

# Knowledge and Rhetoric: A Specialization Analysis of Courtroom Argumentation

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# Outline

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- Situate the Research
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- Case study: Bo's bribery trial
- Knowledge code and elite code strategies in Courtroom argumentation
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# Why study Chinese Courtroom Discourse?

-Sociological: understanding of the operation of power in the judicial field. Who wins and who loses in courtroom argumentation and why? What are the rules/organizing principles?

-Pedagogical: understanding the social practices of the judicial field is crucial for aligning graduate qualities with the professional standards of legal practice.

-Research on legal education in China critical of rote memorization of legal statutes, lack of understanding how to apply legal principles in context and when to foreground stance and evaluation in argument (Grime, 2018; Ji, 2017)

“The long adversarial phase is concerned with presenting with the evidence in the case and both counsels are primarily engaged in argumentation. Though constrained in their discourse options, they have considerable room for manoeuvre and the choices they make might influence the outcome of the trial. This makes their dominant orientation to discourse a strategic one.”

- Heffer (2005:67)

# Situating the Research

Research on courtroom argumentation has two general tendencies:

- 1) Analysis of the epistemic justification of legal claims:
  - Either concerned with formal logic of legal argumentation
  - or informal logic of what kinds of starting points/grounds are accepted within discursive communities.
  
- 2) Analysis of interpersonal meaning/Language in use: studies of stance and stance-taking, evaluative language, repour building or affiliation strategies.

# Situating the Research: Stance and Stance taking

There is a large literature looking at stance and stance taking, affiliation strategies, e.g:

-lawyers employing **first person plural pronouns** to suggest shared opinions and evaluations (Danet, 1980; Felton Rosulek, 2009).

-relating “**everyday speech**” to build rapport with the listeners, especially the judges/jurors (Stygall, 1994; Bedell, 2000; Simons, 2001; Payne, 2007).

and much more...

## And yet...

- Previous research on courtroom argumentation always separates justification of legal claims and stance taking/affiliation strategies.
- Most of this focuses on Western countries with common law traditions/jury systems.
- Chinese legal system formally “socialist legal system with Chinese characteristics”/ civil law system.

# Research Problem

- What is the basis of legitimation in courtroom argumentation?
- What strategies do defence lawyers and prosecutors use to influence the outcome of court cases?



# Data

Statements drawn from 15 cases selected from intermediary and basic level people's courts, from May, 1999 to April, 2017:

- Cross-section of crimes: homicide, bribery, dangerous driving, and robbery.
- Cross-section of geographical locations: Yantai, Fusong, Beijing, Ankang, Xian, Jinan, Shanghai, Hanzhou
- Prosecutor and defense statements from **argumentation** phase of the trial, concerning mitigation after defendant pleas guilty or founded guilty in the examination.

# Stages of Chinese Courtroom trials

- preparatory stage
- examination
- **argumentation**
- defendant's statement
- collegiate bench's deliberation
- sentence.

# Chinese Criminal Code

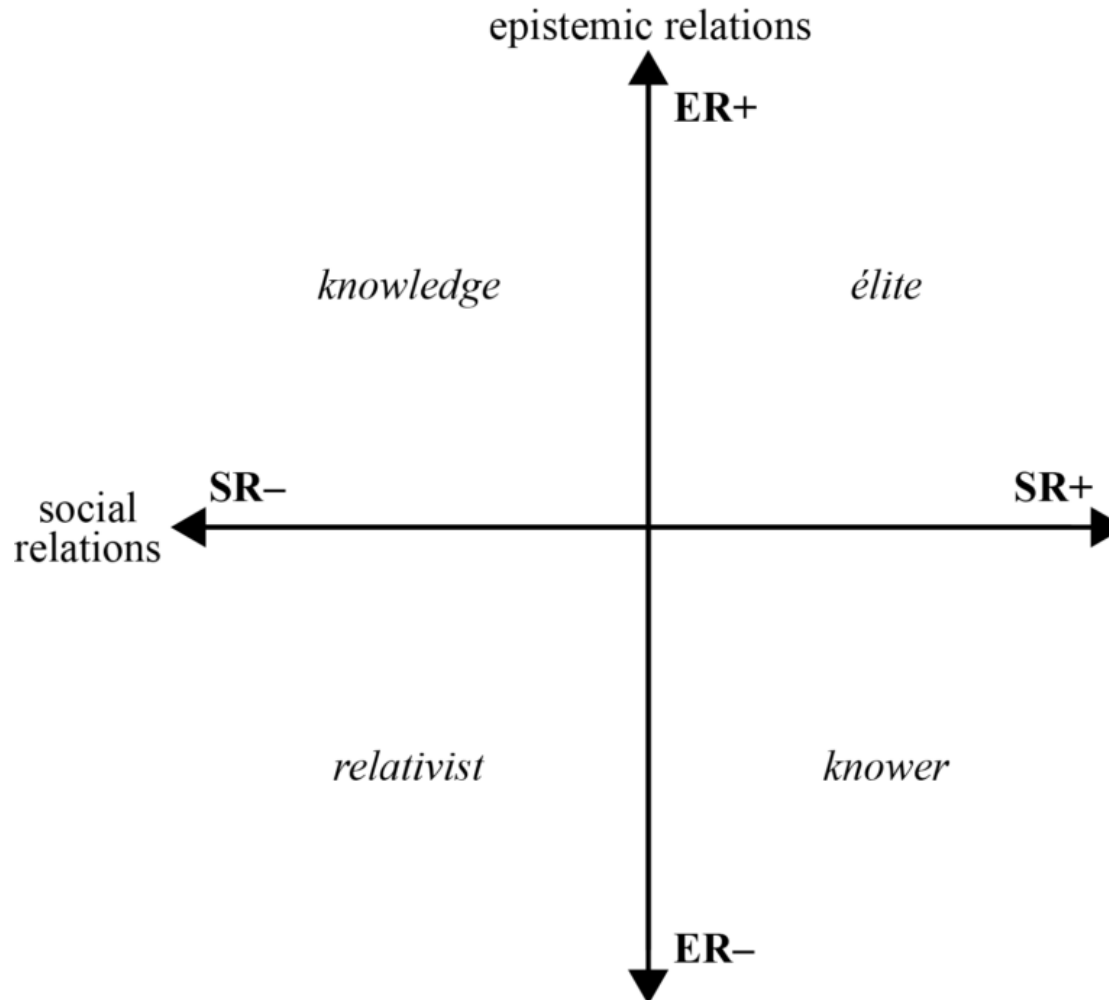
Definitions of crimes establish relations between elements that constitute the offence :

- Actions
- Mental states

And guidelines for sentencing and mitigation.

- Harm/consequences
- Intentionality/culpability
- Confession and repentance.
- Good character.

# Specialization Codes of Legitimation



Translation Device for Specialization Codes in Courtroom argumentation

<b>Relations</b>	<b>Emphasis</b>	<b>Indicator</b>	<b>Example</b>
Epistemic relations (+)	Fact construction and/or invocation of specialist knowledge emphasised in justifying courtroom argumentation.	Legal principles, Statutes, factual accounts.	The accused, Bo, took advantage of his power, in order to secure benefits for others and accepted the bribe from others directly or together with his wife Bogu. His behavior conforms to the constitutive requirements of the crime of acceptance of bribes stipulated in the Criminal Law of China. According to the law, he should be proven guilty of the crime of bribery.
Epistemic relations (-)	Fact construction and/or invocation or specialist knowledge less emphasized in justifying courtroom argumentation.	Absence of: Legal principles, Statute, factual account.	Villagers' committee of Gelao Village of Fuping County of Hebei Province, the government of Pingyang Town of Guping County and Pingyang Police substation of Public Security Bureau of Fuping County prove that Cui is a law-abiding citizen
Social realtions (+)	Eexplicit moral, affective, or political evaluation or speculation emphasized in shaping legal opinions.	Expression of emotion, moral evaluation, common sense understanding of wrong-doing.	The defendant, Zhao's inhuman atrocities, is not only a flagrant violation of citizens' personal rights and property rights, but a severe damage to social public security order. It is not only a random trampling on the laws of the state, but also a brutal destruction of human civilization
Social relations (-)	Moral, affective, or political evaluation or speculation downplayed in shaping legal opinions.	Statements that reject the importance of common moral feeling, interlocutors moral feeling, etc.	Therefore, nothing can change the identification of Bo's taking advantage of his position and seeking benefits for others, no matter his act of helping others is rightful or not, or he knew Tang Xiaolin made personal profits or not, and both sides agreed on taking bribes or not while seeking benefits.

## Case Study: Bo's trial for Bribery

Case: Bo, a state official, accused of bribery from the late 90s to early 2000s.

From the Criminal Law of the People's Republic of China:

“Crime of Embezzlement and Bribery

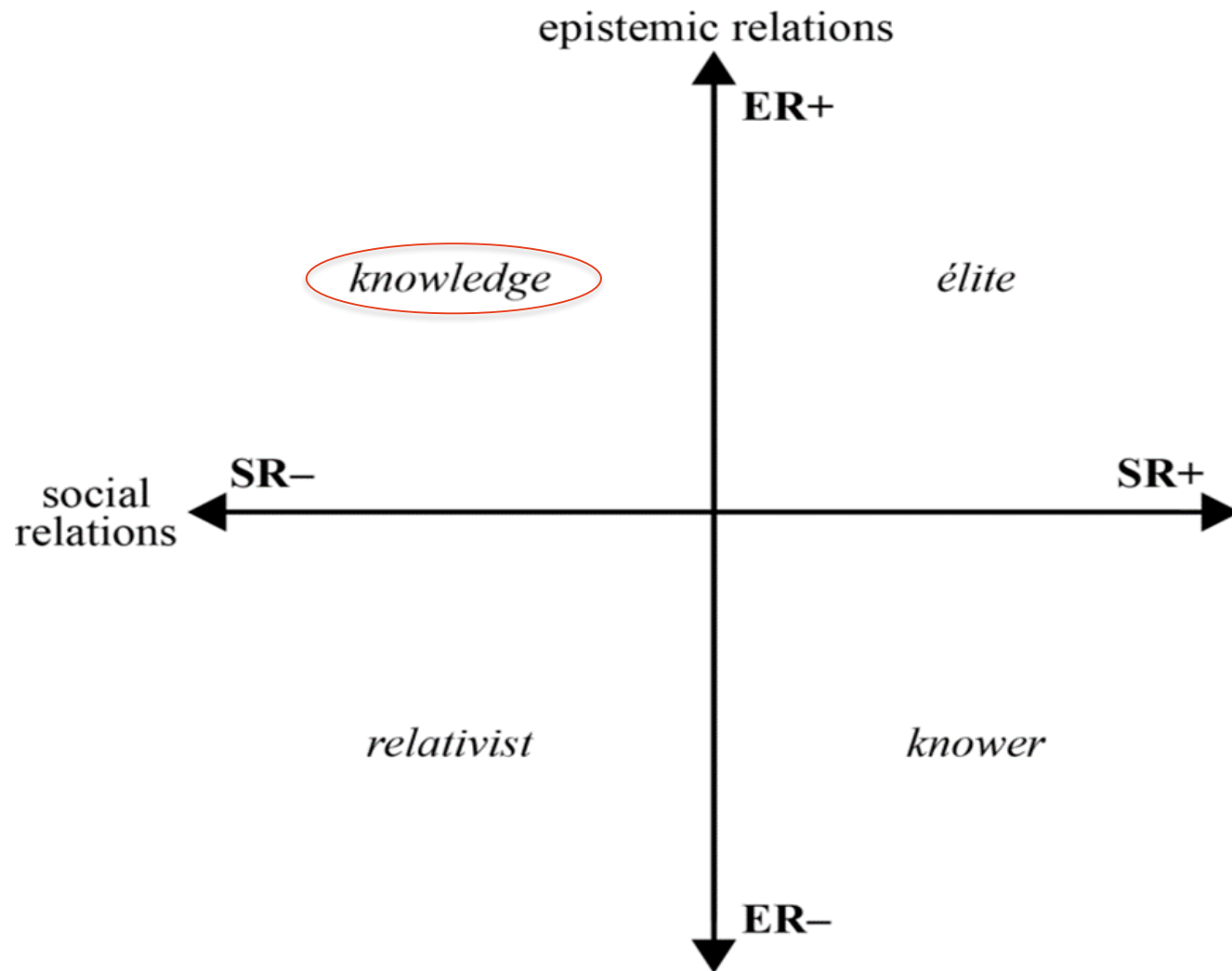
Article 382

Any State functionary who, by taking advantage of his office, appropriates, steals, swindles public money or property or by other means illegally take it into his own possession shall be guilty of embezzlement.

Any person authorized by State organs, State-owned companies, enterprises, institutions or people's organizations to administer and manage State-owned property who, by taking advantage of his office, appropriates, steals, swindles the said property or by other means illegally take it into his own possession shall be regarded as being guilty of embezzlement.”

## Bo's Bribery case: Prosecutors Statements

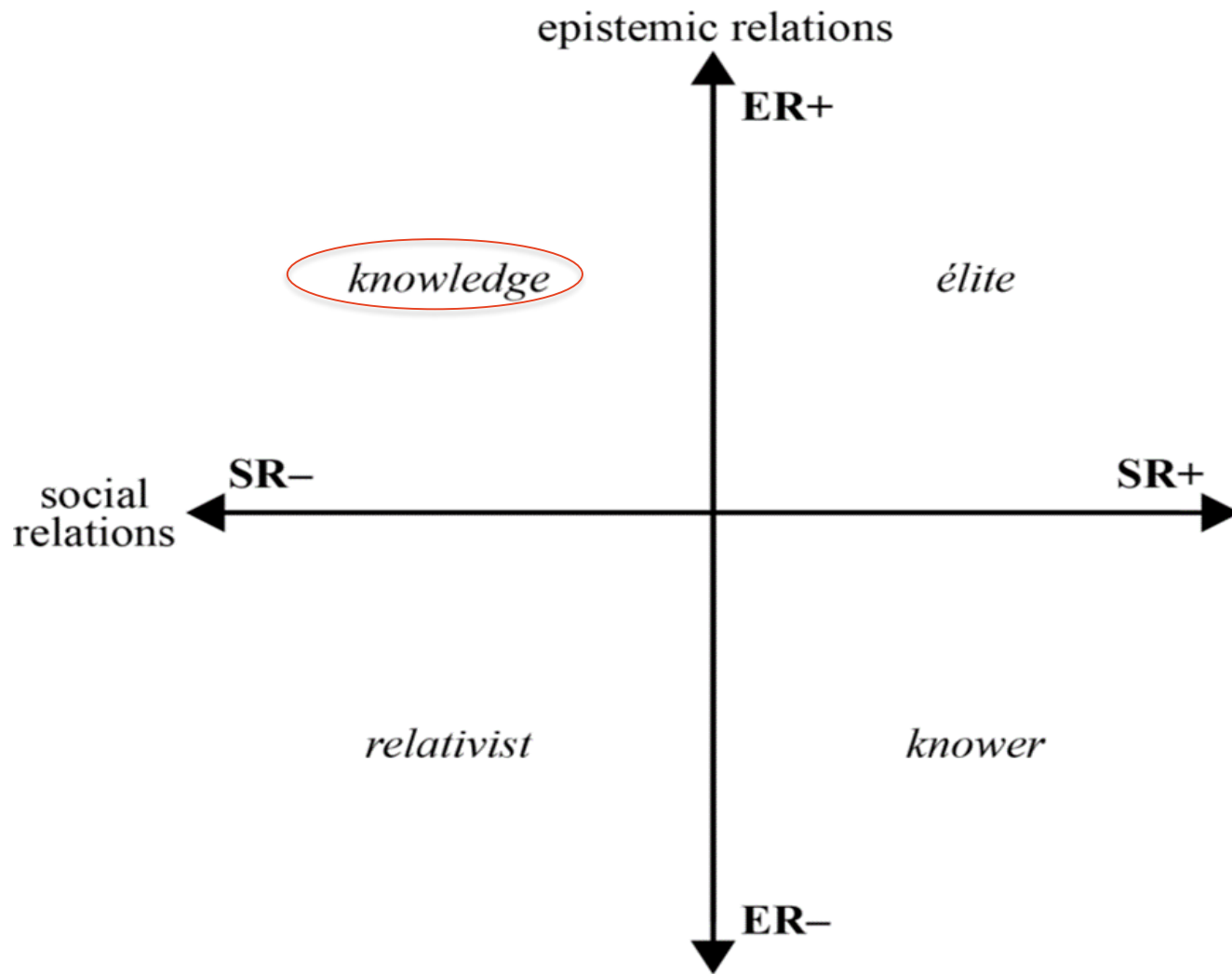
“From the year of 2000 to 2002, at the request of Tang Xiaolin, who was then the general manager of Dalian International Company, the accused Bo Xilai took advantage of his government posts as mayor and CCP head of Dalian city as well as governor of Liaoning Province to help Tang with developing the local land owned by the liaison office of Dalian city in Shenzhen and applying for quota of imported motor vehicle. From the second half of 2002 to latter half of 2005, Bo received Tang's money on three different occasions, which is worth an amount of ¥1109446. ”





## Bo's Bribery case: Prosecutors Statements (2)

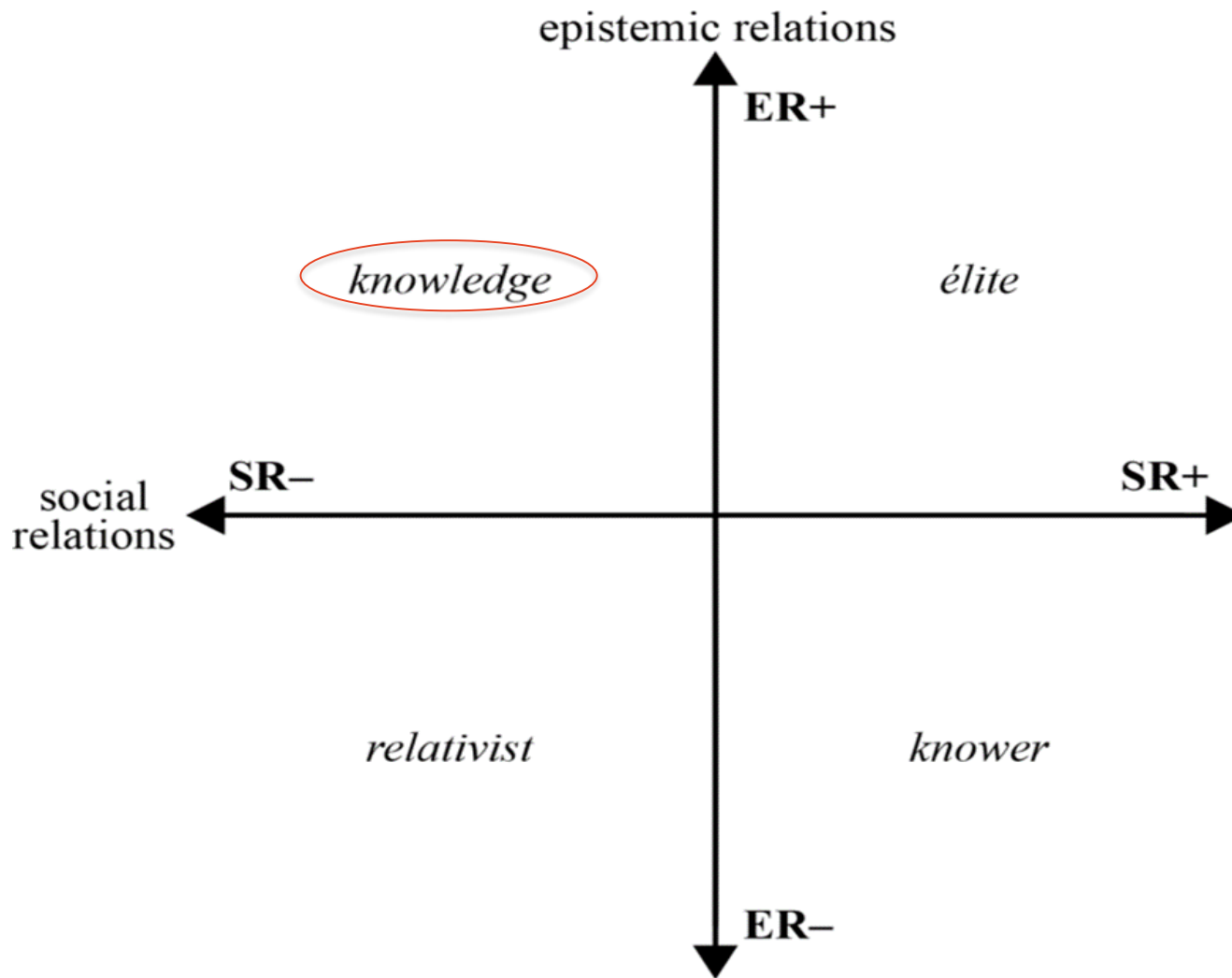
“From the year of 1999 to 2006, at the request of Xu Ming, who was then the president of Dalian Shi De Group Company, the accused Bo Xilai took advantage of his government posts as mayor and CCP head of Dalian city as well as governor of Liaoning Province and China's Minister of Commerce to help Xu's company with the acquiring of Dalian Wanda Football Club, the project of fixed-point flying ball, the applying of petrochemical project in Shuangdao Bay of Dalian, and being listed for record by Ministry of Commerce of China as a nonstate-run Imp. & Exp. Trading Company to buy and sell crude and refined oil. From the year of 2001 to 2012, Bo Xilai received Xu's bribes on several occasions by the hand of Bo's wife Bogu Kailai and Bo's son Bo Guagua, which is worth an amount of ¥2,0681,141.”



## Bo's Bribery Case: Defence statements

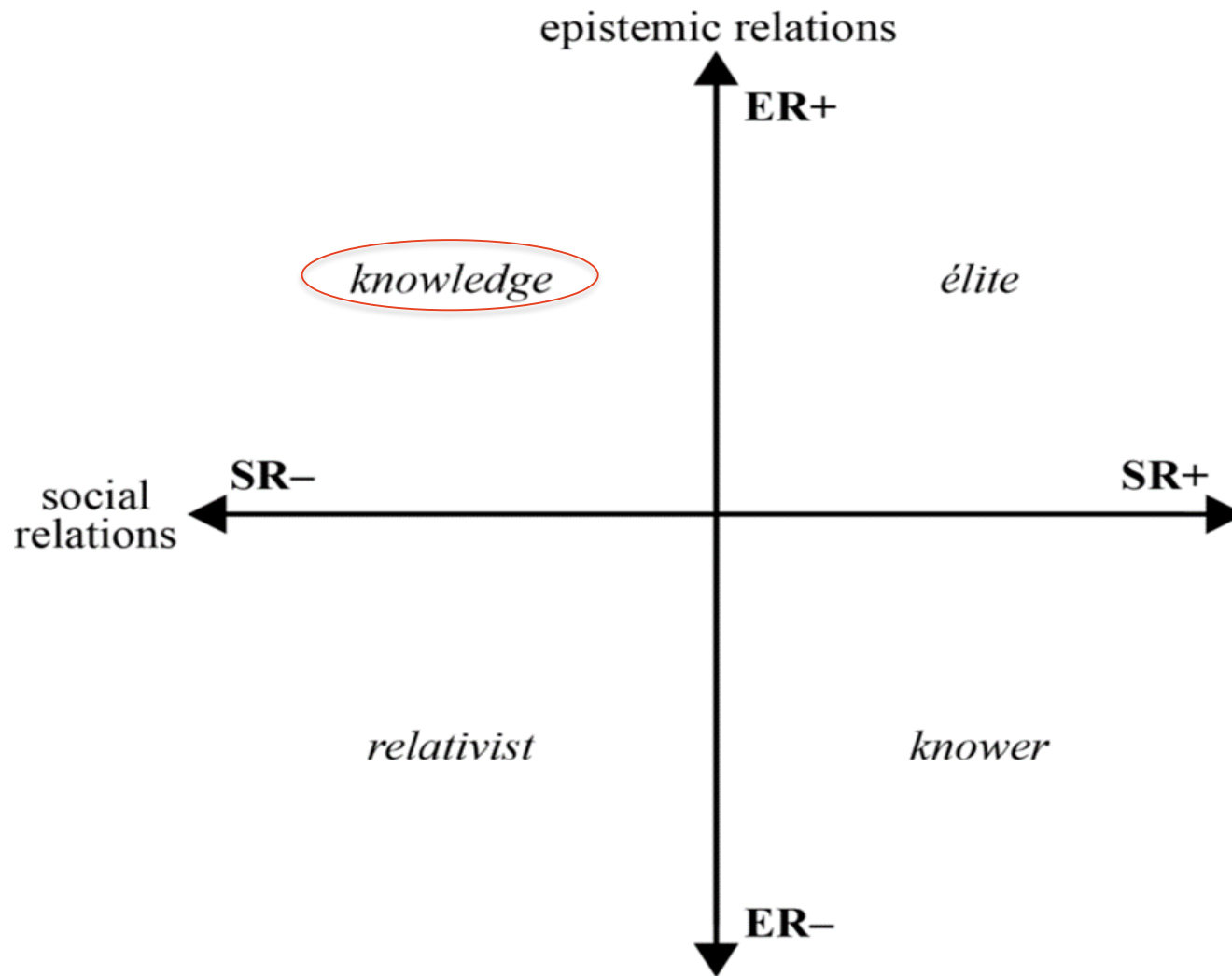
“What Bo Xilai has done for Tang Xiaolin, for which Bo was charged by the prosecutor, is an act of duty for Bo to support lawfully Dalian International Company. Bo did not know Tang got profits in this business, for Bo did not seek personal benefits for Tang himself. Similarly, the help and support Bo gave to the Shi De Group is a legal duty, which can stimulate the local economic development. Most importantly, Bo did not make a deal with Tang and Xu.

Tang's verbal evidence that he gave Bo money three times is contradictory to other evidences, so it should not become established evidence. In addition, Bo denied having received money from Tang. Therefore, this bribery charge cannot be determined”



## Knowledge code strategy: 'The law is the law'

“For illegal encroachment, the defendant Zhu used computer network to steal 6166 game recharge cards on the website of Beijing Huao pioneering and Trade Co., Ltd. *The amount is extremely huge.* His behavior has violated the Article 264 of the Criminal Law of People’s Republic of China and constitutes the crime of theft.”



## Elite code strategy: ‘But their a good person...’

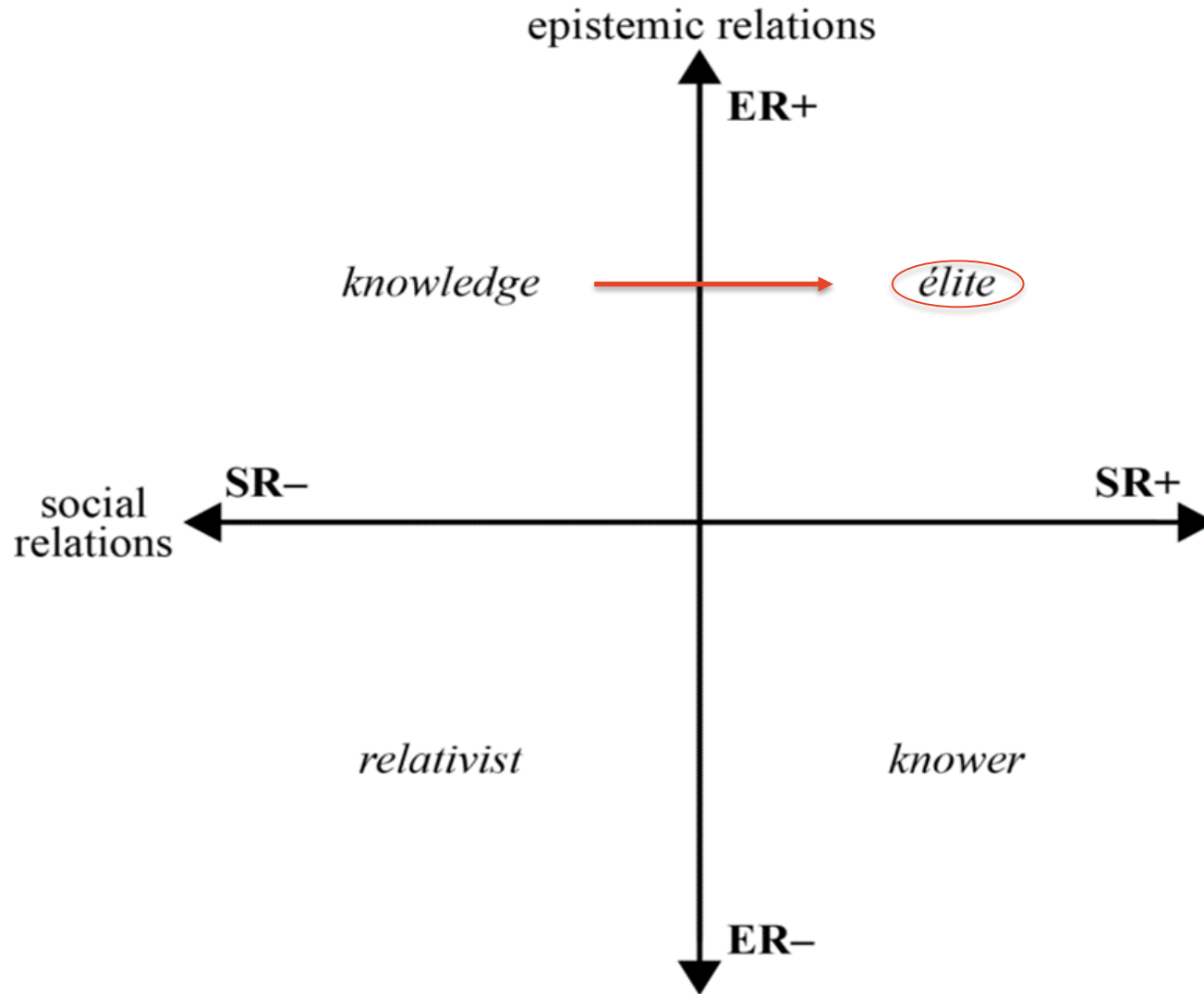
1)Villagers' committee of Gelao Village of Fuping County of Hebei Province, the government of Pingyang Town of Guping County and Pingyang Police substation of Public Security Bureau of Fuping County proves that Cui is a **law-abiding** citizen.

(2)The central primary school of Fuping Country of Hebei Province where Cui once studied proves that Cui is an **excellent** student.

(3)Pingyang Middle School of Fuping County where Cui once studied in reveals that Cui is **faithful** and had **excellent** performance.

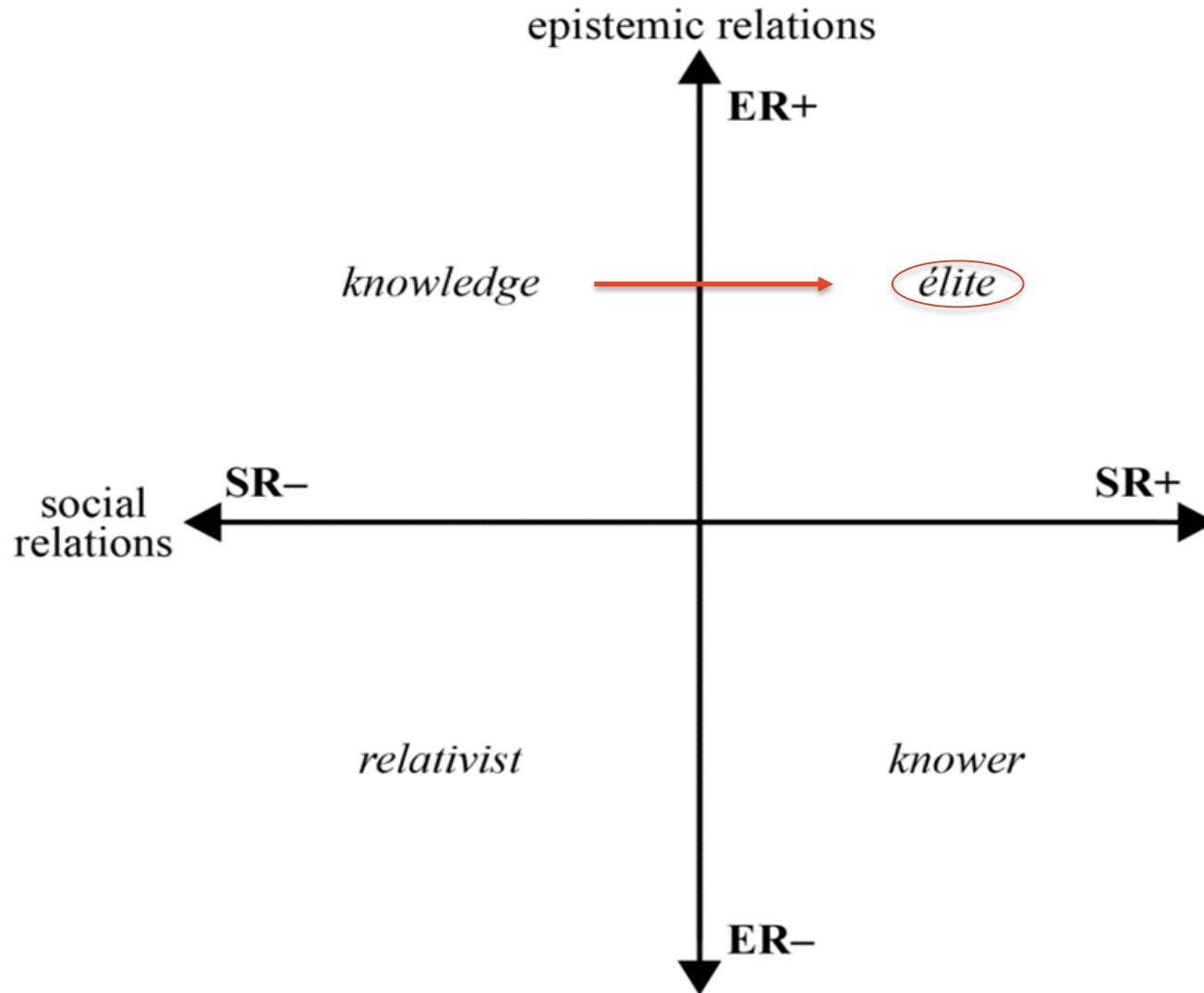
“The defendant confessed his **crime faithfully**. He **confesses enthusiastically** and **elaborates frankly** on the crime story in several interrogations of the political and procuratorial organ. The cooperative attitude is the first step of repentance: the defendant behaves quite well in prison of Zhaoyuan City, which is the second step of repentance. Judging panel, please consider the attitudes and repentant behavior when measuring the penalty.”





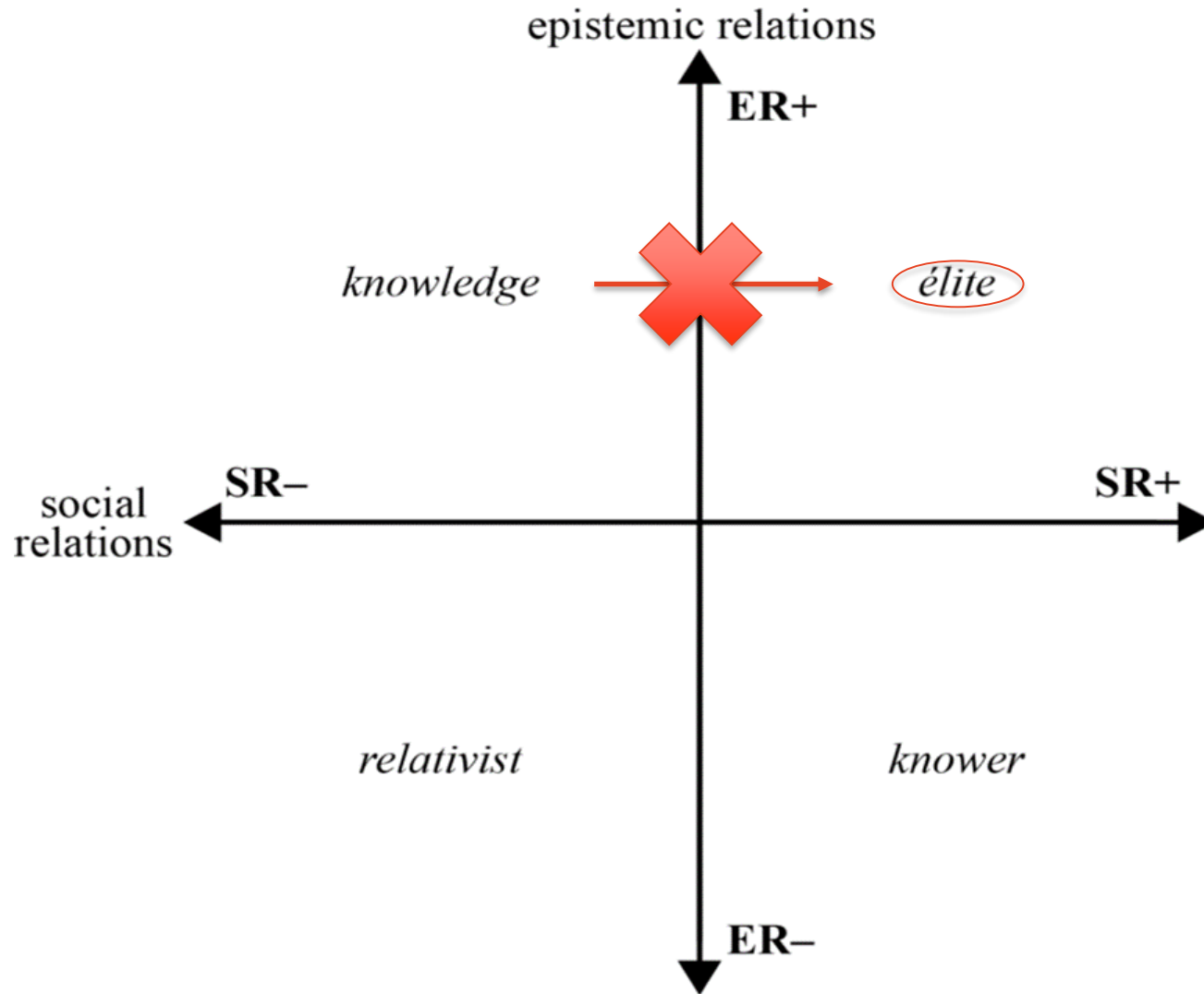
## Elite code strategy: “They were cruel and malicious’

“At the midday of May 4th, Ning, who’s **kind-hearted** [+Judgement/Veracity], treated Zhao as a guest from afar and ushered in Zhao, who’s **vicious** [-Judgement/Veracity]. She offered him the seat and served him water. However, the accused Zhao was **evil** [-Judgement/Veracity]. He stabbed Ning, who’s **unprepared** [-Judgement/Normality], with a knife. Immediately blood gushed from her neck and breast, then she fell down.”



## Knowledge code strategy: ‘none of that matters’

“According to China’s criminal law, when government staff member takes advantage of his position to seek benefits for others and take their bribes, he is suspected of committing bribery crime. As long as the suspect has made the power-for-money deal, he is surely guilty of bribery crime no matter the means he sought benefits for others is legal or not, the benefits he sought for others are illegitimate or not, and regardless of the suspect sought benefits for the entrusting person himself or for his affiliated unit, and no matter he had intended to take bribes or not while seeking benefits for others. Therefore, nothing can change the identification of Bo’s taking advantage of his position and seeking benefits for others, no matter his act of helping others is rightful or not, or he knew Tang Xiaolin made personal profits or not, and both sides agreed on taking bribes or not while seeking benefits.”



## Conclusion

- Chinese courtroom predominantly a knowledge code practice.
- The law technicalizes crimes and their consistent elements into taxonomies which are then applied to explain cases.
- Yet, the law does not define “good character”, “repentance”, “severity”/ ‘harm” (when not quantifiable) – which allows space to strengthen social relations and emphasise a cultivated gazes.
- Courtroom strategies move between these knowledge code and elite code dimension of courtroom argumentation.
- Pedagogic implications: rote memorization of statutes is not enough to teach students effective argumentation.
- Sociological implications: reveals an axiological dimension to legal argumentation/ undermines the neutrality of legal judgements.