Portrait of Antonio Gramsci
PC: Unknown

The Neglected Side of the Coin:

Legal Hegemony, Class Consciousness, and Labour Politics in China

Elaine Sio-ieng Hui

Since China's opening up, the Chinese party-state has put great effort into reforming its labour laws. Taken at face value, the new laws and regulations adopted in these decades may easily be seen as a sign of the commitment of the party-state to advance labour rights. This article contradicts this view through an examination of how the labour law system in China has been utilised to build up hegemony and dampen workers' class consciousness.

This article is based on two of the author's publications: 'The Labour Law System, Capitalist Hegemony and Class Politics in China', *The China Quarterly* (226): 431-455; and *Hegemonic Transformation: The State, Laws and Labour Relations in Post-Socialist China*, Palgrave Macmillan, New York (forthcoming).

Since China's opening up in 1978, the Chinese party-state has put great effort into reforming the labour law system. During the 1990s, the 1992 Trade Union Law, 1994 Labour Law, and the 1995 Arbitration Law were enacted. In 2001 and 2004, the revised Trade Union Law and Provisions on Minimum Wage were promulgated respectively. In 2007, the Labour Contract Law was passed. All these events may be easily taken at face value as a sign of the commitment of the party-state to advance labour rights.

This article, however, argues that the labour law system is a vital vehicle through which the Chinese party-state has constructed capitalist hegemony with regard to state-capital-labour relations in the country. While Marx and Engels, as well as Lenin, mostly focussed on the oppressive nature of the state, in *Prison Notebooks* Gramsci advanced the idea that the power of the ruling class is organised by the state in both political society and civil society through 'coercion' plus 'hegemony' (Gramsci 1971). He contended that the coercive machinery of the state helps sustain the domination of the capitalist class, but at the same time it has to acquire the active consent of the working class by establishing what Joseph Femia termed 'its own moral, political and cultural values as conventional norms of practical behaviour' in order to sustain its class rule (Femia 1987, 3). The ideological ascendancy of the capitalist class over the subaltern classes is what Gramsci called 'hegemony'.

For years, Chinese migrant workers have carried out contentious actions to strive for defaulted wages, compensation for workplace injury, overtime payment, and so forth. Recently, democratic enterprise trade union elections, decent wages above the minimum wage rate, compensation related to factories' closure or relocation, and payments of social insurance have also been key demands of migrant workers. Some studies point out that migrant workers have manifested a growing level of class consciousness over time (Chan

and Pun 2009). Workers' class consciousness and capitalist hegemony are 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 criticise, 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 in inducing system-changing initiatives. Focussing on the often-neglected side of the coin, this article examines how the labour law system in China has been utilised to build up hegemony and dampen workers' class consciousness.

The Double Hegemony Buttressing Market and Party-State

The labour law system has been given a greater role in the mediation of industrial relations in post-reform China. The concept of '*yifa zhiguo*' (rule of law) was added to the Chinese constitution in 1999 and the notion of '*yifa weiquan*' (defending rights according to the law) has been widely promoted by the party-state (see also the Forum on the rule of law on pp. 98-105 in the present book). The labour law system 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, despite complaining about poor income, many workers still approve of the meagre wages offered by their employers. As one female worker whom I interviewed back in 2013 remarked: 'I go to work according to the schedule; it is fair and just, so long as my employer does not underpay me.' Another male worker I

interviewed 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.' Many workers have taken labour laws as a yardstick for measuring employer behaviour—if employers do not violate the Labour Law, then paying workers low wages is not unjust. This 'normalising mechanism' embedded in the labour law system does not simply legitimise low wages, but also covertly endorses market principles such as waged labour, private property rights, surplus value extraction, commodification of labour, and so forth.

Another mechanism—which I define as a 'countervailing mechanism'—is incorporated into the labour law system to strengthen capitalist dominance. Despite its pro-capital essence, the labour law system provides aggrieved workers with a platform for resolving labour disputes, such as mediation, arbitration, and litigation. Being unaware of the many limitations of this system, because of the countervailing mechanism, many workers believe that the market economy is not structurally exploitative, and that their hardships are a result of erratic misdeeds from idiosyncratic employers. In one of my interviews, a 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.' For some 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 in China, which on paper are very comprehensive and seemingly try to constrain and regulate employers, has convinced some workers that the party-state protects workers. They, thus, do not attribute worker misfortunes to the state's pro-capital bias. As a worker I interviewed noted: 'In the

past, there were no regulations on wages, and we just earned a little. But now, enterprises must follow the laws and pay us the minimum wage. Our situation is much better now...' This 'concealing mechanism' embedded in the labour law system induces some workers to believe that the Chinese 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 concealing mechanism usually goes hand in hand with another mechanism—the 'transmuting mechanism'—to protect the Chinese Party-state from workers' radical challenges. Due to the decentralised politics of China, the central government delegates the task of capital accumulation to local governments, while it focuses its attention on maintaining political legitimacy and social harmony (Lee 2007). Some workers, therefore, perceive government corruption and its pro-business bias as being caused by local governments or officials. In the words of a worker I interviewed: '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.' In brief, the transmuting mechanism shifts the target of workers' contempt from systemic state-capital collusion to local governments.

An Uneven Influence

Through the aforementioned four mechanisms, the labour law system has been able to impose double hegemony on some workers. However, 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 others have rendered *passive consent*. Some, however, have given *no consent* at all.

Those workers who have rendered active consent to the capitalist leadership approve of the official legal discourses and labour law practices (see also the chapter by Ivan Franceschini on pp. 84–87 in the present book). Most of them perceive of economic reforms and economic growth in a positive light. They endorse the state's development strategy of 'letting some people get rich first', which is akin to the liberal 'trickle down economics' theory, believing that economic progress fuelled by the state's pro-business policies will eventually benefit other members of the society. Many of them believe that employers would have been above reproach had they paid workers wages according to the labour laws. The market economy and the wealthy class are thought to have created jobs for workers and prosperity for the country, rather than exploiting labour.

Workers who have rendered passive consent to capitalist leadership have neither completely assented to it, nor fundamentally challenged it. Some workers do not place full trust in the labour law system because of the gap between their work experiences and the unfulfilled promises of the official legal rhetoric. However, the labour law system is still able to elicit passive consent from them because, as Joseph Femia put it, their 'spontaneous discontent is contained by the pre-existing categories of the dominant ideology' (Femia 1987, 137). This means that, even though they disapprove of the juridico-political and economic system, their criticism is constrained by the ideational framework produced by the ruling bloc. Although these workers discredit the labour law system, their criticism usually targets implementational issues rather than asymmetrical power relations embedded within the system. Many of them maintain that the central government has good intentions to protect workers with labour laws; they attribute the failing labour law system to the fault of local governments or officials.

Some workers have given no consent to the ruling class at all. These workers have formulated radical challenges to both the market economy and the party-state; and they refuse to follow the ruling bloc's leadership. They are relatively immune to the normalising mechanism of legal hegemony. They do not see legal minimum wages as fair or just; instead they measure their wages against how much their employers earn. In addition, they are not influenced much by the countervailing mechanism. Some of them understand 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 on unequal footing within the legal realm. Moreover, the concealing mechanism and the transmuting mechanism have little effect on them. They see through the intricate relations between government and businesses, and do not construe the party-state as wholly autonomous from the capitalist class. They do not simply blame the local governments or officials, but censure the central government or the party-state en bloc.

Precarious Hegemony

The differing degrees in which the impact of this legal hegemony on workers expose its fragility and precariousness, which are the results of a number of factors. At the economic level, unbalanced economic development and growing social inequality have laid the material foundation for worker contestation to capitalist leadership. At the associational level, the Party-led trade unions are unable to secure short-term material concessions for workers and, hence, worker allegiance to the ruling bloc. At the legal level, the party-state has failed to consistently uphold the legal ideals it has reproduced; the discrepancies between legal ideals and legal reality have produced disenchantment. In July 2015, more

than two hundred rights-lawyers and legal assistants were detained by the government without following proper legal procedures. In December of the same year, seven labour NGO activists were arrested—five of them were formally charged at a later date for 'gathering a crowd to disrupt public order' and 'embezzlement'—and they were denied many legal rights, such as the rights to communication with lawyers and families. Some of the detained activists were made to confess their alleged crimes on television. These incidents have aroused tremendous concern at both the international and national level. Still, it is important to highlight the fact that the greater the discrepancies between the government's rhetoric and the legal reality is, the easier it is for workers to become distrustful of the juridico-political system and to overcome the deception of the legally-mediated double hegemony.

Elaine Sio-ieng Hui

Elaine Sio-ieng Hui is an Assistant Professor in the School of Labor and Employment Relations at Pennsylvania State University. Her research interests include critical state theories, legal theories, class consciousness, civil society, social welfare, and labour relations in China.

This text is taken from *Disturbances in Heaven: A Year of Chinese Labour, Civil Society, and Rights, Made in China Yearbook 2016*, edited by Ivan Franceschini, Kevin Lin and Nicholas Loubere, published 2017 by ANU Press, The Australian National University, Canberra, Australia.