

2014

# The Forgotten Promise of Professionalism

Rebecca Roiphe

*New York Law School*, [rebecca.roiphe@nyls.edu](mailto:rebecca.roiphe@nyls.edu)

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## Recommended Citation

Jotwell: The Journal of Things We Like (Lots), Vol. 2014, pp. [488]-[490]

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# The Forgotten Promise of Professionalism

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Sida Liu, Lily Liang, & Terence C. Halliday, *The Trial of Li Zhuang: Chinese Lawyers' Collective Action Against Populism*, 1 *Asian J.L. & Soc'y* (forthcoming 2014), available at [SSRN](#).



Rebecca Roiphe

Perhaps all the lawyer jokes are not such bad a thing.<sup>1</sup> Rather than trying to make lawyers more appealing, we ought to protect the profession from the sometimes-inevitable popular resentment. By telling the shocking story of defense attorney Li Zhuang's prosecution in China, [Sida Liu](#), [Lily Liang](#), and [Terence Halliday](#) remind us of the power of professionalism and the need, at times, to resist both government pressure and public anger at lawyers.

In America, we are living through a time of radical change in the profession and in professional education. The market seems, in many ways, to be winning out. The concept of professionalism is assuming a sort of hazy anachronistic aura. Some scholars even declare the notion defunct and celebrate its demise.<sup>2</sup> While the profession has always experienced itself in a state of crisis, the suggestion that we abandon the notion of an independent legal profession is relatively new.<sup>3</sup> Perhaps it is changes within the profession, such as its growing size and competitiveness, which have led to the decline in professionalism. Broader cultural trends toward consumerism and away from collective approaches to social problems must also contribute to this shift. If we accept the general momentum, the question remains whether to embrace or resist it.

There is no doubt that professionalism has been used to combat progressive change. It has been invoked to justify racism and anti-Semitism and to prevent outsiders from challenging the norms of the profession.<sup>4</sup> But as the authors of this article remind us, it can also serve as an important break, a valuable check on the accumulation of power. Lawyers can force the government to abide by the law and defend the rights of individuals when the popular mood turns against them. Comfortable in our relatively secure democracy, it is easy to forget how fragile rights and liberties truly are. Among other things, the authors of this article remind us that while flawed, an independent legal profession is fundamental to a democratic system.

Liu, Liang, and Halliday define professionalism as an ideology, which prioritizes formal rationality over substantive justice and procedures over outcomes. Populism, to the contrary, favors public accountability and political legitimacy. In vivid terms, this article demonstrates that populism—while appealing in theory—is often dangerous. The will of the people can be manipulated. It is susceptible to propaganda, political campaigning, and mass mobilization. Individuals or unpopular minorities can often fall prey to the changing tide of public opinion.

*The Trial of Li Zhuang: Chinese Lawyers' Collective Action Against Populism* takes us half way around the world and recounts a trial and legal drama in China. It depicts a rapidly developing legal profession (there were only a few hundred lawyers in 1979 and now the number exceeds 200,000) struggling to establish its

independence amidst assaults from the government, the media, and the public. At the center of this drama, Li Zhuang, a criminal defense lawyer, faced two criminal prosecutions and spent eighteen months in prison for what he—and most of the legal profession in China—insist was representing his clients well.

In 2007, communist party politician, Bo Xilai, had just taken charge of Chongqing, a municipality in Western China. Ambitious and, according to some, ruthless, Bo swore to revolutionize a city plagued by poverty and organized crime. Gong Gangmo, who was charged as part of Bo's campaign to clean up Chongqing, hired Mr. Li in late 2009 to defend him against charges related to organized crime. Within a month, Li had been tried and sentenced for advising Gong to testify falsely that Gong had been brutally beaten by the police. Bo mobilized the press to support the prosecution. The cards were stacked against Li from the start. Among other things, prosecutors doctored photographs and fed the press stories about how Li had frequented houses of prostitution. Confronted with misinformation and propaganda, the public sided with the government and demanded a conviction.

Li faced two-and-a-half years in prison for violating Article 306 of the criminal law, which delivered harsh penalties for lawyers who falsified evidence. Li's sentence was ultimately reduced to eighteen months. Prosecutors claimed that the reduction was in exchange for his cooperation. But after the sentence, as he was being taken from the courtroom, Li angrily shouted that he had been framed and coerced into a confession.

In 2011, while he was still in prison, Li was charged, again, for inducing witnesses to testify falsely. But this time, the case involved a client whom Li had represented in Shanghai in 2008. Most Chinese lawyers and scholars believed that the new indictment was in retaliation for Li's outburst in court. It was odd, after all, that Chongqing authorities would handle this case when all the alleged conduct occurred in Shanghai. The second set of charges against Li was ultimately dropped but his license was revoked.

The authors of this article use the case to explore two competing ideologies in China. The government and media invoked populism, which values public accountability and political legitimacy, to condemn Li. Bo's political campaign and propaganda drew on populist rhetoric to mobilize the population to pursue its conception of substantive justice over formal legal procedures. Li and his colleagues, on the other hand, invoked professionalism, a faith in process, formal rationality, and independence from political actors to defend Li and counter the force of the populist appeal.

As we know from our own history, professionalism can be used for self-serving and fundamentally anti-democratic ends. As I mentioned, it has been invoked to justify state supported monopolies and deny immigrants, women, and racial minorities access to the profession.<sup>5</sup> But Liu, Liang, and Halliday remind us of the dangers of populism. They remind us that for all the failures and abuses committed in its name, professionalism is critical for ensuring rights and liberties in a democratic society.

What, other than the importance of professionalism, can we learn from the experience the authors recount of the very young legal profession in China? It seems to me that the opposition between professionalism and populism that is crystalizing around Li Zhuang's case is not necessary to the survival of an independent legal profession and is, perhaps, inadvisable. Lawyers in our modern democratic state ought to conceive of their role as promoting a positive political or social participation and protecting against the kind of manipulation and propaganda that allow political minorities to oppress individuals or groups in the name of the public opinion.<sup>6</sup>

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1. Marc Galanter, **Lowering the Bar: Lawyer Jokes and Legal Culture** (2006). [?]
  2. Thomas Morgan, **The Vanishing American Lawyer** (2010). [?]
  3. Robert W. Gordon, *The Independence of Lawyers*, 68 **B.U. L. Rev.** 1, 48–68 (1988). [?]
  4. Richard Abel, **American Lawyers** (1989); Jerold Auerbach, **Unequal Justice: Lawyers and Social Change in America**

(1977). [?]

5. Richard Abel, **American Lawyers** (1989); Jerold S. Auerbach, **Unequal Justice: Lawyers and Social Change in America** (1977). [?]
6. Richard Parker, **Here the People Rule: A Constitutional Populist Manifesto** (1994). [?]

Cite as: Rebecca Roiphe, *The Forgotten Promise of Professionalism*, JOTWELL (June 3, 2014) (reviewing Sida Liu, Lily Liang, & Terence C. Halliday, *The Trial of Li Zhuang: Chinese Lawyers' Collective Action Against Populism*, 1 **Asian J.L. & Soc'y** (forthcoming 2014), available at SSRN.), <http://legalpro.jotwell.com/the-forgotten-promise-of-professionalism/>.