

## Political Reliability and the Chinese Bar Exam

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*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 behaviour 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.*

Part of China's effort to construct a well-functioning legal system is official ambivalence toward the legal profession. On one hand, trained experts are indispensable for any system that aims to resolve disputes, ease economic growth, and preserve social harmony. On the other hand, however, the leadership is watchful. Across centuries and continents, legal professionals have often banded together to demand civil rights, including freedom of speech, association, and belief.<sup>1</sup> How, then, to cultivate loyalty among lawyers, judges, and legal scholars short of resorting to force, threats or

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Thanks to Mengyu Dong, Cindy Wen Xin Liu, Kristen Sangren, and Lizzie Shan for research assistance. This article benefited from feedback from Donald Clarke, David Law, Jon Hassid, and Ethan Michelson, as well as from discussion with audiences at Berkeley Law, Brown University, George Washington University, and the University of Washington.

- 1 On political activism by the legal profession, see T. Halliday and L. Karpik (eds.), *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries* (1997), and T. Halliday et al., *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism* (2007).

bribes? A key part of the Chinese approach is cultivating a state-led vision of what it means to be a politically correct legal practitioner.

This article uses the Chinese bar exam as a window onto the Chinese strain of authoritarian professionalism. Though socio-legal scholars have long known that legal education shapes the worldview of legal professionals,<sup>2</sup> and can reinforce an authoritarian status quo,<sup>3</sup> less attention has been paid to how bar exams transmit political values and promote a state-sanctioned version of professional identity. In China, these political overtones became particularly easy to see in 2007 when questions on socialist rule of law and the correct role of the Chinese Communist Party (CCP) were added to the bar exam. Although Chinese scholars tend to dismiss these explicitly political questions as a minor, normal part of a long test, they send a signal to aspiring judges, lawyers, and prosecutors that the legal profession is not exempt from the rules of the game that apply elsewhere in society. Political content is also poised to increase in importance after changes slated to take effect by 2017 raise the number of points devoted to two highly political topics, socialist rule of law and the constitution.<sup>4</sup> Clearly, the authorities are recommitting to the idea of a bar exam capable of cultivating a legal profession both knowledgeable and politically reliable.

For aspiring legal professionals, this article argues that Chinese bar exam is a place where socially shared understandings of politically correct behaviour are refined and practiced. The exam calls on test-takers to demonstrate political loyalty in exchange for points and, in so doing, to navigate the gap between personal beliefs and public expression. This political learning takes place during the fevered run-up to the exam as well as on exam day itself. Weeks of studying allow test-takers to brush up on correct bywords and, during this time, teachers and classmates spread the message that political questions are easy points that can be won with little effort. Viewed from this perspective, China's bar exam has much in common with other demands for performances of political loyalty. Like parades demonstrating support for President Asad in 1990s Syria,<sup>5</sup> or a Communist slogan placed in the

2 E. Mertz, *The Language of Law School: Learning to 'Think like a Lawyer'* (2007).

3 L. Hilbink, *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile* (2007).

4 Xinhua News Agency, 'Guanyu Wanshan Guojia Tongyi Falü Zhiye Zige Zhidu de Yijian Yinfa' [Opinion on Improving the National Unified Legal Profession Qualification System Published], 20 December 2015, at <<http://goo.gl/9t1WWd>>. See, also, Office of the Central Committee of the CCP and Office of the State Council, 'Yinfa Guanyu Wanshan Guojia Tongyi Falü Zhiye Zige Zhidu de Yijian de Tongzhi' [Notice of Publishing Opinion on Improving the National Unified Legal Profession Qualification System], 30 September 2015, at <<http://goo.gl/1k0I8W>>.

5 L. Wedeen, *Ambiguities of Domination: Politics, Rhetoric, and Symbols in Contemporary Syria* (1999).

window of a Czechoslovakian greengrocer,<sup>6</sup> the bar exam shores up the status quo by reminding tomorrow's lawyers, judges, and prosecutors to keep dissent private. The exam illustrates the Chinese state's symbolic power, expressed through rituals that 'reinforce and assert state control ... over people's everyday lives.'<sup>7</sup> Testing conveys the appearance that no power is being exercised, while pressing a vision of how the relationship between legal professionals and the state should unfold.

The core of this vision is an attempt to harrow a middle ground between professional autonomy and the authoritarian aspiration of control. For all the Chinese leadership has tightened control over civil society in recent years, legal professionals retain a measure of bounded autonomy, and quiescence rests on self-censorship as much as coercion. Of course, the Chinese bar exam is a single way to normalize and incentivize compliance. Students of authoritarian law have tended to overlook it, however, because bar exams are typically treated as an apolitical means of learning technical expertise. Re-conceptualizing bar exams as a political exercise adds a fresh layer to our understanding of whose interests testing can serve, and why examinations take the form they do. This reorientation requires treating bar exams as a ritual, or a series of actions, rather than a one-off experience. As explored below, ideas about correct conduct are spread through studying and social interactions as well as through the experience of sitting the exam itself.

## CHINA'S POST-MAO PROCESS OF LEGAL PROFESSIONALIZATION

The history of China's bar exam reflects the country's ambitious effort to build a legal system nearly from scratch. After Mao's death, and following the chaos of the Cultural Revolution, China embarked on a historic project of legal construction that involved writing new laws, popularizing legal knowledge, and strengthening the courts. Professionalization was on the agenda from the outset, or at least a shallow version aimed at improving substantive legal expertise. Before the mid-1990s, there were no absolute requirements for becoming a judge, lawyer, or prosecutor.<sup>8</sup> Once hired,

6 V. Havel, 'The Power of the Powerless' in *Vaclav Havel: Living in Truth*, ed. J. Vladislav (1986) 36.

7 J. Hassid and B. Watson, 'State of Mind: Power, Time Zones and Symbolic State Centralization' (2014) 23 *Time & Society* 167, at 169.

8 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. This changed with the 1996 Lawyers Law, which introduced national requirements for entry into the profession. See E. Michelson, 'Unhooking from the State: Chinese Lawyers in Transition', University of Chicago PhD dissertation (2003) 366.

many legal professionals learned on the job. ‘This [system] was very dangerous’, Tsinghua law school Dean Wang Zhenmin wrote. ‘One cannot become a doctor first and then receive on-the-job medical training afterwards.’<sup>9</sup> Improving legal knowledge was at the top of reformers’ agenda, and qualification exams for lawyers, prosecutors, and judges were introduced in the 1990s.<sup>10</sup> Then, in 2001, the Ministry of Justice (MoJ), the Supreme People’s Procuratorate, and the Supreme People’s Court decided to unify these separate exams into a single bar exam for all legal professionals.<sup>11</sup> 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 unified national test, limited the pool of test-takers to those with a university degree, and aimed for a threshold high enough to improve expertise.<sup>12</sup> Xiao Yang, the President of the Supreme People’s Court in 2002, remembers that ‘[the exam] established an objective standard.’<sup>13</sup>

- 9 Z. Wang, ‘Legal Education in Contemporary China’ (2002) 36 *International Lawyer* 1203, at 1208. 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. See B. Ahl, ‘Advancing the Rule of Law through Education? An Analysis of the Chinese National Judicial Examination’ (2006) 42 *Issues and Studies* 171, at 173.
- 10 X. Huo, *Falü Jiaoyu: Cong Shehui Ren Dao Falü Ren* [Legal Education: From Ordinary Person to Legal Expert] (2010) 489.
- 11 Concurrent revisions to the Judges’ Law, the Lawyers’ Law, and the Prosecutors’ Law in 2001 also raised the formal education requirements such that new entrants were supposed to be university graduates. Ahl, op. cit., n. 9, p. 173.
- 12 Interviews BJ7 and BJ11 both discussed Japanese influence. When this study tour visited Japan in the late 1990s, only about 3 per cent of test-takers passed the Japanese bar. 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 per cent of examinees passed. On the history of the Japanese bar exam, see S. Miyazawa et al., ‘The Reform of Legal Education in East Asia’ (2004) 4 *Ann. Rev. of Law and Social Science* 333. On the 2011 pass rate, see M. Tanikawa, ‘A Japanese Legal Exam That Sets the Bar High’ *New York Times*, 10 July 2011, at <<http://tinyurl.com/o4aar3o>>.
- 13 X. Yang, *Xiao Yang Fazhi Wenji* [The Collected Writings of Xiao Yang] (2012) 469. The Minister of Justice at the time, Zhang Fusen, also called the unified judicial exam ‘crucial in guaranteeing the quality and proficiency of people in law enforcement’ (quoted in Wang, op. cit., n. 9, p. 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: see X. Ding, *Zhongguo Sifa Kaoshi Zhidu de Chuangjian He Fazhan* [The Creation and Development of China’s Judicial Examination System] (2009) 10 *Zhongguo Sifa* [China Justice] 26. Note that most Chinese lawyers were state employees until a state-led ‘unhooking and restructuring’ drive around 2000–2001 popularized private practice. By 2003, only 14 per cent of law firms were state-owned, down from 98 per cent in 1990: see J. Zhu, *Zhongguo Falü Fazhan Baogao* [Report on China Law Development: Database and Indicators] (2007) 332.

Since 2002, the year of the first unified bar, the exam has settled into a standard format. The written, closed-book examination takes place each year during two days in September, and consists of three multiple-choice sections of 100 questions and a seven-question essay section. Test-takers need 360 points to pass, or 60 per cent of 600 possible points,<sup>14</sup> and 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.<sup>15</sup> Major topics include criminal law, civil law, administrative law, international law, legal history, jurisprudence, legal ethics, the structure of the judiciary, and the constitution.

Who writes the bar exam and how does the process of drafting questions work? Responsibility for writing and administering the test is divided between the MoJ and the members of the State Bar Exam Question Writing Committee (*Guojia Sifa Kaoshi Mingti Weiyuanhui*). The MoJ provides ‘macro-guidance’ (*hongguan de zhidao*) and sets the point allocation for each sub-field, but government officials do not write individual questions.<sup>16</sup> This task falls to the committee members, most of whom are well-established men who teach at China’s top law schools.<sup>17</sup> Question drafting is an elaborate multi-round process that relies on this group of experts to write, revise, and select the questions for the year’s exam.<sup>18</sup> An invitation to draft

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. There are lower passing scores in areas of the country where legal professionals are scarce: see J. Zhu, *Zhongguo Falü Fazhan Baogao* [China Legal Development Report] (2012) 501.

15 Interview BJ8. 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.

16 The Bar Exam Office (*Sifa Kaoshi Bangongshi*) under the Ministry of Justice (MoJ) handles nuts-and-bolts administration. Among other administrative responsibilities, the MoJ runs a complaint hotline for test-takers who feel a published answer is wrong and tracks the success rate of individual questions.

17 The committee list is not publicly released, but many names are common knowledge. An Internet search in the summer of 2014 turned up the names of 32 Chinese scholars publicly linked to the question-drafting committee. Of this list, nearly all were men (96 per cent), with the vast majority born in the 1950s or 1960s (87 per cent) and based at a Beijing university (84 per cent).

18 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 sub-field experts review submissions and accept, discard, or revise each question. This meeting is held in a secure location, with all revisions typed into an onsite computer to prevent leaks. Experts must also sign a confidentiality agreement, and agree to avoid participation in the exam preparation industry. Finally, an even smaller band of experts picks questions for the year’s exam. Questions are not repeated from year to year. This description of the question-drafting process draws on conversations with current and former members of the question-drafting committee (interviews BJ2, BJ6, BJ7, BJ8, BJ9, BJ13, BJ14), and all details were confirmed by more than one source.

questions is generally seen as an honour and a form of public service. As one scholar involved with the bar exam since 2002 explained, ‘the country needed me, and I went to help out ... I felt I should.’<sup>19</sup> Although the MoJ provides token compensation,<sup>20</sup> another professor described it as ‘taxi fare’ compared to how much an experienced lecturer at an exam preparation school can earn.<sup>21</sup>

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 per cent 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.<sup>22</sup> 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*).’<sup>23</sup> Today, some law professors advocate returning to a pass rate as low as 7 per cent.<sup>24</sup>

19 Interview BJ14.

20 One scholar reported that the MoJ offers 10,000 RMB in compensation (about \$1,600), compared with just 2,000 RMB in the early 2000s: see interview BJ4.

21 Interview BJ7.

22 Interviews BJ7, BJ6, and BJ14. Interview BJ7 traced the decision to the Central Commission for Political and Legal Affairs (*Zhongyang Zhengfa Weiyuanhui*), the party committee that oversees the security apparatus and the legal system. 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 students acclimatize to studying for it. On the reasons for a rising pass rate, see, also, C. Minzner, ‘The Rise and Fall of Chinese Legal Education’ (2013) 36 *Fordham International Law J.* 335, at 362–3.

23 J. Pan, ‘*Lun Sifa Kaoshi Yu Daxue Benke Faxue Jiaoyu De Guanxi*’ [On the Relationship Between Undergraduate Legal Education and the Judicial Exam] (2003) 21 *Faxue Pinglun* [Law Rev.] 147. 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 mentioned in interviews include altering grading standards for the essay questions, adjusting raw scores to grade on a curve, and instructions to the following year’s exam-writers to make the exam harder or easier.

24 C. Wang, ‘*Lun Sifa Kaoshi Tongguolü de Jiangdi*’ [On the Lower Pass Rate of the Judicial Exam], paper presented at the Conference on Establishing Rule of Law and Reforming Legal Education, Yantai, Shandong, October 2014. For another article advocating a lower pass rate, see C. Wang and W. Zhu, ‘*Jinfang Sifa Kaoshi Zhong de Da Yuejin—Cong Sikao de Gao Tongguolü Shuo Qi*’ [Beware of the Judicial Examination’s Great Leap Forward – Starting with a Discussion of High Passage Rates] (2010) 3 *Fazhi Yanjiu* [Rule of Law Research] 47.



**Table 1: Test-takers and pass rate (2002–2013)<sup>25</sup>**

Year	No. Registered	No. Test-takers	Percentage Pass Rate <sup>26</sup>
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	16.00
2012	400,000	n/a	12.00
2013	436,000	n/a	11.00

‘Crammers’ or ‘cram schools’ (institutions that prepare students for an examination intensively over a short period of time), known in Chinese as ‘training schools’ (*peixun xuexiao*), are a final, critical piece of the ecosystem surrounding the bar exam. Eight to ten per cent of test-takers sign up, typically paying 8,000–10,000 RMB (roughly \$1,200–1,600) for a face-to-face class.<sup>27</sup> There are many options, including programmes 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.<sup>28</sup> The majority are students at second- or third-tier law

25 Data for 2002–2010 is from Zhu, op. cit., n. 14, p. 519. Data for 2011–2013 comes from China Education Online, ‘2014 Sifa Kaoshi Tongguo Lü Shuju Fenxi’ [Data Analysis of Exam Pass Rates 2014], at <<http://tinyurl.com/kraxxp4>>. 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 China’s statistical yearbooks.

26 This is the pass rate for the total number of people who registered for the test. Note that some registrants sacrifice the nominal registration fee and do not show up for the test.

27 The 10 per cent estimate comes from my interview with the founder of a well-known private training school (Interview BJ1). The more conservative 8 per cent estimate appears in W. Yi, ‘Zhonghe Jiaoyu Shezu Liuxue, Tui Faxue Shuoshi Riben Zhitongche’ [Zhonghe Moves Into the Market for Overseas Students, Pushes Japanese LLMs] in *Duozhi*, 14 October 2014, at <<http://tinyurl.com/oe3a9q4>>. Most schools offer a range of price points: for example, some students opt to pay more so they can retake the class for free if they fail the first time.

28 Online instruction remains a small percentage of the market. At Zhonghe, one of the biggest training schools, online products account for only 10 per cent of revenue. Fears of illegal downloads have left some training programmes reluctant to invest in growing their online business: see W. Chen, ‘Zhonghe Zheng Qibin: Sifa Peixun

schools, though every training class also includes a share of older attendees looking for a second career.<sup>29</sup> In academic circles, crammers' popularity has prompted criticism of a 'dual school phenomenon' where students invest more energy in exam preparation than at university.<sup>30</sup> Especially at lower-ranked law schools, there are concerns about outsourcing legal education to commercial test-preparation outfits.<sup>31</sup>

All of this – the growth of crammers, 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 public-spirited scholars and policy makers. 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 rest of the article explores, the bar exam is a political project.

## BAR EXAMS AS A POLITICAL PROJECT

In comparison with 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<sup>32</sup>

*Zhiwai, Women Zenme Zou?* [Zhonghe's Zheng Qibin: Besides Judicial Training, Where Will We Go?] in *Duozhi*, 17 March 2014, at <<http://tinyurl.com/ovqtbpk>>.

29 Interviews BJ1, BJ9, BA9.

30 J. Zhang, 'Yingjie Benke Biyesheng Canjia Sifa Kaoshi Zhi Fansi' [Reflections on Recent College Graduates' Participation in Judicial Exams] (2012) 9 *Shehui Kexuejia* [Social Scientists] 121.

31 In addition to their importance as a source of legal knowledge, training programmes 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, as exam preparation can be a lucrative sideline in an expensive city, though the work is gruelling. 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 night-time 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.

32 For contrasting articles that lay out some pros and cons of bar exams, see E. Griswold, 'In Praise of Bar Examinations' (1974) *Am. Bar Association J.* 908 and L. Green, 'Why Bar Examinations?' (1939) 33 *Illinois Law Rev.* 81.



and, if so, how to test real competence rather than rote memorization.<sup>33</sup> The growing literature on lawyers and courts in China, meanwhile, usually mentions the bar exam only in passing.<sup>34</sup> 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.<sup>35</sup> 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, legal sociologists have pointed out a second, economic function of bar exams: to control the supply of lawyers and limit competition.<sup>36</sup> 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.<sup>37</sup>

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 legal system with supporters.<sup>38</sup> 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.<sup>39</sup> The glut of new lawyers led to sharp competition, leaving few lawyers with the

33 For example, some critics question whether the bar exam focuses enough on practical skills. There is also a debate over whether the test exacerbates class inequality or disadvantages minorities. See T. Clydesdale, 'A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage' (2004) 29 *Law & Social Inquiry* 711 and W. Kidder, 'The Bar Examination and the Dream Deferred: A Critical Analysis of the MBE, Social Closure, and Racial and Ethnic Stratification' (2004) 29 *Law & Social Inquiry* 547.

34 Two notable exceptions are Ahl, op. cit. n. 9 and C. Minzner, 'The Chinese Bar Exam and the "Turn Against Law"' *Chinese Law and Politics Blog*, 29 August 2012, at <<http://tinyurl.com/l4zz44y>>. Michelson, op. cit., n. 8, pp. 87–9, also discusses trends in pass rates over the earlier 1988–2000 period.

35 S. Lubman, *Bird in A Cage: Legal Reform in China After Mao* (1999) 156.

36 See J. Berlant, *Profession and Monopoly: A Study of Medicine in the United States and Great Britain* (1975); M. Larson, *The Rise of Professionalism: Monopolies of Competence and Sheltered Markets* (1977); R. Abel, 'Comparative Sociology of Legal Professions' in *Lawyers in Society: Comparative Theories*, eds. R. Abel and P. Lewis (2005).

37 K. Weeden, 'Why Do Some Occupations Pay More than Others? Social Closure and Earnings Inequality in the United States' (2002) 108 *Am. J. of Sociology* 55.

38 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: see Michelson, op. cit., n. 8, pp. 98–9.

39 M. Massoud, *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan* (2014) 141.

energy or financial flexibility to pursue political causes. In China, by 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’.<sup>40</sup>

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 reveal the values implicit in correct answers, or even in the types of knowledge tested. Much as law professor Elizabeth Mertz explored American legal epistemology through an ethnography of the first-year law school experience,<sup>41</sup> there is room for work that explores how bar exam writers shape different legal systems’ approach to legal knowledge.

To be sure, bar exams play a more important role in some legal systems than others. Chinese scholars sometimes compare the bar exam to a bridge separating a pool of aspirants from a corps of legal professionals. In China, the pool of hopefuls is vast and the bridge narrow – just 11 per cent of test-takers passed the 2013 exam. In contrast, American requirements for sitting the bar exam vary by state, and the bridge is much wider. Nationwide, the bar pass rate reached 68 per cent in 2013.<sup>42</sup> 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 POLITICIZATION OF THE BAR EXAM

There is no doubt that the Chinese bar exam has become more political over time and, in fact, politicization offers a way to periodize the early history of the test. The first five years, from 2002 to 2006, featured an exam with low

40 W. Alford and K. Winston, ‘Introduction’ in *Prospects for the Professions in China* (2011) 16.

41 Mertz, op. cit., n. 2.

42 National Conference of Bar Examiners, *2013 Statistics* (2014), at <[www.ncbex.org/publications/statistics/statistics-archives/](http://www.ncbex.org/publications/statistics/statistics-archives/)>.

political salience squarely focused on testing legal knowledge.<sup>43</sup> Then, the introduction of heavy-handed political questions in 2007 marked the opening of a politicized period. An ideological overlay has been a consistent trait of the exam since then, and plans to increase the number of points devoted to political topics by 2017 suggest deeper politicization lies ahead. Given that the Chinese Communist Party (CCP) was firmly in charge of China in 2002, and remains so today, how and why did the bar exam become political?

The answer lies in intra-party politics, and the behind-the-scenes wrangling that visibly shifted the CCP's legal development strategy. Starting in the mid-2000s, observers started linking a number of signs – especially a crackdown on activist lawyers – to efforts to shore up Party control over the legal system.<sup>44</sup> On the ideological front, a major socialist rule of law education campaign was launched in April 2006. Almost immediately after the campaign was announced, the phrase 'socialist rule of law' started featuring prominently in *People's Daily*, the state-run newspaper that serves as the weathervane of Party discourse.<sup>45</sup> Although a definitive piece on the historic evolution of 'socialist rule of law' as a concept has yet to appear, Chinese scholarship typically describes it as a synthesis of insights from ancient Chinese philosophy, past CCP leaders, Marxism, Leninism, and Western legal theory. It is also clear that socialist rule of law is meant as an alternative to the Western strain. A 2012 editorial in the *Legal Daily* stresses China's need to forge its own path:

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.<sup>46</sup>

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

43 Take a look, for example, at how legal scholar Björn Ahl characterized the early bar exam:

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, op. cit, n. 9, p. 198.)

44 American law professor Carl Minzner coined the phrase 'turn against law' to describe this shift: see C. Minzner, 'China's Turn Against Law' (2011) 59 *Am. J. of Comparative Law* 935.

45 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 around 2006. For two early examples, see *Shehui Zhuyi Fazhi Linian Jiaoyu Xuexi Wenda* [Q&A on the Socialist Concept of Law] (2006), and *Shehui Zhuyi Fazhi Linian Jiaoyu Ganbu Duben* [Socialist Concept of Rule of Law Cadre Reader] (2006).

46 Quoted in Minzner, op. cit, n. 22, p. 395.

In short order, the socialist rule of law education campaign rippled through the legal bureaucracy as well. Following the lead of the Central Political Legal Committee, the MoJ convened a study group devoted to popularizing speeches by the three leading lights of socialist rule of law theory: Hu Jintao, Luo Gan, and Zhou Yongkang.<sup>47</sup> In 2007, the bar exam started testing socialist rule of law theory. That first year, essay writers were asked to explain ‘the main content of our country’s socialist rule of law ideology as well as the principal essence of socialist rule of law.’<sup>48</sup> In 2008, the MoJ elevated socialist rule of law theory to its own section on the official outline of exam topics, and allocated more points to it.<sup>49</sup> In keeping with the usual practice, MoJ officials recruited academic experts to translate the new topic into testable questions rather than penning test questions themselves. Still, the new ideological material was no secret, and some leading Chinese academics publicly decried the politicization of the test.<sup>50</sup>

Computerized content analysis of all 3,996 questions from the 2002–2014 bar exam confirm a shift after the MoJ allocated more points to ideological material in 2008.<sup>51</sup> One way to see this is by tracking ‘highly political questions’, defined as any question containing: (i) the name of any individual

47 In 2006, when the campaign began, Hu was President, Luo chaired the Political-Legal Committee, and Zhou headed the Ministry of Public Security. C. Hao, ‘*Yong Shehui Zhuyi Fazhi Linian Zhidao Sifa Xingzheng Gongzuo*’ [Using Socialist Rule of Law to Guide the Administration of Justice], speech in Beijing at a meeting on the socialist rule of law education campaign, 24 August 2007, at <<http://tinyurl.com/jby78b4>>. Also see Luo’s landmark speech announcing the campaign: G. Luo, ‘*Shenru Kaizhan Shehui Zhuyi Fazhi Linian Jiaoyu. Qieshi Jiaqiang Zhengfa Duiwu Sixiang Zhengzhi Jianshe*’ [Deeply Carry Out Education on Socialist Rule of Law Concepts. Strengthen the Ideological and Political Construction of the Political-Legal Team] in *Qiushi* [Seeking Truth], 11 April 2006, at <<http://tinyurl.com/qb75vts>>.

48 2007 Bar Exam, question 1, section 4. Copies of all exam questions on file with the author.

49 A. Wu, ‘*Jianchi he Fazhan Guojia Sifa Kaoshi Zhidu, Wei Jiakuai Jianshe Shehui Zhuyi Fazhi Guojia Zuochu Jiji Gongxian*’ [Upholding and Developing the National Judicial Examination System to Provide a Positive Contribution to Speed Up the Building of a Socialist Country Ruled By Law] (2011) 10 *Zhongguo Sifa* [Justice of China] 7. This change is also visible in the National Bar Exam Study Guide (*Guojia Sifa Kaoshi Fudao Yongshu*) – known as the ‘three big books’ (*san da ben*) – issued by the MoJ. These study guides started listing socialist rule of law in the table of contents starting in 2008.

50 S. Li, ‘*Shehui Zhuyi Fazhi Linian Buying Zuowei Guojia Sifa Kaoshi Neirong*’ [Socialist Rule of Law Theory Should Not Be Included on the Bar Exam], 21 September 2009, at <<http://tinyurl.com/otjd5jc>>.

51 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, at <<http://www.law-lib.com/sk>>.

associated with Communism or the CCP;<sup>52</sup> (ii) the word Party (*dang*);<sup>53</sup> (iii) a political slogan from the 2002–2014 period.<sup>54</sup> 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 shows that this is a statistically significant difference ( $p=.003$ ).<sup>55</sup> This five-fold jump in political content indicates a clear turning point around 2008 (see Figure 1), a shift observers trace to a decision made by the Central Political-Legal Committee as an outgrowth of the socialist rule of law education campaign.<sup>56</sup> Although details of intra-Party debates are hard for anyone outside the upper echelons of power to trace, the decision to politicize the bar exam marks the triumph of a group committed to integrating Party ideology with legal study and reflects a broader ideological tightening in Chinese politics.<sup>57</sup>

After President Xi Jinping's ascension to power in 2012, the number and tone of political questions initially remained stable. Figure 2 shows that questions on socialist rule of law remain a recurrent feature of the exam despite the arrest of one of the officials most associated with the concept, Zhou Yongkang, on corruption charges. Xi also devoted one of highest-profile events of his first year, the Fourth Plenum of the 18th Central Com-

52 Names are always laudatory references 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 CCP luminaries.

53 Three questions were thrown out where the word 'Party' referred to a political party in another country rather than the CCP.

54 Although this definition could easily overlook more nuanced questions that feel political to Chinese test-takers, the advantage is a high level of confidence that all questions captured are explicitly political. 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 exams appears is on file with the author and available on request.

55 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 with 101 between 2009 and 2014.

56 Interviews BJ7, BJ9, BJ11.

57 Document 9, circulated inside the CCP in April 2013 and leaked to the media soon thereafter, is a well-known illustration of ideological tightening. The communiqué calls on Party members to strengthen resistance to infiltration by outside ideas and pay close attention to ideological work. The introduction of socialist rule of law theory onto the bar exam predates Document 9, and is an early example of the growing strength of ideological hard-liners. For an English translation of Document 9, see 'Document 9: A ChinaFile Translation' *China File*, 8 November 2013, at <<http://tinyurl.com/ktaz4z9>>.

Figure 1. Highly political questions on the bar exam (2002–2014)

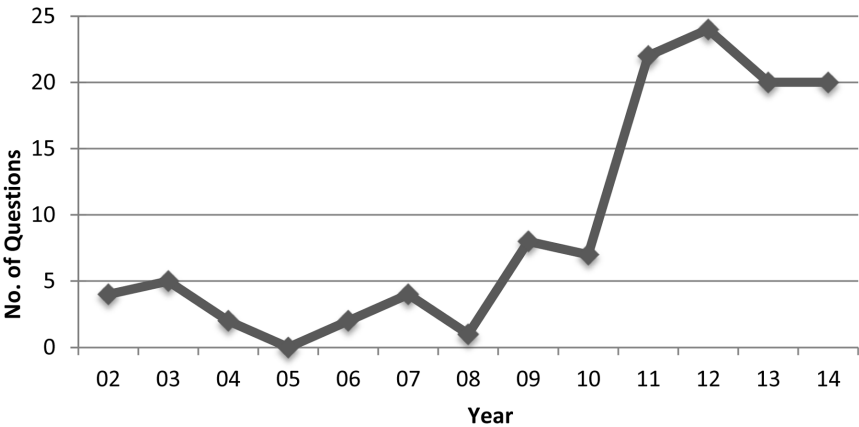
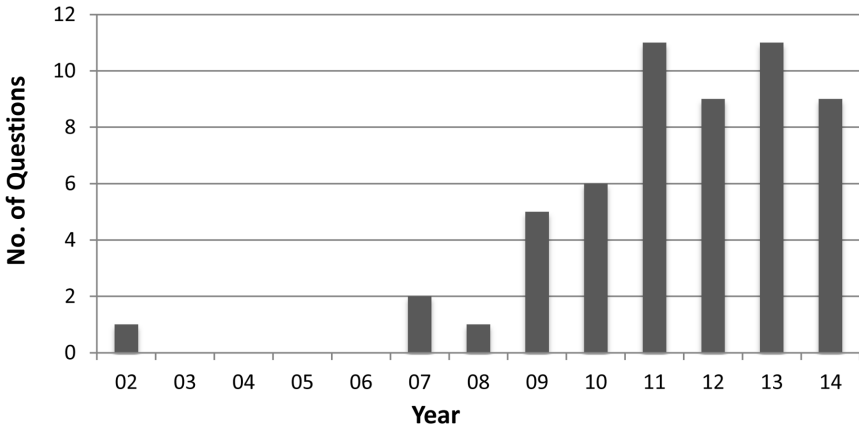


Figure 2. Questions on socialist rule of law (2002–2014)



mittee, to legal reform, and a key conference resolution highlights the ongoing importance of testing Marxism and Chinese socialist rule of law theory on the bar.<sup>58</sup>

Even though new leaders always invent fresh slogans, and 55 per cent of highly political questions from 2012–2014 do *not* use the phrase ‘socialist rule of law,’ new language seems to mark a re-packaging rather a change in direction. The leadership’s commitment to developing an indigenous alter-

58 J. Fan, ‘*Meiyitiao Fazhi Daolu Dixia douyou Yizhong Zhengzhi Lichang*’ [Every Road of Rule-of-Law has a Political Stance] in *Zhongguo Shehui Kexue Bao* [China Social Sciences Today], 15 June 2015, at <<http://goo.gl/ryhfRT>>.



native to Western rule of law remains strong and, as Xi himself reminds listeners, ‘every theory of the rule of law takes a political stance.’<sup>59</sup> In fact, Xi is poised to preside over the most politicized version of the bar exam yet, once the points allocated to political topics expand in accordance with the plans announced at the end of 2015. In Xi’s China, correct political thought will only become an increasingly important part of what it takes to become a legal professional.

## TEST TAKING AND POLITICAL KNOWLEDGE

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.’<sup>60</sup> For example, here is a highly political question from the 2012 exam:<sup>61</sup>

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 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). To outsiders, these questions are both brain numbing and perplexing. How do Chinese test-takers distinguish between nearly identical answers? And why are political questions generally perceived as easy when the choices are so similar?

In an effort to gain insight into these questions, my research assistants and I recruited twenty former test-takers willing to look at ten highly political questions from previous exams, and discuss which answer they would pick and why.<sup>62</sup> Our goal was to spark a conversation by talking about a text, a

59 Quoted in id.

60 P. Link, *An Anatomy of Chinese: Rhythm, Metaphor, Politics* (2013) 245.

61 2012 Bar Exam, section 1, question 6.

62 Scholars interested in education and assessment sometimes use a similar protocol to explore strategies deployed by test-takers. See A. Cohen, ‘Exploring Strategies in Test Taking: Fine-Tuning Verbal Reports from Respondents’ in *Learner-Directed*

technique called object-response interviewing.<sup>63</sup> Our interviewees were neither an average group nor a large one.<sup>64</sup> The goal, however, was not to provide a definitive account of test-taking strategies, but to use an exploratory set of interviews to illuminate the range of ways former test-takers approach political questions.

Above all, 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.<sup>65</sup> In college, there are 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.'<sup>66</sup> 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*).<sup>67</sup> 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?

Occasionally, interviewees apologized for their forgetfulness.<sup>68</sup> For example, a 2009 multiple-choice question asks test-takers whether 'ruling

*Assessment in ESL*, eds. G. Ekbatani and H. Pierson (2000) 127. Of course, this type of interaction only captures choices that (i) test-takers are conscious of making and (ii) willing to discuss. My research assistants and I followed interviewees' lead about whether they would prefer to speak in English or Chinese. In the end, 3 interviews took place in English and 13 in Chinese, with four interviewees flip-flopping between the two languages.

63 On object-response interviewing, see C. Morrill and M. Musheno, *Youth Conflict: Trust and Control in a High-Poverty School* (forthcoming). They note that object-response interviewing can help spark a conversation that 'lead[s] far beyond the artifact at hand' and 'enable[s] people talk about quite abstract and sensitive issues through their relationships with the object.' At the start of each interview, we also collected biographical information, including college attended, year of bar exam, and choices surrounding test preparation. Most conversations took place in the Bay Area with Chinese visiting scholars and LLMS, with a few interviews in China to explore whether the object-response approach yielded vastly different responses outside the United States. It did not, at least in this small sample.

64 Only stellar test-takers tend to find their way to California, where we conducted most interviews, and it was an unusually politically perceptive group. See Appendix A for an anonymized list of interviewees that aims to balance transparency with the need to protect the identities of those who spoke with us.

65 K. Koessel, 'Learning to Be Loyal: Political Education in China,' conference paper presented at the 2014 Midwest Political Science Association Annual Meeting.

66 Interview BA6.

67 The phrase 'common sense' came up in interviews BA5, BA7, and BA14.

68 Interviews BA2 and BJ3.

the country according to law' (*yifa zhiguo*) is idea associated with Deng Xiaoping theory.<sup>69</sup> This is an easy question, as long as test-takers recall from political education classes that 'ruling the country according to law' was the brainchild of former CCP General Secretary Jiang Zemin. 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.<sup>70</sup> 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 political slogans lend unfamiliar answers a suspect cast. One common strategy was scanning the answers for 'any part that feels wrong', as one interviewee put it.<sup>71</sup> 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*). Of course, all exams call for memorization and test-takers around the world gravitate toward familiar answers. Substance matters, however, and political cant differs from substantive knowledge. By asking test-takers to ferret out mistakes in political logic, the bar exam gives legal professionals practice in rejecting heterodoxy and embracing conformity.

Some questions also 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 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.<sup>72</sup> 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.'<sup>73</sup> 'Many legal principles are good', elaborated another, 'but there is a gulf between theory and practice.'<sup>74</sup>

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.<sup>75</sup> Obeying orders is incorrect, one interviewee told us, because 'the people who write the test do not want us to

69 2009 Bar Exam, question 5, section 1.

70 On *tifa*, see Link, op. cit. n. 60, p. 275 and M. Schoenhals, *Doing Things with Words in Chinese Politics: Five Studies* (1992).

71 Interview BA1.

72 2012 Bar Exam, section 1, question 8.

73 Interview BA13.

74 Interview BA4.

75 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, and 3) faithfulness to objective facts.

think we have political intervention in the judicial system.’<sup>76</sup> Another interviewee classified ‘obeying orders’ as an answer that is ‘politically accurate’ without being ‘judicially correct.’<sup>77</sup> The best strategy on the exam, he elaborated, is to recall Party rhetoric about how law should work rather than reflecting on reality.

Finally, a handful of questions combine charged political language with queries about black-letter law. A 2012 question, for example, asks how the labour inspection bureau should draw on the principles of socialist rule of law to respond to preferential hiring based on zodiac sign.<sup>78</sup> The correct answer is that discriminatory hiring should end because of the principle of equal employment found in the Labour Law. What to make of this strange mash-up of socialism and employment discrimination law? One possibility is that an adroit question-writer – likely a Chinese academic – smuggled black-letter law into the quota of questions earmarked for ideology. One interviewee described doing this<sup>79</sup> and, unprompted, other question-writers derided socialist rule of law questions as ‘nauseating’,<sup>80</sup> ‘unscientific’,<sup>81</sup> and ‘meaningless’.<sup>82</sup> Even though this type of question is rare, its existence shows that exam writers enjoy some latitude. Those who bristle at the politicization of the test can occasionally find ways to test law alongside ideology.

#### THE FUNCTION OF POLITICAL QUESTIONS: TO WEED, WARN, PERSUADE OR TRAIN?

The abrupt appearance of political questions on China’s bar exam raises the question of intent. Without being privy to policy discussions, however, it is hard to know what specific goal the architects of the policy change had in mind. Switching from *intent* to *effect*, however, makes it possible to think functionally about the pay-offs of political questions. Assuming that the introduction of ideological content was purposeful, and that the intended audience was test-takers, there are four possible functions of political content: to weed, warn, persuade or train.

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 per cent of each year’s point total is allocated to

<sup>76</sup> Interview BA1.

<sup>77</sup> Interview BA2.

<sup>78</sup> 2012 Bar Exam, section 1, question 3.

<sup>79</sup> Interview BJ7.

<sup>80</sup> Interview BJ4.

<sup>81</sup> Interview BJ7.

<sup>82</sup> Interviews BJ9 and BJ14.

explicitly political questions, and test-takers can accrue enough points to pass without correctly answering them. 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 designed 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 theme of the 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.'<sup>83</sup>

Of course, it is difficult to show that ideological indoctrination plays a role in shaping belief. Despite a long tradition of social science research on how schooling fosters nationalism and moulds ideal citizens, the causal link between education and political attitudes is rarely tested directly. In the China context, the evidence is evolving. A 2013 survey of 2,000 Peking University students shows a shift in political attitudes among those exposed to a new high-school curriculum, including increased trust in government officials and greater scepticism about free markets.<sup>84</sup> Another survey of 1,250 university students, however, highlights a different story. Political scientist Haifeng Huang uncovers no correlation between ideological knowledge and student attitudes toward government performance.<sup>85</sup> Against these research findings is an open question: how (if at all) has the politicization of the bar exam affected test-takers' worldview. At one

83 Quoted in Koesel, *op. cit.*, n. 65, p. 3. As she notes, these ideas are widely expressed in government documents on patriotic and moral education.

84 Revisions to high-school textbooks were introduced in a staggered fashion to different provinces between 2004 and 2010, making it analytically possible to tease apart the effect of the policy change: D. Cantoni et al., 'Curriculum and Ideology,' forthcoming in *J. of Political Economy*.

85 H. Huang, 'Propaganda as Signaling' (2015) 47 *Comparative Politics* 419.

extreme, perhaps politically correct answers can be memorized and jettisoned without changing beliefs.<sup>86</sup> Yet, even if language does not create true believers, it likely still helps demarcate what the cultural critic Stuart Hall once called ‘the horizon of the taken-for-granted.’<sup>87</sup>

This article puts the causal question aside for future research in pursuit of a more modest goal: to illustrate how heavy-handed political questions can re-enforce the unspoken rules of acceptable public discourse. In this way of thinking, the bar exam is a site of political learning where test-takers refine 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 sceptics looking to accrue points.

## PRACTISING 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 centres 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.<sup>88</sup> 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 fen ti*).<sup>89</sup> 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 crammers, 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.’<sup>90</sup> 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’.<sup>91</sup>

For some test-takers, surely, their inner thoughts echo the correct answer. For others, however, the bar exam requires navigating the gap between

86 Some expressed this point of view in interviews. For example, one crammer 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 behaviour’ (see interview BJ9).

87 Quoted in Wedeen, *op. cit.*, n. 5, p. 11. For a thoughtful treatment of how political language matters in contemporary China, see Link, *op. cit.*, n. 60.

88 C.K. Lee and Y. Zhang, ‘The Power of Instability: Unraveling the Microfoundations of Bargained Authoritarianism in China’ (2013) 118 *Am. J. of Sociology* 1475.

89 Interview BA4. The idea of political questions as ‘free points’ also comes up in Li, *op. cit.*, n. 50.

90 Interview BJ12.

91 Interview BA13.



private beliefs and public expression, an act the political scientist Timur Kuran calls ‘preference falsification’.<sup>92</sup> 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.’<sup>93</sup> 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.’<sup>94</sup>

The conventional wisdom treats preference falsification as an instinctive strategy for survival in an authoritarian state. In one of Václav Havel’s classic essays about Communist Czechoslovakia, for example, the greengrocer places a political poster in his shop window ‘as one of the thousands of details that guarantee him a relatively tranquil life.’<sup>95</sup> 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.<sup>96</sup> The CCP’s tenure, however, has seen a shift in the sites where correct behaviour is learned and practiced. In Mao’s China, political study sessions organized through work units were a key place where citizens performed loyalty by endorsing the latest political ideas.<sup>97</sup> As private industry took off and the importance of state-run work units declined through the 1990s and 2000s, workplace study sessions became less widespread. Opportunities to learn proper public expression sprouted elsewhere, including political education classes and the judicial exam.

92 T. Kuran, *Private Truths, Public Lies: The Social Consequences of Preference Falsification* (1995). On page 3, Kuran defines preference falsification as ‘the act of misrepresenting one’s genuine wants under perceived social pressures.’ Here, I focus on the difference between inner belief and public expression, a subset of Kuran’s more expansive definition.

93 Interview BA7.

94 Interview BA2.

95 Havel, op. cit., n. 6, p. 41.

96 K. Lieberthal, *Governing China: From Revolution through Reform* (2004) 8.

97 Link, op. cit., n. 60, pp. 324–5. Sociologist Andrew Walder notes that the political atmosphere varied with the type of meeting, the tenor of national politics, and the organizational setting. Although workers might ‘knit, whisper among themselves, and even doze off’ during a routine meeting, ‘tension, nervousness, and sweaty palms’ and participation were the order of the day during major political campaigns. See A. Walder, *Communist Neo-Traditionalism: Work and Authority in Chinese Industry* (1986) 159.

Using the bar exam, in particular, as an opportunity to stress public ideological conformity is a strategy that predates 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.<sup>98</sup> 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 Yat-sen's memorial.<sup>99</sup> Much as socialist rule of law would later serve as an overarching CCP doctrine, Sun Yat-sen's Three People's Principles were re-purposed as the guiding ideology for the judicial profession in the 1930s and 40s.<sup>100</sup> 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.'<sup>101</sup> 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.

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.<sup>102</sup> 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 in an exam. With so much riding on the outcome, too, preference falsification becomes a quickly

98 G. Tiffert, 'An Irresistible Inheritance: Republican Judicial Modernization and Its Legacies to the People's Republic of China' (2013) *Cross-Currents* 84, at <<http://cross-currents.berkeley.edu/e-journal/issue-7>>.

99 L. Yu, 'Guomindang Zhengfu Dui Sifaguan de Xuanba he Peixun' [The Guomindang Government's Selection and Training of Judicial Personnel] in *Wenshi Ziliao Cun Gao Xuanbian* [Selection of Historical Manuscripts] (2002) 466.

100 For an overview of the three principles (nationalism, the rights of the people, and the livelihood of the people), see O. Schell and J. Delury, *Wealth and Power: China's Long March to the Twenty-First Century* (2013) 127–35.

101 Quoted in Tiffert, op. cit., n. 98, p. 103.

102 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 in 2013 and 1,720,000 sat for the 2014 graduate school exam: see BBC, 'Zhongguo Jinnian Quanguo Gaokao Renshu Jiangzhi 912 Wan Ren' [Number of Test-Takers for China's National College Entrance Exam Falls to 9,120,000], 5 June 2013, at <<http://tinyurl.com/ndvvutp>> and Xinhua News Agency, 'Quanguo 172 Wan Kaosheng Canjia Yanjiusheng Kaoshi' [1,720,000 Test-Takers Attend Graduate School Entrance Exam Nationwide], 5 January 2014, at <<http://tinyurl.com/n4yyftd>>.

developed 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.’<sup>103</sup>

If preference falsification is a skill, then how is correct behaviour 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.’<sup>104</sup> 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 memorize boilerplate language rather than offering opinions. A lecturer from a top-three crammer offered this advice in a 2014 lecture posted online:<sup>105</sup>

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]<sup>106</sup> 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.

103 H. Han, *This Generation: Dispatches from China’s Most Popular Literary Star (and Race Car Driver)* (2012) 26.

104 *id.*, p. 24.

105 Although this lecture is available online, no citation is provided in order to protect the identity of the lecturer.

106 Peking University has a history of campus political activism.

By laying bare the political script, the lecture gives the feeling of listening in on the ‘the hidden transcript’ of a conversation sheltered from observation by those in power.<sup>107</sup> Perhaps the teacher did not know his lecture would be posted online, or perhaps bluntness was a way to prep listeners while also entertaining them. But as hidden transcripts go, preference falsification hardly seems deeply concealed. In 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.’<sup>108</sup> 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-twentieth-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.<sup>109</sup> The crammer 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.<sup>110</sup> 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.

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.

107 The term ‘hidden transcript’ is borrowed from J. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (1990).

108 Quoted in Kuran, *op. cit.*, n. 92, p. 39.

109 For more on the role ‘safe enough’ spaces play in recruitment to Protestant house churches, see K. O’Brien and C. Vala, ‘Recruitment to Protestant House Churches’ in *Popular Protest in China*, ed. K. O’Brien (2008) 108.

110 Interviews BA12 and SH1.

Several years ago, legal scholars William Alford and Kenneth Winston asked if the Chinese authorities might craft new notions of authoritarian professionalism.<sup>111</sup> A close look at the politicization of the bar exam suggests the answer is yes. In the democratic West, the professions are still defined by the criteria laid out by political scientist Harold Wilensky in 1964: technical expertise and belief in a service ideal.<sup>112</sup> The first part of this definition – technical expertise – is compatible with CCP leadership. Recall that the justification for unifying the bar exam in the early 2000s was the need for a class of legal professionals as knowledgeable and skilled as their counterparts anywhere in the world. The difference is that Wilensky’s vision places the client-professional dyad at the core of professional identity, and celebrates the norms that urge professionals to elevate client interests above their own. In contrast, the Chinese state-sponsored vision aims to replace the dyad with a triad that binds client, professional, and state. The authoritarian conception of service, to put it another way, asks professionals to balance client and state interests.

Although this article focuses on a single case, China, the triadic ideal is likely to surface anywhere authoritarian leaders tackle the project of professionalization. What diverges across the authoritarian world is the state’s will and capacity to police both private thoughts and public actions. One motif of judicial politics in twenty-first-century China is a recurrent emphasis on cultivating loyalists, but accepting dissemblers. Much like political questions on the bar exam, recent efforts to reintroduce lawyer loyalty oaths and set up Party cells inside law firms are part of a broader effort to train competent legal professionals who are also politically reliable.<sup>113</sup> As others have pointed out,<sup>114</sup> these kinds of political rituals help sustain political power in the absence of emotional commitment. 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.’<sup>115</sup> Political stability can be the outcome of 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*). So far, China’s

111 Alford and Winston, op. cit., n. 40, pp. 19–20.

112 H.L. Wilensky, ‘The Professionalization of Everyone?’ (1964) 70 *Am. J. of Sociology* 137.

113 For more on the MoJ’s 2012 efforts to introduce a loyalty oath, see E. Lynch, ‘China’s Rule of Law Mirage: The Regression of the Legal Profession since the Adoption of the 2007 Lawyers Law’ (2010) 42 *George Washington International Law Rev.* 535, at 535. In 2008, Justice Minister Wu Aiying also called for the creation of more Party cells inside law firms.

114 Wedeen, op. cit., n. 5. See, also, Y. Navaro-Yashin, *Faces of the State: Secularism and Public Life in Turkey* (2002).

115 Wedeen, id., p. 76.

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.<sup>116</sup>

Ideological revival has been a theme of President Xi Jinping's first years in power, visible in repeated calls for universities and the bureaucracy to take ideology seriously, as well as the choice to add political content to future bar exams. Faced with the challenge of 'how to maintain ideological discipline ... in a globalized world awash with money, international travel, electronically transmitted information, and heretical ideas', as the journalist Orville Schell put it, the leadership is returning to recitation.<sup>117</sup> In Xi's worldview, however, ideology and law are entirely compatible. Even as the bar exam becomes more political, parallel changes to the civil service exam are slated to add questions on law.<sup>118</sup> Under Xi, rule of law is a political project that requires an ideological underpinning shared by legal professionals inside and outside the state. After all, legal insiders such as judges and prosecutors share a qualifying exam with the private bar.

However, the Chinese strain of authoritarian professionalism also leaves room for bounded autonomy. Test-takers can choose not to study political content, for example, and still pass the bar exam. Or exam writers who originally recoiled from the clumsy introduction of ideology find ways to smuggle legal content into at least a few political questions. A legal system that emphasizes correct public behaviour over proper private thought, in short, is one that also leaves room for reformers who disguise their preferences, follow expectations, and work inside the system to change it.<sup>119</sup> Stressing orthopraxy over orthodoxy means opening the door for some to pursue the slow work of incremental institutional change from within. Contrary to assumptions about authoritarian aspirations of absolute control, the Chinese legal profession enjoys a degree of tethered independence from the state.

What are the long-term effects of allowing bounded autonomy rather than insisting on absolute loyalty? A lot depends on the proportion of cynical test-takers who only grudgingly offer the correct answer, a number difficult for either researchers or the Chinese state to gauge. Policing public behaviour may work as a social-control strategy, but it also creates an information

116 R. Stern and J. Hassid, 'Amplifying Silence: Uncertainty and Control Parables in Contemporary China' (2012) 45 *Comparative Political Studies* 1230.

117 O. Schell, 'Crackdown in China: Worse and Worse' *New York Rev. of Books*, 21 April 2016, at <<http://tinyurl.com/jb3wj72>>.

118 Xinhua News Agency, 'China Promotes Understanding of Law Among Civil Servants', 7 April 2016, at <<http://tinyurl.com/j4jrvq5>>.

119 For more on change agents and possibilities for gradual institutional change, see J. Mahoney and K. Thelen (eds.), *Explaining Institutional Change: Ambiguity, Agency, and Power* (2010). My discussion of reformers maps onto their concept of subversives.



problem for the Chinese leadership: it is hard to know what legal professionals really think. 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.

Thinking about authoritarian professionalism as a critical feature of authoritarian legality also has implications for future research. First, 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 behaviour. Like other types of symbolic politics, the bar exam naturalizes and reinforces the ubiquity of state control over everyday life. Power is often at its most effective when it is least observable, 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 is at work.

## Appendix A. Interview list

Location	Code	Description	Date of interview
<i>Beijing, China (unless otherwise noted)</i>	BJ1	Leadership of a top judicial exam preparation programme	10/2014
	BJ2	Former participant in the exam drafting process	10/2014
	BJ3	Two former test-takers, took bar exam in 2011 and 2013	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), took bar exam in 2009	11/2014
	BJ14	Former test-taker (Nanjing), took bar exam in 2013	11/2014
	BJ15	Former participant in the exam drafting process	11/2014
	BJ16	Former participant in the exam drafting process	11/2014
<i>California</i>	BA1	JSD student, took 2010 bar exam	10/2014
	BA2	LLM student, took 2011 bar exam	10/2014
	BA3	Visiting scholar, took 2006 bar exam	10/2014
	BA4	LLM student, took 2008 bar exam	10/2014
	BA5	Visiting scholar, took 2010 bar exam	10/2014
	BA6	LLM student, took 2013 bar exam	10/2014
	BA7	Visiting scholar, took 2002 bar exam	10/2014
	BA8	Visiting scholar, took 2010 bar exam	10/2014
	BA9	Visiting scholar, took 1999 bar exam	10/2014
	BA10	Visiting scholar, took 2009 bar exam	11/2014
	BA11	LLM student, took 2013 bar exam	11/2014
	BA12	Visiting scholar, took 2010 bar exam	11/2014
	BA13	LLM student, took 2013 bar exam	11/2014
	BA14	Visiting scholar, took 2010 bar exam	11/2014
	BA15	LLM student, took 2013 bar exam	1/2015
	BA16	LLM student, took 2012 bar exam	1/2015