

The Labour Law System, Capitalist Hegemony and Class Politics in China

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Abstract

This article investigates how the Chinese labour law system has helped to reproduce capitalist hegemony, i.e. the ethico-political, moral and cultural leadership of the ruling class. Based on intensive fieldwork in the Pearl River Delta and 115 interviews with migrant workers, this article shows that the labour law system has exercised a double hegemonic effect with regards to capital–labour relations and state–labour relations. Through normalizing, countervailing, concealing and transmuting mechanisms, the labour law system has been able to buffer both the market economy and the party-state from workers' radical and fundamental criticism. However, the double hegemony mediated through the labour law system has influenced the Chinese migrant workers in an uneven manner: some of them have granted active consent to the ruling class leadership; some have only rendered passive consent; and some have refused to give any consent at all.

Keywords: hegemony; China; labour laws; class consciousness; class politics; migrant workers; the state

This article investigates how the Chinese labour law system has helped to secure worker consent to the leadership of the ruling class, i.e. the party-state plus the capitalist class. The legal system, marginalized during the Maoist era, has gained greater weight in the reform period. During the 1980s, the labour contract and economic contract systems were introduced in China and private property rights were constitutionally endorsed. During the 1990s, the 1992 Trade Union Law, 1994 Labour Law and the 1995 Arbitration Law were enacted to regulate the newly emerging capitalist–labour relations. Moreover, the concept of *yifa zhiguo* 依法治国 (rule of law) was added to the Chinese constitution in 1999, and the notion of *yifa weiquan* 依法维权 (defending rights according to the law) has been widely promoted by the party-state. During the 2000s, the 2000 Legislation Law was enacted to specify how laws should be legislated, and the 2001 revised Trade Union Law and 2004 Provisions on Minimum Wage were promulgated. In 2007, three new laws, the Labour Contract Law, the Employment Promotion Law, and the Labour Dispute Mediation and

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Arbitration Law, were passed. In 2011, the Social Insurance Law was promulgated. In 2012, the 18th CCP National Congress endorsed the deepening of judiciary reform, which continues to be an important agenda for the current Chinese leaders, Xi Jinping 习近平 and Li Keqiang 李克强. In addition, post-Mao China has witnessed greater efforts to professionalize judges and legal practitioners,¹ train and regulate lawyers,² and increase legal aid to the public.³

It is widely agreed upon by scholars that the labour law system in China is an important tool used by the state to channel worker grievances through to the regulated, individualized and officially sanctioned procedures so as to forestall radical actions.⁴ However, at the same time, many studies point out that labour laws are poorly enacted and ill-respected by local governments and businesses.⁵ If both of these arguments hold true, then an intriguing puzzle arises: how is it possible that a loosely implemented labour law system is capable of persuading workers to utilize legal instruments to redress their grievances, or to abide by legal principles when taking action? If the labour law system completely fails to perform any mediating or mitigating functions, workers are likely to become more rebellious and subversive. If workers do not turn insurrectionary, then how has the labour law system, however flawed, managed to contain labour activism within the legal boundaries? To my knowledge, little is known about the grievance-diversion mechanism inherent in the labour law system: how has the party-state made many workers believe that the labour law system can protect their interests so that they do not take to the streets? In what ways does the labour law system help to resolve conflict between capital and labour? To what extent do workers trust it and why? Under what circumstances would workers be willing to bypass it?

Drawing on Gramsci's theory of hegemony, this article seeks to solve the aforementioned puzzle and provide a deeper understanding of the grievance-diversion capacity of the Chinese labour law system, which I call *legally mediated hegemony* or *legal hegemony*.⁶ Differing from the studies that highlight the benefits brought by labour laws to workers,⁷ or that stress workers' active appropriation of laws to advance their interests,⁸ I contend that the labour law system is also a

1 Friedman and Lee 2010.

2 Zhu 2004.

3 Stern and O'Brien 2012.

4 Gallagher 2007; Friedman and Lee 2010; Chen and Tang 2013.

5 Cooney 2007; Ngok 2008; Liebman 2007.

6 Gramsci 1971, 1988.

7 For instance, Cooney et al. (2007) examine in what ways the 1995 Labour Law has failed to safeguard workers' rights and how the new Labour Contract Law has filled these legal gaps. Gallagher et al. (2015, 197) suggest that the Labour Contract Law "contributed to reversing a trend toward increasing informalization of the urban labor market." Zheng (1987, 430) argues that the labour contract system "represents an enhancement of the employees' position relative to the enterprises." I do not deny that labour laws have offered workers a certain degree of protection, but this article seeks to move beyond this easy observation to investigate the deeper nature of the Chinese labour law system.

8 For instance, Lee 2007 underscores that both urban and migrant workers have utilized official legalist rhetoric during their protests to support their demands. While acknowledging that the labour law system helps channel worker grievances, Gallagher 2005 holds that the same system has made it difficult for the government to neglect labour conflicts and that laws can be workers' weapons to safeguard their rights.

vital vehicle through which the Chinese party-state has constructed capitalist hegemony, i.e. the ethico-political, moral and cultural leadership of the dominant class. Through four hegemonic mechanisms – the normalizing, countervailing, concealing and transmuted mechanisms – the Chinese labour law system has produced a *double hegemony*, which deflects workers' radical opposition against both the market economy and the party-state.⁹ Focusing on Chinese migrant workers, this article proposes that their susceptibility towards legal hegemony varies. Many workers are vulnerable to legal hegemony, granting active consent to the ruling class's leadership through the mediation of the labour law system, some have only given passive consent, while a segment of workers are quite insusceptible, refusing to render any consent at all. This implies that emerging legal hegemony in China is precarious and fragile rather than stable and sturdy.

This article draws on interviews with 115 workers and other types of informants in five out of nine cities in the Pearl River Delta (Zhujiang sanjiaozhou 珠江三角洲, hereafter, PRD) in Guangdong province, including Shenzhen 深圳, Dongguan 东莞, Foshan 佛山, Huizhou 惠州 and Guangzhou.¹⁰ In addition, participant observation in labour NGOs and worker activities and systemic documentary research were conducted. This article is organized as follows. The next section discusses the concept of hegemony, elucidates how the current literature in the field of China studies has used the term, and points out the inadequacies of this usage. The article then goes on to illustrate the double hegemonic effect imposed by the labour law system with regards to capital–labour relations and state–labour relations, the four hegemonic mechanisms embedded in the Chinese labour law system, as well as the varying degree of worker susceptibility towards legal hegemony. The last section concludes.

Hegemony and Class Politics

The term hegemony is used in this article in the strict Gramscian sense. Instead of stretching the concept to include every relation between the oppressor and the oppressed, this article focuses on the Chinese party-state's hegemonic capacity as derived from its labour law system with regards to state–capital–labour relations. While Marx and Engels¹¹ and Lenin¹² mostly focused on the oppressive

footnote continued

Diamant, Lubman and O'Brien (2005) maintain that the proliferation of labour laws, the emphasis on the rule of law and the rights discourse have emboldened the aggrieved groups to “fight the power.”

9 The term “double hegemony” is inspired by Scherrer 2001, who argues that the US hegemony exerted in the world market is interlinked with the hegemony of the corporate internationalists within the country.

10 The data were collected between September 2012 and July 2014. Among the worker interviews, 75 were in-depth interviews and 40 were informal interviews. In addition to interviews with workers, I interviewed trade union officials, legal and labour scholars, lawyers and legal practitioners, judges, government and Party officials, and NGO staff.

11 Marx and Engels 1978.

12 Lenin 2012[1969].

nature of the state, Gramsci, in his *Prison Notebooks*, advanced the concept that the power of the ruling class is organized by the state in both political society and civil society through “coercion” plus “hegemony.”¹³ He contended that the coercive machinery of the state helps to sustain the domination of the capitalist class, but at the same time, the state has to acquire the active consent of the working class by establishing “its own moral, political and cultural values as conventional norms of practical behaviour” in order to sustain its class rule.¹⁴ The ideological ascendancy of the capitalist class over the subaltern classes is what Gramsci called hegemony. Because of the intricate power mechanism of coercion and hegemony, Gramsci reveals that the working class consciousness and its rebellions against capitalism do not appear automatically, as some forms of Marxism predict.

Many subsequent scholars have delved into Gramsci’s insights on hegemony.¹⁵ This article defines hegemony as containing six key elements. First, hegemony is the active consent obtained by the ruling class over the subordinate class by influencing the latter’s intellectual, moral and political worldviews. Second, the exercise of hegemony is to sustain the long-term dominance of the ruling class. Third, the capitalist class needs to create a national, popular appearance for its parochial interests in order to acquire worker allegiance to the leadership. Fourth, the reproduction of hegemony involves compromises on secondary issues made by the ruling class – short-term concessions made to the working class are not unusual. Fifth, hegemony is bulwarked by the application of state coercion; even the most hegemonic state cannot rule without the support of military and physical forces. Sixth, the hegemony of the ruling class is exercised in the unstable and fragile field of socio-political relations; this means the possibility of the working class’s counter-hegemony exists.¹⁶

Scholars in the field of China studies frequently refer to the term “hegemony” but its meaning is often unspecified and ambiguous. According to my own analysis, hegemony is understood in at least four different ways in the literature relating to the Chinese state, laws and labour. First, some scholars have equated hegemony with legitimacy. For instance, Teresa Wright uses the term hegemony and legitimacy interchangeably when discussing to what extent the Chinese

13 Gramsci 1988, 1971.

14 Femia 1987, 3.

15 Salamini 1974; Anderson 1976; Adamson 1980; Mouffe 1979.

16 Burawoy 2012 contends that Gramsci has missed out mystification as an important foundation for hegemony. However, some other scholars stress that hegemony is not equivalent to the imposition of false consciousness on the working class (Poulantzas 2008; Jessop 1982); hegemony-building has to take into account and incorporate some workers’ interests and demands in order to gain universal appeal. In fact, Gramsci’s insight on hegemony is considered to transcend Marx’s idea of “false consciousness” exactly because he has treated worker agency seriously, rather than viewing workers as dummies on which any ideas from the capitalist class can be imposed. Moreover, I find Burawoy’s elaboration on the relation between mystification and hegemony not so clear. On the one hand, he writes that “hegemonic regimes are the necessary and sufficient condition for the mystification of exploitation” (2012, 196); on the other he states that “It [mystification] is the necessary condition for a stable hegemony, that is, for the organization of consent to domination” (2012, 198). It is unclear whether for him hegemony is the necessary condition for mystification or the other way around, or whether they are mutually dependent. This important relation needs further clarification.

Democratic Party and China Labour Bulletin (a NGO led by overseas dissidents) can challenge the legitimacy of the Chinese state.¹⁷ Without defining what these two terms mean, the confusion between them manifests in her conclusion that “decentralized CCP control provides openings that may be probed by groups challenging CCP *legitimacy* ... the political atmosphere on the mainland remains extremely constricted, such that only groups that pose a limited threat to CCP *hegemony* (such as the CLB) may be allowed to persist.”¹⁸ Legitimacy is a concept usually associated with political regimes but without considering its relationship with the economic state.¹⁹ However, from the Gramscian perspective, the concept of hegemony concerns both political and economic relations. Owing to their conceptual difference, it is inappropriate to equate hegemony with legitimacy.

Second, hegemony is used by some scholars to indicate ideological influence or dominance. Peter Gries argues that the Chinese state’s “hegemony over national discourse” has been challenged by the popular notion of nationalism, which criticizes the state’s nationalist discourse and foreign policies for failing to protect the national interests.²⁰ He suggests that “[s]truggling to keep up with popular nationalist demands, the Party appears to be losing its hegemony over Chinese nationalism.”²¹ Comparing it to the production regime characterized by localistic despotism in Shenzhen, Ching Kwan Lee advances that the production regime in Hong Kong is based on “familial hegemony,” which refers to the managerial control of labour by relying on discourses and ideologies related to the Chinese family and the domestic responsibilities of women.²² Although this usage of hegemony concerns values and ideologies, it is different from the Gramscian notion of hegemony. These authors use hegemony to refer broadly to ideological domination rather than specifically to acceptance by the working class of capitalist worldviews concerning the state and the economy.

Third, hegemony is treated as a synonym for domination, power or control. Dorothy Solinger emphasizes the Chinese state’s “socioeconomic domination” over floating migrant workers, arguing that they have been “absorbed into the state’s hegemony.”²³ Pitman Potter examines how Chinese economic reform has strengthened the party-state’s reliance on the legal system, which in turn has restrained state power and challenged “party hegemony.”²⁴ He highlights that “once policies are publicly articulated in law, the regime loses important

17 Wright 2004.

18 *Ibid.*, 137–38. Emphasis added.

19 For example, Max Weber’s understanding of legitimacy is “the belief that someone’s position and the system incorporating it are right and proper” (Wallace and Wolf 2006, 74); for Habermas, it is “a political order’s worthiness to be recognised” (Habermas 1979, 178); for Jessop, it is “the socially acknowledged character of its [the state’s] political functions” (Jessop 2008, 10).

20 Gries 2004, 187.

21 *Ibid.*, 183.

22 Lee 1995.

23 Solinger 1993, 93.

24 Potter 2004, 480.

degrees of *control* over the content and interpretation of these new norms. Instead, *hegemony* is protected by preserving the party's authority over personnel ... the regime has attempted to maintain *hegemony* over legal reform through *control* over personnel."²⁵ Like most of the scholars who have used the term *hegemony*, Potter does not define precisely what it means. The meaning of the above quotation does not change much if "hegemony" is replaced by "power" or "domination."

Fourth, some scholars in the field of China studies have used *hegemony* in the Gramscian fashion and have understood it as the moral and political leadership of the capitalist class. Marc Blecher explains that laid-off urban workers used to be exposed to socialist ideologies but that they have come to accept the market ideologies in the post-Maoist era.²⁶ Many of them are victims of economic reform but they surprisingly think that the market economy is more effective than the planned one. Some workers feel the unfairness of the economic reform but believe it is natural and inevitable. Therefore, many are unmotivated to struggle for labour rights through collective action. This is, Blecher argues, a testimony to worker acceptance of common sense as created by the ruling class. Blecher sheds light on the study of Chinese class politics by deploying a Gramscian perspective. However, his research is lacking when accounting for recent developments in China because, first, it was conducted more than ten years ago, during the late 1990s, and substantial socio-political and economic changes have taken place over the last decade, meaning the issue of capitalist *hegemony* needs to be revisited. Furthermore, Blecher's study only focuses on laid-off urban workers and omits the growing number of migrant workers from the rural areas – nothing is known about their susceptibility to capitalist *hegemony*.

Another study of capitalist *hegemony* in China was conducted by Elaine Hui and Chris Chan.²⁷ They contend that "harmonious society" is not simply a political slogan propagated by the Hu–Wen regime, but rather is the party-state's hegemonic project to tame restive labour and secure acquiescence to the ruling class's leadership. Examining the state–capital–labour relations during the period from 2004 to 2011, they propose that the harmonious society project aims to shape the political and moral worldviews of migrant workers, and to safeguard the ruling class's dominance by incorporating the short-term concerns of the working class into social policies. Their findings, centring on migrant workers in the 2000s, supplement Blecher's study on laid-off state workers conducted in the 1990s. Nonetheless, as no worker voices are included in their study, little is revealed with regards to what extent migrant workers' worldviews have been shaped by capitalist *hegemony*, or to what extent they have contested *hegemony*.

25 *Ibid.*, 482. Emphasis added.

26 Blecher 2002, 2004.

27 Hui and Chan 2012.

This article seeks to answer these unattended questions by investigating how the labour law system has helped to build up the moral, cultural and ethico-political leadership of the ruling class by endorsing, inculcating and reproducing capitalist values and worldviews. I hold that the labour law system is a crucial point of departure to anatomize the hegemonic power of the Chinese state for various reasons. Theoretically, as Gramsci has pointed out, laws serve a hegemonic purpose by creating and sustaining “a certain type of civilization and of citizen,” eliminating “certain customs and attitudes,” and promoting certain values.²⁸ The legislative and judiciary branches of the state are “organs of political hegemony.”²⁹ Historically, the experience of Western countries shows that labour laws are an ideology and that they negatively affect labour activism. For instance, the Wagner Act in the US de-radicalized the labour movement by instilling a legal consciousness into workers premised upon contractualism and private property rights, and by confining their actions within existing legal institutions and practices. Domestically, the Chinese party-state has strongly encouraged workers to use laws to resolve disputes. The fifth five-year plan for legal promulgation and education made by the Ministry of Justice and the Propaganda Department of the CCP considered making education and guidance of the popular masses to carry out legal rights defence one of its major goals, emphasizing that laws should be actively enforced within enterprises and that the government and Party cadres should “actively guide workers to learn laws and use laws ... *heighten workers’ awareness of legal rights defence*, of fulfilling their legal duties and of bearing their responsibilities.”³⁰ In 2013, when the sixth five-year plan of the Ministry of Justice began, the ministry’s goal was to bring laws to the rural areas through, among other things, guiding the rural masses to carry out legal rights defence and fulfilling their legal duties.³¹ The government’s intention to contain labour activism through legal means is obvious.

Legal Hegemony and Workers’ Susceptibility

Chinese migrant workers have accepted or rejected capitalist hegemony mediated through the labour law system to differing extents: some workers have conferred active consent to the leadership of the ruling class, some have only given passive consent, and some have completely rejected it. Active consent indicates that workers have internalized capitalist worldviews, and that their consent “takes the form of active commitment, based on a deeply held belief that the superior position of the ruling group is legitimate” and that the capitalist class represents the interests of larger society.³² Passive consent signifies that workers have only

28 Gramsci 1971, 246.

29 Ibid.

30 See: <http://www.moh.gov.cn/mohzcfgs/s6525/200804/18397.shtml>. Accessed 3 April 2013. Emphasis added.

31 See: <http://www.xchen.com.cn/jihua/sifagongzuojihua/624539.html>. Accessed 3 April 2013.

32 Femia 1987, 32.

partially assimilated dominant values and ideas, or that they feel the status quo is inequitable but there is no viable alternative. Workers have developed passive consent “not so much because the masses profoundly regard the social order as an expression of their aspirations as because they lack the conceptual tools.”³³ In the following, I elaborate the views of workers who have rendered active, passive or no consent to the leadership of the ruling class through the mediation of the labour law system.

Workers’ active consent

Zhi Ming was 28 years old and had completed vocational school.³⁴ In 2011, he worked in an electronic factory in Shenzhen, but his employer decided not to hire him after the probationary period for unspecified reasons. Asserting that Zhi Ming performed his duties poorly, his boss only paid him half of the monthly wage for a full month’s work. Zhi Ming lodged a complaint with the labour bureau, but action was only taken after he had gone to the office four times. The labour bureau officer called his boss to enquire about the case, after which a mediation meeting was held between Zhi Ming and his boss. In the end, his employer paid him the other half of his monthly salary.

Zhi Ming had a high opinion of the labour law system, most likely because he managed to retrieve the rest of his wages through labour mediation. He stressed that “labour mediation helps a lot and has done me justice.” Although Zhi Ming encountered unfair treatment at work, the labour law system, to a certain extent, provided him with a channel through which he could redress his grievances; this convinced him that the socio-economic system was not completely inequitable. Similarly, a worker who lived through the Maoist period noted that, “In the past, we did not have any laws. Only when laws exist can there be standards for social practices; otherwise, there would be no [social] standards ... For example, labour laws require employers to sign employment contracts with workers and buy social insurance for them.”³⁵ Another first-generation migrant worker commented: “Some factories are really bad ... But, when my employer is problematic, I can simply complain to the labour bureau or sue the boss. There was no law when we first worked in the cities; now things have improved.”³⁶ The labour law system counteracts some adverse impacts imposed by the market economy on workers. Some workers, especially those who had had positive experiences with the labour law system or who had lived through the Maoist and early reform periods when the legal system was incapacitated, expressed appreciation for the labour law system, through which they believed they could resolve disputes with their employers. For them, labour laws were a

33 *Ibid.*, 33.

34 All names are pseudonyms.

35 Interview 2, 16 January 2013.

36 Interview 3, 19 March 2012.

tool that could be used to curb misbehaviour within the economic arena, rather than a juridico-political apparatus for facilitating capital accumulation. They regarded the labour law system as standing apart from the economic state, rather than being (partly) subsumed under the economic state. This demonstrates the *countervailing mechanism* embedded within the labour law system, which buffers the market economy from workers' radical criticism.

Despite his endorsement of the labour law system, Zhi Ming was aware of its weak enforcement. When asked if poor legal enforcement was caused by the government's bias towards employers, Zhi Ming firmly said no. Instead he reiterated:

*The labour bureau officers have the capability to implement the laws, but sometimes they just don't do it ... Some government officials may appear indifferent; but if you are persistent and determined enough to go through the process, they will have to handle your case properly. On the contrary, if you go to the labour bureau just once or twice, they won't handle your case seriously. The key to rights defence is persistence and determination. If you don't strive for your own interests, they won't help you.*³⁷

When explaining why some workers were unable to defend their interests successfully, Zhi Ming put the blame on their lack of persistence and determination rather than on the loose implementation of labour laws or the government's ineffective monitoring of enterprises. In other words, he attributed workers' suffering to their own psychological and behavioural shortcomings, rather than deeming it a failure of the labour law system.

In her early 20s, Xin Xin had come from Shanxi to work in an electronics factory in Shenzhen in 2007. She complained that inflation was too high, and that her salary could hardly keep up. By working as much overtime as she could, she earned about 3,000 yuan every month.

Researcher: Do you think workers are sharing the fruits of the economic growth?

Xin Xin: We can't catch up in many aspects ... we haven't benefited much from the rapid development. Although our wages have gone up, prices increase faster.

Researcher: Has economic development brought about any positive impacts?

Xin Xin: It probably has. At least our country has grown stronger. This is not really related to us, but when our country is strong, other countries will respect it in regards to issues like the Diaoyu Islands.

Researcher: What are the benefits for workers if our country is strong?

Xin Xin: For us ... we can't get any substantial benefit in economic terms, I think probably not much. It [China being a strong nation] doesn't affect us much. However, it'll be good for us if our nation is stable. If it were stable, we wouldn't have much to worry about.

Researcher: So, you want our country to grow stronger, right?

Xin Xin: Yes. Who wants their own nation to be worse off than other [nations]? I suppose everybody thinks like this.

Researcher: Have you heard about the slogan "let some people get rich first"?

Xin Xin: This means letting a group of people become wealthy first, and they'll then help others get rich ... this is what our textbooks in school say.

Researcher: What do you think about this?

Xin Xin: I think it's what ought to be done. *If there are no employers, how can people like us get jobs, right? Only when they're rich and successful can they hire us.*

³⁷ Interview, 14 October 2012, Shenzhen. Emphasis added by the author.

Researcher: Don't you think some employers earn a lot but still don't pay workers decent wages?

Xin Xin: I haven't thought about this much. *It's ok as long as employers pay our wages according to the Labour Law.* I've already worked in this factory for five years and there haven't been any labour disputes. Basically, this factory is ok.³⁸

Despite her complaint that inflation grew faster than her wages, she still expressed approval of the meagre wages offered by employers. She did not think that paying workers low wages was unjust if employers were not violating the Labour Law. Such a belief in the legitimacy and authority of labour laws is commonly held by workers. One female worker remarked, "I go to work according to schedule; it is fair and just, so long as my employer does not underpay me."³⁹ Another male worker noted that, "labour laws must have been passed for good reason. They were made by professionals; they, thus, must have taken into consideration national and social needs."⁴⁰ Another male interviewee commented that, "laws are products of many people's efforts and are made by the nation, therefore, they have their legitimacy."⁴¹ Social and legal structures are the aggregate consequences of the actions of people in the past, yet the elaboration and continuation of these structures over time makes them appear as external objects to social actors.⁴² Labour laws are one such object for some workers; they seldom go so far as to challenge whether the legal contents are just, or to question the unequal power relations dictating the law-making process. For these workers, laws are credible and authoritative yardsticks for judging employers – if employers act lawfully, then there are no grounds to blame them for the plight of workers. This illustrates the *normalizing mechanism* embedded in the Chinese labour law system, which buffers the market economy and the capitalist class from workers' fundamental criticism.

Although Xin Xin felt that workers did not share the fruit of economic progress, she nonetheless endorsed the state's developmental policy of "let some people get rich first," which resembles the liberal "trickle-down" theory whereby the government's support of businesses and the rich will subsequently benefit other members of society because the capitalist class will have driven the economy as a whole. She did not attribute workers' exclusion from economic prosperity to the state's support of the capitalist class. She interpreted her work experiences from a neo-liberal lens, which conceives capitalists as creating jobs and driving the economy rather than exploiting workers. Viewed from a Gramscian perspective, Xin Xin has conferred active consent to the capitalist leadership and market economy, interpreting her living experience from the dominant class's worldview. Xin Xin did not question the unbalanced economic development not only because of her employer's lawful acts but also because of nationalist sentiments.

38 Interview 4, 16 January 2013, Shenzhen. Emphasis added by the author.

39 Interview 5, 16 January 2013.

40 Interview 6, 15 December 2012.

41 Interview 7, 15 December 2012.

42 Archer 1982.

She deemed economic growth as not so much related to herself as an individual as to the nation as a whole. Similarly, a first-generation male migrant worker noted: “Since its economic reform, China’s GDP has gone up swiftly. Workers have sacrificed a lot, but it is worthwhile. Now, China has gained some international power and the Chinese people can lift our heads up.”⁴³ Although Xin Xin and some workers recognized that they had not benefited from China being strong, they considered it important for China to be powerful so that it could possess political and economic leverage over other countries. This reflects that, to a certain degree, the capitalist class in China has gained a trans-class appeal, and its interests are being universalized as the interests of both the working class and the country.

Workers’ passive consent

Ah Jing, a 36-year-old female worker, had come from Hunan province to work in a Taiwanese-invested shoe factory.⁴⁴ Her monthly basic salary was the same as Shenzhen’s legal minimum wage. I met Ah Jing when participating in a labour NGO’s outreach activities in an industrial area. She paid no attention to labour laws as she thought it was unnecessary: “My salary is ok. It’s higher than what I earned back home. I would just quit my job if there were any problems with the factory.” During our conversation, I found out that Ah Jing’s employer had not paid her the overtime premium according to labour laws: the overtime compensation she received was simply the same as the straight piece-rate wages rather than 1.5 to 3 times higher than the piece-rate, as legally required. Ah Jing was unaware of this legal regulation; her initial response to my legal advice was objection, insisting that she was not entitled to 1.5 to 3 times overtime compensation as she was a piece-rate worker, not an hourly rate worker. I then gave her a booklet produced by the NGO that explained the legal stipulation on overtime work. Later, she became uncertain about her original views and revealed greater interest in what labour laws stipulated, but she still reiterated several times that she would just quit her job and return to her rural village if the factory work became problematic.

Ah Jing did not care about labour laws and her manager’s illegal actions because she considered her monthly gross salary acceptable when compared to the meagre income she had earned in her hometown. She believed she could escape from unpleasant situations at work by exercising her “freedom” to leave the factory. This kind of idea was also manifested by other workers. A male middle-aged worker noted: “This factory is not perfect, but we can’t change much. At least what I earn now is enough to feed myself and my family. If my boss does not treat me well, I can quit my job; I am not chained to it.”⁴⁵ The

43 Interview 8, 7 February 2014.

44 Interview 9, 11 September 2012.

45 Interview 10, 21 April 2014.

labour contract system introduced in the reform period has concealed class exploitation by breaking up the working class as a collective force into political “individual persons” and “subjects of law” so as to reduce their bargaining power and pre-empt the formation of a self-conscious class; workers, as individuals, are thought to be on an equal footing with employers from a legal point of view.⁴⁶ Affected by this constitutive effect of the labour contract system and the free market ideology, Ah Jing and some workers believed that they were “free” to end the labour contract with their bosses whenever they liked. They had passively assimilated some of the ideas of the dominant class, such as contractual equality and freedom, believing that they could exercise “freedom” by quitting their factory jobs when they felt sufficiently dissatisfied with their jobs. They exhibited a sense of submissiveness and apathy towards the socio-political and economic status quo, believing that it could not be altered or challenged. In other words, they rendered passive consent to legal hegemony.

From 2008 to 2011, Hu Ling, a 23-year-old male production worker, worked in a large state-owned electronics factory in Zhuhai.⁴⁷ His team leader would deduct 50 yuan from the wages of workers who did not agree to work overtime, and workers had to have lunch while working on the assembly line. Some of his colleagues brought these issues to the attention of a higher-level manager. Later, in a meeting, the team leader warned them not to make any trouble and told them to “watch out.” Hu Ling’s colleagues then complained about these issues to the labour bureau, which failed to take any action. Hu Ling was frustrated by the situation his colleagues faced and felt that lodging complaints was useless and that labour laws were unable to safeguard workers’ interests adequately. He therefore bore in silence the team leader’s illegal treatment.

Hu Ling commented that although Chinese labour laws were good enough on paper, the problem lays in their weak implementation. He told me that many government officials did not enforce the laws strictly and acted with “one eye closed, one eye open” towards the legal violations committed by factories. When asked about the reasons for poor legal enforcement, he replied, “*guanxi* 关系 [personal connections] plays an important role in China, and everything is about *guanxi*.” Our further conversation on this topic revealed the following:

Researcher: Have you heard about *yifa weiquan* [legal rights defence]?

Hu Ling: Um ... *weiquan* [rights-defence] ... like in my previous factory, what was the result of workers’ rights-defence? The labour bureau didn’t respond to us or take any action. We don’t have confidence in it.

Researcher: How does one solve this problem? What should the government do?

Hu Ling: How can I put this ... China is corrupt from outside to inside, and it’s hard to change that. China is big; it’ll take a long time to change it. I’m not sure if we will witness the change before our death.

Researcher: Is it a problem of the central government being biased towards employers or that of individual irresponsible government officials?

46 Poulantzas 1973.

47 Interview 11, 19 January 2013, Guangzhou.

Hu Ling: Probably individuals, many individuals. At the grassroots level, the relations between government cadres and businesses are well established. Anyway, many individuals contribute to this problem.⁴⁸

Compared to the workers who had given active consent to the ruling class, Hu Ling was more critical of the labour law system and the state. Some interviewees (such as Xin Xin) accepted that labour laws were fair and just, but Hu Ling saw discrepancies between the laws on paper versus the laws in reality. Some informants displayed positive sentiments towards the state (such as Xin Xin), but Hu Ling cast serious doubts about government officials. However, it should be highlighted that although Hu Ling did not trust the labour law system, his disapproval was formulated within the boundaries set by legal hegemony. His criticism of labour laws was directed at the level of implementation rather than pinpointing the unbalanced power relations embedded in the laws and the law-making process. His scepticism towards the state remained at the level of blaming individual government officials rather than targeting the state as a whole for supporting the wealthy class. For him, labour laws on paper were protective of workers; it was only because of individual government cadres that workers suffered from weak legal implementation. Similar to what Hu Ling said, another female worker opined: “The labour law system is problematic. If labour laws made by the central government can be enacted effectively, they will benefit us. But currently some corrupt cadres do not enforce the laws impartially.”⁴⁹ The existence of the theoretically protective labour laws buffers the state, as a whole, against the criticism of leaning towards the privileged class; many workers believed that the legislation of labour laws was a sign that the state en bloc was pro-labour. This demonstrates the *concealing mechanism* inherent in the labour law system, which hides the state–capital nexus in China from some workers. Moreover, the labour law system has developed a *transmuting mechanism*, which makes workers like Hu Ling attribute legal weaknesses to individual cadres at the local level; local government, or its officials, serve as scapegoats for the systemic failure of the juridico-political system in safeguarding workers. As Eli Friedman and Ching Kwan Lee underscore, violations of labour rights “cannot be attributed to the activity of a few ‘bad apples,’ but rather, are a fundamental feature of the model of development that the Chinese state has pursued over the past 30 years.”⁵⁰ Owing to the concealing and transmuting mechanisms embedded in the labour law system, the party-state en bloc, or the central government, becomes legitimized in the eyes of some workers.

Huang Fei was in his mid-40s. He first came from Henan to work in the cities in 1989.⁵¹ In 2008, Huang Fei’s left eyeball was hurt in an occupational accident. When he was hospitalized, another work injury victim gave him a labour

48 Ibid.

49 Interview 12, 2 March 2013.

50 Friedman and Lee 2010, 513.

51 Interview 13, 16 December 2012, Dongguan.

NGO-produced booklet on labour laws connected to occupational health and safety. After being released from the hospital, he attended the classes on labour laws organized by the NGO and became an active participant. He held a high opinion of the NGO, praising it for being committed to championing labour rights. When Huang Fei was still undergoing medical treatment, his employer urged him to conduct an assessment of work capability so that he could return to work as soon as possible. His employer threatened to discontinue his salary should he refuse to do the assessment. Being well equipped with legal knowledge, Huang Fei talked to his employer. He recounted the situation as follows:

I told my boss, “My eye still hurts. According to labour laws, I’m still undergoing medical treatment. Why are you urging me to conduct the assessment? You said you would stop my salary if I don’t do the assessment. But *our national laws stipulate clearly that work injury victims are entitled to salaries equivalent to their average monthly pay as well as other benefits during the period of medical treatment. I have to remind you that I can sue you for not paying me my due salary.*” My employer responded, saying that he didn’t know about these laws. I said, “No problem. I can show you some information. You can decide what to do after reading it.” *Everything that I said to him at the time had legal grounds. If what I said was inconsistent with the laws, he could simply ignore me, right?* After reading the information I gave him, he didn’t reply to me or discontinue my salary.⁵²

Huang Fei demonstrated a high degree of confidence when confronting his employer, who occupied a superior position in the workplace. Labour laws had emboldened him to overcome the uneven power relations between himself as waged labour and his manager so that he could reason with him as an equal. That said, he was dismissive of the legal discourse on the rule of law and rights defence according to laws.

Researcher: Have labour laws offered enough protection to workers?

Huang Fei: I think the government doesn’t care. It doesn’t know how much value workers have created. It only sees the value created by firms and doesn’t know that the value created by businesses are, in fact, produced by workers. *If workers don’t work, enterprises wouldn’t be able to produce any value.*

Researcher: Are you referring to the central government or local government?

Huang Fei: I think *the central government doesn’t have any problems; it has legislated many labour laws to protect workers. The problem lies with the local governments* who protect businesses too much.

Researcher: Can you elaborate more?

Huang Fei: When workers complain to their employers about illegal working conditions, the most that the labour bureaus do is call the factories asking about what happened; they seldom conduct on-site investigations or punish factories. In many cases, *worker complaints end up nowhere.* The labour bureaus and the social security department seldom go to check if factories have signed labour contracts with workers, if their labour contracts conform to labour regulations, etc. *This so-called rule of law and legal rights defence are deceiving.*⁵³

In contrast to workers who have granted active consent to the ruling class through the mediation of the labour law system, Huang Fei was sceptical of the official legal discourse and rendered no active consent to the labour law

52 Ibid. Emphasis added by the author.

53 Ibid. Emphasis added by author.

system. However, still unable to transcend the hegemonic constraints, he attributed the failing labour law system to local government officials who were on the side of the enterprises. For him, the central government had made numerous labour laws, and thus had accomplished its duties; it was the local government that had contributed to the infringement of labour rights by valuing businesses over workers. The transmuting mechanism incorporated into the labour law system has shifted the target of his criticism from the central government, which has, indeed, strongly driven the capitalist economic reform, to local government officials for not performing their duties satisfactorily.

Workers' refusal to consent

Li Yuan was 20 years old.⁵⁴ Whilst studying at vocational secondary school, she applied for an internship at a hotline centre for a telecommunications company in Guangzhou. When this telecommunications company came to recruit student interns in Li Yuan's school in Guangxi, it had promised them basic monthly salaries of 1,200 yuan, plus commission. However, when she and other students went to the office in Guangzhou, the manager asked them to sign internship agreements that only offered them monthly salaries of 800 yuan. Initially, she had insisted on not signing the agreement and called her teachers for help, but they did not follow up her complaint. Later, her manager threatened her that if she did not sign the agreement, she would not be able to complete the internship, and therefore would not be able to graduate from school. In the end, she bowed to the pressure. In 2012, she graduated from vocational school and was hired by an automobile factory as a production worker.

When I asked for her opinions on labour laws, she responded:

Many policies and laws are made within a small circle of the government. Labour laws were made to employers' advantage. Take statutory holidays as an example. Workers are only entitled to 11 days of paid statutory holiday every year, which is absolutely insufficient. The labour law system does not consider the situation of workers – it only serves the capitalists. Employers think that if workers have too many statutory holidays, nobody would work for them, and they would need to pay more, and thus earn less.⁵⁵

Unlike the workers whose criticism of the labour law system focused on the enforcement level, Li Yuan sharply pointed out the ingrained bias of labour laws towards the capitalists and the undemocratic nature of legislation in China. Echoing what Li Yuan said, another worker commented: "Labour laws are highly biased. They are made to serve the rich, to make us work harder, to exploit us more."⁵⁶

In addition, Li Yuan criticized the slogan of rights defence in accordance with laws:

Rights defence? Who defends our rights? Who helps us? *The government? It doesn't care about us.* When workers are in need, where is the government? We know we should defend our rights,

⁵⁴ Interview 14, 4 November 2012, Foshan.

⁵⁵ *Ibid.* Emphasis added by the author.

⁵⁶ Interview 15, 23 January 2013.

but who should we appeal to? The road of rights defence in China is very long, it takes years. During the process, one encounters lots of frustrations and difficulties. *Right now, the problem is not that people do not know their rights, it is that they don't know who can help them.*⁵⁷

In contrast to Zhi Ming, who viewed workers' determination and persistence as key to rights defence, Li Yuan censured the government for not providing the proper assistance and infrastructure for workers' rights defence. Instead of attributing unsuccessful rights defence to the poor psychological qualities of individuals, she believed that the government had an obligation to handle worker grievances and facilitate their rights defence. The government should "serve the people," opined Li Yuan, but the Chinese people do not exercise any power over the government. She also criticized trade unions for failing to aid workers' rights defence: "they only organize recreational activities and from time to time give workers small gifts and coupons." Li Yuan condemned the labour law system fundamentally and rendered no consent to it.

The normalizing mechanism of legal hegemony exerted a less remarkable impact on Li Yuan. She did not take labour laws as the benchmark for measuring fairness or exploitation. Instead, she used the gap between how much workers gain and how much factories earn, i.e. the surplus value appropriated by capitalists, as an indicator. She stressed:

*My company uses all kinds of excuses for not giving us a decent wage increase and fair annual bonus. But actually, the money it earns from selling just one transformer would be enough to grant all production workers a yearly bonus equivalent to two months' salary. They think we don't know mathematics. Capitalists are capitalists: they always make their own interests their top priority. It's so unfair that we work so hard but earn so little in comparison to them.*⁵⁸

Li Yuan knew clearly how much the factory's products were sold for, how much workers were paid and thus how much her employer earned. Therefore, even though her boss provided legal wages in the factory, she was unsatisfied and felt it was unfair. She was asking for decent wages and a fairer distribution of profits between workers and employers rather than the legal minimum wage.

Most likely owing to her acute awareness of capitalist exploitation, Li Yuan expressed deeper discontent with Chinese economic development than those workers who rendered active or passive consent to legal hegemony. Instead of approving the strategies of "let some people get rich first," she decried the uneven development and the grave wealth disparity within the country: "The government has allowed some people from the urban areas to become wealthy first and invests a lot in the coastal areas; therefore, people want to leave underdeveloped areas and rush to the more developed ones. As a consequence, there is a great disparity between different regions."

Ling Xin was in her early 20s.⁵⁹ In 2010, workers in the automobile parts factory in the PRD where she worked walked out to demand an 800-yuan wage increase and democratic trade union reform. Although workers' salaries in this

57 Interview, 4 November 2012, Foshan. Emphasis added by the author.

58 Ibid. Emphasis added by author.

59 Interview 16, 1 December 2012, Foshan.

factory were higher than the city's legal minimum wages, Ling Xin and her fellow workers considered them insufficient for a decent standard of living. They believed they deserved higher wages as they had worked hard to produce huge profits for the company. That was the reason they went on strike.

Throughout the strike, the company kept alleging that the action was illegal and arranged for legal experts to talk the workers into calling it off. Furthermore, in a meeting between the strikers' representatives and the CEO of the automobile group to which their factory supplied spare parts, the CEO warned the representatives, including Ling Xin, that their strike was illegal and ordered them to resume production, with the threat that they would not be able to bear the consequences for violating the laws otherwise. Ling Xin was in quite a panic at the time as she knew little about the legal regulations for strikes. During the meeting, she consulted with supporters from some social groups through text messaging and they told her that there was some legal ambiguity concerning strikes: they were neither illegal nor treated as a worker's legal right in China. Initially, Ling Xin did not know how to respond to the CEO's accusations, but later she made up her mind:

No matter how the CEO threatens us, we should have no fear. We should continue our strike. Although I know nothing about the laws, and am uncertain about what he says about strikes, I should not be scared. *As long as the workers are united and do not resume their work, the company can't do anything to us.*⁶⁰

Ling Xin then asked the CEO exactly which clause in which law forbade strikes, but the CEO could not give her a definite answer. All the representatives denied that their strike was illegal. Unsure of whether the strike was legal or not, labour laws were not the catalyst for Ling Xin's resistance, as was the case for some workers who granted active or passive consent to the ruling class's leadership with the mediation of the labour law system (such as Huang Fei). It was the workers' unity and collectivity that gave Ling Xin, a subordinate worker, the courage to carry on with the strike and emboldened her to overcome the hierarchical relations in the workplace and challenge the management's authority.

Ling Xin distrusted the labour law system because "it contains many legal loopholes that are abused by businesses." For example, she pointed out that, as long as companies pay workers the legal minimum wage, they are not breaching any laws and thus cannot be penalized, even though their employees are poorly remunerated. However, she challenged this: "Is the minimum wage enough for a decent living? Whose interests does the government, who is responsible for determining the minimum wage, serve?" As previously illustrated, the labour law system, in particular the minimum wage policy, has normalized the capitalist system of wage labour in post-socialist China – some workers thus deem their bosses fair and above reproach for paying them the minimum wage. Ling Xin, however, had overcome the normalizing effects of the labour law system and contested the idea that what is stipulated in the law must be correct and fair.

60 Ibid. Emphasis added by the author.

Ling Xin pointed out that the rule of law in China was deceptive because the government did not respect laws and was biased towards the businesses. Taking the strike in her factory as an example, she maintained that the district-level and town-level governments were backing the factory rather than acting as “neutral” parties, as portrayed in the news. The government officials put pressure on the strikers to resume work. Additionally, during wage negotiations with management, they kept trying to persuade the strikers’ representatives to accept the company’s offer. Ling Xin also stated that outsiders and the public might think the government was neutral and did not take sides, but “in reality, they are pro-business.” Having overcome the concealing effects of the labour law system, Ling Xin was able to see through the apparent autonomy of the Chinese government from businesses, and thus considered the state to be neither neutral nor separate from the economic arena.

Ling Xin showed her discontent with Chinese economic development. Although China was the second largest economy in the world, she noted, its per capita GDP still ranked low, and the wealth gap in the country continued to widen:

Our economy has been developing at the expense of workers. The government has attracted foreign investment with a cheap labour force. Our growing GDP has been created in exchange for the sacrifice made by workers. Workers have contributed tremendously to our country, but they can’t share in the fruits of development. The government has channelled them into work in the cities, but under the current household registration system, they are “dumped back” into the villages when they get old. Economic development has already reached a certain standard; the government should make sure that workers have enough social protection.⁶¹

Instead of endorsing the market economy, Ling Xin was critical of the fact that China’s economic growth was built upon the sacrifice of workers who had received hardly any share of the economic progress that had been made. She also denounced the government for utilizing workers for economic development but at the same time denying them proper social welfare and benefits through its *hukou* policies. Some radical workers also had formulated similar criticisms. A middle-aged female worker told me: “we have sacrificed a lot, but we can’t share in the fruits of development. The government does not protect worker interests, but that of the businesses [instead].”⁶² Another male worker commented, “How much sweat and tears have we shed for China’s economic development? But who is actually benefiting from it? Not workers, but the rich and government cadres.”⁶³

Conclusion

Chinese migrant workers have carried out contentious actions to strive for defaulted wages, compensation for workplace injuries, overtime payment, and

61 Ibid.

62 Interview 17, 12 December 2012.

63 Interview 18, 27 April 2014.

so forth.⁶⁴ Recently, migrant workers have also made demands for democratic enterprise trade union elections, decent wages above the minimum wage rate, compensation related to the closure or relocation of factories, and social insurance payments. Some studies point out that migrant workers have manifested a growing level of class consciousness as the number of collective actions has dramatically increased over the past few years,⁶⁵ the second generation of migrant workers are less tolerant of injustice and thus have taken greater initiatives to defend their rights compared to their parents' generation,⁶⁶ their actions have gone through a process of radicalization,⁶⁷ and their demands in protests have shifted from urging employers to comply with legal standards to pressing for treatment above the legal standards.⁶⁸ Workers' class consciousness and capitalist hegemony are, indeed, two sides of the same coin. Hegemony is the endeavour of the ruling class to constitute workers' worldviews and values in such ways that the latter may criticize, but not challenge fundamentally, the legitimacy of the capitalist economy and the party-state, and that they may resist but not take rebellious actions to transform the socio-political and economic systems. In other words, through establishing capitalist hegemony, the ruling class aims to forestall the emergence of workers' class consciousness, which is a cardinal factor to inducing system-changing initiatives. It is, therefore, crucial to grasp hegemony and class consciousness in relation to one another. Focusing on the often neglected side of the coin, this article examines how the labour law system in China has been utilized to build up hegemony and dampen workers' class consciousness.

The labour law system has been given greater weight to mediate industrial relations in the reformed China. It is a vital vehicle through which the Chinese party-state has constructed capitalist hegemony. It has produced a *double hegemony*, which seeks to deflect radical worker opposition against both the market economy and the party-state. Concerning capital–labour relations, the normalizing mechanism embedded in the labour law system has legitimized market principles such as waged labour, private property rights, surplus value extraction, commodification of labour, and so forth. Many workers have taken labour laws as a yardstick for measuring employer behaviour. Even though they are not completely happy with their jobs, they consider their bosses to be fair and just, as long as they are legally compliant. The countervailing mechanism incorporated into the labour law system also buttresses capitalist dominance. Despite its pro-capital essence, the labour law system provides aggrieved workers with a platform for resolving labour disputes. Many workers, therefore, believe that the market economy is not structurally exploitative and that their hardships are a result of their own inadequate personal qualities (such as being irresolute in rights

64 Pun 2005; Chan 2001; Lee 2007.

65 Chan 2012.

66 Pun and Lu 2010.

67 Leung and Pun 2009.

68 Chan and Hui 2012.

defence) or the result of erratic misdeeds from idiosyncratic employers. For these workers, the juridical sphere is autonomous from the capitalist economy, and labour laws are a useful tool for remedying misbehaviour occurring in the economic realm.

Concerning state–labour relations, the abundance of labour laws which seemingly try to regulate employers has convinced some workers that the party-state is protective of workers. They, thus, attribute worker misfortunes to their own poor psychological and behavioural traits rather than to the state’s pro-capital bias. This concealing mechanism embedded in the labour law system induces some workers to believe that the political regime is “autonomous” from the market economy and is willing to curb economic misdeeds. Hence, they do not fundamentally challenge the party-state’s legitimacy. The transmuting mechanism also bulwarks the Chinese party-state against workers’ radical challenges. Owing to the decentralized politics of China, local governments are delegated the task of capital accumulation, while the central government is preoccupied with maintaining political legitimacy and social harmony.⁶⁹ Some workers, therefore, perceive government corruption and its pro-business bias as being the fault of local governments or officials. They do not criticize the central government or the party-state as a whole, which they consider to be independent from capitalists. Put another way, the transmuting mechanism shifts the target of workers’ contempt from systemic state–capital collusion to individual officials and/or local governments.

Through these four mechanisms, the labour law system has been able to impose a double hegemony on some workers, making them believe that the labour law system and the central government are labour-friendly and that the market economy and employers who misbehave are being monitored. These workers thus may not opt to take to the streets when faced with labour disputes. Moreover, the labour law system has deflected some workers’ fundamental and radical criticisms of the market economy, the capitalists and the state, and as such, it helps to pre-empt their rebellious actions and alleviate capital–labour and state–labour conflicts. However, it should be highlighted that these mechanisms have not completely eradicated worker discontent with the market economy or the party-state. The double hegemony has influenced Chinese migrant workers in an uneven manner. Some workers have granted active consent to the ruling class through the mediation of the labour law system, while some have rendered passive consent. Some, however, have given no consent at all. Take my informants as an example: 32 and 58 of them, out of a total of 115, conferred active consent and passive consent, respectively, to the ruling class, but 25 of them gave no consent at all. Those workers who rendered active consent to the capitalist leadership approved of the official legal discourses and labour law practices. Most of them perceived capitalist reform and economic growth as a positive thing. They endorsed the state’s development strategy of “let some people get

69 Lee 2007.

rich first,” which is akin to the liberal “trickle-down” theory, believing that economic progress fuelled by the state’s pro-business policies would eventually benefit other members of society. Many of them believed that employers were above reproach if they paid workers their wages according to labour laws. Rather than exploiting labour, the market economy and the wealthy class were seen to have created jobs for workers and to have brought prosperity to the country. In other words, the capitalist class’s interests have been universalized as those of the working class and the nation.

The workers who only rendered passive consent to capitalist leadership neither completely assented to it nor fundamentally challenged it. Some of these workers lacked the motivation to gain legal knowledge and instead submitted themselves to the economic and political status quo, about which they had many complaints. Believing in free market ideology and the labour contract system, they opted to quit their jobs when faced with problematic bosses rather than turn to the labour law system. Some other workers did not have complete trust in the labour law system because of the gap between their work experiences and official legal rhetoric, i.e. the unfulfilled promises of the latter. However, the labour law system was still able to elicit their passive consent because their “spontaneous discontent is contained by the pre-existing categories of the dominant ideology.”⁷⁰ Although these workers discredited the labour law system, their criticism usually targeted the issues of implementation rather than the asymmetrical power relations embedded within the system. Many of them were of the judgement that the central government had good intentions to protect workers with labour laws, and they attributed the failing labour law system to the fault of local governments or officials who either did not enforce labour laws effectively or else had strong connections with businesses.

The hegemonic mechanisms incorporated in the labour law system, however, failed to elicit active or passive consent from some of the workers. These workers formulated radical challenges to both the market economy and the party-state, and they refused to follow the ruling bloc’s leadership. They were relatively immune to the normalizing mechanism of legal hegemony. They did not view the legal minimum wage as fair or just; instead they measured their wages against how much their employers earned. In addition, they were not influenced much by the countervailing mechanism. Some of them understood that the legal and the economic are not independent from each other, that the law-making process and legal content are biased towards employers, and that workers and capitalists are not on an equal footing within the legal realm. Moreover, the concealing mechanism and the transmuted mechanism had little effect on them. They saw through the intricate relations between government and businesses, and did not construe the party-state as wholly autonomous from the capitalist class. They did not simply blame the local governments or officials, but censured the central government or the party-state en bloc. In brief, they rejected the

70 Femia 1987, 137.

labour law system and fundamentally contested the capitalist worldviews it reproduces regarding capital–labour and state–labour relations.

The double hegemony mediated through the labour law system has influenced Chinese migrant workers in an uneven manner. Owing to space restrictions, I cannot account for the differing degrees of worker susceptibility to legal hegemony in detail. However, as illustrated by the worker interviews previously cited, we see that workers with experience of labour disputes (such as Huang Fei, Hu Ling, Li Yuan and Lin Xin) tend not to confer active consent to the ruling class's leadership mediated through the labour law system. This is because they have witnessed the discrepancies between the legal rhetoric and the legal reality, and thus have become disillusioned. Workers who have encountered labour disputes but who have had positive experiences with the labour law system (such as Zhi Ming) are inclined to render active consent to the ruling class as they believe the socio-economic system is not completely inequitable and that laws can curb economic misdeeds. Workers' generational background also makes a difference to their degrees of susceptibility to legal hegemony. Those who have lived through the Maoist or early reform period, when the labour law system hardly existed and material life was limited, tend to show appreciation of the labour law system which, however imperfect, is seen as offering them a certain degree of protection. This kind of endorsement is not often observed in young migrant workers who began working in cities after the implementation of many labour laws. Moreover, workers who join labour NGOs (such as Huang Fei) tend not to confer active consent to the ruling class owing to the training and educational activities they receive from the NGOs.

The differing degrees of impact imposed by legal hegemony on workers also expose its fragility and precariousness, which are the result of a number of factors. At the economic level, unbalanced economic development and growing social inequality have laid the material foundation for worker contestation of the capitalist leadership. At the legal level, the party-state has failed to uphold consistently the legal ideals it has reproduced, and the discrepancies between legal ideals and legal reality have disillusioned some workers. Moreover, the Party-led trade unions are unable to secure short-term material concessions for workers and thus fail to ensure worker allegiance to the ruling bloc.

This article shows that hegemony should not be regarded as something that the ruling class either fully possesses or does not possess. Instead of conceiving of hegemony as a zero-sum phenomenon, my approach of dividing worker susceptibility into granting active consent, passive consent or no consent permits us to conceptualize the differing degrees of hegemonic effect transmitted through the labour law system and the varying extents of worker susceptibility towards legal hegemony. In addition, while previous studies on hegemony in China focus on how the ruling class reproduces dominance,⁷¹ my approach also points

71 Blecher 2002, 2004.

to the precariousness and fragility of legal hegemony, as well as the possibility of overcoming legal hegemony. This implies that worker counter-hegemony is possible.

A final remark is that this article considers the PRD as a key starting point to understand the legally mediated hegemony in China because of the increasingly tense labour relations, rapid process of industrialization and urbanization, and massive inflow of foreign investment into the area. However, judging from the party-state's broader attempt in the legal arena, including the stress on the rule of law, reform and betterment of the labour law system, professionalization of judges and lawyers, increasing training and regulation of lawyers and proliferation of legislation, there are good reasons for arguing that the construction of hegemony through the labour law system is not specific to the PRD. That said, how it is carried out in other regions of China and if and how that differs from the hegemony-building process taking place in the PRD deserve closer investigation in future.

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Biographical note

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摘要: 本文探讨中国的劳动法体制如何再生产资本主义的文化霸权—即统治阶级的政治, 道德和文化领导。透过在珠三角地区进行的深入田野调查和 115 个工人访谈, 本文展示中国的劳动法体制对资本—劳工关系和国家—劳工关系, 发挥了双重的文化霸权影响性。透过四种机制—常态机制, 抵消机制, 隐蔽机制和变换机制, 劳动法体制令到工人没有对市场经济和党政作出最根本和激进的批评。可是, 透过劳动法体制再生产的双重文化霸权对工人的影响不一。有些工人对统治阶级的领导给予积极的认同; 有些则给予消极的认同; 有部份工人完全没给予认同。

关键词: 文化霸权; 劳动法; 阶级意识; 阶级政治; 农民工; 国家

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