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## WHAT THE (EXPLETIVE) IS A “CONSTITUTION”?! ORDINARY CADRES CONFRONT THE 1954 PRC DRAFT CONSTITUTION\*

### Abstract

Following the history of western constitutional history, studies of Chinese constitutionalism have tended to focus on its intellectual origins, or, more commonly these days, its failure to restrain official behavior. Drawing upon new archival materials, this article takes a different tack. I zero in on a critical period of constitutional gestation, when officials read the 1954 constitution in draft form, posed questions about its text and suggested revisions. How did officials react when told that citizens, many of whom were recently persecuted, now enjoy “freedom of assembly”? These materials allow us to see “the state” in real time: How did officials understand core legal concepts such as “right,” “constitution” and “citizen” as well as their role in the new polity? In many respects, the discussion surrounding the draft constitution turned out to be a venue for officials to talk about the meaning of the revolution they had just experienced.

### Keywords

1954 Constitution, cadres, Communist revolution, legitimacy, anthropology of the state, PRC history

Capitalists [in Taiyuan, Shanxi] are mainly dissatisfied with the Constitution. They think that the promulgation of the Constitution is a noose around their necks that’s getting tighter. They say, “With the Constitution I’ve become a counterrevolutionary,” and “Be careful what you say, and especially what you do... make a mistake and you’ll be punished.”<sup>1</sup>

Having stipulated that a revolution is not a “dinner party,” Mao Zedong would certainly have concurred that losing one is definitely no picnic. Between 1949 and 1954, the Chinese Communist Party (CCP) unleashed a reign of terror upon rural landowners,

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<sup>1</sup>“Taiyuan, Wuhan deng diqu gejie renmin dui xianfa cao’an de fanyin” 太原、武汉等地区各界人民对宪法草案的反应, *Neibu cankao*, July 7, 1954, 107.

wealthy urbanites, intellectuals, religious organizations, and former Nationalist Party activists and military personnel. When the party, gamely following the Soviet example circa 1936, launched a “national discussion” of a new constitution during the spring and summer of 1954 that displayed these acrid fruits of the revolution, many of these newly disenfranchised groups, unsurprisingly, feared another political blow to their already fragile status.<sup>2</sup> But what did the 1954 constitution look like from the other side of victory, among the hundreds of thousands of officials serving in the state and party bureaucracy who also gathered in meetings and read its preamble and articles? A bit more abstractly, how did the powerful think about their power—its capacities as well as boundaries—within the context of the new constitution?

To scholars of Chinese legal history, and even to many ordinary citizens, questions about constitutionally-grounded power and limitations might seem pointless.<sup>3</sup> Over the decades—if not a century—we have grown accustomed to the inadequacies of Chinese constitutions (spanning the late Qing, Republican, and Communist governments) in organizing political power and in protecting rights such as freedom of speech and assembly. Nor have constitutions done much to soften the sharp edges of the state’s coercive power.

Accurate as this broad-brushed depiction is, such a perspective errs by seeing the past through the eyes of the present.<sup>4</sup> As disappointed as *we* might be, the knowledge of constitutional flaccidity was obviously unavailable to CCP officials in the spring and summer of 1954. At that particular historical juncture, it was not unreasonable for them to expect that the party was as serious about the constitution as it was about its other revolutionary and state-building commitments.<sup>5</sup> Like other political campaigns during the Mao era, the constitution debuted as a document with a bite and worrisome implications: it drew its socialist bona fides from the USSR, China’s “elder brother”<sup>6</sup>; it was authored by the highest authorities in the land; its status as “law” (法 *fa*) rather

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<sup>2</sup>On terrified reactions among elites see Neil J. Diamant and Xiaocai Feng, “Textual Anxiety,” forthcoming in *Cold War Studies*.

<sup>3</sup>I have repeatedly encountered much skepticism in China about any research about their “useless” constitution.

<sup>4</sup>This fallacy has inspired many labels: “presentism,” Whig History, and the “mythology of prolepsis.” Quentin Skinner defines the latter as occurring “when the historian is more interested—as he may legitimately be—in the retrospective significance of a given historical work or action than in its meaning for the agent himself.” See “Meaning and Understanding in the History of Ideas,” *History and Theory* 8.1 (1969), 22.

<sup>5</sup>State building includes bolstering domestic and international legitimacy. As noted by Jan Behrends, Bolshevik-style constitutions were less concerned with the establishment and functioning of institutions (often concealing where real power lay by not mentioning the Party) than “attempt[ing] to reach out to the population and to international opinion in order to create a strong sense of statehood and legitimate use of power.” See “The Stalinist Volonté Générale: Legitimizing Communist Statehood (1935–1952): A Comparative Perspective on the USSR, Poland, Czechoslovakia, and Germany,” *East Central Europe* 40 (2013), 44. In the PRC, the constitution can be interpreted as a “mass line” or information gathering policy initiative given the numbers of people involved in the discussion.

<sup>6</sup>Even though there was significant textual similarity between the Chinese and Soviet constitutions and the CCP copied the idea of holding a constitutional discussion from them, the notion that modern political power (which China did not enjoy) required a constitution was far older, stretching back to the late Qing and developing further under the Guomindang. Mao, without whose support there would not be a constitution, was surely influenced by Liang Qichao 梁啟超 (1873–1929), who argued that “a constitution that provided for popular participation in government would actually strengthen the state.” On Liang see Andrew Nathan,

than “regulation” or “policy” signaled serious political commitment and potential sanctions for offenders; it mandated “obligations,” judicial procedures, and citizen rights that potentially threatened to curtail the authority of police and officials. For instance, the constitution mandated military service (Art. 103), required the Public Security Bureau to seek the approval of the Procurator before making an arrest (Art. 89) and provided freedom of speech and assembly (Art. 87). The “National Discussion of the Draft Constitution” (*quanguo xianfa cao'an taolun* 全国宪法草案讨论) encouraged officials (and citizens) to comment on these articles, questions of *future* effectiveness notwithstanding. As officials from beat cops to mid-level bureaucrats to city-level officials digested the constitution, what questions swirled around their minds? Even without delving into the constitution any deeper we can conjure up alarming scenarios: Would the government conscript them to fight American imperialists? Would they face demands for compensation by religious groups whose property they had recently confiscated? How could they prosecute the revolution if citizens could gather in protest?

Even though the fields of Chinese legal history and constitutional law have grown by leaps and bounds after the reform period, scholars have yet to explore how ordinary officials (as well as citizens) understood the constitution and their role in it.<sup>7</sup> As a result, the treasure trove of material about what happened in those meeting spaces during the national discussion have yet to find a scholarly outlet—with the exception of uncritical repetitions of the official line that the discussion was a tremendous success.<sup>8</sup> Instead,

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*Chinese Democracy* (Berkeley: University of California Press, 1986), 54. In addition to Soviet influence, key elements of the PRC constitution are also in the Guomindang's.

<sup>7</sup>There is, in contrast, excellent literature about judicial and political elites. For example, see Han Dayuan 韩大元, *Waiguo xianfa dui 1954nian xianfa zhiding guocheng de yingxiang* 外国宪法对1954年宪法制定过程的影响, *Bijiao fa yanjiu* 比较法研究 4 (2014), 51–64; Glenn Tiffert, “Epistrophe: Chinese Constitutionalism and the 1950s,” in *Building Constitutionalism in China*, edited by Stéphanie Balme and Michael W. Dowdle (New York: Palgrave Macmillan, 2009), 59–76.

<sup>8</sup>These materials owe their existence to the CCP's decision to emulate the former Soviet Union and conduct a national “discussion” within workplaces and then to dispatch intelligence agents/reporters into these meetings. Fortunately, the government also transcribed and preserved them in county, district, city and provincial archives (I have relied primarily upon the Guangdong Provincial Archive, the Shanghai Municipal Archive, and several district archives in the Shanghai area [Songjiang, Baoshan, Huangpu, Yangpu]). What makes these materials particularly fascinating is that the Communist Party encouraged “discussion” as well as “questions and suggestions for revision.” The constitution, after all, was presented as a “draft” open to public input, and the national discussion was propagandized as evidence that socialist constitutions, unlike their capitalist counterparts, authentically manifest the “will of the people.” On the Soviet case see Sheila Fitzpatrick, *Everyday Stalinism: Ordinary Life in Extraordinary Times: Soviet Russia in the 1930s* (Oxford: Oxford University Press, 2000), and Lewis Siegelbaum and Andrei Sokolov, *Stalinism as a Way of Life* (New Haven: Yale University Press, 2000). Soviet internal security organs such as the NKVD monitored the discussion of the 1936 discussion of the “Stalin Constitution” and reported upwards. These materials, Fitzpatrick notes, “generated a mass of useful information on public opinion on a wide range of topics, including some that were rarely addressed in other forums” (178). Such discussions have also taken place in Vietnam, Cuba, and Poland. In China, intelligence reports were published in *Neibu cankao* from roughly April to September 1954. For a rosy depiction of the constitutional discussion see Kam C. Wong, “Human Rights and Limitations of State Power: The Discovery of Constitutionalism in the PRC,” *Asia-Pacific Journal of Human Rights and Law* 1 (2006), 6nn20,21. Citing only Mao, he writes that the constitutional discussions produced “overwhelming popular support” that “reflected common experience and registered collective concerns.” This, of course, was the official line. According to Jennifer Althenger, reporters, report-givers, and officials were warned “not to report publically on any controversies or disputes.” See “Through the Legal Looking Glass: Propaganda Work and the PRC's

legal scholars have tended to focus on the legislative and intellectual history of constitutions,<sup>9</sup> and how the constitution has been deployed by ordinary citizens in the context of “rightful resistance” or online-based activism by intellectual, legal, and journalistic elites aimed at curtailing the arbitrary exercise of CCP power.<sup>10</sup>

In this article I depart from these approaches in several ways. First, I focus on the overlooked “talkative” or “question and comment” (Q&C) stage of constitutional gestation to pry open a different kind of intellectual space, one inspired less by legal history than by the classic tradition of Durkheimian sociological studies. In this analytical perspective, I adopt constitutional origins as a research methodology, a way to peer into a society to get a rough fix on values, normative ideas, and general orientation towards the world, but only insofar as they relate to the topics raised by the document. In this respect, PRC constitutions, like their socialist brethren, are a particularly fruitful line of inquiry because they traverse far more political geography than their western counterparts (including ideology, economy, rights, obligations, the structure of the state, and national symbols) and are widely circulated in the population via pamphlets, newspapers, books and many other forms of educational materials.<sup>11</sup>

Second, I consider the analysis of constitutional Q&C particularly important owing to the revolutionary political dynamics at play in 1954. Despite four years of political terror aimed at the party’s opponents real and imagined, the 1949 “Common Program” (*gong-tong gangling* 共同纲领) was still in force. According to this document, the CCP was in the historical phase of “New Democracy,” which allowed the “national bourgeoisie” to contribute to the construction of socialism. In stark contrast, Article 1 of the 1954 constitution avoided all pretense of cross-class inclusion. The PRC, it stated, is “led by the working class and based on the alliance of workers with peasants”; that the rich peasant economy would be restricted and gradually eliminated (*xiaomie* 消灭; Art. 9); and that the state would “utilize, restrict and transform” (*liyong, xianzhi, gaizao* 利用, 限制, 改造) capitalist industry (Art. 10). Businessmen, teachers, shopkeepers, wealthier farmers and others immediately noticed this shift and spoke in terrified tones—as

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1954 Draft Constitution,” paper presented at the Association for Asian Studies Annual Conference, Toronto, Canada, March 2017 (monograph forthcoming from Harvard University Press).

<sup>9</sup>The study of constitutional history has a long pedigree in Chinese law. For a recent effort to place constitutionalism in the context of the political transition between the Qing and Republican era, see Peter Zarrow, *After Empire: The Conceptual Transformation of the Chinese State, 1885–1924* (Stanford: Stanford University Press, 2012); Chang Peng-yuan, “Constitutionalism in the late Qing: Conception and Practice,” *Zhongyang yanjiu yuan jindaishi yanjiusuo jikan* 中央研究院近代史研究所集刊 18 (1989), 95–113. The best work to date about the 1954 constitution is Han Dayuan, *1954 nian xianfa yu xin Zhongguo xianzheng* 1954 年宪法与新中国宪政 (Changsha: Hunan renmin chubanshe, 2004).

<sup>10</sup>Keith Hand, “Constitutionalizing Wukan: The Value of the Constitution Outside the Courtroom,” *China Brief* 12.3 (February 2012); Rogier Creemers, “China’s Constitution Debate: Context, Content and Implications,” *The China Journal* 74 (July 2015), 91–109.

<sup>11</sup>In June 1954, Xinhua News Agency reported that “two million copies in pamphlet form are on sale in bookstores throughout North China” and the pamphlet was being reprinted to meet large demand. See “Large Quantities of Draft Constitution Text Printed” (June 29, 1954), in *Selections of Mainland Chinese Press*, # 840, 26. In Foshan, Guangdong, the county propaganda department distributed 10,280 copies of the constitution. This could mean that as many as 1 in 30 people might have received a copy there. See Guangdong Provincial Archives 235-1-339, 15. It cost one *mao*. By the end of the discussion period, *People’s Daily* (Oct. 26, 1954) reported that 12,500,000 copies had been printed (3).

suggested by the epigram at the beginning of this paper—that it was only a matter of time before they would be strangled by the Communist Party. But what did cadres—the prosecutors as it were—say about the groups impacted by the CCP’s change of course in the constitution? Whereas the study of terrified citizens has long been the bailiwick of social historians, here we have an opportunity to flip sides towards what political scientist Joel Migdal has called an “anthropology of state,” particularly at its lower (“trenches”) and mid-levels (“field” office).<sup>12</sup> These “state voices,” unpopular as they might be in some academic disciplines, are just as important to scholarship as those of the marginalized and dispossessed, particularly for a period in PRC history when the voices of *all* “ordinary people” are often obscured by attention to elite policymakers, ideological changes, and dramatic campaigns such as collectivization and land reform.<sup>13</sup> The constitutional discussion provided a space to all of these people to vent, prod, resist, and advocate.

So what do we learn about “the state of the state” circa 1954, as seen from the perspective of those officials who talked and asked questions about their constitution? Here I advance the argument that Leninist state and its apparatchiks did not speak with one voice about anything, even those articles where one could reasonably expect widespread support or opposition. Instead, what we hear from the state *about itself* is contentious, and often quite irreverent, cacophony. As we will see below, ordinary officials blurted out their utter confusion about what the (or, more accurately, “a”) constitution was, and expressed profound irritation about many of its articles and the state’s unreasonable demands that they pay it any attention at all. They asked pointed questions about the definitions of core concepts such as “people” and “citizen,” and worried aloud about being treated like ordinary citizens who could be mobilized for war, held accountable, or face a constitutionally-protected comeback by groups that they had recently cut down. The talk surrounding the constitution, I suggest, was like a time capsule, reflecting both its antecedent years in people’s willingness to engage in mockery and satire,<sup>14</sup> as well as its birth year in the way it raised to the surface political, ideological, and social uncertainties within the state apparatus.

#### WHAT THE [EXPLETIVE] IS A “CONSTITUTION”!?

Any anthropology of the state in the early 1950s, and perhaps throughout the Mao era, must begin with the revolution itself, which brought to power individuals who were

<sup>12</sup>Joel S. Migdal, “Introduction,” in *State Power and Social Forces: Domination and Transformation in the Third World*, edited by Migdal, Atul Kohli and Vivienne Shue (Cambridge: Cambridge University Press, 1994).

<sup>13</sup>Equally problematic, we often learn about the state from citizens’ encounters with its officials. This perspective is important, but still partial. On this methodological issue see Suzanne Scoggins and Kevin J. O’Brien, “China’s Unhappy Police,” *Asian Survey* 56.2 (March/April 2016), 230. Historians have done a better job than political scientists capturing the voices of low-level officials, especially the police. See, for example, Kristin Stapleton, *Civilizing Chengdu: Chinese Urban Reform, 1895–1937* (Cambridge, Mass.: Harvard University Asia Center, 2000), 86–95; David Strand, *Rickshaw Beijing: City People and Politics in the 1920s* (Berkeley: University of California Press, 1989), 79–89.

<sup>14</sup>Christopher Rea has noted that mockery and satire were common sources of laughter in the Republican period, and that Mao is on record, in his original and revised editions of his Yanan Talks on Art and Literature, approving satire as “always needed” (even though satirists could rarely find safe targets). See *The Age of Irreverence: A New History of Laughter in China* (Berkeley: University of California Press, 2015), 160–62.

unlikely to have experienced upward mobility in politics either during the Republican era or during China's dynastic history. Many officials—particularly at the lowest levels of administration—were young (generally around twenty-four to twenty-six years old), illiterate, or with a primary to middle school education, and gained their positions because of their social background and revolutionary activism.<sup>15</sup> Knowledge of law in its more formal, document-based, form (such as a constitution) was uncommon. So too was knowledge of ideological concepts: “historical materialism,” “dialectics,” “dictatorship of the proletariat” and the like were not yet part of most officials' working vocabulary. Equally problematic from a legal knowledge perspective, the constitution as a text was long—coming in at a whopping 106 articles (compared to the 1950 Marriage Law at a mere twenty-seven), boring, abstract, and difficult to memorize. It was also stress-inducing. Officials who were accustomed to Leninist top-down hierarchy were expected to suggest revisions to a document originating from the party center, as well as to convey the constitution's “spirit” and selected articles to audiences of ordinary people and other cadres. Getting up to give a speech about revolution was one thing, but a constitution?

*Neibu cankao* and archival materials describe the legal equivalent of a cloud of befuddlement descending upon officials as they encountered the constitution; we should imagine eyes glazing over and feet nervously tapping as it was read out, and serious stage fright.<sup>16</sup> Newly minted “constitutional educators” (*baogao yuan* 报告员), lane and alley cadres, mid-level officials in state institutions (*zhongji jiguan ganbu* 中级机关干部), and many in between these ranks asked perhaps the most obvious question: What's a *xianfa*? Because Chinese is tone-based and *xian* 宪/憲 and *fa* (法) could be any number of things,<sup>17</sup> this question was even more difficult to answer irrespective of the lack of prior knowledge.

<sup>15</sup>See, for example, the case of local mediators in Neil J. Diamant, “Conflict and Conflict Resolution in China: Beyond Mediation Centered Approaches,” *Journal of Conflict Resolution*, 44.4 (2000), 529–33.

<sup>16</sup>Most of the archival materials are from the files collected by the local (provincial, county, and district) branches of the national “Discuss the Draft Constitution Committee.” They include summary reports, handwritten minutes of meetings, investigations, propaganda materials, budgets, plans, and documentation of “responses” by a wide swathe of the population, including officials. *Neibu cankao*, in contrast, is an official, Soviet-style (see note 8 above), national-level publication based on reporting by journalists and security agents that circulated among high-level officials. Its articles tend to focus on the topics the journalists and editors thought would be of greater interest to top leaders, such as potential subversion by “class enemies,” social disturbances such as protests and riots, public opinion, and problems in administration that result in instability or other social problems (starvation, suicide, etc.). While archival materials tend to be privileged as a primary source these days, I would argue that *Neibu cankao* and archives should be used in tandem, if only because the former provides national-level data that is usually unavailable at local archives, and is easier to read for those pressed for time. With new restrictions on archival research in mainland China, *Neibu cankao* is refreshingly available at the Chinese University of Hong Kong (but nowhere else). For another article that relies heavily on *Neibu cankao* (with more detail about its reporting and distribution) see Hua-yu Li, “Reactions of Chinese Citizens to the Death of Stalin: Internal Communist Party Reports,” *Journal of Cold War Studies* 11.2 (Spring 2009), 70–88.

<sup>17</sup>Sources reveal many different “takes” on *xian* (Modern Law 现法, County Law 县法, Before Law 先法, Restrictive Law 限法, Law to Prevent a French Invasion 限法 [“Fa” here refers to France, which was in the news because of the Geneva Convention], Law of the Immortals 仙法) and variants in Shanghai dialect (death law 死法, magic trick law or theater law 戏法, referring to lack of trust in CCP legislation or the notion that the party's quest for societal control even extended to legislation about theaters).

Take for example a report about *baogao yuan* in Chongqing circa July 1954 who were accused by the higher-ups of “mis-explaining” its contents (*luan jieshi* 乱解释) to various audiences. Although we cannot ascertain how widespread this was, it appears that word *xianfa* itself was challenging. In District 5, it was understood as a “rigid constitution” (*gangxing xianfa* 刚性宪法), “soft constitution” (*ruanxing xianfa* 柔性宪法) “written constitution” (*chengwen xianfa* 成文宪法), and “unwritten constitution” (*bu chengwen xianfa* 不成文宪法), conceptions that have lasted until this very day. As for their audience, “the more they heard, the more confused they became.” Even worse from the perspective of state authority, “not a few” people who heard the constitutional performance “used the material in jokes after the meeting.”<sup>18</sup> In Shenyang, however, the opposite happened—nervous *baogao yuan* feared deviating from the text and so read each article, one-by-one, until the end. In this case, their audience was fellow officials, who apparently did not mind: “Our education level is pretty low so we can’t see any problem [with the constitution]. OK—move on!” they yelled. This was not atypical: the report noted that “some units have done it this way eight times, so cadres haven’t learned much at all.” Bored by the constitution, some nodded off, while others read *The Dream of the Red Chamber*, played poker or chess, and chatted among themselves.<sup>19</sup>

Lane and alley cadres (*lilong ganbu* 里弄干部) were deeper in the sinews of what the political scientist Benjamin Read has called the state’s urban “nerve tips.”<sup>20</sup> In contrast to the contemporary PRC, which has raised the education level required to serve in such posts,<sup>21</sup> 1950s-era cadres were poorly educated. In meetings they peppered *baogao yuan* with questions about core concepts in the constitution. In Shanghai’s elite Jing’an 静安 district, they asked: “What’s ‘system of public ownership’ (*gongyou zhi* 公有制)?”; “What’s a ‘citizen’?”; “What are ‘people’?”; “What are ‘productive forces’?”; “What are ‘social forces’?”; “Does the Preamble have the force of law?”; “What does ‘rely on state institutions’ (*yikao zhengzhi jiguan* 依靠政治机关) mean?” “There are many things they do not understand,”<sup>22</sup> the report writers noted in summation.

Not an insubstantial number of these cadres were women recently promoted from among the ranks of workers and their families (*gongren jiashu* 工人家属). Unpaid, exhausted by taking care of children and husbands while trying to meet work deadlines,<sup>23</sup> they were not in a great intellectual space to memorize articles in the constitution, let alone to speak about it accurately and in public. In Shanghai’s industrial Huangpu 黄浦 district, a Woman’s Federation official frightened her audience by saying that

<sup>18</sup>“Chongqing shi you yixie xianfa cao’an de baogao yuan cuowu de jieshi xianfa cao’an de neirong” 重庆市有一些宪法草案的报告员错误地解释宪法草案的内容, *Neibu cankao*, July 3, 1954, 43–4.

<sup>19</sup>“Panyang shi ge jiguan gongchang dui taolun xianfa cao’an zhong de pianxiang he ge jieji renmin de sixiang dongtai” 沈阳市各机关工厂讨论宪法草案中的偏向和各阶级人民的思想动态, *Neibu cankao*, July 10, 1954, 161–62. Panyang (Shenyang) established 117 committees and discussion groups for the draft constitution and dispersed over 1,000 *baogao yuan*.

<sup>20</sup>See “Revitalizing the State’s Urban ‘Nerve Tips,’” *The China Quarterly* 163 (September 2000), 806–20.

<sup>21</sup>Today it is difficult to get these positions without a high school or university education.

<sup>22</sup>Shanghai Municipal Archive A79-2-381, 1, 133. Mid-level officials in the city did not know what “society” meant. See Shanghai Municipal Archive B2-2-61, n.p.

<sup>23</sup>On the exhaustion of Women’s Federation officials in rural China see Gail Hershatter, *The Gender of Memory: Rural Women and China’s Collective Past* (Berkeley: University of California Press, 2011).

they “can be sued for not abiding by the constitution.”<sup>24</sup> In Zhabei 闸北, they complained that the words and ideas in the constitution were “too deep” and that they just “did not understand it” (*ting budong* 听不懂). Female cadres who were working higher up at the district (*qu* 区) level in hoity-toity Xincheng 新城 district reportedly “did not understand” the constitution either, even after hearing a report. One lamented, “I understood it when I heard it, but forgot half on the way home. When I arrived only a couple of sentences were left in my memory.”<sup>25</sup> In Shuishang 水上 district, the women “all yelled that they don’t understand it.” One remarked that the constitution was meant for “new brains, not old ones,” while another asked, likely in all seriousness, “Does the constitution mean that we’ve liberated someplace else?” (*you jiefangle shenma difang* 又解放了什么地方).<sup>26</sup> After multiple explanatory efforts, the most many retained was the idea that the constitution was “an important state law” (*guojia dafa* 国家大法) or a “basic,” “fundamental” law (*genben fa*; *jiben fa* 根本法; 基本法).<sup>27</sup> In a factory, some workers deduced the following: the constitution is “state law” and state law is what used to be “law of the land” (*wangfa* 王法).<sup>28</sup>

People’s representatives shared this rough notion that the constitution was important, but exactly how or why was not very clear to them. In Jiangmen city in Guangdong, one asked, “What’s it do?” (*xianfa gan shenma* 宪法干什么) and suggested that instead of a new constitution the party should just tack on some clauses to the Common Program.<sup>29</sup> In Shanghai some heard the constitution described as China’s “Basic Law” or “Mother Law” (*mu fa* 母法), which confused them even more: “If the constitution is the Mother Law, and our regular laws (*fa lü* 法律) are the children, what’s the foundation of current laws (in other words, those that came *before* the constitution—are they “bastard” laws)?” The pell-mell style of education led to a barrage of tough conceptual questions: “Which people are ‘laborers’ (*laodongzhe* 劳动者)?”; “Are capitalist agents ‘laborers’?” (*zifang daili ren shi bushi laodongzhe* 资方代理人是不是劳动者); “The constitution says that women are protected by the state—does this mean that men are *not* protected?”<sup>30</sup> Since those in charge of explaining the constitution were themselves minimally trained, these questions went unanswered. As a result, one of the main ideological goals of the 1954 constitution—strengthening working class and socialist

<sup>24</sup>Huangpu District Archives 48-2-113, 29.

<sup>25</sup>Shanghai Municipal Archive B2-2-58, 14.

<sup>26</sup>Shanghai Municipal Archive A80-2-309, 34.

<sup>27</sup>Shanghai Municipal Archive B2-2-58, 30. This was also noted in Shanghai’s rural suburbs. There, officials complained that discussions around the constitution were a “burden,” lasted too long, and that they “could not understand its language” (*yuyan bu tongsu* 语言不通俗). They complained they could not remember its content because it failed to “connect” to their own circumstances. See Shanghai Municipal Archive A71-2-974, 125.

<sup>28</sup>Shanghai Municipal Archive B2-2-61, n.p.

<sup>29</sup>Guangdong Provincial Archives 235-1-399, 8.

<sup>30</sup>Huangpu District Archives N7-1-455, 95. Cadres used familial metaphors in a somewhat different way, calling the constitution the eldest child (*laoda* 老大) the Labor Law the first born (*lao'er* 老二), and the Marriage Law the third born (*laosan* 老三). Others deployed naturalistic images, depicting the constitution as a large wormwood tree and other laws as small ones. See “Heilongjiang sheng bufen diqu zai xianfa cao’an xuanchuan zhong chansheng bushao quedian” 黑龙江省部分地区在宪法草案宣传中产生不少缺点, *Neibu cankao*, August 5, 1954, 77. Depicting ownership systems, they drew four horse heads for a cooperative, a lone peasant with a shovel for a private economy, and a fat businessman for capitalism.

*consciousness* through a repudiation of the more inclusive model of New Democracy—was seriously compromised.

Were these misunderstandings and questions solely the result of poor education at the bottom tier of the state? Reports from higher levels in the bureaucracy suggest not. “Very many” mid-level bureaucrats also said “we don’t understand” after receiving three hours of intensive education about the constitution. Nor did they have enough “awareness of the class conflict element” in the document, their teachers complained. Perhaps even worse from the perspective of Marxism, these officials spent two hours going over a single phrase—superstructure and foundation—and one “covering larger issues like its characteristics and type,” but a common response was “we don’t get it.” Cadres working in the General Office of the Shanghai Party Committee said similar things.<sup>31</sup>

Officials in occupations in which literacy was a greater part of their job requirement also failed to understand the word, theory, and practical applications of the constitution. Many employed by Guangdong Radio (*Guangdong diantai* 广东电台), for example, were said to “not know what a constitution was and what it’s for.” Some had viscerally negative reactions to the word itself, thinking it was “something having to do with a reactionary government... our country shouldn’t have such a bad law,” they quipped. However, in contrast to some of their lower-level counterparts for whom the constitution was a “Mother Law” or “Basic Law,” the radio officials thought it was “no big deal,” because “every country has one.” It was “a routine government regulation” that was probably unnecessary because “people would follow the law.” Others thought it superfluous because it had no new content—“cooking cold rice” they said—because they had already studied the General Line as part of their training as CCP cadres.<sup>32</sup>

#### IRRITATION, OR, “WHAT’S THE CONSTITUTION GOT TO DO WITH ME?”

Officials’ broad befuddlement about the constitution triggered much irritation at their higher-ups who foisted it upon them. Such emotions might seem obvious—who among us doesn’t get annoyed at our superiors?—but they have rarely been revealed in the literature on the state in the early 1950s. Given the political terror that characterized this period, it is not unreasonable that scholars have paid far more attention to top-down governance methods such as repression, cooptation, or “controlled polarization” than officials’ “horizontal” annoyance with each other.<sup>33</sup> Nor have scholars in comparative politics supportive of the officials-as-humans “anthropology of the state” perspective shown much inclination to delve into such feelings.

Given the unprecedented nature of the campaign to discuss a draft constitution, it was understandable that officials would feel exasperated by the sudden call to talk openly

<sup>31</sup>Shanghai Municipal Archive B2-2-63, 28.

<sup>32</sup>Guangdong Provincial Archives 225-2-29, 117.

<sup>33</sup>“Controlled polarization” refers to the state’s purposeful activation or encouragement of strife among social groups as a way of preventing the formation of a united front against it. It was deployed by the CCP in its “base areas” prior to 1949 and continues to be a hallmark of its governing strategy. See Yung-fa Chen, *Making Revolution: The Communist Movement in Eastern and Central China, 1937–1945* (Berkeley: Univ. of California Press, 1986); Elizabeth J. Perry, “Studying Chinese Politics: Farewell to Revolution?,” *The China Journal* 57 (January 2007), 1–22.

about abstruse yet sensitive issues such as political power and ideology, as well as more practical topics like police powers and rights. Believing that this was unnecessarily political and irrelevant to them personally, many officials trivialized the entire enterprise, even as a stream of documents fluttered down trying to convince them of the historical significance of China's first socialist constitution, said to have been written "in the blood of revolutionary martyrs."<sup>34</sup>

The notion of the constitution as politically superfluous stemmed from the inarguably accurate assessment that the Communist revolution had just succeeded without one. In Zhejiang province, for example, a *Neibu cankao* report on mid- and high-level cadre study sessions concluded that "not taking the constitution seriously" was "widespread." In Hangzhou, section and bureau chiefs said, "We didn't have a constitution and the revolution succeeded anyway; even if there is no constitution from here on in we'll still be able to establish socialism." Their time, they complained, would be much better spent doing more important things.<sup>35</sup> Similar views were expressed in Shanghai and its suburbs. In the city, some cadres saw the large, red-inked typeface announcement of the draft constitution in *People's Daily*, read some of the document, and then chucked the paper aside, saying "nothing new here," and "the revolution would have succeeded without it."<sup>36</sup> A report on cadres in Yangsi 杨思 district (currently in Pudong 浦东) noted that, "at the beginning cadres had no idea what a constitution was and how it is related to socialism. They are indifferent to it, saying that just as the revolution succeeded without it, so too can socialism."<sup>37</sup> Elsewhere in the suburbs, officials were incredulous that the party was making a big fuss about the constitution, convinced that it was a "formality" because citizens' "rights and duties were already in the Common Program," and unnecessary, saying, "didn't each campaign [before this] push us further toward socialism?"<sup>38</sup>

There was another reason for cadres' irritation. During their political study they were informed that the draft constitution was authored by the top legal minds in the country, thousands of people's representatives, and the highest leaders in the CCP. This being the case, why would lower-level officials even bother suggesting revisions? In a Leninist system, who were they? In Zhejiang, mid-level officials asserted (incorrectly) that the constitution was "only about principles" and thus only relevant to "big cadres," not small ones.<sup>39</sup> In the Shanghai suburbs, a smart aleck cadre wisecracked, "Mao himself wrote the constitution and 8,000 representatives already discussed it. If I had something good to suggest I would've left my job a long time ago!"<sup>40</sup> In Kunming in Yunnan

<sup>34</sup>In Cao 曹 village, Ding 定 county, in Hebei, cadres wrote on a blackboard that the constitution was the country's "Basic Law," but in a meeting said it was "our country's highest program" that was important because it "was written in martyrs' blood." They understood its primary goal to be "lawfully protecting laborers' lives and property and suppressing counterrevolutionary activities." Still, most were "not able to say what very many of the articles were actually about." See "Hebei sheng Ding xian Cao cun xuanchuan xianfa cao'an de qingkuang" 河北省定县曹村宣传宪法草案的情况, *Neibu cankao*, July 31, 1954, 520.

<sup>35</sup>"Zhejiang sheng geji ganbu pubian bu zhongshi xianfa cao'an de xuexi" 浙江省各级干部普遍不重视宪法草案的学习, *Neibu cankao*, July 31, 1954, 518.

<sup>36</sup>Shanghai Municipal Archive A22-2-1525, 14.

<sup>37</sup>Shanghai Municipal Archive A71-2-975, 2.

<sup>38</sup>Shanghai Municipal Archive A71-2-973, 29.

<sup>39</sup>"Zhejiang sheng geji ganbu," *Neibu cankao*, July 31, 1954, 518.

<sup>40</sup>Shanghai Municipal Archive A71-2-973, 29

province, some city-level cadres stated that the constitution could only be “completely correct” because “it was written by Chairman Mao himself.” Therefore, there was no need to study it: “Just do what it says.”<sup>41</sup> Even provincial-level officials thought that constitutional issues were above their pay grade: “Under the leadership of the Communist Party there are no mistakes, so there’s nothing to raise questions about.”<sup>42</sup>

Officials were also irked because they thought the constitution was irrelevant to them personally. In Shenyang, mid-level bureaucrats believed that the document was directed only at “non-party members, and has no relevance to them,”<sup>43</sup> and in Shanghai a report filed by the city’s heavy industry committee noted a widespread perception that the core idea in the constitution was “punishing (*zheng* 整) capitalists,” and therefore a waste of their time. Aside, they noted, “we never saw a constitution before and managed to defeat Japan and the Guomindang.”<sup>44</sup> More concretely, cadres knew very well that their personal interests—rank, salary, benefits—were governed by a system completely separate from the constitution. So what was the point of study? “We already know that Mao is the chairman and workers are the leading class.”<sup>45</sup> While most cadres seemed to maintain their “cool,” not everyone could: “Damn it!” shouted Liu Mingxian, a Hangzhou cadre, in exasperation, “Why am I being called to deal with these trivial things?”<sup>46</sup>

#### QUESTIONS ABOUT POLITICS AND SOCIETY

Historical scholarship on the late Qing and Republican years has emphasized the significance of the concept “citizenship” in the transition from empire to republic. Whether framed in terms of rights, status, or obligations, or as a discourse about modernity, political reformers hoped that citizenship would become embedded in China’s self-strengthening efforts and an “activated” component in a new individual and national identity.<sup>47</sup> By almost all accounts, this was a middle class and elite discourse among politicians, editorialists, jurists, journalists, students, university faculty, and groups in civil society. The extent to which more marginalized groups either understood or deployed the concept of citizenship, however, is less understood. We also know that after the establishment of the PRC another term became more important than citizenship: “people.” In Communist parlance, being considered “among the people” was a far better guarantee of political safety than “citizenship” in the juridical sense; the latter offered no protection if declared a “non-person” (*fei renmin* 非人民) as a member of an enemy class (landlord, rich

<sup>41</sup>“Wuhan, Kunming jiguan ganbu qiye ganbu dui xianfa cao’an de fanyin 武汉,昆明机关干部企业干部对宪法草案的反应,” *Neibu cankao*, June 29, 1954, 350. To be sure, these reactions surely have an element of simply announcing loyalty to the regime and flattering the higher-ups. Still, given the unprecedented nature of the national discussion campaign their befuddled reactions seem to represent their authentic feelings as well.

<sup>42</sup>Guangdong Provincial Archives 225-2-29, 75. These were officials in the Cultural Bureau.

<sup>43</sup>“Panyang shi ge jiguan,” 162.

<sup>44</sup>Shanghai Municipal Archive A38-2-144, 2

<sup>45</sup>“Quanguo gedi renmin dui xianfa cao’an de fanyin” 全国各地人民对宪法草案的反应, *Neibu cankao*, July 24, 1954, 397.

<sup>46</sup>“Zhejiang sheng geji ganbu,” 518.

<sup>47</sup>Robert Culp, *Articulating Citizenship: Civic Education and Student Politics in Southeastern China, 1912–1940* (Cambridge: Harvard University Asia Center, 2007); David Strand, *An Unfinished Republic: Leading by Word and Deed in Modern China* (Berkeley: University of California Press, 2011).

peasant capitalist) or counterrevolutionary.<sup>48</sup> Reflecting both of these discourses, drafters of the 1954 constitution sprinkled “people” and “citizen” throughout the document.<sup>49</sup> They noted (in Article 1) that China was a “people’s” democratic republic, that the armed forces “belong to the people” (Article 20), and [only] “working people” have the right to education and leisure (Article 92). However, the constitution also proclaimed that “citizens” had the “glorious duty” to serve in the military (Article 103<sup>50</sup>), were “equal before the law” (Article 85), and their homes “inviolable” (Article 90). Transcripts of comments and questions about the draft constitution, therefore, allow us to offer a rough assessment of “citizenship” and its allied concepts at a more popular level (many officials in the PRC, as noted earlier, came from lower-class backgrounds), as well as how officials evaluated fellow members of society.

What emerges from the archival sources I have at my disposal is widespread bewilderment about the theoretical and practical meanings of citizenship, particularly insofar as it related to other overlapping but competing concepts such as “people,” “national” (the noun), and the other class categories introduced by the CCP. Whether dealing with different classes, occupation and genders, and regardless of region, people—and here I mean officials as well as ordinary citizens—could not differentiate between a “national” (*guomin* 国民), “the people” (*renmin* 人民), or a “citizen” (*gongmin* 公民). Cadres working in the South China Region Party Committee confessed to their lack of understanding about this,<sup>51</sup> as did officials in Wuhan,<sup>52</sup> Huangpu and Jing’an districts in Shanghai, and Jiangwan 江湾 district in Baoshan 宝山 county in the suburbs, phrasing their questions combining the three terms, or just citizen and people (e.g. “What’s the difference between people and citizen?”; “‘Citizen,’ ‘people,’ ‘national’—how are they different?”; “What’s a ‘people,’ ‘citizen,’ and ‘national?’”).<sup>53</sup>

The fact that the constitution targeted capitalists and rich peasants further complicated matters. Noticing the glaring contradiction between the concepts of equality among citizens and political class status, some cadres argued that if citizens were “equal” under the law, as stated in Article 85, and capitalists and rich peasants had not been declared “non-

<sup>48</sup>This does not imply that favored status, such as proletarian, was easily achieved. As noted by Sheila Fitzpatrick, “there is no known process of enrollment in Marxist classes.” See “Ascribing Class: The Construction of Social Identity in Soviet Russia,” *Journal of Modern History* 65 (December 1993), 745.

<sup>49</sup>According to Tiffert, drafters considered “people” as a sociopolitical concept and “citizen” as a legal one. See “Epistrophe,” 69. Between these two concepts, citizen was used more frequently in the Constitution largely because it came to replace the concept “national” in the Common Program. As noted by Xiaocai Feng, people’s confusion was caused by the abrupt changes in official vocabulary. See “Political Labels and Societal Reactions: The ‘People’ and ‘Nationals’ in the Early Years of the People’s Republic of China,” paper presented at the Annual Meeting of the Association of Asian Studies, Toronto, Canada, March 2017, 14.

<sup>50</sup>This martial notion of citizenship (*junguomin* 軍國民) emerged out of German- and French-inspired discourse (usually via Japan) during the late Qing and Republican eras. According to theorists such as Liang Qichao, Cai E 蔡锷 (1882–1916), and Jiang Baili 蔣百里 (1882–1938), all male Chinese citizens were potential soldiers, and all modern states needed to have some system of conscription. See Nicolas Schillinger, *The Body and Military Masculinity in Late Qing and Early Republican China: The Art of Governing Soldiers* (Lanham: Lexington Books, 2016), 255–67.

<sup>51</sup>Guangdong Provincial Archives 225-2-29, 32.

<sup>52</sup>“Taiyuan, Wuhan deng diqu,” 107.

<sup>53</sup>Huangpu District Archives N7-1-455, 95; Shanghai Municipal Archive A79-2-381, 1 (Jing’an); Baoshan District Archives 9-6-1, 2.

citizens,” “non-nationals” or “non-people,” the CCP should not discriminate against them. Such treatment also did not make sense given an understanding of socialism as similar to the Confucian idea of rule “for the public good” (*tianxia weigong* 天下为公).<sup>54</sup> In Hangzhou, cadres in the Cultural Bureau said, “Even though all people are equal under the law in the PRC, why does the state treat capitalists so harshly (*keke* 苛刻)?”<sup>55</sup> In the suburbs of Shanghai, local officials wondered, “if capitalists are targets of domination (*tongzhi duixiang* 统治对象), why are they even ‘people’?”<sup>56</sup> By 1954 officials knew that these theoretical questions had practical implications, so the constitutional discussion provided an opportunity to get some answers. In Jing’an, one asked, “What if a father has a lot of real estate and he dies and one of his sons inherits it. But his son is classified as a ‘worker.’ Does this mean that the son is now a member of the bourgeoisie?”<sup>57</sup> A lane and alley cadre who also owned a barber shop asked his *baogao yuan*: “What class am I? Some people say I’m in the bourgeoisie, but the truth is that my life is harder than workers’. Will I be wanted under socialism? (*dao shehui-zhuyi yaobuyao wo* 到社会主义要不要我).”<sup>58</sup> In a village outside Shanghai, cadres wondered how capitalists could be eliminated if they were eligible to stand for elections as citizens.<sup>59</sup>

There was no firm answer to such questions since the definitions of citizen and people were elastic. As a result, officials improvised. In Jiangmen 江门, a small city in Guangdong province, for example, there were “relatively more” cadres who objected to Article 10 (“the state protects the ownership by capitalists of the means of production and other capital according to law”) because “they don’t consider capitalists ‘people.’”<sup>60</sup> In the Shanghai suburbs, one “people’s representative” wanted to know why members of the bourgeoisie participated in their meetings. Did they represent the people or their class?<sup>61</sup> On the other hand, officials in those same suburbs publicly rejected the party line about western constitutions as manifestations of “bourgeois selfishness,” pointing out that President Roosevelt’s sons served in the US military during World War II, as did the son of General James van Fleet in that war and in Korea.<sup>62</sup> In Shanghai, reports dealing with the Public Security Bureau noted that there were some officers who were “too close” to the bourgeoisie (“they even talk to them”),<sup>63</sup> but in the city’s rural suburbs cadres were “not sure who is dominant and who is the dominated class.”<sup>64</sup>

This confusion also stemmed from the articulation of citizen obligations in the constitution, which included paying taxes, observing labor discipline, public morality, and

<sup>54</sup>Shanghai Municipal Archive A38-2-144, 28. This view was roundly criticized as a mistake “in principle.” Others mistakes were less serious. In Yangpu district officials forgot the word “constitution,” and instead talked about the “PRC Draft.” See Yangpu District Archives 11-4-7, 26.

<sup>55</sup>“Zhejiang sheng geji ganbu,” 519.

<sup>56</sup>Shanghai Municipal Archive A71-2-973, 28.

<sup>57</sup>Shanghai Municipal Archive A79-2-381, 3.

<sup>58</sup>Shanghai Municipal Archive A79-2-381, 133.

<sup>59</sup>Shanghai Municipal Archive B2-2-61, n.p.

<sup>60</sup>Guangdong Provincial Archives 235-1-399, 8. Such cadres were described as somewhat too “left.”

<sup>61</sup>Shanghai Municipal Archive A71-2-974, 200.

<sup>62</sup>Shanghai Municipal Archive A71-2-974, 39.

<sup>63</sup>Shanghai Municipal Archive B2-2-62, n.p.

<sup>64</sup>Shanghai Municipal Archive A71-2-974, 46.

performing military service. Some wondered whether it was it fair to hold poor citizens—those whom the party claimed to represent in their victory—to the same behavioral standards as the well-off. In Guangdong, a report about provincial-level officials noted that many thought that the party's demands of good behavior were “too high,” and “too harsh,” calling them manifestations of an “exploiting class” standpoint: How could the “unemployed easily avoid temptation to steal things and sabotage public ethics?” (Article 100). These cadres especially sympathized with vendor stall owners who became unemployed thanks to the CCP's attacks on private enterprise.<sup>65</sup> Party officials also were aware that their own work requirements and status as party members undermined the notion of equality in the concepts of citizen and people. In Shanghai, some argued that perpetual meetings made a mockery out of their “right to rest,”<sup>66</sup> and censorship of the press violated citizens' freedom of speech. Cadres in the East China Bureau (*Huadong ju* 华东局) noted that the “Chinese people have the right of free speech and publishing but now we can't say anything reactionary, read reactionary books or pornographic literature. In the US, even though [you say] they have no freedom, you can buy Communist publications.”<sup>67</sup> But CCP members also knew that they had more power than “regular” citizens and people: “If all power belongs to the people” [Article 2], some asked, “what then does the party committee do?” Some suggested revising the article to “all power belongs to the laborers” to better reflect the revolution.<sup>68</sup>

On the flip side of this, cadres also questioned the concept of “glory” as it was typically applied to “labor” (as a verb) and the laboring classes (Article 16).<sup>69</sup> In the constitution, citizens enjoyed “the *right* to work” (Article 91)—not the obligation or necessity to—but officials knew the reality of labor was more complicated. In Shanghai's heavy industry bureau some asked, “If labor is ‘glorious’ why do those under state supervision have to labor to reform themselves?”; “Is laboring as a dancing girl glorious as well?”; “What about those in cultural entertainment (*wenyu* 文娱) and athletes?”<sup>70</sup> In the suburbs, cadres asked a comparably complex question: Is it considered “glorious” if a non-person such as a counterrevolutionary works *well*, or is it less valued than labor performed by a citizen?<sup>71</sup>

<sup>65</sup>Guangdong Provincial Archives 225-2-29, 91.

<sup>66</sup>Shanghai Municipal Archive A22-2-1851, 56.

<sup>67</sup>Shanghai Municipal Archive B2-2-65, 2. In Jiangxi, “not a few” rural cadres were quite bitter about other “contradictions” in the constitution, most notably between the promise to “protect” peasants' interests and the state's requisitioning of land and productive resources: “If the state wants to build a road through my land and I don't agree, what would we eat? Is this considered protecting property rights?”; “If peasants themselves dig a pond, does it then belong to the state?” They were also displeased that the state was concerned about workers' rest and leisure (as “laborers”), but ignored peasants entirely. Military families, of whom there were quite a few in Jiangxi, were “worried” that there was no provision in the constitution for their “care” (*zhaogu* 照顾). See “Jiangxi sheng de xian, shi renmin daibiao dahui de daibiao dui xianfa cao'an de fanyin” 江西省的县,市人民代表大会的代表对宪法草案的反应, *Neibu cankao*, Aug, 19, 1954, 263–64. In a village near Shanghai, cadres asked “why are peasants' lives restricted?” (*weisha nongmin shenghuo shoudao xianzhi* 为啥农民生活收到限制) and why they “do not rest.” See Shanghai Municipal Archive B2-2-61, n.p.

<sup>68</sup>Shanghai Municipal Archive B2-2-61, n.p.

<sup>69</sup>In the official English translation the drafters of the constitution used “honor” instead of “glory” for *guangrong* 光荣.

<sup>70</sup>Shanghai Municipal Archive B2-2-66, 73.

<sup>71</sup>Shanghai Municipal Archive A71-2-973, 79.

Questions such as these remained unanswered during the constitutional discussion period. More important for our purposes is that they were asked, and asked *well*. This was a state whose officials high and low were trying to puzzle things out conceptually, administratively, and in terms of their own status in the emergent polity.<sup>72</sup> Given that their questions remained unanswered after 1954 (unless they bothered to read various explanations of the constitution published in the 1950s, which was unlikely given the high illiteracy rate<sup>73</sup>), ordinary officials had little choice but to improvise, a sort of unplanned politics similar to what Sebastian Heilmann and Elizabeth J. Perry have called “guerilla-style policymaking.”<sup>74</sup>

#### A FRIGHTENING DOCUMENT

As counterintuitive as it might seem, these governance *modi operandi* facilitated the reassertion of central state control after the Communist takeover in 1949. Not bound by institutionalized procedural rules, the CCP had a free hand to arrest millions of their political enemies and potential challengers, execute hundreds of thousands, and ship even more to “reeducation through labor” camps. There is little evidence that the CCP feared broad “pushback” by the losers of the long civil war as a result of this sort of repression.

The constitution appeared to change this. Now, for the first time since 1949, top CCP leaders authored and signed a “Basic/Fundamental” *law* (as opposed to the legally confusing “Common Program”) that provided the accused the right to defense (Article 76), gave the authority to arrest to the procuratorate over the police, provided rights to citizens, and imposed equal obligations on party members as ordinary citizens. In other words, in addition to the many articles in the constitution that terrified groups such as former capitalists, landlords, rich peasants, and the national bourgeoisie, there were also those that caused anxiety and fear among state officials. At least in this respect, the PRC constitution did what constitutions were supposed to do: provide a bulwark against despotic power.

Officials’ stressing over the constitution surfaced in nearly every discussion of its draft throughout the spring and summer of 1954. Even without examining its specific articles, the framing of the constitution as an important document that was sent down by the national leadership caused concern. In the city of Foshan 佛山 in Guangdong, cadres were explicitly warned that “errors” in their work would be “a violation of the constitution, which is a basic law.”<sup>75</sup> In Shanghai, some thought they would “go to jail for their

<sup>72</sup>Elsewhere I have called this “the bumbling state.” See *Revolutionizing the Family: Politics, Love, and Divorce in Urban and Rural China, 1949–1968* (Berkeley: University of California Press, 2000). Andrew Walder, in *Fractured Rebellion: The Beijing Red Guard Movement* (2009) has offered a comparable image of Red Guard behavior during the Cultural Revolution.

<sup>73</sup>The question of readership is somewhat different from state efforts to “spread” the constitution via propaganda and publishing, about which Jennifer Althenger has written. I do not dispute that the state devoted substantial resources to constitutional education, but would be interested in finding more information about the reading public, particularly at lower levels of society.

<sup>74</sup>Sebastian Heilmann and Elizabeth Perry, “Embracing Uncertainty: Guerilla Policy Style and Adaptive Governance in China,” in *Mao’s Invisible Hand: The Political Foundations of Adaptive Governance in China*, edited by Heilmann and Perry (Cambridge: Harvard University Press, 2011), 1–29.

<sup>75</sup>Guangdong Provincial Archives 235-1-339, 16.

mistakes,” and in Yangsi district in the suburbs they complained that “getting our job done after the constitution will be hard (*nangao le* 难搞了). One wrong thing and you’ve violated policy and will be punished by law.”<sup>76</sup>

With the transition to socialism, opportunities for mistakes in word and action, particularly vis-à-vis the soon-to-be-eliminated classes like capitalists, could potentially increase dramatically should the latter become emboldened by their constitutional rights. In Shanghai, mid-level bureaucrats were convinced that the constitution would “make their work more troublesome (*mafan* 麻烦), especially vis-à-vis capitalists undergoing transformation.” Before the constitution, they noted, “there wasn’t much the capitalists could do or say about it,” but now the situation “changed.” They feared that “not taking the constitution seriously is the same as not taking the fruit of the revolution seriously.”<sup>77</sup> With the fraught word “elimination” thick in the political air—having just been used to execute landlords, counterrevolutionaries and “bad elements”—fear hovered over targets and executioners. In Guangdong, a provincial-level investigation reported that wealthier peasants were fleeing to the city on the pretext of visiting friends and relatives. They had heard about rumors that circulated among village and township officials that the constitution decreed a series of executions that would begin with capitalists and then shift to rich and middle peasants.<sup>78</sup> Cadres, most of whom did not read the constitution all that carefully, were “very worried” about the *immediate* transition to socialism (which was not in the text).<sup>79</sup>

Probably no group had more fear of the constitution than officials on the front lines of the CCP’s social revolution. In Guangdong, cadres from the police, prosecutor’s office, and judiciary griped that because “the constitution protects human rights,” their work will be much more difficult: “They are not sure how they will be able to investigate since arrests now [in Article 89] require the approval of the director of the procuratorate” and “people will be able to hold us accountable.”<sup>80</sup> “The masses,” another report predicted, “will become highly democratic” (*jiduan minzhu* 极端民主).<sup>81</sup> Similar concerns were voiced by the Shanghai and Beijing police. All their usual tools of trade—investigating mail and household registration, hauling in suspects and

<sup>76</sup>Shanghai Municipal Archive A22-2-1525, 17; Shanghai Municipal Archive A71-2-975, 2. Police annoyance at procedural limitations has continued unabated. Writing about the contemporary situation, Suzanne Scoggins and Kevin O’Brien note that “older cops complain bitterly about procedural changes that make it harder to conduct investigations and interrogate suspects.” See “China’s Unhappy Police,” 227.

<sup>77</sup>Shanghai Municipal Archive B2-2-63, 27.

<sup>78</sup>Guangdong Provincial Archives 225-4-104, 24. In the Shanghai suburbs some asked, “Will middle peasants be eliminated (*bei xiaomie* 被消灭) after the rich peasants?” See Shanghai Municipal Archive A71-2-973, 74. But other cadres were not sure which class rich peasants belonged to and how they would be eliminated (*ruhe xiaomie* 如何消灭). See Shanghai Municipal Archive B2-2-61, n.p.

<sup>79</sup>Guangdong Provincial Archives 204-3-43, 114.

<sup>80</sup>Guangdong Provincial Archives 225-4-104, 32. Previous attempts to limit police power provoked similar reactions. As noted by Stapleton in her study of late Qing legal reforms, “the Police Bureau did not surrender its judicial authority to the new courts readily.” See *Civilizing Chengdu*, 158.

<sup>81</sup>Guangdong Provincial Archives 204-3-43, 114. Here the fear of “excessive democracy” dovetails with the more traditional official apprehension about litigation tricksters and the contemporary fear of “rights protection” (*weiquan* 维权) lawyers. Were officials in the 1950s influenced by the long legacy of Confucian-inspired fear of litigation? Drawing such a line is tempting, but ultimately speculative, particularly given the class origins of many of these officials.

like—would become far more difficult after the constitution. More frightening, they might “even go to jail for their mistakes.” The constitution, they complained, “protects everyone—except us.”<sup>82</sup> Among Tianjin traffic cops, the new legal regime meant not being able to be “as sloppy and careless as we’ve been in the past—no more giving two-hour lectures over a minor issue.”<sup>83</sup>

These concerns were amplified by the gap in social capital between the typical policeman and the urban upper classes.<sup>84</sup> The latter’s political and economic power had been reduced significantly since 1949 but they still possessed higher social status by the historical standards of class. In Tianjin, “very many” policemen thought that the constitution would be an obstacle to conducting investigations, “especially among upper class people” (*shangceng renwu* 上层人物) if our “low skill is exposed.”<sup>85</sup> In Shanghai, household registration inspectors worried about buzzing up to the “high rise apartments” of the city’s former elite, only to be denied entry based on Article 90 of the constitution, which made homes “inviolable.” This would result not only in failure to complete their mission but also a loss of face should they remain tongue-tied.<sup>86</sup> Some policemen were surprisingly sympathetic to the elite’s predicament. Reports from their internal discussions suggests that they, too, recognized the “contradiction” between limiting the influx of peasants into the city by requiring urban residence permits, enforced through inspections (known as the *hukou* 户口 system) and the new constitution.<sup>87</sup>

Remaining tongue-tied in arguments with those who “could speak well” (*neng shuohua* 能说话) was not policemen’s only concern when dealing with some suspects, or even the most serious one. More worried about legal retribution should they commit a procedural error. In Lianhua 莲花 county in Jiangxi, police officials feared that “if we arrest someone by mistake, people can use the law [constitution] to appeal and the

<sup>82</sup>Shanghai Municipal Archive A22-2-1525, 17; “Beijing ge jieceng renmin dui xianfa cao’an de fanyin 北京各阶层人民对宪法草案的反应,” *Neibu cankao*, June 23, 1954, 281.

<sup>83</sup>“Quanguo gedi renmin,” 403.

<sup>84</sup>Michael Dutton has an excellent summary of the challenges facing the police force in the early 1950s, but largely adopts the state’s critical view of their performance (tempted by corruption, high-handed, less than competent) rather than the subjective experience and feelings of individual police officers. Nor does he mention the cultural challenges facing cops as they tried to enforce political goals. See *Policing Chinese Politics: A History* (Durham: Duke University Press, 1995), 144-50.

<sup>85</sup>Dutton, *Policing Chinese Politics*. However, some did benefit from other aspects of the constitution. As stipulated by the constitution’s Article 105, there was now an official national emblem. Policemen, otherwise not ideal marriage prospects because of their poverty and reputation, thought that wearing this “glorious” emblem on their uniform would make it “easier to get married.” Recent research on contemporary police officers finds that they continue to struggle in the marriage market. One complained, “The work is too hard and the pay is too low... my girlfriend wishes I had never become a policeman.” See Scoggins and O’Brien, “China’s Unhappy Policemen,” 231. As in the past, wearing a spiffy uniform was seen as a definite plus (232).

<sup>86</sup>Shanghai Municipal Archive B2-2-62, n.p. This fear might have been warranted. In Chengdu, a former KMT officer (“reactionary”) said (boasted?) that “the next time a *hukou* official comes to my dorm room to ask for my documents just because he feels like it, I’ll complain.” See “Chengdu shi didui jieji fenzi dui xianfa cao’an jinxing wumie xuanchuan” 成都市敌对阶级分子对宪法草案进行污蔑宣传, *Neibu cankao*, July 3, 1954, 43.

<sup>87</sup>Shanghai Municipal Archive B2-2-62, 4. Officials were also aware that the CCP was behaving unconstitutionally by preventing citizens from travelling to Hong Kong and abroad, and by preventing peasants from entering cities. See Shanghai Municipal Archive B2-2-61, n.p.

error will be on our heads.”<sup>88</sup> In Shanghai, police officials were nervous about arresting someone by mistake and then being compelled to compensate them, but not having enough money.<sup>89</sup> The police’s empty coffers, as one might expect, also worried those who had been—and would continue to be—their victims. Jiaotong University 交通大学 faculty wondered what they should do “if the police can’t afford compensation” to those who suffered or died at their hands. In either scenario, they were skeptical the police would be restrained. The money, after all, would not be coming out of their pockets: “If the government pays, isn’t that really the people compensating themselves?”<sup>90</sup>

Police and other officials were not accustomed to such guff out of the mouths of “bourgeois elements,” or to feeling afraid of them, particularly after the terror of the early 1950s. Lest people become overly “uppity” because of their constitutional rights, some policemen advocated immediate action: “If we want to arrest someone we should do it right away; if we want to get something done, now’s the time (*yaoban de kuai ban 要办的快办*).” Displeased that making arrests now “required court and procurator approval,” some vowed to disobey, arguing that the police are under “absolute” party [not state] control.<sup>91</sup> Those responsible for the draft constitutional discussion criticized these views as “impetuous” (*jizao 急躁*).<sup>92</sup> More generally, security personnel feared that various regime enemies would take advantage of constitutional rights to push back hard against the CCP. The precedent was not encouraging. The CCP, they astutely noted, conducted their own “legitimate struggle” under the hood of the relatively liberal Guomintang state.<sup>93</sup> If the constitution is a manifestation of “class domination,” they argued, why should the party provide any rights to its enemies?

This security-first perspective on rights produced a gusher of suggestions about which articles of the constitution should be more narrowly defined or curtailed altogether. In Jiangxi, for example, people’s representatives spoke in opposition to Article 90, which protected the “privacy of correspondence,” suggesting instead to remove the word “private” as the best way “to avoid enemies taking advantage of it,”<sup>94</sup> as did cadres in Shanghai’s Jing’an district.<sup>95</sup> In Taiyuan, police were perplexed that the constitution provided “the freedom to demonstrate” in Article 87: “Won’t this give an opening for counterrevolutionaries to engage in destructive activities?”<sup>96</sup>

Article 88, which provided “freedom of religious belief,” and Articles 68–70, which addressed autonomous administration among ethnic minorities, both sparked cadres’

<sup>88</sup>“Jiangxi sheng bufen ganbu zai taolun xianfa cao’an zhong de sixiang qingkuang” 江西省部分干部在讨论宪法草案中的思想情况, *Neibu cankao*, July 22, 1954, 352. In Shanghai, low-level Women’s Federation cadres also feared being on the wrong end of a lawsuit “if they did not follow the constitution.” See Huangpu District Archives 48-2-133, 29.

<sup>89</sup>Shanghai Municipal Archive B2-2-62, 4; Shanghai Municipal Archive A22-2-1525, 17.

<sup>90</sup>Shanghai Municipal Archive A26-2-304, 41.

<sup>91</sup>They also justified this violation of the constitution by pointing out the makeup of the judicial system, noting that there were many Guomintang holdovers in it.

<sup>92</sup>Shanghai Municipal Archive B2-2-62, n. p.

<sup>93</sup>Shanghai Municipal Archive B2-2-61, 12.

<sup>94</sup>“Jiangxi sheng de xian,” *Neibu cankao*, August 19, 1954, 265.

<sup>95</sup>Shanghai Municipal Archive A79-2-381, 2.

<sup>96</sup>“Taiyuan, Wuhan dengdi gejie renmin,” *Neibu cankao*, July 7, 1954, 106.

opposition. In the former, cadres feared that religion in a broad sense—as belief, activity, and organization—was a potent source of opposition to Communist rule and its modernist “scientific” ideology. In Jiangxi, rural cadres objected to this article because “it would result in more superstition,”<sup>97</sup> and in Guangdong officials worried it would “encourage the revival of religious practices such as fortune-telling and using horoscopes.”<sup>98</sup> (Some officials seemed quite skeptical that the party was serious about this article, asking the obvious question of whether party members also enjoyed this freedom.<sup>99</sup>) But ethnic minority issues provoked even harsher vituperation. Cadres in the CCP’s East China Bureau called for “suppression” (*zhenya* 镇压) of the “savage” (*yeman* 野蛮) minorities rather than giving them formal semi-autonomy.<sup>100</sup> Shanghai police also pushed back against minority self-government: “We liberated them, and there aren’t very many of them. If they want to organize police units what will happen if they push for independence?”<sup>101</sup> Cadres in Taiyuan similarly feared that the constitution’s provision for self-governance would encourage minorities “to separate from China.”<sup>102</sup>

Still, it would be inaccurate to conclude that cadres’ apprehensions about the constitution were mainly nationalistic or concerned with state security. Probably more typical—but less represented in the sources—were issues that came up in their daily work. In rural Jiangxi, for example, dire poverty produced a large outmigration of peasants to the cities, which officials tried to stem using *hukou* registration. Article 90, which provided “freedom to change one’s residence,” put a legal patina on this survival strategy, but was a major headache for officials. Should peasants take advantage of the constitution and “blindly” (盲目地 *mangmu de*) move to the cities, they argued, “land would remain barren” and they would have nothing to eat—and there was nothing they could do to prevent this.<sup>103</sup> In Shanghai, officials suggested that the new constitution ban gambling, a source of social conflict at the local level.<sup>104</sup>

While fears over counterrevolutionary sabotage, religious conspiracy, and uncultivated land ran deep, there was probably no article in the constitution that provoked more nervousness than Article 103 (“It is the sacred duty of every citizen of the People’s Republic of China to defend the homeland... [and] a glorious duty... to perform military service according to law”). With the Korean War having ended only a year earlier, the danger of military conflict was not an abstraction. And because military service was defined as a universal obligation and the “glorious” thing to do, cadres reasonably expected that, should there be another recruitment drive, they would be expected to serve as examples and march off to war. In Shanghai and its suburbs, reports noted that “very many” were worried about this possibility, and asked serious and cynical questions

<sup>97</sup>“Jiangxi sheng de xian,” *Neibu cankao*, August 19, 1954, 265.

<sup>98</sup>Guangdong Provincial Archives 204-3-43, 114.

<sup>99</sup>Guangdong Provincial Archives 225-2-29, 32. For similar fears about state protection of religious freedom during the national discussion in the USSR see Fitzpatrick, *Everyday Stalinism*, 180.

<sup>100</sup>Shanghai Municipal Archive B2-2-65, 2.

<sup>101</sup>Shanghai Municipal Archive B2-2-62, n.p. Policemen who had worked on security detail for minority peoples’ representatives “looked down on them” because they “lacked culture” and were “backward.” They also despised their dancing.

<sup>102</sup>“Taiyuan, Wuhan dengdi,” *Neibu cankao*, July 7, 1954, 106.

<sup>103</sup>“Jiangsi sheng,” August 19, 1954, 266.

<sup>104</sup>Shanghai Municipal Archive B2-2-61, n.p.

that seemed designed to elicit negative or clarifying answers that would help allay their fears: “Isn’t this the same as the Guomindang?”; “What’s the difference between this and the draft in capitalist countries if service is ‘glorious’?”; “Do cadres have to serve if they already participated in revolutionary work?”; “Why are there no age limits on conscription?”; “If China is committed to peace [noted in the Preamble], why is military service even necessary?”<sup>105</sup> In Guangdong, male cadres asked why women, citizens just like them, would be exempt from service (presumably if women served fewer men would have to).<sup>106</sup> In questioning the necessity and fairness of military service, cadres were no different from the “masses” from whom many had only recently emerged. Multiple reports about Article 103 in various draft constitution discussion groups relayed similar fears.<sup>107</sup> Officials in Jiangxi even refused to mention the article to the public.<sup>108</sup> In reviewing hundreds of reports about Article 103 in the draft constitutional discussion, I have rarely come across much enthusiasm. And this makes sense: worldwide the overwhelming majority of people would rather not serve in the military, no matter how “glorious” the state makes this out to be.

## CONCLUSION

In this essay I have shifted the focus of study about the 1954 constitution from the document itself to the people—readers, listeners, enforcers, and victims—who engaged the draft of the text during the discussion period. This shift was made possible thanks to 1) the availability of fresh archival sources; and 2) a somewhat different set of eyes and priorities, shaped more by the law and society literature than training in constitutional law. Rather than focus on elite jurists and politicians, I explored ordinary officials from whom the very word “constitution” sometimes drew a blank, and who were suddenly confronted by the difficult task of understanding and memorizing complicated articles. And instead of conducting a textual analysis to reveal the state’s motives or to draw attention to the many contradictions in the document (there are, in fact, many, and surely they were intentional), I embedded the constitution into the “living” political and social context from which it emerged into widespread public consciousness in order to get a feel for how officials understood their milieu. The larger intellectual goal has been more descriptive—to flesh out “what happened” during the discussions—than explanatory in a causal sense, or even historical in terms of providing background information, chronological landmarks and an accounting of the key figures involved. In my larger, book-length project about the constitution, however, I will try to examine the longer-term impact of the constitution and the discussion around it. Another question worth pursuing is whether officials’ clever and

<sup>105</sup>Shanghai Municipal Archive A22-2-1531, 56; Shanghai Municipal Archive A22-2-1525, 8, 15; Shanghai Municipal Archive B2-2-65, 4; Shanghai Municipal Archive A71-2-974, 99; Shanghai Municipal Archive B122-2-31, 18.

<sup>106</sup>Guangdong Provincial Archives 225-2-29, 32, 101. In Shanghai, male cadres were perturbed that all the constitutional language about women referred to their rights and not their obligations. See Shanghai Municipal Archive B2-2-61, n.p.

<sup>107</sup>See, for instance, “Quanguo gedi renmin,” *Neibu cankao*, July 24, 1954, 398-9; Shanghai Municipal Archive C48-2-702, 20.

<sup>108</sup>“Jiangxi sheng bufen ganbu,” *Neibu cankao*, July 22, 1954, 353.

challenging questions, having been diligently recorded and archived, came back to haunt the questioners in various rectification campaigns in the latter 1950s or during the Cultural Revolution when Red Guards ransacked party archives.

The main finding to emerge from this study of the officials involved in the constitutional discussion is that they responded very “humanly” to it. That is, they exhibited the behaviors and asked the questions one might expect of a reasonable person when confronted with a difficult text in a politically stressful atmosphere. They were, by turns, bewildered, frustrated, anxious, fearful, and uncertain what the constitution meant and how it implicated them personally. They also asked intelligent, penetrating questions, many of which were difficult to answer then and now (for example, what sort of the relationship should the CCP have with the capitalist class?). When faced with uncertainty about textual meaning (often conveyed by oral communication), they improvised by suggesting changes to the text that better suited their interests. While this essay strived to stay in this constitutional moment in 1954, we can imagine officials sighing with relief when, in 1955, the CCP conveniently forgot all of this constitutional mumbo jumbo and returned to more straightforward repression, which they again replicated after the second “law and society” seminar of the Hundred Flowers movement.<sup>109</sup>

Even though these insights might seem prosaic or intuitive, I would argue that ordinary PRC officials are not *commonly* portrayed with a humanly complex face, particularly during the early years of the PRC, a period most noted for political terror. In this respect, the recent push towards “grassroots history” of the Mao era could be a welcome development, so long as historians include low level officials in the concept,<sup>110</sup> ask questions that are large or abstract enough to draw linkages between the Mao era and the contemporary scene,<sup>111</sup> and seriously engage with current scholarship in political science and sociology about the state, particularly in comparative perspective.<sup>112</sup> No matter what the historical approach is called, it seems to me that

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<sup>109</sup>This suggests the question: After 1954 did officials stop asking controversial and challenging questions about the state and its relationship to society? If so, this would certainly have contributed to “self-blinding” as policy radicalized in the late 1950s and 1960s.

<sup>110</sup>That said, I am not certain if this study fits many of the criteria for “grassroots history” even though it highlights low-level officials and draws upon archival sources that “cut against the grain of established narratives.” Jeremy Brown and Matthew Johnson note that, methodologically, grassroots history is “aligned with subaltern studies and other approaches to ‘history from below,’” and that it should highlight the experiences of ordinary people during “everyday life.” Low-level police and *baogao yuan*, however, were not exactly powerless, and their interactions with higher-level officials during the constitutional discussion were not “everyday” sort of experiences. Moreover, the discussion does not seem to be the sort of “‘contact zone’ where nonelite individuals interact with more powerful social structures” that Brown and Johnson describe for this historical approach. See *Maoism at the Grassroots: Everyday Life in China’s Era of High Socialism* (Cambridge: Harvard University Press, 2015), 5.

<sup>111</sup>On this issue see Elizabeth J. Perry, “The Promise of PRC History,” *The Journal of Modern Chinese History* 10.1 (2016), 114.

<sup>112</sup>Among recent works in PRC history, arguments and concepts proposed by political scientists about the nature of the state, authoritarian regimes (especially their Leninist variant), and how they can be productively studied have been in disappointingly short supply. Similarly, works by social scientists on the Mao era have not been integrated as fully as they should be, resulting in inflated claims to novelty. For a recent critique of such work see my review of Jie Li’s *Shanghai Homes: Palimpsests of Private Life* (*The China Journal* 76 [2016], 128–30. Many of the examples of “even more diversity and variety in behavior” that the “grassroots historical approach” claims to “add” to existing understandings of the Mao era were, in fact, previously documented

getting into officials' shoes and seeing the world from where they stand can help us avoid inappropriate and misleading reification of the state, as well as construction of overly "neat" models of political behavior.

This perspective on the early state surely should apply to the contemporary CCP—and is similarly revealed by studies about how cadres understand the constitution. Contrary to the prevailing wisdom about the CCP's antipathy towards constitutionalism as a threat to party rule, surveys of "leading cadres" in Hunan (mainly at the provincial level) from the early 2000s have found fairly complicated views. As in 1954, cadres complained that the constitution was overly abstract, and about its lack of enforcement mechanisms. More surprising are the findings about the separation of powers. Among the 230 cadres who were surveyed, some fifty-eight percent favored establishing an independent, specialized institution for actions that violated the constitution, and the same percentage favored litigation or "investigation" (*shencha* 审查) based on the constitution. At the same time, much like their 1950s counterparts, these officials said that "in China this would be hard to do."<sup>113</sup>

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(including gay relationships, secret societies, people cursing Mao etc.). See Brown and Johnson, eds., *Maoism*, 2–3.

<sup>113</sup>See Liu Dan 刘丹, "Lingdao ganbu xianfa yishi: wenjuan diaocha yu shizheng fenxi" 领导干部宪法意识: 问卷调查与实证分析, *Guojia xingzheng xueyuan xuebao* 国家行政学院学报, May 2004, 67. A bit over 50 percent said that the most important consideration in guiding their political decisions was whether or not it was legal.