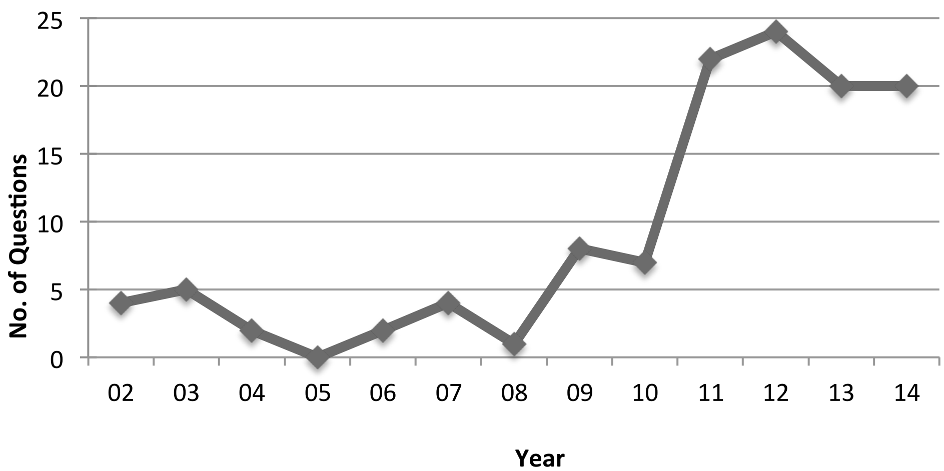
[43] The unit of analysis was the individual question. The two-tailed P value reported here (p=.003) is statistically significant despite a relatively small number of observations. Just 18 highly political questions appeared on the exam between 2002 and 2008, compared to 101 between 2009 and 2014.

[44] Take a look, for example, at how German legal scholar Bjorn Ahl characterized the earlier, less political exam in 2006: "the diminished role of Marxist-Leninist ideology in the judicial examination shows that China has the potential to develop a legal profession that is more autonomous and independent from politics…in order to practice law one has to pass the very high threshold of a professional examination, and a correct political attitude is not a decisive factor in passing the test" (Ahl 2006, 198).

Figure 3: Highly Political Questions on the Bar Exam (2002-2014)



Test-Taking and Political Knowledge

When it comes to political questions, the CCP has a certain style. With few exceptions, political questions epitomize Communist "official talk" (*guan hua),* a type of speech that manages to be "austere and vacuous, intimidating, yet elusive…stuffy and puffy at the same time" (Link 2013, 245). To outsiders, these questions often appear both brain numbing and perplexing. Faced with queries such as "what is the core of socialist rule of law," how do Chinese test takers distinguish between nearly identical answers? And why are political questions generally perceived as easy when the choices seem barely distinguishable?

In an effort to gain insight onto these questions, my research assistants and I recruited former test-takers willing to look at ten multiple choice questions culled from previous exams and talk us through their thought process in selecting an answer.[45]

[45] After giving interviewees a chance to read through the question, we asked them which answer they would pick and why. Scholars interested in education and assessment sometimes use a similar protocol to

Although a few interviews took place in China, most of our conversations took place in the Bay Area with Chinese visiting scholars and LLMs.[46] (For a full list of interviews, see Appendix C). It was not an average group, by any means. Only stellar test-takers tend to find their way abroad, and many of our interviewees were also unusually politically perceptive. What these conversations helped illuminate was how political questions work, particularly the interplay between types of testable information and answering strategies.

Many political questions call for memorization. Again and again, test-takers used familiarity as a selection criterion and gravitated toward phrases known from classes, newspapers, or study guides. Beginning in junior high school, nearly all students spend at least two hours a week in political education courses (Koesel 2014). In college, there are four more mandatory courses covering Maoism, Marxism, Socialism, ethics, and modern Chinese history. "A and B must be correct," one interviewee mused in typical example of this way of thinking, "I remember memorizing them" (BA6). One of my undergraduate research assistants spent the first 17 years of her life in China and, when she was in the room, interviewees sometimes appealed to her "political common sense" (*zhengzhi changshi*).[47] Typically, the dynamic unfolded this way:

> BA 13: Where did you go to high school? Was it in China?
> Research assistant: Yes, it was in China.
> BA13: Then can't you see that this sentence is definitely correct?

---

explore strategies deployed by test-takers (see Cohen 2000 for an overview). Of course, this type of interaction only captures choices that a) test-takers are conscious of making and b) willing to discuss.

[46] I used the same questions and interview protocol for several interviews in Beijing, to see if there was a difference in how conversations unfolded in the two places. At least in this set of interviews, there was little difference between Beijing and the Bay Area.

[47] The phrase "common sense" came up the following interviews: BA5, BA7, and BA14.

Occasionally, interviewees apologized for their forgetfulness (BA2; BJ3). For example, a 2009 multiple-choice question asks test-takers to identify "ruling the country according to law" (*yifa zhiguo*) as an idea not associated with Deng Xiaoping theory.[48] This is an easy question if you remember that "ruling the country according to law" was the brainchild of former CCP General Secretary Jiang Zemin, and impossible otherwise. Here, political questions fit into a long-standing CCP tradition of expressing political power through the compelled recital of set political formulations, called *tifa* in Chinese (Link 2013, 275; Schoenhals 1992). Much like memorizing the phone book, understanding the ideological content is less important than knowing the correct words.

For test-takers reared in China, years of exposure to *tifa* lend unfamiliar answers a suspect cast. One common strategy was scanning the answers for "any part that feels wrong," as one interviewee put it (BA1). There are often visible signs as test-takers perform this internal political correctness check. Some interviewees murmured "no problem, no problem" (*mei wenti*) as they parsed answers, for example, while others placed check marks next to answers deemed "correct" (*zhunque*). By asking test-takers to ferret out mistakes in political logic, the bar exam temporarily places them in the role of censor. Long before their first day on the job, then, legal professionals gain practice at identifying heterodoxy.

Other questions edge beyond memorization to test the regime's worldview. These questions depict an alternate, idealized reality and selecting the right answer requires understanding the Party's self-image. One multiple-choice question from the

[48] 2009 Bar Exam, question 5, section 1.

2012 test, for example, treats local Party interference in the judicial system as a wrong answer, even though it is a well-known, persistent problem.[49] But our interviewees all knew that the exam tests principles rather than the situation on the ground. “My country emphasizes judicial independence,” one interviewee explained, “influence from the government and the media should be eliminated” (BA13). Many legal principles are good,” someone else elaborated, “but there is a gulf between theory and practice” (BA4).

Another question in this vein asked about elements of prosecutors’ professional ethics. The wrong answer is “obeying orders,” even though prosecutors routinely entertain political instructions.[50] Obeying orders is incorrect, one interviewee told us, because “the people who write the test do not want us to think we have political intervention in the judicial system” (BA1). Another interviewee classified “obeying orders” as an answer that is “politically accurate” without being “judicially correct” (BA2). The best strategy on the exam, he elaborated, is to recall Party rhetoric about how law should work rather than dwelling on realities.

Finally, a handful of questions combine charged political language with queries about black-letter law. A 2012 question, for example, asks how the labor inspection bureau should draw on the principles of socialist rule of law to respond to preferential hiring based on zodiac sign.[51] The correct answer is that discriminatory hiring should end because of the principle of equal employment found in the Labor Law. What to make of

[49] 2012 Bar Exam, section 1, question 8.
[50] 2002 Bar Exam, section 1, question 78. The correct answers were: 1) Loyalty to the Party and the country, and serving the people wholeheartedly. 2) Faithfulness to the constitution and the law. 3) Faithfulness to objective facts.
[51] 2012 Bar Exam, section 1, question 3.

this strange mash-up of socialism and employment discrimination law? One possibility is that an adroit question-writer might have smuggled black letter law into the quota of questions earmarked for ideology. One interviewee described doing this (BJ7) and, unprompted, other question-writers derided socialist rule of law questions as "nauseating" (BJ4), "unscientific" (BJ7), and "meaningless" (BJ9; BJ14). Even though this type of question is rare, their existence shows that exam writers enjoy some latitude. Those who bristle at the politicization of the test may be able to occasionally find ways to test law alongside ideology.

To Weed, to Warn, or to Persuade? The Function of Political Questions

The steep increase in the number of political questions on China's bar exam raises the question of intent. The trouble is that information about the inner workings of the Chinese state is scarce, which makes it hard to know what goal the architects of the policy change sought to serve. Rumored backstories abound, the most plausible of which involve elite infighting and the triumph of a group committed to trumpeting Party ideology. Rather than speculate about their motivation, however, an alternative is to shift the conversation from *intent* to *effect* and think functionally about the payoffs of political questions. Purposeful policymakers may have held similar internal discussions, or benefits could be the by-blow of efforts to solve a different problem. Assuming the change was aimed at test-takers, though, this section considers three possible functions of political content: to weed, to warn, and to persuade.

One purpose of political questions could be to weed out the disloyal. If a certain score on the political section is necessary to pass, then the test acts as a proxy for allegiance. In China, however, this logic does not seem to be in play. All in all, less than five percent of questions each year are explicitly political and test-takers can accrue enough points to pass without correctly answering them. According to cram school tallies, only about 28 points are allocated to socialist rule of law theory. At least in its current incarnation, then, the bar exam falls short of a political litmus test.

Another possibility is that ideological content is connected to surveillance. Test-takers might be worried that wrong answers could place them under closer watch, or lead to political trouble later on. But even if this kind of individualized monitoring exists, which is possible, fear of monitoring never came up in interviews. With the exception of online discourse, China is also better known for targeted tracking of troublemakers than the pervasive surveillance of regimes anchored by a strong informer network and powerful secret police.

Could political content be deigned to convince? Among students of politics, both in China and elsewhere, there is a debate over whether habits of language induce habits of thought. Historically, the CCP has taken a strong stand that words transform the heart, and that language and belief are intertwined. Political education is a recurrent presence in CCP's history, from pre-1949 efforts to teach Marxism-Leninism in the areas under Communist control through Mao-era confidence that "thought reform" could rehabilitate political critics. Today, cultivating "correct" political orientation remains a major goal of education. As a Ministry of Education report from the mid-1990s put it, education should "nurture the entire body of students as citizens who love the socialist motherland…and who observe discipline and obey the law" (quoted in Koesel 2014, 3).[52]

Of course, it is difficult to show that ideological curriculum (or testing) plays a causal role in shaping belief. For all the cross-cultural discussion of how schooling can foster nationalism and mold ideal citizens,[53] very little work tests the causal link between education and political attitudes. In the China context, the best evidence that the CCP is right—and political socialization effectively nudges students toward the regime's worldview—comes from a recent study by a team of Chinese and American researchers. Revisions to high school textbooks were introduced in a staggered fashion to different provinces between 2004 and 2010, creating a situation where it was analytically possible to tease apart the effect of the policy change. A 2013 survey of 2,000 Peking University students shows a shift in political attitudes among those exposed to the new curriculum, including increased trust in government officials and greater skepticism about free markets (Cantoni et al. 2014). Still, it is an open question whether the 2008 politicization of the bar exam had a similar effect. At one extreme, perhaps politically correct answers can be memorized and jettisoned without changing core beliefs.[54] Or even if language does not create true believers, many social scientists

[52] As Koesel (2014) notes, these ideas are widely expressed in government documents on patriotic and moral education.
[53] This research tradition can be traced back to Weber's work on how public schools helped construct "national sentiment" in nineteenth century Prussia and France (1922/1978).
[54] Some expressed this point of view in interviews. For example, one cram school teacher described political questions as nothing more than "memorization...as a strategy, it has been a total failure. There is no effect on student opinion or behavior" (BJ9).

think it helps define what the cultural critic Stuart Hall once called "the horizon of the taken-for-granted," (Hall, quoted in Wedeen 1999, 11).[55]

This article puts the causal question aside for future research in pursuit of a more modest goal: to illustrate the range of ways that bar exams can serve a political purpose. Moving beyond warning, weeding and persuasion, the rest of the article turns to a subtler fourth function of ideological content: training legal professionals in the unspoken rules of acceptable public discourse. One final way to think about the bar exam is as a site of political learning where test-takers learn and practice the implicit rules governing interactions with the state. As discussed below, this learning takes place regardless of whether test-takers are true believers in socialist rule of law or skeptics looking to accrue points.

Practicing the Citizen-State Relationship

From the get-go, the presence of political questions sets up an exchange where test-takers provide the politically correct answer and receive points in return. It is a microcosm of how the relationship between the Chinese state and its citizens now so often centers on the exchange of political loyalty for personal benefit. Politically-charged exam questions are part of what the sociologists Ching Kwan Lee and Yong Hong Zhang call the "commodification of politics," where loyalty is contingent and purchased (2013). Most test-takers do not think twice about this implied deal, especially because political questions are so easy that some describe them as "free points" (*song*

[55] For an exceptionally thoughtful treatment of how political language matters in contemporary China, see Link (2013).

fen ti) (BA4). Given limited preparation time and a vast corpus to study, many students also strategically prioritize certain topics. Word quickly spreads through social circles, and through cram schools, that political questions offer a good return on investment. “If you spend a day or two of effort,” an interviewee told me, “you can get a lot of points” (BJ12). After “going through all that [education and] indoctrination,” a veteran of the 2013 bar exam added, it is simple to “memorize some basic terms” and “make up some other things” (BA13).

For some test-takers, surely, their inner thoughts echo the correct answer. For others, however, the bar exam requires navigating the gap between private beliefs and public expression. Some interviewees talked about the experience of sublimating their opinions while taking the exam, even though nothing in our interview protocol was designed to prompt a discussion of preference falsification. After explaining which answer he would pick for a socialist rule of law multiple-choice question, for example, one interviewee commented: “no one believes this in contemporary China. But if want to take the bar exam, you have to do as they say” (BA7). Another test-taker wrestled with the rift between what he called “personal dialogue” and “public dialogue.” “I am struggling with myself [as I take the test],” he said. “I have my personal opinion, but for the test I will do whatever the correct answer is” (BA2).

The conventional wisdom treats preference falsification as an instinctive strategy for survival in an authoritarian state. In one of Vaclav Havel’s classic essays about Communist Czechoslovakia, for example, the greengrocer places a political slogan in his shop window “as one of the thousands of details that guarantee him a relatively tranquil life" (Havel 1986, 41). However, treating preference falsification as an instinct overlooks how it is also a skill taught and practiced in specific places, and not in others. In China, in particular, demands for demonstrations of political loyalty have a long history. The primacy of orthopraxy (correct conduct) over orthodoxy (prescribed ideas) stretches back to imperial China and the Confucian belief that practice would shape belief over time (Lieberthal 2004, 8).

Using the bar exam, in particular, as chance to test orthopraxy also pre-dates the CCP's ascension to power. In the Republican period, the Guomindang set about "partifying" (*sifa danghua*) the judicial system in an attempt to control it (Tiffert 2013). As early as 1929, the Nationalist government added ideological content to law school classes and the bar examination. Party theory (*dangyi*) was tested in 1933, as one test-taker later recalled, and post-exam festivities included a solemn pilgrimage to Sun Yatsen's memorial (Yu 2002). Much as socialist rule of law would later serve as an overarching CCP doctrine, Sun Yatsen's Three People's Principles (*san min zhuyi)* were re-purposed as the guiding ideology for the judicial profession in the 1930s and 40s.[56] As the President of the Judicial Yuan, Ju Zheng, wrote in 1946, "every legal institution, law and regulation, decree, code, everything that could take the form of law…must…thoroughly take the Three People's Principles as its main idea [and] its guiding principle" (quoted in Tiffert 2013, 103). As far back as another century, and another regime, the bar exam was part of a political indoctrination process that bound legal professionals to the state and trained them to consider Party priorities.

[56] For an overview of the three principles—nationalism, the rights of the people, and the livelihood of the people—see Schell and Delury (2013, 127-135).

Today, the CCP's bar exam is part of a nexus of standardized tests that train Chinese young adults in the art of orthopraxy. State-administered tests control access to college and graduate school and to many white-collar jobs, including the civil service, journalism, accountancy, teaching, and law. [57] Studying for these tests, particularly the all-important college entrance exam, is a central coming-of-age experience and nearly every test includes political indoctrination. Thanks to the ongoing importance of national tests, it is hard to enter the Chinese middle class without encountering an opportunity to exchange a politically correct answer for points on an exam. With so much riding on the outcome, too, preference falsification becomes a quickly learned skill. As the blogger and social critic Han Han wrote in a 2007 piece called "Let's Do Away With Student Essays," essay assignments "subconsciously tell you that saying things you don't mean is normal and necessary" (2012, 26).

If preference falsification is a skill, then how is correct behavior learned? Imitation clearly plays a big role, particularly the reams of "standard answers" (*biaozhun da'an*) that form the backbone of test preparation. Han Han, in particular, highlights the importance of emulation: "from an early age, model essays and essay-writing textbooks convey to students that the function of essays is to eulogize and extol" (2012, 24). Even without precise instructions, example essays teach students the conventions of correct public expression. Teachers, too, can play an important role in reminding students to

[57] In fact, the reach of the bar exam pales beside the college and graduate school entrance exams. 9,120,000 people took the college entrance exam (*gaokao*) in 2013 and 1,720,000 sat for the 2014 graduate school exam (*kaoyan*) (BBC 2013; Xinhua 2014).

memorize boilerplate language rather than offering opinions. A lecturer from a top-three cram school offered this advice in a 2014 lecture posted online:[58]

> So if you want to get a good score in the socialist rule of law section… memorize this one sentence…The sentence is: our Party is always glorious, great and correct….**I don't care what you really think in your heart, it's not about what you think inside.** You just have to remember that, during the exam, you must believe this sentence. And I often tell the kids from Peking University, just do it this one time, will you? [Laughter][59] Just say some good things about the sentence, ok? Why do you have to talk about your own opinion every time?

Rather than maintaining the fiction that test-takers believe every word they write, this lecturer chose to teach preference falsification. His lecture stresses both the rewards of compliance ("a good score") and the dangers of disobedience. The latter is illustrated through a parable: the story of Peking University Professor He Weifang's two-year transfer to remote Xinjiang province in retaliation for political criticism. Here is how the lecturer presents He's cautionary tale:

> Where did our Professor He go? Shihezi University in Xinjiang. Only then did I learn that Xinjiang has a desolate place named Shihezi and there is some kind of university there. It was a volunteer opportunity in name, but an exile in reality. How many years was he shut out for? Two years. He was researching [this] question…Which one is more important in China: the Party or the law? Let me ask you guys, when there is a conflict in China between Party policy and the law, which one has priority? [Several students in the audience said: "the Party."] You have to firmly remember—Party policy takes priority.

By laying bare the political script, the lecture gives the feeling of listening in on the "the hidden transcript" of a conversation sheltered from direct observation by those

[58] Although this lecture is available online, no citation is provided in order to protect the identity of the lecturer.
[59] Peking University has a history of campus political activism.

in power (Scott 1990). Perhaps the teacher did not know his lecture would be posted online, or perhaps bluntness was his way to improve listeners' exam results while also entertaining them. But as hidden transcripts go, preference falsification hardly seems deeply concealed. After 1989, one Soviet citizen described wearing six faces under Communism: "one for my wife; one, less candid, for my children, just in case they blurted out things heard at home; one for close friends; one for acquaintances; one for colleagues at work; and one for public display" (quoted in Kuran 1991, 39). In contrast, frank public lectures on preference falsification in today's China (and interviewees' willingness to raise the topic with American researchers) illustrate how the pervasive suspicion typical of mid-20th century totalitarianism has dimmed. At least in some spaces that feel "safe enough," if not exactly safe, there is room to acknowledge the gap between one's personal beliefs and the public mask.[60] The cram school lecturer's advice displays a cynical readiness to game the system, but little paranoia about who might be listening.

Nor do the Chinese authorities insist on a show of loyalty from every test-taker. Points-wise, it is possible to skip every political question and still pass the exam. In fact, a few interviewees volunteered that they disliked ideological material and refused to study it (BA12, SH1). One such conscientious objector explained her choice this way:

> BA12: I didn't really look at the political questions…
> Research assistant: Why not?
> BA12: I don't like that kind of thing.
> Research assistant: But don't they count for points too?
> BA12: Yes, but they don't count for much. Maybe 20 points.

[60] For more on the role "safe enough" spaces play in recruitment to Protestant house churches, see Vala and O'Brien (2008).

It is hard to know whether allowing some test-takers to ignore political material is an accident or a conscious state strategy. Instead of demanding compliance, leaving an apolitical option could be a strategic way to avoid alienating (and radicalizing) those who resent political content. On the other hand, however, it may also have never crossed anyone in authority's mind that wrong answers occasionally mask objections to the material rather than confusion or lack of preparation. Either way, even a handful of conscientious objectors show it is possible to decline the state's deal. For all the power of the Chinese state, test-takers retain the choice *not* to act in public and to turn down the benefits of public compliance.

Conclusion

As the CCP nears its seventh decade in power, most see a once-revolutionary regime that long since failed to inspire devotion. The ideological fervor of Maoism has largely receded, revealing both new room for private pursuit and divergent standards for public and private talk. As far back as 1980, then-Minister of Propaganda Hu Yaobang acknowledged the growing gap between speaking in public and "what you might say casually at home." While the latter "doesn't matter very much," Hu saw public speech as "official thought work" which "produces social effects" (quoted in Link 2013, 240). Over three decades later, the CCP continues to take Hu's point seriously. The mid-2000s politicization of the bar exam was an attempt to stimulate support for China's governing ideals, but it was also an opportunity to teach the benefits of sticking to the public script.

This double-barreled emphasis on cultivating loyalists, but accepting dissemblers, has become a theme of 21st century judicial politics in China. The Ministry of Justice's renewed emphasis on lawyer loyalty oaths and setting up Party cells inside law firms, for example, are similar measures that aspire to re-freshen allegiance, but demand only the trappings of loyalty.[61] As others have pointed out (Wedeen 1999, Narvaro-Yashin 2002), these kinds of political rituals help sustain political power in the absence of emotional commitment. Loyalty oaths, Party cells, and political questions on the bar exam are all part of a larger project to train competent legal professionals who are also politically reliable. However heavy-handed, political rituals signal the importance the regime places on preference falsification and warn legal professionals to watch their step in public.[62] So far, China's reliance on socialization and self-censorship has been effective. For all the headlines about Chinese lawyers in prison, or under surveillance, the vast majority of the profession is quiescent, and there are few reports of risk-taking judges or prosecutors (Stern and Hassid 2012).

At the same time, however, the current system leaves room for individual choice. Test-takers can choose not to study political content, for example, and still pass the bar exam. Or exam writers who originally held their nose at the clumsy introduction of ideology can find ways to smuggle legal content into at least a few political questions. A

[61] For more on the MoJ's 2012 efforts to introduce a more specific loyalty oath, see Deng (2012) and Lynch (2012). In 2008, Justice Minister Wu Aiying called for the creation of more Party cells inside law firms. By 2009, 90 percent of law firms had official Party representatives (Chao 2009).
[62] For more on signaling, see Lynch (2011) and Stern and O'Brien (2012).

legal system that stresses correct public behavior over proper private thought, in other words, is one that also leaves room for reformers who disguise their preferences, follow expectations, and work inside the system to change it. Stressing orthopraxy over orthodoxy means opening the door for some to pursue the slow work of incremental institutional change from within.[63]

Of course, the long-term effect of preference falsification depends a great deal on how many people are doing it. What proportion of the legal profession consists of "cynical subjects" who are "aware of the distance between the ideological mask and social reality?" (Yurchak 1997, 29) This is an impossible question to answer, both for researchers and for the Chinese state. Policing public behavior may be an effective social control strategy, but it also creates an information problem for the Chinese leadership: it is hard to know what legal professionals really think (Lieberthal 2004, 8). Flying blind, in turn, stimulates suspicion. From the commanding heights of leadership, it is hard to know whether a fifth column is swelling. One way to understand China's ongoing suppression of politically active lawyers, then, is as an official decision to act *as if* preference falsification is widespread. Each arrest, fine, or disbarment serves to remind other legal professionals that tamping down personal beliefs is a wise choice.

Several years ago, William Alford and Kenneth Winston asked if the Chinese authorities might try to craft new notions of authoritarian professionalism (19-20). A close look at the politicization of the bar exam suggests the answer is yes. The exam is part of a state-promoted template aimed at producing small-c conservatives who

[63] For more on change agents and possibilities for gradual institutional change, see Mahoney and Thelen (2010). My discussion of reformers maps onto their concept of "subversives."

support and profit from the status quo. Autonomy from the state is not part of this vision, which is hardly surprising, but neither is heartfelt loyalty. Instead, as with loyalty oaths or political questions on the bar exam, the simulacrum of loyalty is sufficient. The point, as political scientist Lisa Wedeen writes, is not to require legal professionals "to believe the 'mystifications' the regime puts forth." Rather, "they are required to act *as if* they did…They thus confirm the system, make the system, *are* the system" (1999, 76). Political stability can be the outcome of thousands upon thousands of decisions to feign belief even when, as the Chinese expression has it, "the mouth and the heart are not one" (*xin kou bu yi*).

Thinking about authoritarian professionalism as a critical feature of authoritarian legality also has implications for future research. First, just as earlier research has uncovered different strains of professional identity among Chinese journalists (Hassid 2011), there are surely competing professional visions circulating inside authoritarian legal systems. Understanding where role conceptions come from, and how they shift, is key to grasping the dynamics that propel outspokenness or quiescence. The example of China's bar exam also serves as a reminder that state-promoted professionalism is not absorbed through osmosis. It needs to be taught, particularly through rituals that ask legal professionals to master and display correct behavior. Like other types of symbolic politics, the bar exam naturalizes and reinforces the ubiquity of state control over everyday life. Power is at its most effective when it is least observable, as Steven Lukes notes, and the very fact that so many test-takers see the exam as natural, inevitable and even apolitical is a tip off that state power may be at work (1974/2004, 1).

Appendix A: National Judicial Exam Passing Scores (2014)

Region	Passing Score
National Passing Score	360
Sichuan Selected Areas	310
Guizhou Selected Areas	310
Yunnan Selected Areas	310
Gansu Selected Areas	310
Xinjiang Autonomous Region	305
Sichuan Autonomous Prefectures and Districts	305
Guizhou Autonomous Prefecture and Districts	305
Yunnan Autonomous Prefecture and Districts	305
Gansu Autonomous Prefecture and Districts	305
Qinghai Autonomous Prefecture and Districts	305
Inner Mongolia Autonomous Region	305
Guangxi Autonomous Region	305
Ningxia Autonomous Region	305
Qinghai Autonomous Prefecture and Districts	305
Tibet Autonomous Region	280

Source: Ministry of Justice (2014)

Appendix B: List of Political Slogans

社会主义法治:	Socialist Rule of Law
依法治国:	Rule By Law
邓小平理论:	Deng Xiaoping Theory
三个代表:	The Three Represents
公正与效率:	Equity and Efficiency
司法为民:	Justice for the People
执政为民:	Governing for the People
科学发展观:	Scientific Outlook on Development
公正司法/司法公正:	Judicial Fairness
服务大局:	Serving the Overall Picture
执法为民:	Enforcing Laws for the People
公平正义:	Justice and Equality
大调解:	Grand Mediation
中国特色社会主义:	Socialism with Chinese characteristics
五个严禁:	Five Forbiddens
保增长、保民生、保稳定:	Ensure growth, people's livelihood, and stability
有法必依、执法必严、违法必究:	Laws must be obeyed, laws must be strictly enforced, illegal activities must be prosecuted
党的事业至上、人民利益至上、宪法法律至上	The Party's endeavors are supreme, the people's interests are supreme, constitutional law is supreme
人民主权:	Popular Sovereignty
三个至上:	Three Supremes
和谐社会:	Harmonious society

Appendix C: Interview List

Location	Code	Interview	Date
Beijing, China (unless otherwise noted)	BJ1	Leadership of a top judicial exam preparation program	10/2014
	BJ2	Former participant in the exam drafting process	10/2014
	BJ3	Two former test-takers	10/2014
	BJ4	Former participant in the exam drafting process	10/2014
	BJ5	Chinese scholar	10/2014
	BJ6	Former participant in the exam drafting process	10/2014
	BJ7	Former participant in the exam drafting process	10/2014
	BJ8	Former participant in the exam drafting process	10/2014
	BJ9	Former teacher in an exam preparation school	10/2014
	BJ10	Former teacher in an exam preparation school	10/2014
	BJ11	Chinese scholar	10/2014
	BJ12	Small group of former test-takers	10/2014
	BJ13	Former test-taker (Shanghai)	11/2014
	Bj14	Former test taker (Nanjing)	11/2014
	BJ15	Former participant in the exam drafting process	11/2014
	BJ16	Former participant in the exam drafting process	11/2014
Bay Area	BA1	JSD student	10/2014
	BA2	LLM student	10/2014
	BA3	Visiting scholar	10/2014
	BA4	LLM student	10/2014
	BA5	Visiting scholar	10/2014
	BA6	LLM student	10/2014
	BA7	Visiting scholar	10/2014
	BA8	Visiting scholar	10/2014
	BA9	Visiting scholar	10/2014
	BAA0	Visiting scholar	11/2014
	BA11	LLM student	11/2014
	BA12	Visiting scholar	11/2014
	BA13	LLM student	11/2014
	BA14	Visiting scholar	11/2014
	BA15	LLM student	1/2015
	BA16	LLM student	1/2015

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