

Overtime in China: law, practice and social exclusion¹

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Abstract

In most liberal capitalist societies, the working class is generally protected by laws regulating an 8-hour working day and a 5 day work week. But in China today, such rules are a luxury most laborers do not enjoy. This paper explores overtime working conditions that the Chinese working class currently suffers, especially migrant workers who have flowed from bankrupted rural villages into urban centers by the hundreds of millions. They supply the "surplus" labor force demanded by the booming manufacturing industry as China has quickly become the world's leading producer of industrial goods. This paper not only documents this tragic situation but tries to answer the question: how could this seemingly pre-modern capitalist phenomenon have occurred in an ostensibly socialist country like China?

Keywords: overtime; exploration; exclusion; working class

Resumo

Sobretalho na China: lei, prática e exclusão social

Na maior parte das sociedades capitalistas liberais, o proletariado geralmente é protegido por leis que determinam o dia de oito horas e a semana de cinco dias de trabalho. Todavia, na China, essas regras são um "luxo" que a maioria dos trabalhadores não tem direito. Neste artigo, analisamos as condições de trabalho e exploração do proletariado chinês, especialmente dos trabalhadores migrantes das áreas rurais e que vivem em aglomerados urbanos que concentram milhões de pessoas. Formam um exército de reserva exigido pelo próspero setor industrial que se tornou um produtor mundial. Neste artigo, além de documentar a situação trágica desses trabalhadores, procuramos contestar a seguinte pergunta: como este fenômeno capitalista, aparentemente pré-moderno, tem ocorrido ostensivamente em um país socialista como a China?

Palavras-chave: sobretalho; exploração; exclusão; proletariado; China.

Resumen

Sobretalho en China: ley, práctica y exclusión social

En la mayor parte de las sociedades capitalistas liberales, el proletariado generalmente es protegido por leyes que determinan el día de ocho horas y la semana de cinco días de

¹ An earlier version of this paper, entitled "Social excluding and legal practice on overtime in China", is included in *Law and Social Sciences, Proceeding of the First Seminar*, edited by Maria Antonia Espadina and published by University of Macau in January, 2009. With the support of Prof. Maria Espadina, this paper has been substantially revised, restructured and updated. In addition, great thanks to Dr. Clifford Andrew Welch for his critical suggestions, sources and perspectives on the issues raised in this article.

trabajo. Todavía, en China esas reglas son un “lujo” que la mayoría de los trabajadores no tiene derecho. En este artículo, analizamos las condiciones de trabajo y de exploración del proletariado chino, especialmente de los trabajadores migrantes de las áreas rurales y que viven en aglomerados urbanos que concentran millones de personas. Forman el ejército de reserva exigido por el próspero sector industrial que se volvió productor mundial. En este artículo, allende documentar la situación trágica de estos trabajadores, procuramos contestar la siguiente pregunta: ¿Cómo este fenómeno capitalista, aparentemente pre-moderno, ha ocurrido ostensivamente en un país socialista como China?

Palabras-clave: sobretrabajo; exploración; exclusión; proletariado; China.

Introduction

It is well known that China's labor conditions are generally poor even in comparison with most developing nations, and there is no sufficient law enforcement on overtime in most Chinese enterprises². Foreign direct investment (FDI) has rushed into China not only because Chinese labor is cheap, but also because business owners can do virtually whatever they want with their Chinese employees.

This article discusses problems related to the exploitation of labor via the imposition of extended hours, commonly known as overtime. Analyzed with particular attention is the relationship between overtime, labor law regulating the workday, noncompliance with the law and the state's inability/disinterest in enforcing regulations, and social exclusion. Rather than offer a mere recitation of laws drafted, this research seeks to identify the actual practices, including both achievements and shortcomings, found in major sectors of the economy, including state-run companies and private enterprises that are either foreign-owned or joint ventures. The study reminds us that in China, the law is one thing, while practice is another.

Research methodology, procedure, and theoretical framework

The research methodology used for this paper mainly consists of a first stage review of sociological and legal publications regarding the definition of the work day, the imposed legal limits on overtime hours, and standards for compensation. The second stage involved interviews with officials in labor departments at four scales of government (provincial, city, county, and township); lawyers and legal specialists; business managers and factory owners; workers and official union leaders; NGO members; and professors, researchers and other social scientists.

During the summer vacations of 2005 to 2007, I joined a research team and traveled in the provinces of Jiangsu, Zhejiang, Guangdong, and Hainan to collect data on the existence of overtime issues in a variety of Chinese industries, from foreign invested enterprises (FIE) to collective and township enterprises (C&T) to individual and private enterprises (I&P).

With the help of colleagues and local Chinese officials, I visited a total of 10 cities in those four provinces, including three dozen factories and many neighborhoods where migrant workers from inland rural provinces predominated. During these days, I interviewed about 200 workers, 52 government officials, 66 managers, 19 lawyers, 33 professors familiar with labor disputes, five business administration research fellows, and eight union leaders,

² The research for this article was conducted before a new Chinese labor law, enacted in June 2007, came into effect in January 2008. The law promises to slightly improve workers' rights in China (KAHN & BARBOZA, 2007), although it is still too early to see the final result. Completion of the article also pre-dated recognition of the global economic crisis at the end of 2008, which has already demonstrated the vulnerability of the working class in China, as elsewhere.

including one undocumented NGO leader who his fellow workers described as a “*dixia gonghui zhuxi* (underground union chair)”.

The interviews conducted took two different forms. One was the formal interview that I tended to use with officials, lawyers, and other legal specialists. The other was informal chatting, which I tended to use with workers³. Whether formal or informal, the data collected was systematized and individual cases written up, even some positive cases in which workers described themselves as satisfied with their working conditions because managers respected overtime regulations. Nevertheless, the research confirmed the view that the great majority of Chinese enterprises do not pay attention to overtime law, such that violations of legal limitations on working hours were seen everywhere.

This research basically uses Marxist methods, especially the theory of primitive accumulation as its theoretical frame of reference. In fact, it seems to me that China’s post-Mao economic reform – the policy of opening itself to become one of the world market’s largest producers of industrial good – is in fact a restoration and resumption of the capitalist industrial accumulation model that existed before the revolution of 1949. The main difference between then and now is contextual – the unprecedented scope of globalization has both expanded and intensified the accumulation process.

Marx explored two basic elements in defining the value of labor: one is the physical limitation for a worker to produce and reproduce his labor force and the other is the moral limitation for keeping his salary at a socially acceptable level. “Different from other commodities,” wrote Marx and Engels (1972), “the determination of the value of labor force includes an element of history and morality.” However, these two elements are automatically determined and calculated by the employers, not by the employees. Marx argues that these values are determined by capitalists and wage workers jointly in long term interactive processes of cooperation, negotiation and class struggle.

However, because of the lack of labor solidarity and the ineffectiveness of union representation in China, no such mechanism for consolidating working class power was encountered in our research. As Marxist theory postulates, a disorganized labor force cedes its participation in processes determining the value of work to the capitalist class, which quite naturally seeks to accumulate even more profit through suppressing wages to physically unsustainable and morally unjustifiable levels.

Chinese labor law

China was among the original group of nations that signed the United Nations Declaration of Human Rights in 1948. According to Article 23 of the declaration

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Thus, China long ago made a commitment to the international community to favorable work conditions, parity in pay, a living wage, and the right to organize.

Relevant articles of the declaration also include:

³ A motive for the informality was that two lawyers told me that migrant workers are very scared to be interviewed because speaking to strangers places their jobs and personal safety at risk. Bosses and labor brokers are said to have taken revenge by penalizing the workers, or worse.

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25: 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection (UNHCHR, 1948).

In Articles 24 and 25, we note China's further agreement to international standards on limited hours and paid vacations as well as social benefits such as health care, unemployment insurance, pensions, and maternity leave.

Nearly 150 years have passed since the working class began its struggle to limit the workday to eight hours and the work week to six days. In 1919, in its first convention the newly instituted International Labor Organization (ILO) adopted the charge of applying "the principle of the 8-hour day or of the 48-hour week" (ILO, 1919). Further struggle during the Great Depression of the 1930s led to the creation of a new standard, the 40 hour work week, which was embraced by the ILO in the Forty-Hour Week Convention of 1935. In the postwar period, the ILO's Reduction of Hours of Work Recommendation (1962) further elaborated the standard of the 40-hour workweek.

Two chapters of the 1994 *Labor Law of the People's Republic of China* define and regulate the hours of the work day and week. Chapter 4 establishes regulations for "labor time, rest and vacations." Its articles read:

Article 36: The state establishes a labor time system in which every worker's daily work time is not to exceed 8 hours; total work-time per week will be no more than 44 hours.

Article 37: For those who earn piece rate wages, employers must rationally determine their labor quota and piece-rate standard in accordance with Article 36.

Article 38: Employer should guarantee his employees to have at least one day off for every week.

Article 39: If employers cannot meet the standard established in Articles 36 & 38 due to their particular production characteristics, they should adapt other methods for working and rest under the approval of labor administrative department.

Article 40: According to law, employers should arrange their production schedules to allow their employees to enjoy vacation during the following public holidays:

1. New Year's Day; 2. Lunar New Year's Day; 3. International Labor Day (May Day); 4. National Day (October 1); 5. Other legal holidays.

Article 41: If necessary for business, employers can extend working hours after consultation with the labor union and workers, but the extension may not exceed one hour per day. If business requirements necessitate exceeding the one hour limit, the prerequisite for protecting worker health limits the extension of working hours to no more than 3 hours per day, and the total extension may not exceed 36 hours per month.

[...]

Article 44: In accordance with the following standards, employers should pay a higher wage to employees for the hours that exceed normal working hours:

1. No less than 150% of the regular wage-rate should be paid if the employee is required to work extended hours.

2. No less than 200% of the regular wage-rate should be paid if the employee is required to work during his off-time and rescheduled rest time is impossible.

3. No less than 300% of the regular wage-rate should be paid if the employee is required to work on legal holidays.

Article 45: The state is also adopting a paid-vacation system. All those who have continuously worked more than one year should enjoy paid-vacations. The specific method for implementing this article should be regulated by the State Counsel.

Thus, in terms of its own regulations, revolutionary China's legal apparatus is generally in conformity with international standards, including an 8-hour day and limits on overtime. While the regular work-week is 4 hours longer than specified by ILO conventions, pay standards for overtime work are equivalent to or better than the major liberal capitalist economies.

The second relevant chapter of China's labor law is chapter 5, "Wages." Its relevant articles read as follows:

Article 46: Wage payment should be established according to each job, with equal pay for equal work.

[...]

Article 48: The state regulates a minimum wage security system. The specific minimum wage standard should be determined by the people's government on the level of province, autonomous region, or directly administered metropolis.

[...]

Article 50: Wages should be paid in cash to the workers themselves on a monthly basis. Salary deduction and irrational delay of wage payment are not permitted.

Article 51: According to the law, employers should pay wages to their employees for their legal vacations and leaves for marriage and funerals, as well as for time-off to legally participate in social activities (NPC, 1994).

Coupled with articles 44 and 45, the chapter on wages demonstrates that China has a regulatory architecture for fair compensation. Like any such architecture, however, perverse interpretations of the law are possible especially when the working class is not organized to defend its interests.

Moreover, as noted, China has so far failed to formally adopt the 40-hour work week in its labor law. Our research reveals an interesting double standard on this question. While workers in government agencies and State Owned Enterprises (SOEs) have long enjoyed the international standard of a 40-hour work week, the government refuses to protect equal treatment for workers in the new private and public-private sector enterprises where the vast majority of Chinese people work. In these settings, even the officially regulated 44-hour work week is regularly violated.

Despite the legal stipulation of clearly defined working hours, days, and weeks, my investigation revealed many cases of migrant workers in urban factories who have been forced to work much longer than the law permits, with little or no compensation as required by the law. I found, for example, cases in which employees had to work from 10 to 12-hours a day, enduring 6- to 7-day work weeks.

Due to the lack of nationwide data, accurate statistics for a general assessment of overtime violations are difficult to confirm. We designed a simple questionnaire for collecting people's opinions of overtime law enforcement by using the positive phrase "compliance with overtime law (*zhixing jibao fa*)", avoiding use of the negative term "overtime law violation (*weifan jibao fa*)", and inviting five levels of response: 1. Very good (*henhao*); 2. Good (*hao*); 3. OK or so-so (*yiban* or *mama huhu*); 4. Poor (*cha*); & 5. Very poor (*hen cha*).

Because this sort of independent census work is frowned upon by Chinese authorities, the collection of responses was quite limited. My sample pool is quite small, as I collected

the statistics through personal interviews, and observation. While partial, given limited data availability in China, these figures reveal important information about overtime law violations and the conditions of Chinese workers in the context of globalization.

Major findings

After questioning nearly 400 people in different positions of the industrial sector, we tabulated the results obtained in Table 1.

Table 1: Assessment of Overtime Law Practices*

Assessment	1		2		3		4		5	
	Very good		Good		So-so		Poor		Very poor	
Number & %	Nº.	%	Nº.	%	Nº.	%	Nº.	%	Nº.	%
Officials (52)	3	5.8	6	11.5	14	26.9	9	17.3	20	38.5
Managers (66)	6	9.0	6	9.0	19	28.8	7	10.6	28	42.4
Lawyers (19)	0	0.0	0	0.0	3	15.7	8	42.1	8	42.1
Scholars (38)	0	0.0	0	0.0	2	7.7	6	15.4	30	76.9
Union leaders (8)	0	0.0	1	12.5	1	12.5	2	25.0	4	50.0
Workers (200)	4	2.0	6	3.0	20	10.0	52	25.5	118	59.0
Total (383)	13	3.3	19	5.0	59	15.4	84	21.9	208	54.3

*Note: The five categories are roughly designed by the following five definitions:

1. Very Good means the informant related that companies or factories basically obey Chinese Labor Law. If the workers are occasionally required to work overtime, they are compensated with time-off and receive extra payment as the law requires.

2. Good means the informant reported overtime work from 5 to 10 hours per week without extra pay.

3. OK or So-so, means workers were made to work overtime from 11 to 20 hours per week without extra pay.

4. Poor means the informant reported overtime from 21 to 30 hours per week, either without extra pay (in the case of monthly wages) or no higher piece-rate compensation for the extra hours worked (in the case of piece rate workers). Even though they work overtime on weekends and legal holidays, these workers just get their regular wage rate.

5. Very poor means overtime working hours are 31 or more hours per week and employers hardly ever reschedule rest time or otherwise compensate for the extra hours worked

In general terms, Table 1 reveals that most of the interviewees, no matter their position, are generally aware of the overtime problem. Except for a few officials and managers who indicate satisfaction with the overtime enforcement, most lawyers, scholars, and workers expressed their dissatisfaction with overtime abuses. More than 84% of the workers think that China's overtime law enforcement is poor or very poor. We also met with four workers who seemed very satisfied with the general working conditions in their factories, and overtime regulations in particular. According to them, they know Article 44 of the Labor Law very clearly, but have never been asked to work overtime without proper compensation. They attribute the "fair play" treatment to their own "good-luck" for working in factories with more humane (*ren xing*) managers. When I asked them: "Do you think the reason your factory treated you fairly has anything to do with government law enforcement pressure on your boss?" These workers laughed and replied: "No! There is nothing the government will do, or wants to do, to stop overtime law violations; it is only because of the good heart of our factory owners!"

In general, the questionnaire revealed a gloomy picture of overtime law enforcement in China. Most interviewees expressed deep concern with regards to overtime law violations, underpayment or withheld, overdue salaries (*gongzi tuoqian*). According to the 200 workers

interviewed, more than half of them (59%) worked more than 11 hours a day, 6 days a week, and never received extra payment as regulated by law.

Most interviewees were quite satisfied with China's written laws. However, when asked the question "What's your impression China's practice of regulating overtime issues?" most complained that there's no powerful and sufficient means to guarantee the law's implementation.

Among officials, I talked with Vice Mayor Zhang, who was in charge of foreign economic affairs in a coastal city of Zhejiang Province. He made jokes to my group while we toured with him to a model motorcycle factory in his city. I asked for his observations on the long working hours demanded by this factory. Zhang replied: "I know it's wrong to allow overtime and other abuses to continue in our factories. People are being treated like animals, or moneymaking machines. But what can we do about it? If we want to develop China's economy, we have to bear the cost."

But who are "we"? It sounded like he included the workers into the concept of "we."

"It seems to me," he continued, "that our generation cannot afford to enjoy the luxurious overtime law standard for advanced western countries. In China, the law is mainly drafted to show off to foreigners in order to attract their investments. Let's leave the overtime law enforcement to our children, perhaps our children's children. Let's just focus on how to turn China into the world's Number 1 manufacturer first, hah, hah, hah!" With outstretched arms, he laughed loudly. Zhang created the impression of being a good, plain spoken man, young, energetic, and liked to tell the truth. Under conditions of not revealing his name and city location, he provided us with many inside stories about the factories.

Unlike Zhang, most of the officials interviewed, I talked to, especially those in charge of labor affairs, proved reluctant to discuss issues with overseas Chinese scholars like me who have a foreign passport. They usually try to dodge the subject (play *Taichi* in Chinese), making general statements to justify the practice. An often heard excuse was, "Due to China's special situation of excessive labor supply, there is no better solution for improving labor conditions than that of first developing its economy."

Curiously, some scholars share Zhang's opinion that an 8-hour working day is too generous for Chinese laborers. Professor Dai Jianzhong⁴, for example, told me at a conference that most rural migrant laborers working in urban factories do not really like the regulation 8-hour work-day and 40-hour week because there is no such custom in their own villages. When I asked workers who had migrated from the countryside about this issue, they agreed that they didn't mind working longer hours and on weekends. But they also said that they do mind getting paid so little for their work. So long as their physical and mental health can sustain the hardship, they remain willing to work more hours than city people. But they complained about not being paid for extra working hours and days and want to see the labor law enforced.

By looking more deeply into this picture, I found that Zhang's statements are only partially true. The overtime situation is not equally bad or good everywhere and for everybody. Just like George Orwell wrote in his famous novel *Animal Farm*, "Everybody is equal, but some are more equal than others".

It is interesting that overtime law enforcement in China occurs in different ways depending a concern's economic sector and type. Ranked from best to worst, the overtime law enforcement situation can be divided into the following 6 categories: 1) Employees in government agencies and institutions (GAI); 2) Workers in state owned enterprises (SOE); 3) Complying foreign invested enterprises (C-FIE); 4) Non-complying foreign invested enterprises (NC-FIE); 5) Collective and township enterprises (C&T); and 6) Individual & private enterprises (I&P).

1) As far as overtime is concerned, employees in GAIs were the best-treated category found in our study. The category can actually be broken down into several subdivisions, such as party and government officials, staff members, intellectuals, military, and

⁴ Professor Dai Jianzhong, deputy director of the Sociology Institute at the Beijing Academy of Social Sciences, has done tremendous research on labor relations in Chinese privately owned enterprises.

professionals. There are also divisions in different government levels, from central administration down to county and township levels. Different from the Mao and Deng eras, when China was dominated by egalitarianism and everyone got paid equally, except for small differences based on seniority and geographic locations, wage/salary levels and benefits have become far more diverse and stratified during the last 5 to 10 years.

As far as working time is concerned, all state employees basically enjoy the protections of state overtime labor law. Moreover, many enjoy a 40-hour work week, equal to most of the advanced societies, and less than the 44 hour week stipulated by law. The new 40-hour week was formally adopted in the “State Council Regulations on Staff Member’s Working Time” on March 25, 1995. It required all state institutions to adopt the new rule no later than May 1, 1996, and state enterprises had to implement it no later than May 1, 1997 (SC, 1995).

In most Chinese government agencies and institutions, office hours for most staff members, except for service personnel like secretaries and clerks, are not restricted. Even though work hours are legally mandated as being from 8 to 12, and 2 to 6, many employees enjoy a customary system of working from 8 to 11:30 in the morning, and 2:30 to 6 in the afternoon. Within this 7-hour office time, many officials and staff members customarily enjoy periods of so-called “tea drinking with newspaper reading” (*yibe cha yizhi yan, yi zhang baozhi kan bantian*). In the mid 1980s, Premier Zhao Ziyang tried to copy the USA by implementing a new 9 to 5 office hour system, eliminating the 2-hour lunchtime break. But the most aged political leaders and staff members resisted his bold experiment and it was soon abandoned.

These favorable labor condition sound like real socialism, but the total number of people embraced by this system is comparatively small. I estimate this category to include some 5 to 7 million of the 25 to 27 million total state employees. According to most Chinese publications, the Chinese Communist Party currently has 60 million members, and the state employs about 25 million of them, all with salaries guaranteed by the state budget. But the majority of state employees have to rely on low-level government financial resources, and many county governments in poor regions can barely pay salaries, not to mention other benefits, to their employees. Such low-level state employees make up some 75% percent of the total number of government employees (LU, 2002, pp.257-259). For these reasons, I estimate the number of privileged ones to be about 5 to 7 millions.

2) The category of workers SOEs is more complex than the first category. Theoretically, all state-enterprise workers are state employees who should be treated like GAI employees. However, since Deng Xiaoping’s economic reform implemented, SOEs are required to compete independently with related non-state enterprises. Under these conditions, most SOEs are not very successful. They run-up high debts and nearly always operate in the red.

Only a few SOEs manage to make windfall profits. These are state enterprises that enjoy privileges as monopoly service and utility providers, such as the telephone, power and institutions. These SOEs are so successful that they are very difficult for new employees to enter. Workers hired usually have strong family or party ties to existing employees, entering through the “back-door (*houmen*)”, and their wage level is normally 50 to 100 percent higher than those of workers in other non-monopolized state enterprises. In addition to higher wage levels, employees in the monopoly sector benefit fully from overtime law protection, including the 40-hour working week, not to mention 14-days of paid vacation, as well as full health care coverage. But how many workers are there in this category?

Official statistics shows that the state enterprise employees are about one third of the total Chinese urban working class of 200 million.⁵ That means there are about 66 million workers within the category, of which the majority (three quarters, some 43.6 million) work for poorly managed SOEs while the rest work in the privileged, monopoly sub-category. The

⁵ This number does not include the rural to urban migrants, some 100 to 150 million workers. These workers are still counted as peasants because their household registration statuses remain bound to their home villages.

former group faces lay-offs or pressure to retire early and enjoy neither full protection of overtime laws, nor benefits entitled by state regulations. Thus, only one-quarter of SOE workers benefit from the overtime and paid-vacation regulations. In other words, the maximum number of SOE workers who enjoy labor law benefits is 16.5 million, a paltry 4.8% of the total Chinese nonagricultural working class.⁶

3) We need to clarify first the meaning of “foreign capital invested enterprises” (FIE).. According to China’s practice, there are three types of enterprises that incorporate foreign capital.

The first group consists of enterprises wholly-owned by foreign capital. It is called “*waizi qiye*” and includes businesses owned by overseas Chinese and investors from Taiwan, Japan and Hong Kong. The second group are the joint ventures, called “*hezi qiye*,” that unite Chinese and foreign partners. The third group, called “*hezuo jingying*,” are enterprises based on contractual cooperation between Chinese and foreign capital. Since all three types involve foreign capital and there are no clear differences in employee treatment, I simply lumped them together as “foreign invested enterprises”.

This category is the most controversial of the categories, because we often see two extremes. On the one hand, there are many Taiwanese, Hong Kongese and Japanese invested enterprises, especially in Zhejiang, Fujiang, and Guangdong provinces, that are severely criticized as “dehumanizing” in their treatment of employees, including serious violations of overtime laws.

In the 1980s when China started to allow foreign direct investment in Special Economic Zones (SEZ) in the cities of Zhuhai and Shenzhen, both in Guangdong Province, regulations required FIE wage-levels 20% higher than local, state or collective-owned enterprises. In the 1990s, however, this regulation was abandoned, and many foreign firms run by companies based in Taiwan and Hong Kong have reduced wages to levels equal or below local, state and collective enterprises. According to newspaper reports, many FIEs have their average wage levels lower than 1,000 *yuan* (about US\$128) per month. In addition to low wage, they often delay issuing monthly pay checks and their working hours are much longer than the local Chinese firms (CLB, 2001). For their non-compliance with Chinese labor law, I categorize them as NC-FIE.

On the other hand, the evidence suggests that some firms treat their employees with greater fairness and generally comply with Chinese labor law. I designate these mainly American (Wal-Mart is an exception), Canadian, Australian, and European companies as C-FIE. It is interesting enough to see that most complaints coming from the workers hired by NC-FIEs Taiwanese, Hong Kongese, and Japanese owners, fewer coming from the FIEs with western capital. This phenomenon forced us to dig for answers.

Based on our research, we arrived at two basic reasons. The first is the economic motives. Marxists would say that China is undergoing a process of “primitive accumulation.” All business owners naturally favor low labor costs in order to enhance surplus value and thus the profits that can be squeezed out of these money making machines. China has offered itself to capitalists as a country in which there is almost no enforcement of labor laws and no tolerance for genuine labor unions, turning it into a paradise for blood-seeking

⁶ These figures are based on 1995 statistics that need to be updated. According to Lu Xueyi’s calculation (LU, 2002, pp.129-131), the Chinese total working population was about 700 million in 1997, of which 101 million (14.42 %) worked in the manufacturing and transportation sectors. But we know that about 70% of the working population was categorized as peasants rather than members of the working class, which is considered to be strictly urban, therefore, the actual urban working class was probably no more than 200 million people at the end of 1997. Since the natural population growth in Chinese cities in recent decades is very low -- for instance, Beijing’s was almost zero (0.006%), and Shanghai’s was negative (SONG, 2007) -- the the urban working population probably did not change much. However, some 100 to 150 million rural migrant workers more recently went looking for jobs in urban industrial centers. If they are added into the national nonagricultural workforce, the total in 2007 could have been as high as 300 to 350 million workers. According to news reports in February 2009, more than 20 million migrants lost their jobs as a result of the concurrent global economic recession.

capitalists to exploit these poor laborers at will. These are the universal laws of industrial capitalism and the only force that can block their appetites, balancing the scales of exploitation, are an organized working class, united in unions or politics. Unfortunately, this kind of mechanism has long been suppressed in China.

The second reason comes from the power structure of the Chinese state. Since the party/state is ruled by a single monopolistic political force, there are no check and balance mechanisms. As Machiavelli observed, power corrupts and absolute power corrupts absolutely. Economic corruption, political corruption and legal corruption can be seen everywhere, spreading like a disease that stretches beyond meaningful treatment. Under these circumstances, some local officials such as policemen and retired party/state cadres have been hired, publicly or privately, as consultants/advisors, and even as “labor union” leaders by FIEs to earn a second income (KAHN, 2003). These officials use their government connections and knowledge to help the enterprises crack down on possible legal challenges and labor unrest. With the help of the local powerful protectors and collaborators, the FIEs have more freedom to pursue their primitive accumulation practices.

In addition to these structural conditions, there are also some cultural reasons that may underlie the abuse of Chinese employees. Many of the Taiwanese, Hong Kongese and Japanese currently doing business in China have family members or relatives who were persecuted in China, disenfranchised, driven out or even killed by the Communist revolution. It is alleged that they have revenge sentiments in their hearts, such that the abuse on these Chinese enemies could bring psychological compensation for their injuries.

Two shoe factory workers in Zhejiang Province told us that whenever their Taiwanese boss, whose father was an exiled Kuamintang - KMT officer from the same town where the factory was located, dealt with them, sometimes violently, he denigrated them by using such expressions as, “Fuck you, you stupid CCP guys!” or “You are the Mainland Chinese pigs who have been fed by the Communists!” or “You want to be rich? I will never let you stupid Communists become rich, never!” or “You are only qualified to lick my ass!” This kind of vehement anti-Chinese, anti-Communist sentiment cannot be explained in other than psycho-cultural terms.

In terms of the great confrontation between capitalists and communists, it is ironic to note how several workers told us that their Western bosses treat them fairly. At a street market in Zhejiang provincial capital Hangzhou, two girls working for a Canadian electronic factory said that their Canadian boss never forced them to work overtime without legal compensation. One girl said, “Our factory posts the labor law in the dining hall, and also distributes a bilingual (English-Chinese) booklet to each employee, including the supervisors and other folks, foreign and Chinese alike.” They told us that they normally work 8 hours a day, 6 days a week. It was not their boss who forces them to work more than 44 hours a week, but they themselves who want to earn more money by gaining double-pay for the extra day work. They have heard of the many overtime law violations in other factories, and count themselves as lucky for working for a Western firm, for these terrible things have not happened in their work places.

A professor teaching in the School of Economics, Zhejigan University explained why Westerners are regarded as less abusive in treating Chinese workers in the following terms, the reason can be viewed from three perspectives. One is the Christian philosophy of ‘live and let live’; the second is a practice of labor law enforcement and taboos against human rights abuses; the third is pressure from the working class in their own countries. Labor unions in Western countries are taking actions to force their business owners to treat their counterparts in developing countries equally, both for human rights motives and to eliminate unequal competitions. His analysis highlights some of the more important factors underlying Western business management, suggesting how it differs from Eastern philosophy.

On the other hand, the famous American company Wal-Mart has reportedly done little to protect the workers who manufacture their goods. I checked that information with a friend who works in the Comprehensive Development Institute (CDI) located in Shenzhen where Wal-Mart’s China headquarters is located. He told me that CDI trained Wal-Mart employees in 2002. According to him, Wal-Mart has treated its administrative and commercial

employees well. There are almost no overtime violations filed by its supermarket workers in Shenzhen. However, he explained Wal-Mart did not do enough to protect the workers who manufacture their products because it has contracted with more than a hundred different factories and it is difficult to monitor so many smaller companies located in so many places.

How many workers are affected by each of these good (complying) vs. bad (non-complying) FIE categories? In other words, how many are treated fairly, and how many are treated badly? According to a report, the total number of people employed by foreign firms was about 15.8 million (SUN, 2008). Nevertheless, there are no accurate statistics to differentiate the enterprises owned, or partially owned, by Asian foreign capital and those owned, or partially owned, by North American, Australian and European capitalists.

Based on our interviews, we can suggest an answer. According to our sample, about 25% of FIEs are owned or managed by Westerners and 75% of them are owned or managed by East Asians. If we divide the number 15.83 million by these percentages, the result suggests that less than 4 million workers work in the complying segment, where they are more fairly treated, and about 12 million work in the non-complying portion, where they are treated badly.

4) This category of collective and township owned enterprises (C&Ts) is composed of a bigger number of employees, and they seem to suffer the worst treatment. By definition these two firm types originated from the rural industries that mushroomed in villages and townships in the 1970s. Since then, however, the total number of these types of enterprise diminished in number due poor management, the ambiguity of ownership and intense competition from foreign capital and privately-owned companies. Indeed, many C&Ts were bought-out local entrepreneurs or foreign firms, especially those based out of Taiwan and Hong Kong. Nonetheless, enterprises in this category continue to employ 30 to 35 million rural workers, accounting for one third of the total rural industrial working class.

Working conditions in this category fall some where between the non-complying FIE and the complying FIE and state enterprises. Notable are differences in treatment between resident employees from local communities and the outside migrant workers. For local workers, it would seem that managers have to consider the employee's connections (*guanxi*) with family members, relatives and patrons, and that this helps guarantee reasonable conditions. For the migrant workers, however, slavelike treatment is common. In other words, rural migrant workers suffer super-exploitation, with unlimited hours and days of labor and no overtime compensation?

One informant told us, for example, that in the dangerous firecracker industry, managers avoid hiring locals for the most risky gunpowder filling jobs. Those workers are largely chosen from inland provinces such as Jiangxi, Hunan, Guizhou, and Sichuan. If they die from an explosion, the factory definitively settles any death claims by paying 25,000 to 30,000 RMB (approximately 7 RMB = 1 US\$) to the migrant laborer's family.⁷ If the death toll is less than three, the factory need not report it to the authorities. On the other hand, if a local worker dies on the job, problems dealing with family and friends may be endless.

5) This category of individual and private owned enterprises (I&Ps) consists of small businesses in both rural villages and urban centers. By legal definition, the individually owned enterprise (*geti qiye*) means the business has a single owner and the total number of employees is no more than five, while private enterprises could have several co-owners, while the total number of employees must be more than 5 and less than 50. However, since China's policy since the 1990s has been to encourage the creation of I&Ps the employment limitations has not existed in practice. Local officials in Jiangsu and Zhejiang, were proud to show-off their most successful 5-star private enterprises, a motorcycle factory in Jiangsu and a sewing machine factory in Zhejiang, both employing more than 5,000 workers.

As a category, I&Ps are responsible for hiring 60 to 70% of the workers who migrate from inland rural areas to the coastal industrial centers, accounting for two-thirds of the 100-150 million migrant laborers from all over China. Among the 200 workers randomly

⁷ According to new regulations starting in 2006, accidental death compensation has been increased to 100,000 RMB.

interviewed for this study, 25 originated from urban centers while 175 were rural migrants. Among the 175, 5 work for GAIs and SOEs, 10 for C&Ts, 44 for foreign enterprises (FIEs), and 116 for individual and private enterprises (I&Ps), some 66% of interviewees. Our investigation found that I&Ps generally have the most serious overtime law problems. These problems can be documented in terms of wage-levels and working hours.

To analyze wage levels among workers interviewed, I chose those workers whose jobs required similar skill and intensity and put them into one table for comparison. Table 2 shows the wage gaps in different categories:

Table 2: Wage Gaps for Workers in Different Categories

Category	1 GAI	2 SOE	3 C-FIE	4 NC-FIE	5 C&T	6 I&P
net wage (RMB) /M	825	735	740	650	625	630
Nominal wage gap (%)	100	89	90	79	76	76

Notes: 1. All workers here are un-skilled with similar labor intensity. 2. The number in each category is the average based on three investigations from 2005 to 2007. 3. All figures are net payment after deductions for medical and other benefits. 4. Based on interviews in selected cities and factories, may not represent national wage levels. 5. To accommodate labor shortage and inflation from 2006 to 2007, a 200-yuan average increase has been added.

It is interesting to note the general income gap among the different categories demonstrated in the table. The highest is Category 1 (GAI: 825RMB), and the lowest is Category 5 (C&T: 625RMB). The second is the gap between GAIs and SOEs, as well as between C-FIE and NC-FIE. Although they theoretically belong to the same categories, the income differential runs as high as 12% and 14%, respectively. Another difference is shown in the gap between categories 5 (C&T: 625RMB) and 6 (I&P: 630RMB). The income gap is quite small, with wages in C&Ts a little bit lower than those paid by I&Cs. But if overtime work is considered, the wage gap grows as the overworking of migrant workers in this sector is quite high, placing the I&P category at the bottom of the 7 wage groups. Table 3 and 4 explain this finding.

Table 3 shows the overtime situation of the workers in different categories. We converted their monthly wage into hourly wage rates in order to facilitate comparison among the categories with the real wage gap in accordance with their overtime situations.

Table 3: Overtime & Real Wage Gap in Different Categories

Category	1 GAI	2 SOE	3 C-FIE	4 NC-FIE	5 C&T	6 I&P
Working hours per week	38	40	44	50	55	60
Overtime Hours per week	-6	-4	0	6	11	16
Hourly Wage (RMB)	5.4	4.6	4.2	3.8	2.8	2.6
Real wage Gap (%)	100	85	78	70	52	48

Note: 1. Work hours are calculated according to the Labor Law standard of a 44-hour work-week, not including legal annual holidays. 2. Overtime hours are defined as the time workers are required to work beyond their legal obligations, and for which they receive no extra compensation in wages or comp-time.

This table shows that among those interviewed only those employed by GAIs and SOEs enjoy a 40-hour work week. The reason for the negative overtime working hours in these categories is that GAIs and SOEs offer employees two extra long weekend holidays. On the other hand, C-FIEs usually respect the 44-hour work-week regulation stipulated by Chinese Labor Law, while the other three categories are those that regularly violate overtime regulations.

According to 1999 World Bank data, poverty line falls between a per capita daily income of US\$ 1 and US\$ 2. Using this yardstick to calculate poverty in China, about 212 million people live-off less than US\$ 1 a day and 700 million fall below the US\$2 (KE, 2008). Table 3 shows that most migrant workers make barely 3 *yuan* per hour and 24 *yuan* per day, some US\$ 3.20. If each of them has a 3-person family depending on this wage, all members would fall into the poverty categories. On such wages, how can these workers pay for decent food, shelter, health care, and afford to let their children attend school? According to Marxist theory of labor value, these workers cannot even maintain the simple reproduction of their labor force; much less expand their productive and reproductive participation in the economy.

Table 4: Wage Gap for Different Chinese Social Strata

Social Stratum	Upper class	Upper middle class	Middle class	Lower middle class	Low income class	Under class
Median gross wage per month (RMB)	10,000 & up	7,000	5,000	3,000	1,000	500 & less
Percentage in all wage workers (%)	1 or less	2	3	10	29	55

Note: 1. This table is based on the interviews and questionnaires collected during the field work and may not represent income levels for the entire nation. 2. Only wage income is calculated, other nonwage incomes are not included; but the labor income of self-employed farmers is included. 3. Population percentage is estimated with the help of my interviewees.

In addition to wage differences, the withholding of wage payments should also be considered. According to our informants, GAI and C-FIE have never delayed payments to their employees. Even though SOE face financial difficulties for continuing operation, they seldom delay wage payments, although they sometimes delay pension payments to their retired workers. One reason for this is the support of the Chinese state banking system, which seeks to maintain social stability by keeping urban workers from taking to the streets in large numbers. NC-FIE and C&T enterprises often delay wage payments because they are smaller and have more difficulty getting bank loans. Some interviewees reported that payment delays from 3 to 5 months are typical with these two types of enterprises. Some reported that the most serious wage delays happen in Zhuhai and Zhongshan, both in Guangdong Province, where salary withholding has extended as long as 1 to 2 years (CLB, 2001).

Competing explanations for overtime violations

Now let's look at the reasons underlying serious overtime violations in China, in order to consider possibilities for how these problems can be reduced to a reasonable level, if not completely eliminated. The research offers at least four major explanations.

1) The supply\demand approach attributes the overtime problem to the "oversupplied" surplus labor force that constantly flows out of the countryside into urban centers. A professor at Zhejiang University described it in this way:

Like commodities on the free market, any oversupply will inevitably press the price down. The same is true with China's labor force. Just look at the labor market, no matter whether it is an official job distribution center or a street corner, one can easily hire an unlimited number of young boys and girls for 500 to 600RMB per month. That's the same amount a rich Beijing or Shanghai businessman might pay for one meal in a fancy hotel! If the market dictates that a human being's price can be as low as the cost of lunch, who's going to care about benefits or human rights?

Quite a few managers, government officials, and labor union leaders expressed this opinion, justifying overtime violations as a product of the labor supply surplus.

The problem with this explanation is that China has always had a surplus labor supply, yet the overtime exploitation is new to the globalization era. During Mao's time, when state-planning dominated the national economy, the supply of labor exceeded demand and wage levels were even lower than today, but all factories were required to comply with overtime regulations. Except for special occasions of mass mobilization for productivity campaigns, such as the Great Leap Forward in 1958, the work week was established at 48 hours, that is, 8-hour days in a 6-day week. For three years, from 1968 to 1970, I worked as a lathe operator in a state owned electric machinery factory in Baotou, Inner Mongolia, and rarely experienced the serious overtime violations that our research revealed to be so common today. Of course, in the past, virtually no private manufacturing sector existed and even today, state-controlled factories (GAI and SOEs) are the firms that most comply with labor law.

2) Other sources take an historical approach and attribute the problem to China's tradition of social inequality and human rights abuse, especially in rural areas. One lawyer in Haikou told me that he does not believe outsiders can do anything to help victims if they themselves don't take action. "These less educated rural boys and girls are too passive to take legal actions to protect themselves. They simply don't get the concept, or have the consciousness, to struggle for their own benefits and interests," he said. Most government officials, managers, and some scholars share this point of view.

When I asked workers and union leaders to comment on this explanation, most of them expressed disagreement. "It's not true!" one worker exclaimed.

What makes them think we don't want to fight? We dream of fighting against these injustices all the time. The problem is the incomparable force arrayed against us. We are too weak, and they are too strong. We have no organization, and they are very well organized and supported by the state with its policemen. Fighting against them is like throwing an egg at a rock!

Chinese history offers lessons that support the worker's version and contradict that espoused by the lawyer. Within the context of industrialization, China has a pretty long history of official support for the 8-hour working day. Since the 1920s when China opened its doors to the modern factory system, the 8-hour day was standard, even if the work week was longer.

Nevertheless, violations were rampant and they helped stimulate decades of resistance on the part of a working class composed primarily of rural migrants. The Communist Party skillfully infiltrated the industrial sector and organized these migrants into a

working class army before taking state power in the revolution of 1949. We can speculate that hundreds, if not thousands, of isolated, scattered, and spontaneous forms of working class resistance occur in the factories of today. Of course, the communist party has positioned itself in opposition to these labor actions. Hence, labor unrest has not been fully reported by the media as the state fears setting off a prairie fire that could get out-of-control. Indeed, should working conditions be allowed to deteriorate even more, China would experience great chaos and destruction, making rational and constructive reforms impossible.

3) A third option, the social structure approach, focuses on the problems created by China's so-called dual social system, namely the deep division and demarcation between urban society and rural society. One professor in Suzhou University made a profound analysis on this point. He said,

Why are overtime problems so serious? It is easy to understand for me. Just think about a simply question: who are all the victims of labor law violations? Urban workers? No. They are rural dwellers, country folks who migrated to urban centers! No matter how long they live and work in cities, they will never become urban residents like you and me. So, they actually belong to the second-class, like the 'untouchables' in India. Not only are they paid unequally by their companies, they are also discriminated against by the whole society. Even their children are not allowed to go to the same school as our children! Look around the whole world. Do you see such a system in other countries? I don't think so. Therefore, it seems to me, unless the Chinese society can be fundamentally restructured, no matter what high price we have to pay, I don't see any hope to improve working conditions for the rural laborers. That's the real, key source of the problem.

I have quoted this statement to other interviewees to see their reactions, and most of them agree with his arguments.

This explanation touches upon an essential aspect of the overtime problem, China's dual social structure. The other two approaches confuse symptoms with sources. This acceptance of this dual social structure is probably the secret to China's success, its competitiveness, as a manufacturing dynamo in the globalization age. The dual social structure may help sustain overtime violations for a long time to come, despite the arguments of gradualists, who anticipate a process of improving wages and conditions as has occurred historically in other industrializing nations, such as Japan Taiwan and Korea. If this process unfolds, it will take several decades as some estimates suggest that nearly 360 million peasants are getting ready to migrate to the industrial centers to supplement the existing supply of super-exploited low-wage laborers. This structural condition challenges the probability of market-driven fixes to the problem of inadequate wages and overtime exploitation (CEDN, 2003).

4) According to the supply chain/buying practice approach, workers are often forced to work overtime because suppliers take on too many orders on very short notice. But why do suppliers take on too many orders? Due to the nature of the global supply chain: it puts buyers in a position of power and leaves suppliers with little autonomy. Buyers can make, cancel, change or suddenly add orders at will; on the other hand, the suppliers, who are not making big profits and can't afford to lose the clients, are forced to respond. As a report (MANNING, 2003) concluded:

If price depression becomes a consistent pattern and yet the labor cost keeps on increasing to meet the requirements of Chinese labor law and comply with buyer-imposed codes of conduct, the gap between the buyers' price and real production costs will be further widened. Fair pricing is a real issue for sustainable code of conduct compliance.

In other words, this explanation holds that if the world market price of a good is fair, working condition will automatically improve.

This approach touches on part of the problem, not all of it. For most manufactured consumer goods today, it is now a buyer's market. The global multinational corporations have territorialized superior positions to force suppliers and manufacturers to produce quicker and cheaper at their command. Then, what about the classical economic law of supply-and-demand? Does it still exist and function? If it does not, what is the new leading force in the operation of market economy? And what is the new theory to explain it? If it does, there must be some room for bargaining and negotiation between buyers and suppliers.

It seems to me however, that working conditions in general and overtime in particular are primarily issues between business owners and their hired laborers, not between the suppliers and the buyers. Since a seemingly unlimited supply of laborers is available on the market, the enterprises enjoy a buyer's market and the sellers of labor power – the workers – suffer the consequences.

If the factories can easily hire more workers, why do they make their employees work such much overtime? If bosses hired additional workers or paid their employees for their actual working hours, there would be no overtime problem. The hidden truth is that most factories pay their workers a monthly wage, not an hourly wage. To keep workers working longer hours means to exploit extra surplus value from their bodies since most of these hours go uncompensated. New hiring involves more job training costs and lost productivity as new workers learn new skills and shifts change and settle-in. Classical Marxists studied these factors when they started analyzing primitive accumulation more than a hundred years ago (MARX, 1972).

Finally, all these explanations provide little help for understanding recent Chinese labor conditions. The only real way to stop overtime exploitation and labor abuse is to increase the collective bargaining power of the Chinese working class, as classical Marxists have also shown.

Of course, low wage labor does not necessarily mean that working conditions have to be bad. We can still do something to improve human rights for the Chinese working class. We do agree that without fundamental social and political reforms significant improvements for labor conditions are unlikely to happen. But we should further ask how socio-political reforms can really take place? Who will write the reforms and who will ensure their implementation? What if we sought to achieve a little change here and there, and incrementally bring bigger improvements to all factories and workshops? Can we start by agreeing to recognize the necessity of change for the workers' livelihood? Is it not a necessary step to educate the working class, to mobilize them, organize them, and finally remake them into a class-in-itself, as classical Marxists say?

Improving law enforcement

In meetings with Chinese lawyers and scholars interested in improving labor law enforcement, five strategies were discussed.⁸ According to them, such measures are urgently needed not only to improve conditions for laborers, but also for maintaining social stability in China. One professor's told me:

If China does not substantially improve the labor condition for its working class, China won't be able to maintain the stability party/state leaders dream about. China is in fact following a Latin Americanization model. Many people are talking about the possibility for China to replace Japan or the

⁸ I briefly mentioned some of our ideas to a few company managers and government officials who have also criticized China's labor law enforcement. They had a strong reaction against permitting workers to set up independent labor unions in foreign invested companies with the help of international NGOs. One official in Hangzhou argued that any form of foreign involvement into China's labor relations system would be recognized as a political challenge to the CCP's legitimacy. "It's no good, only makes things worse!" he said.

USA to be the world's #2 or #1 largest economy. But at this rate, it seems to me that tomorrow's China will be today's Argentina, Brazil or Venezuela!

To avoid China's Latin Americanization, the experts recommended: 1) putting the spotlight on the problem by publicizing China's poor labor conditions internationally; 2) collaborating with international agencies to increase the pressure on China's government to enforce existing labor laws; 3) encouraging World Trade Organization (WTO) monitoring of labor conditions; 4) encouraging workers to organize trade unions free of government interference; and 5) permitting the involvement of non-governmental organizations (NGOs) in activities designed to improve working class life and labor.

Among the five recommendations, that on publicizing China's poor labor conditions to the world is probably the easiest to accomplish. It would not be costly to investigate, report, translate, and publish accurate stories on the miserable daily life of Chinese workers, and the tragedies and casualties they suffer daily, especially in the I&P enterprises.

China still restricts foreign journalists from directly reporting on Chinese industrial incidents, but its restrictions on Chinese journalists have generally been lifted, which has led to the appearance of many reports in local newspapers and magazines. Chinese publishers could raise the funds to put these stories together and translate them into English and other major foreign languages, in order to educate the international community about the labor exploitation behind the miracle of cheap Chinese manufacturing. Such publicity will have two important impacts on the world community. On the one hand, it will strengthen the solidarity between the Chinese working class and people outside China, by building knowledge about the abuse of labor in the globalization era in other developing countries. In addition, foreign publicity in Chinese language to Hong Kong, Taiwan, and mainland China will spread the news to every corner of the Chinese sphere of influence. By increasing people's awareness of the seriousness of labor law violations, it should encourage them to speak out in one voice. On the other hand, improved comprehension and better understanding of China's socio-economic situation will help the world community prepare for China's inevitable social changes and possible instability. Accurate and true information about the overtime problem will be very important for maintaining regional peace in East Asia.

The wave of information should help stimulate international pressure on China to improve labor law enforcement in order to comply with UN and ILO labor relations conventions. The pressure may take the form of a multi-national collective effort of the international community, especially the UN, EU, and other world institutions. It may also take the form of bilateral efforts between the Chinese government and governments representing the interests of transnational corporations.

Our interviewees criticized the international dialogue idea from two angles. First, most such dialogues do not get beyond symbolic levels, having little impact on factory working conditions. Both sides of the dialogue have been more interested in propaganda rather than substantive change. Second, when negotiations have touched upon concrete issues, they always focus on individual cases and almost never touch on the poor conditions suffered by millions of Chinese workers, especially the rural migrants to urban-based industries. This situation could be improved if negotiators would work together to design reasonable agendas and tactics. In addition to overtime, those agendas could include such issues as unemployment and underemployment, retirement and pension system reforms, wage levels, job security, safety on the job, sexual abuse and harassment, medical treatment and insurance, child labor restrictions, and the abolition of slave labor.

The task of monitoring labor conditions in factories can be carried out by Chinese government agencies and/or the WTO. Since China is a formal member of the WTO, the nation is obligated to be in compliance with all WTO regulations, including the treatment of its own workers according to legal codes and international standards such as provided by the Universal Declaration of Human Rights and the International Labor Standards discussed above.

If China is discovered violating those codes and standards, international trade organizations, companies, as well as related national government agencies in charge of

foreign trade policies, all have rights and responsibilities to bring violators from all categories of enterprise to justice. If China refuses to enforce the law and change the behavior of firms, counterpart countries could take retaliatory actions in line with WTO regulations.

This strategy might be more efficient than the strategy of encouraging international pressure. It places more emphasis on equal terms of trade and other economic exchange activities, and parity has established legitimacy as evidenced by international conventions. The manner of raising these issues is one which minimizes their political nature and emphasizes technical criteria, allowing Chinese authorities to save face.

This strategy allows those favoring reform to benefit from the decentralization of China's economic policymaking power. The southeastern coastal provinces and cities have more autonomy in foreign trade and investment affairs than ever before, and their economies rely more on foreign investment and international trade. Therefore, they are more interested in compliance and more susceptible to pressures from foreign companies and governments. Some interviewees told me that, since most labor law violations have happened in local enterprises anyway, foreign interests and NGOs should try first to negotiate directly with local authorities. If they prove cooperative, it is better not to bother with central authorities in Beijing. In the judgment of one informant, "most of the problems of labor law enforcement can be improved, even solved, at city and provincial levels".

Since the Polish Solidarity Movement gained credit for tearing down the Soviet Union in the 1980s, "independent labor unions" have been taboo in China. Indeed, China's repression of the labor movement has been much more severe and ruthless than its better known crackdown on the student movement. For instance, six months after the peaceful conclusion of a strike by the Liaoyang workers, the government persecuted union leaders for subversion, threatening their supporters and family members with additional pressure (CLB, 2003).

More recently, there have been reports of a relaxation in controlling semi-independent labor unions in FIEs. The most promising story is that of the free election of union representatives in Reebok shoe factories in Fuzhou, Fujian Province and Shenzhen, Guangdong Province. It seems that Chinese authorities, at least on the local level and under pressure from foreign investors, are now willing to risk lifting restrictions on the organization of semi-independent labor unions.

How to explain this new development at Reebok? In other words, how should we interpret these seemingly contradictory phenomena: the relative freedom of Reebok workers and the crackdown on union leaders in Liaoyang? After discussing these issues with several interviewees I am inclined to believe that some kind of internal policy exists for demarcating the level of tolerance for "independent" labor organizing. Here are three ideas on the factors that may explain this policy.

1) The nature of firm ownership. The more "social" the ownership of an enterprise, the less freedom its workers will enjoy for organizing "independent" unions. Thus labor organizing in FIEs is more tolerated than in I&Ps and SOEs, which seem to have no freedom. The reason for this is that the target of collective action in former category is a foreign or private capitalist. In this context, no contradictions are presented to the ideological orientation of the CCP. But since the state – ie, the dictatorship of the proletariat – runs SOEs and I&Ps, the organization of labor is unnecessary and labor strife presents significant contradictions for the state. It naturally does not want to be targeted when the workers go to street.

2) The nature of the workers' target. State tolerance also depends partially on what issues the "independent" labor union wants to focus on. Are they low-level disputes restricted to economic issues or higher-level issues that might inspire social and political dispute? Analysis suggests that if the scope of the conflict is limited to the shop floor, dormitory or dining hall, organization will be tolerated. But if the workers' focus extends beyond the factory gates, and begins to involve higher authorities in the city, provincial and even central government, collective action will not be tolerated and a crackdown, no matter how violent, will result.

3) The size of the “independent” labor union. The smaller the union’s territory is, the better. If it only organizes one workshop or one factory, it is more likely to be tolerated by communist authorities. But if it grows larger to cover many factories and many locations, the government will not tolerate at all.

Based on the above analysis, if the Reebok labor union can limit its size and target very carefully, and also try to keep reasonably good relations with the official labor union,⁹ it should be safe and functional for a while. Nevertheless, a labor union is a labor union and as a social organization of great vitality it will have to grow. How can a labor union’s vision be limited to personal benefits, and its size be dwarfed inside of the factory walls? The question is how to solve the contradiction between a real independent union and the official limitations imposed on it?

In Suzhou, Jiangsu Province, one interviewee suggested a clever strategy: to play double face with the official dual policy in dealing with the independent labor union. His fellow workers called him “the underground union leader,” because there were two union leaders in his factory: One was appointed by the official city labor union, while he was secretly elected by the workers. The interesting thing is that these two union directors know each other and help each other. The official director handled all the superficial things like holiday celebrations, cultural activities and meetings to read official announcements. But the “underground director” handled the tough issues, like bargaining wages and benefits with the Taiwanese boss, and protesting against abuses, for labor law enforcement, and developing contacts with workers in other enterprises to be prepared to organize broader actions if it turned out to be necessary.

“Do you think it’s illegal and dangerous to be running such an underground union?” I asked. “Is it illegal?” the leader replied, “No! Is it dangerous? Yes! Since China’s law clearly stipulates that the Chinese working class has the right to organize unions, how can it be illegal? It is only that the CCP’s policy allows its own union. So, our underground union does nothing wrong, because the workers have a right to protect themselves. When the guys elected me to serve them, I prepared myself that some day I might be put in jail. That’s why I don’t want to have a girl friend or to marry. Why should I bring troubles to others?”

I do not mean to suggest that anybody take such risks, or do anything to go against Chinese law. I am just saying that this semi-independent and semi-dependent labor union phenomena is worthy of further social scientific research.

In addition to unions, NGOs have a role to play in fighting for the enforcement of Chinese labor law. We are going to discuss two types of NGO here; one is international and the other in domestic. The former either have or plan to have branches in China. The Chinese NGOs started from scratch and are rapidly increasing in number and developing in their reach and activities. One of the more well-known is the Institute of Contemporary Observation (ICO) in Shenzhen, Guangdong Province.

We have no data on how many foreign NGOs have offices in China, but we know that dozens of have established a presence in many Chinese provinces and cities. Their missions include almost all sorts of non-political and non-religious philanthropy, from child adoption to nursing home services. Very few of them have programs to help needy rural migrant laborers. But one of my students told me recently that there an American NGO named World Vision is offering free English classes to hundreds of young workers in Zhongshan and Dongguan, Guangdong Province. Most of these workers are Nike employees who have migrated from inland Chinese rural villages. My student reports that they are very anxious to learn English, computer science, and other subjects, such as sociology, but the NGO offers only technical classes and no social science courses are available.

This story suggests to us that NGOs like World Vision and the China Working Group (another US-based NGO that monitors corporate social responsibility) could work to provide not only English lessons to migrant workers, but a more complete array of disciplines to help

⁹ The full name of the official labor union central is the All China Federation of Trade Unions (ACFTU). As a semi-government organization, union leaders and staff members are, in fact, government paid cadres. It has branches in all locations and large enterprises.

provide them with general and specialized knowledge. With this sort of help, some rural migrants might be promoted to higher managerial positions or become union leaders.

Domestic Chinese NGOs are relatively new to the country. Except for a few urban intellectuals, most rural laborers have no knowledge of NGOs. But during the research, we discussed how to set up NGOs in China to help the rural migrant population. One way is simply to donate money to existing charities. That is the least troublesome and is encouraged by local governments. But in the context of China's rapid growth anxious educated youth like my students who are interested in social justice have a desire to take NGO jobs as their career. One young MBA, who comes from the countryside, expressed this desire. "Now China is facing fundamental social transformation, and it needs the growth of civil society, so there is an enormous demand for NGO service in China. I've decided to invest all my money and time to develop an NGO for helping these unfortunate country boys and girls in my city."

Another good example is the Chinese NGO named ICO in Shenzhen. Many of their news and research projects focus on China's labor law enforcement. In brief, if foreign invested enterprises, international NGOs, and the Chinese domestic NGOs could work hand in hand in helping the working class and contributing to the campaign to improve labor law enforcement. This final strategic suggestion is mainly for foreign enterprises and NGOs to improve their services related to China's labor law enforcement.

Conclusion

As the geographer David Harvey has observed, the rich have been getting richer, the poor poorer, and by the end of the 20th Century three quarters of the earth's population had no control over its destiny and no claim to basic rights (HARVEY, 2000). For Marxist analysts like Harvey, there is nothing new about this trend. What is surprising is the virtual absence of political will to do something about it. Perhaps the latest world financial crisis will stimulate action and make a footnote of Harvey's observation.

I hope the present research will stimulate the Chinese state and international community to pay more attention to working conditions in China, especially the urgent and serious overtime problem. As a sociologist concerned with Chinese labor rights, as well as China's long-term social stability, I feel obligated to let the world know of the real conditions. If the authorities put changes into effect, we will have reason to hope for a better future in China. Otherwise, we are quite likely doomed to witness gigantic social chaos in China.

The Chinese government should not mislead the Chinese people and the world by emphasizing attractive economic growth figures such as a climbing GDP and Pharaonic construction projects, not to mention huge export surpluses. Even when these figures are hundred percent positive, they are based on the very negative abuse of workers; they cannot be seen in black and white terms when their true color is in red, the red blood of hundreds of thousands of exploited Chinese boys and girls. Behind this rosy picture of traditional economic statistics, unthinkable numbers of souls are daily ground to the bone. As a consequence, discontent and grievances accumulate and if the pressure is not released, a volcanic eruption may occur at anytime.

I suggest that all of those who have tried to deny or ignore labor law violations in China reflect on China's history. It is filled with beautiful stories of mass upheavals, rebellions and uprisings against concentrated power and the gradual formation of new dynasties, like a huge pendulum swinging back and forth. It has happened many times before, if its momentum is not controlled, no one will be able to prevent it from happening once again.

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