

The Circular State – the Symbolic Labor Politics in Transitional China

By

Xiuying Cheng

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Sociology

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge

Professor Michael Burawoy

Professor Raka Ray

Professor Youtien Hsing

Fall, 2010

Abstract

The Circular State – the symbolic labor politics in transitional China

by

Xiuying Cheng

Doctor of Philosophy in Sociology

University of California, Berkeley

Professor Michael Burawoy, Chair

The restructuring of SOEs (State Owned Enterprises) in China produced a great deal of labor contentions. How to manage the workers and control the labor conflicts after the collapsing of the work unit system became a big challenge to the state's stability and legitimacy during the transition to the market economy. This dissertation attempts to explore the structure and functioning of this state in transition from the particular perspective of the interaction between the state and its workers.

It offered a comparative case study of two groups of workers (the state workers vs. the temporary workers) in central China, especially the concrete processes of their struggles, including street protests, office petitions and court litigations. The radical protesters on the streets would be directed into the petition offices, which would further refer or push the workers to the courts to seek clear judge. When the conflict could not reach a conclusion at the local level, the workers would petition to the center, which would certainly refer them back to the local.

The process of the workers' struggles displayed a circular state composing of four intersecting circles: the circle between petition offices, the circle between courts, the circle between petition offices and courts, and the circle between the center and the local. This circular state only circulated the cases of the labor conflicts, instead of resolving them, but it turned the material requests from the workers into discursive struggles about justifications, and thus transformed the radical confrontation between the labor and the capital into peaceful communications.

This containment of the labor conflicts was not an oppressive process simply to quench down the workers' resistance, but instead a productive process to promote the statist capitals, such as the state policies and state laws, and produce the imagination of the state. During the active engagement with the state agents, the challenging workers gradually learned to use the dominant and official languages to frame their requests, interpret their positions and realign their relations to the state. This symbolic domination was the crucial mechanism for the state to manage and control the contentious workers during the period of transition.

Table of Contents

Chapter one: Introduction

Chapter two: History and transition – relation between the state, the SOEs and the workers

Chapter three: The castle – the pension disputes of the state workers

Chapter four: The trial – the social security disputes of the temporary workers

Chapter five: Three avenues to the state – streets, courts and petition offices

Chapter six: The effects and functioning of the circular state

Acknowledgement

This dissertation was conceived and produced along with the birth and growing up of my son Raymond and my daughter Athena. They are all my best works, which have proved my nine years in Berkeley is fruitful.

Deepest appreciation goes to Michael Burawoy, my graduate advisor and dissertation chair. Throughout my years in Berkeley, Michael has never failed to give me the most generous help, endless support, and fatherly love. This dissertation is greatly benefited from the long comments typed by just one finger arriving at me in the middle of nights, or early in the mornings, from Michael. His push towards Bourdieu clearly directed this dissertation to the right track, though we don't always share the same understanding of Bourdieu.

Thanks Raka Ray for her academic direction for so many years. She was the first one pointing out the "Marx" in my blood, no matter how hard I tried to purge it from my mind. The pain of this struggle still loomed in this dissertation sometimes. It was a pity that I did not flesh out the gender theme in this dissertation, though I promised Raka five years ago that it must be a gender project. The feminist enlightenment that I got from Raka, nevertheless, would always influence both my academic and personal life.

Thanks Youtien Hsing for her broad knowledge about Chinese society and the literatures, which has always been my weak point. Both her seminar and her questions in my qualify exam reminded me of the necessity to root my research in the Chinese reality and build meaningful dialogue with other China studies scholars. Hope this dissertation fulfilled a successful attempt in this sense. Thanks my dissertation group, including Laleh Behbehani, Emily Brisset, Marcel Paret, Fareen Parvez, ofer sharone and Cinzia Solari. They have given me the most provocative academic suggestions and the strongest emotional support during the composing of this dissertation. Thanks Zongshi Chen for the warm friendship.

Special thanks go to those workers who accepted my interviews, who invited me to their meetings and banquets, who protected me from the violent factory janitors, and who sent me home using her worn-out bicycles. They showed me a totally different world from my peaceful ivory tower, and let me reflex upon how to produce and use my knowledge. Hope this dissertation could record some reality of their struggles, and help to change their lives in the future.

Finally thanks my family, who supported me for so many years, and loved me for no reason.

Chapter One: Introduction

Research Question

Since 1990s, China's economic miracle has attracted worldwide attention. The continuous double-digit increase in its GDP puzzled economists and politicians in the capitalist West, which was in a recession. However, behind the economic miracle created by the Chinese state's attempt to attract global capital and build a market economy, Chinese workers are plagued by massive unemployment and layoffs, intense labor disputes, and street protests. According to the *China Labor Bulletin*, "actions like strikes and protests have been increasing exponentially over the last ten years. According to official figures, there were more than 90,000 'collective incidents' nationwide in 2006, probably a majority of which involved workers." (China Labor Bulletin, 2008) If we take the labor litigation as a sign of "labor contentions," the situation is even worse. According to *China Labor Statistical Yearbook*, there were 310,000 labor disputes in both 2005 and 2006. Despite the intensity of these disputes, there is no sign of that a nationwide labor movement is emerging.

Marxist scholars offered a "master narrative" long ago, in which proletarianization would lead to class consciousness, local labor conflicts would become radicalized into national labor movements, or even spawn a revolution. This master narrative was widely criticized by the labor scholars (Katznelson and Zolberg, 1986.) If the master narrative was proven wrong by the development trajectory of industrial capitalism, contemporary scholars of the modern world system, such as Silver, explain the labor movement in terms of globalization. They claimed that labor movements have not lost their power but moved their battlefield along with the global capital. According to this theory, China, as the workshop for the global market, is destined to become the epicenter of surging labor movements (Silver, 2003.) However, China has seen scattered labor skirmishes instead of national labor movements.

I will argue that both classical Marxism and modern world system theory are constructed under the structural notion of class and especially the class relation between labor and capital; they have ignored or downplayed the importance of the state and the complexity of the working class. The Chinese state has had an active role in preventing the emergence of labor movements by suppressing or defusing labor unrest.

Literature review

The workers' responses to labor conflicts

This puzzle of "lack of labor movements" attracted many China scholars, whose explanations mainly focus on the "lack of collective capacities" of workers and their passive responses to the exploitations and ameliorations. Thus, hegemony and fragmentation are typical explanations for the workers' mental and behavioral limitations. Marc Blecher has focused on "the role of workers' hegemonic acceptance of the core values of the market and state," which

prevents the emergence of “a robust working class political movement capable of building a counter-hegemony” (Blecher, 2002:283-303) Many others have pointed to the fragmented identity of the workers, such as the work-unit division (Chen 2000:41-63), gender and location differentiations (Sargson, 2000), and differences in labor relation, e.g. the division between permanent, temporary and contract workers (Mallee, 2003). All these divisions lead to the fragmentation of the workers, who are unable to make a cross-boundary labor movement based on a universal class identity and common interests. The hegemonic acceptance of the official ideology and the fragmented identities of the workers have long been deemed as the inherent inadequacy of the working class, but they cannot explain why under certain circumstances and at particular historical moments, the working class did break the myth of the hegemonic ideology and organize a radical labor movement or even a revolution despite their fragmentation.

To explain the exceptional case of China, we need to take particular Chinese characteristics into consideration. The concept of “cellular activism” has brought Chinese history and institutions into the fragmentation and hegemony perspectives but focus on the “active” side of the workers’ responses. According to Chingkwon Lee, “cellular activism” describes the localized and workplace-based character of the Chinese labor unrests. In her argument this cellular activism displayed the “workers’ limited organizational capacity,” and thus “rarely escalated into large-scale, coordinated, cross-regional unrest.”(Lee, 2007) This cellular activism argument is based on the fragmented character of the Chinese workers, but does not lead to the conclusion of “an inactive working class.” It explains both the potentials and limitations of Chinese labor unrest.

Under the concept of “cellular activism,” many concrete research has attempted to reveal the “nature” of the Chinese labor activism. Based on his researches of the state workers, Chen Feng pointed out the workers’ actions somehow have the character of “moral economy resistance,” as described by James Scott (Scott, 1976). The latent argument in such research is that, when the workers’ minimum livelihood is threatened or deprived by either the market or by state policy, they will rise up and attempt to protect their basic human needs. Because this type of protest is based on the absolute and minimum requirements of human beings, such as wages, pensions, and lodgings, it has natural legitimacy, and it usually uses pleads for protection or entitlement based on their historical relationship with the paternalistic state. As Chen Feng contended, this sort of labor resistance “is ‘defensive’ and ‘restorative,’ informed by pre-reform ideological legacies and aimed at maintaining the status quo or a condition at least no worse than the present one.” (Chen, 2003:257) On the contrary, many other researches claim that, labor insurrections take up the banner of “legal rights” and frequently get entangled with the law. To some extent, this is related to state propaganda about “governance according to law.” Kelvin O’Brien’s research on “rightful resistance” draws attention to the “innovative use of laws, policies, and other officially promoted values to defy ‘disloyal’ political and economic elites.” Furthermore he points out, “Rightful resistance is thus a product of state building and of opportunities created by the spread of participatory ideologies and patterns of rule rooted in notions of equality, rights, and rule of law.” (O’Brien, 1996:2) Despite the obvious contradiction between “moral economy resistance” and “rightful resistance,” they both emphasize the state’s role of structuring the workers’ claims and interests, and the workers’ active engagement with the state.

Ching Kwan Lee's research of different modes of protests in rustbelt and sunbelt attempts to compare and concretize these two types of protests. Based on her ethnographic researches, Lee came up with "protests of desperation" in northeastern rustbelt, representing the death of socialism, and "protests against discrimination" in southeastern Sunbelt, representing the birth of capitalism. In her arguments, the veteran state workers take their grievances to the street rather than to the legal system, while the migrant workers resorted first to legal activism, and only when this institutional channel fails do they resort to public disruption. To some extent, these researches echo Marc Blecher's emphasis on the hegemony of the state, but in these researches the state does not stay on the level of idea or ideology in the mind of workers, which prevents them from rebellion, but offers the basic framework for their resistance and at the same time limits their revolutionary capacity. To better understand how the worker unrests in China have been contained and dissipated, we need to check the structure and nature of Chinese state closely.

The state's structure and function in labor control

In Kenneth Lieberthal and David M. Lampton's book *Bureaucracy, Politics, and Decision Making in Post-Mao China*, they highlighted two far-reaching concepts about the structure and function of Chinese state – the cellular society and the fragmented authoritarianism. The cellular society refers to the consequence of the decentralization of policy making process which produces "bureaucratic devices that permit localities effectively to block upward flows of information and to blunt higher-level initiatives that cascade down on local leaders." The fragmented authoritarianism argues that "authority below the very peak of the Chinese political system is fragmented and disjointed," yet, "the interactive processes among the constituent elements of the Chinese polity" (Lieberthal and Lampton, 1992:10,8,12) still holds the system a functioning whole under the authoritarian center. These two concepts nurtured the current understanding of the Chinese society and state to great extent. The widely used term of "cellular protests" is obviously influenced by the image of the "cellular society," both of which emphasized the disconnected and even contradictory relations between different parts, and nearly all studies of Chinese state focus on its "fragmented" nature. Although the studies of "fragmented authoritarianism" shows us a state down to the provincial and municipal level, and the interaction between different state levels and agents, the focus of this model is only political, or mainly politics and policies. How to drag this abstract state down to the earth and make a direct dialogue between the structure of the state and its functioning in labor conflicts control is still problematic.

Compared to the image of the centered state over a cellular society offered by Lieberthal and Lampton, the book *State and Society in 21st century China*, edited by Cries and Stanley Rosen, produces the picture of a cluster of states instead of a single centered state, though it also claims to explore "the contested nature of state legitimacy and the fragmented nature of state power in China today." (Lieberthal & Lampton: p.12) Among the researches in the book, Kevin O'Brien depicts Chinese state power as both "fragmented and divided against itself." (p.11) He argues, "In China, what emerges is a multi-layered state that has grand aspirations but formidable principal-agent problems." (p.116) In addition, he implies that this fragmented state facilitates the "rightful resistance" which makes use of the gaps among policies, or between promises and practices. In this way he seems bring the state and society, or the top and bottom together, however, Chingkwon Lee criticizes the concept of "rightful resistance" for staying on the level of

“framing” and not offering enough explanation for how the exact character of the state constitutes the subjectivity and action modes of the resisters.

Based on these researches and her ethnographic work in China, Chingkwan Lee comes up with the concept of “decentralized legal authoritarianism” to “refer to the twin strategy of decentralized accumulation and legalistic legitimation of authoritarian rule.” (Lee, 2007:11) Unlike the concept of “multi-layered state,” which is simply to describe the configuration of the state, “decentralized legal authoritarianism” attempts to analyze the characteristics and nature of this “contradictory state.” (2007:17) Lee’s main argument is that the contradictions of the accumulation goals and legitimation goals of the central government, the tensions between the central and local government give rise to the labor conflicts, but at the same time they also facilitate the settlement and containment of the labor unrests – the decentralization process leads to the fragmentation of the workers while the legalization process couches the workers’ actions in the same legalistic language. (2007:11) Lee’s theory does make huge progress to the understanding of the “structure and function” of the state in China today, and it does bring together the state and its subject, mainly the workers in her research, however, her final target is the labor protests, instead of the state. The state is diagnosed only in order to explain the special mechanisms and characteristics of the labor protests. Hence the state actually stays in the background of the workers’ activities.

From “fragmented authoritarianism” to “multi-layered states” till “decentralized legal authoritarianism,” the image of the state of China becomes more complicated and clearer. If “fragmented authoritarianism” focuses more on the “head” of the state, i.e., the policy making and politics on the top center and its implementation above the municipal levels, “decentralized legal authoritarianism” brings the state to its feet, i.e., the influences and effects of the state policies at the bottom – how the state takes roots in the workers’ mind and how the workers walk within the confinement of the state. The question is – where is the body of the state? The term of “multi-layered states” touch upon the body of the state, but it is too descriptive to offer meaningful analysis of the huge and complicated state body, which still stays in mist. Furthermore, there is an implicit question about this cluster of conceptualizations of the current Chinese state. If this state is fragmented and full of contradictions, how does it maintain the integrity and functioning of the system? The concept of “authoritarianism” seems like an explicit answer to this question. But it is just too explicit to tell us the real mechanisms and practices which sustain this contradictory system.

From “cellular protests” to “rightful resistance” till “protests of desperation vs. protests against discrimination,” the relationship between the state and the workers unrest become clearer and deeper. The “fragmented authoritarianism” gives birth to a cellular society which facilitates the “cellular protests,” while the discrepancy and contradiction within the “multi-layered states” were utilized by the workers to launch rightful resistance. To some extent, Lee’s research was an attempt to bring these two approaches together and to show how particular character of the state structures the workers’ different protests strategies. However, the state, or the states, in these researches, were all displayed as the institutional background and framework for the workers’ struggles, none of them explores how the state plays an active role in shaping and controlling the labor contentions.

Solinger (2000:81) is the only scholar to date who has emphasized the role of the state in containing labor conflicts. In “The Potential for Urban Unrest: Will the Fencers Stay on the Piste?” Solinger succinctly points out,

the most important point about worker unrest is its essentially interactive nature. Workers react, both in relation to the treatment they receive from their own bosses and local officials, and also to state policies and the overall politico-economic context in which they find themselves.

If C.K. Lee’s work explored how workers react to state policies and to the political-economic climate, no research has examined the interaction between workers, their managers and local officials, which is actually crucial to containing labor conflicts. Although Solinger does offer many stories to “indicate the deep interconnectedness between worker moves and official initiatives and responses,”(Solinger,2000:88) she attributes the failure of the workers’ unrest to “the imbalance in organizational capabilities between them and the state (at whatever level).” The “interactive nature” of worker unrest becomes more descriptive than explanatory in her analysis.

Bourdieu: The state as a bureaucratic field and its function of symbolic domination

Solinger’s (2000) research has already hinted at the game between workers and the state. To explore the process and mechanism of this “game,” Bourdieu’s theory is instructive.

Bourdieu’s cluster of “field, capital and habitus” is a good way to analyze the interplay among social agents. According to Bourdieu (1992:97)

in analytic terms, a field may be defined as a network, or a configuration, of objective relations between positions. These positions are objectively defined, in their existence and in the determination they impose upon their occupants, agents or institutions, by their present and potential situation in the structure of the distribution of species of power (capital).

Field is a space of social forces and struggles. Capital enables agents to appropriate social energy in the form of reified or living labor. Bourdieu classified capital as cultural, economic and social. He later added symbolic capital, which became central to his theory. The most engaging part of the concept of capital is “endeavor to grasp capital and profit in all their forms and to establish the laws whereby the different types of capital change into one another.” Through the concept of capital, Bourdieu developed a “unified political economy of practices.”(Wacquant, 1989:26) He assumed that different types of capital can change into one another and especially from other types of capital to its most basic form – economic. What is most important in his theory of capital is the concept of “symbolic capital,” which consists of any properties that social agents could perceive as valuable.

If the concepts of field and capital make Bourdieu’s model a little “structuralist,” he introduces the concept of “habitus” to conquer the dichotomy between structure and agents. “Habitus” is “the system of structured and structuring dispositions which is constituted by practice and constantly aimed at practical – as opposed to cognitive – functions.” The “habitus”

of the social agents, as “a sense of the game,” is structured by their positions in the field; their historical trajectories tell them what the rules of the game are. It is important to understand social agents’ engagement with these fields, we need to analyze the “interest or investment” of the agents in the game. To Bourdieu, this “interest or investment” is not economic, but a certain kind of belief, illusion or “collusion” given by the field itself. As he stated, “Each field calls forth and gives life to a specific form of interest, illusion as tacit recognition of the value of the stakes of the game and as practical mastery of its rules.” This special perspective can help to explain the behavior of the social agents, who sometimes seem irrational from the economic perspective, but quite “reasonable” if we understand their “illusions.”

This basic model of “field, capital and habitus” structured all of Bourdieu’s empirical research. In “Rethinking the State: The Genesis and Structure of the Bureaucratic Field,” Bourdieu (1994) traced the formation of the state and pointed out that

the emergence of state also implies an emergence of a specific, properly statist capital which enables the state to exercise power over the different fields and over the different species of capital, and especially over their rates of conversions. In this process, the concentration of symbolic capital appears as the condition of all the other forms of concentration. Furthermore, there is a shift from a diffuse symbolic capital, resting solely on collective recognition, to an objectified symbolic capital, codified, delegated and guaranteed by the state, which is bureaucratized.

According to this theory, the state is mainly the meta conditioning and foundation for the struggles around different species of capital and as the holder of monopoly of legitimate symbolic violence. The statist capital became objectified in the bureaucratic field to stabilize and normalize the state’s power. What Bourdieu emphasizes is the important function of the state – the power to preserve and transform the categories of perception of the world, which is the essence of political struggle. Bourdieu sometimes refers to this as “classification”: the system of naming and ordering things and thus of influencing people’s visions and divisions. What underpins this classification system is the symbolic violence or symbolic domination held by the state.

Symbolic violence is the coercion which is set up only through the consent that the dominated cannot fail to give to the dominator (and therefore to the domination) when their understanding of the situation and relation can only use instruments of knowledge that they have in common with the dominator, which, being merely the incorporated form of the structure of the relation of domination, make this relation appear as natural.

There is a long struggle of symbolic power, during which the state appears as the Meta conditioning and foundation. The function of the bureaucratic field is to universalize and objectify this monopoly of symbolic capital and circulate the statist capital.

Research design and field work

Based on the existing researches on Chinese state and its control of labor, I propose to conduct a comparative case study of labor politics in central China. This study will examine the

contentious politics of state workers and temporary workers in a single locale on a single issue at a single point in time.

First of all, this research is built on C.K.Lee's study, but very different from it. In *Against Law: labor protests in China's rustbelt and sunbelt*, Lee compares different protest modes for state workers in Northeast China and migrant workers in Southeast China. Her design is based on the "fragmentation proposition" of the working class, which presumes that different kinds of workers have different characteristics, which differentiate their perceptions of the world and behavioral patterns, thus they could not come up with universal interests and common understanding as the base of class actions. In her research, the differences of the protests modes are basically the product of different state policies in different areas – different accumulation strategies and accommodation methods. Through this way, the differences between the workers were treated as inherent and inborn, and thus unchangeable. Furthermore, the two types of workers seem to live in two segregated and disconnected worlds – the collapsing state socialism in northeast and the rising market capitalism in southeast, therefore they are predestined to come up with different protest modes. This kind of sharp contrast does lay bare the differences between the workers, especially the institutional differences which structure their protests, but the explanation of the differences is too rigid to give a dynamic view of workers' potentials and limits. Based on this critique, I propose to do a research of workers' struggles focusing on the dynamic process of their interaction with different levels of the state agents.

First of all, I choose to do the research in one big industrial city in central China to avoid the polarized contrast between the state socialist northeast and the market capitalist southeast, as presented by C. K. Lee, which has the danger to reduce differences in labor politics to geographical and institutional differences. Containing the comparisons within one inner city will pose an example of how a typical mixed economy with no special state policy deals with labor conflicts. Furthermore, locating the cases in the same city will offer an opportunity to display whether or not, or how the same institutional framework and state policy could produce different and differentiating effects on different categories of workers, and especially on their struggles.

Second, I choose to focus on the labour politics around the issue of relocation and compensation for workers at the historical moment of "restructuring of the SOEs." As the climax and last resort of series efforts by the state to change the employment relations between the state, SOEs and workers and thus improve the efficiency of production, "restructuring of SOEs" pushed the labor conflicts to a peak and thus supplied a good opportunity to observe how the state could maintain the social order even at this potentially dangerous moment. Furthermore, restructuring as the state's measure to change the ownership of the state enterprise, is also an attempt to get rid of the privileges of the state workers and thus "commodify and contractualize" the whole labor force. It hence indicates the potential and opportunity to "universalize and unify" different categories of workers. Therefore, focusing on the struggles around restructuring of SOEs will show us whether or not the workers successfully make use of this historical opportunity to realize their "revolutionary" potential and get unified through their struggles.

If the same spatial and temporal location of the cases are designed to control background differences and emphasize what are shared by the workers and thus offer the potential for them to unify, what actually prevents the workers' from launching a universal labor movement at this historical moment? Third and most importantly, with other factors controlled, I want to highlight the effects of being a state or temporary worker on labor politics. This choice was based on

theoretical and empirical concerns. The literature review shows the differentiations between different categories of workers play an important role in preventing the emergence of large scale labor movements from scattered worker unrests, and among the differentiations, the different employment identities of the workers are very crucial. During my field work, it is also evident that the most important dimension constructing the workers' interaction with state agents are their employment status – be they state or temporary workers. Since I have controlled the geographical differences and focused on the same contentious topics, the different identities of the workers will not be explained or displaced simply by other factors, such as different policies or institutional treatments.

At the same time, this design doesn't mean different labor politics could be reduced to some inborn or inherent characteristics which predetermine the workers' mentalities and behaviors. On the contrary, as the literature review highlights, what is important is the interaction between different workers and the state agents during the concrete processes of their struggles. A real dynamic view of the labor politics requires looking into how the differences of the workers are activated and deployed in their active engagement with the state institutions and agents. This implies a research focusing on the processes and interactions, instead of factors and patterns.

Based on this research design, I choose Wuhan as my research site. With a population of about 8 million, Wuhan is one of the biggest cities in China. It is located in central China, right along the Yangtze River, and is the focal point of the national transportation network. It has been a center for manufacturing, commerce and finance since the beginning of the 20th century, and it was chosen to be one of the national industrial bases in the Five-Year Plans during Mao's rule. However, in the midst of Deng's economic reforms, special developmental policies stopped flowing into Wuhan, while it painfully muddled through the treacherous market reforms. One recent study shows that, out of the five biggest cities in China, Wuhan has the highest rate of unemployment at 22.3% (Zhang, 2005)¹. With so many SOEs endowed by the previous industrialization policy during the socialist period, and such a high unemployment rate generated by the economic restructuring policy of the market reform, Wuhan epitomizes a large inner city facing severe labor contention. I carried out field research in Wuhan for about nineteen months (January to August, 2005; March to August, 2006; April to August, 2008.)

The main ethnographic work was conducted in two government sectors – the province trade union and the province labor bureau, which I presumed to be the frontline of the battles between workers and labor officials. During the field research in these two institutions, especially their petition offices, I found one salient factor which highly constructed the interactions between workers and officials, and even influenced the processes and results of the workers' struggles – the status of the workers, e.g. be they the official state workers (*zhengshi gong*) or temporary workers (*linshi gong*). The different identities of state workers vs. temporary workers did not simply mean different employment terms, but implied a great deal of social connotations. During my field research, I got acquainted with two groups of workers -- state

¹ This is a sampling research carried out by the Population and Labor Economy Research Institution in the Social Science Academy and the Local Social Statistics Bureau. The five cities are Wuhan, Shanghai, Fuzhou, Xi'an and Shengyang. Their reason of this sampling is Shanghai and Fuzhou represents the thriving east coast, while Wuhan, Xi'an and Shengyang are the inner cities with the most SOEs, therefore the latter group are impacted by the economic restructuring most severely.

workers vs. temporary workers, who were referred to as “the rebels” by others, and sometimes even by themselves. I accompanied them to the cadres of the factory, to the foremen on the shop floor, to the district courtroom, and to the petition offices and attended their underground meetings. This particular method of participant observation supplies me an opportunity to have a close observation of the interaction between the workers and officials. Because of the “evidence awareness” nurtured by their experiences with the legal system, the workers would secretly record their conversations with the officials and managers for possible use in later litigation. Their willingness to allow me to use these recordings made it possible for me to perform a detailed analysis of the interactions and their underlying power relations. At the same time, my experiences in the petition offices in the provincial trade union and the provincial labor bureau afforded me the chance to get the other side of the story and to see the totality of the institutional background, especially the structure and functioning of the state machine. Although I sometimes found myself in the uncomfortable position of being a “double agent” in the field, this method brought me closer to the complicated truth.

Findings and arguments

The two groups of workers were indeed institutionally “fragmented” in many ways.

For example, the first group comprises state workers in cities. They enjoy many privileges from their long experiences of work units. Most of them are men over sixty years of age. The second consists of marginalized temporary workers who work in state factories. Most of these workers are women in their forties who live in rural areas. Would these differences in age, gender, employment and resident status create different sets of problems for these two groups, thus prevent their “unification and radicalization?”

Elizabeth Perry’s (1993, 1997) research has shown that the internal stratification of China’s working class has promoted collective action at several key moments from the 1930s to the 1960s. In her analysis, both the inner structure of the working class and its interaction with outer social forces have determined labor politics. Therefore, the question becomes how “differentiation has helped prevent such strike waves and radicalism from spreading into a more coherent, resilient, and truly national labor movement,” as hypothesized by Marc Blecher (2004:197). Indeed, the first workers’ protests had the potential to present a formidable challenge to state policies; as time passed, the resistance was directed into the giant state machine of “case processing” and finally faded into peaceful and prolonged administrative and legal struggles.

The linchpin of this transformation was the state which delayed taking action on workers’ cases, diluted their anger, dissipated their revolutionary will, offered false hope, and converted their subjectivities. In the process, the historical and inborn differences between these two groups of workers were not eliminated in restructuring process, but were reactivated by the official policy of “divide and conquer.” State workers and temporary workers were granted different types of symbolic satisfaction but received no material concessions. In this way, the Chinese state defuses the labor conflicts piecemeal instead of resolving them. This “dispersive containment” is a process of symbolic domination that turns the workers’ economic struggle to a

struggle to redefine their status in the transition to the market economy, and thus justify their claims. In this classification struggle, the workers subjected themselves to the codification,

This circular state is a bureaucratic field of four intersecting circles: 1) among petition offices; 2) among courts; 3) between petition offices and courts, and 4) between the local (*defang*) and the center (*zhongyang*.) It is depicted in Figure 1.

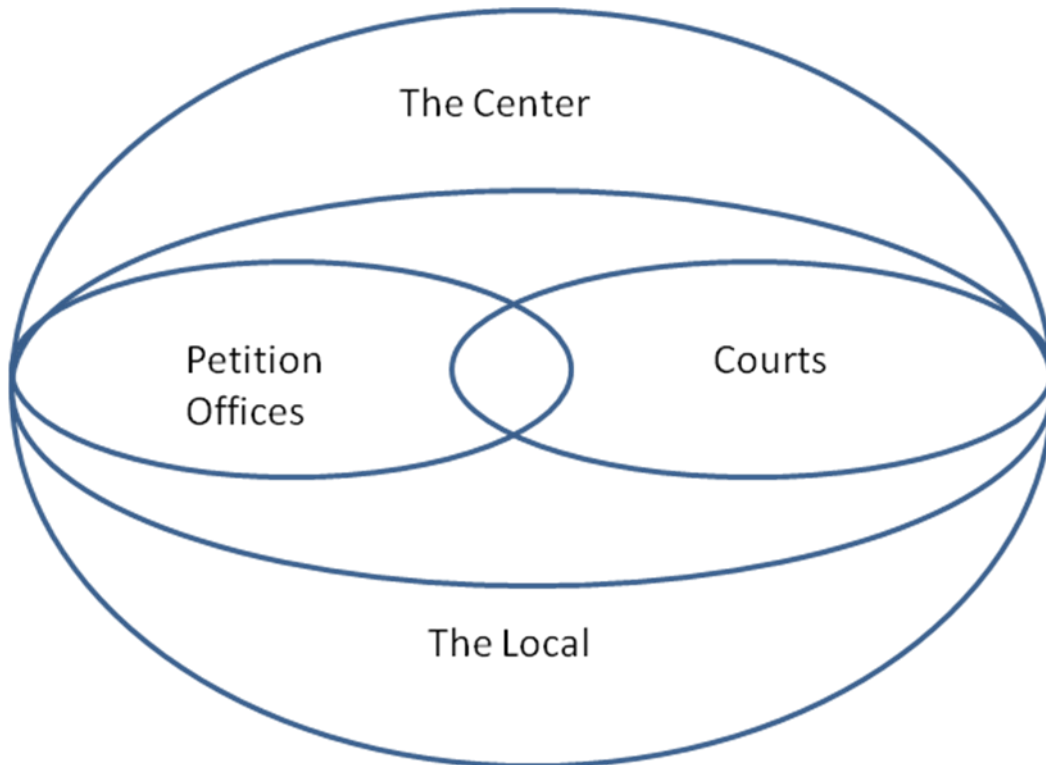


Figure 1: The circular state

The circle of petition offices is refurbished and reinforced by the central government based on the previous institution of petitions under “the rule of man.” In the era of state socialism, these offices played a marginal role in the state bureaucracy and took care of small exceptional cases which could not be handled institutionally. It was the product of the party’s “mass line,” to promote communication between the cadres and the masses and realize the mass inspection of the cadres’ deeds. Therefore the institution had a distinctive color of “rule of man.”

This changed with the economic reform in 1990s. On the one side, the economic reform has produced social conflicts which cannot be absorbed or resolved and therefore are pushed to the petition offices, which are the masses’ windows into the bureaucracies. Petition offices are therefore no longer a marginalized part of the bureaucratic system; they are the main institution to handle social conflicts. On the other side, its increased importance has not been accompanied by an increase in its power to issue administrative orders or allocate economic resources. Their functions are simply “to consult, coordinate and supervise.” Therefore, petition officials have to employ soft power, such as discursive power, to appease the masses.

This newly refurbished petition system is less a remnant of “rule of man,” than an example of “rule of law.” The new petition regulations from the central government attempted to standardize the processing procedures of the petition offices, and clearly ordered that the mass must “petition according to law.” Because there are petition offices in every government department, the cases could be bounced from one petition office to another. The procedural standardization only makes the transferring of cases more formalized and less arbitrary.

The circle of courts is composed of district courts, the city court, and the provincial Supreme Court. If the prosecutor does not accept the sentence from a lower court, he or she can keep appealing to higher courts. The higher court could either impose a new sentence or order a retrial. This is very similar to the western legal system, but the progress of one case throughout the court system could take years. Unlike the independent judiciary in the west, Chinese courts are under the direct control of the government. The judges of the courts are appointed by the government and funding for the courts are also allocated by the government, therefore the sentences for cases related to government policies and behaviors will be under the close influences and supervisions from the government. This entanglement between government and court system is most evident in the functioning of the labor disputes arbitration committee, which is a “semi-legal” institution nested in the labor bureau, usually side by side with its petition office. It functions partly as a governmental branch and partly as a legal institution, and thus becomes the intersection between the circle of petition offices and the circle of courts.

Besides the shared part of labor disputes arbitration committee, there is a general circle between petition offices and courts, which circulates cases. When the petition officials could not take a case, they will refer the petitioners to the legal institutions, usually claiming that in an era of “rule of law,” the legal system is more powerful than the administrative institutions. Similarly, when the courts could not rule on a politically sensitive case, they will refer it to petition offices, claiming that this case “does not qualify as a legal case and is beyond the jurisdiction of law.” The crucial mechanism of this transference between petition offices and courts is the definition of a case – is it a legal case or political case? Since the boundary between legal and political is never clear in China, and is especially ambiguous at the period of social transformation, the definition is usually arbitrary, which facilitates and legitimates the circulation of cases between petition offices and courts.

Finally there is a circle between the local and the center. Circulation of cases throughout the three local circles usually will take years to exhaust the workers’ hopes and trusts, and at some point they will bring their cases to the central government. “Petition to Beijing” is a popular strategy for the Chinese petitioners who are disappointed and outraged by the abuse of local officials. They can either send letter petitions to relevant departments of the central government, or visit their petition offices in person. Usually their petitions will be referred back to the local government – either the central petition officials suggest that the petitioners report to the local offices or order the local officials to reprocess the cases. Either way, the cases will be circulated between the local and the center with no guarantee of a resolution. What the petitioners get from their petitions to the center is the symbolic capital of “care and attention from the state” which might place pressures on the local officials, and therefore “petition to Beijing” becomes a common way to threaten the local officials, whose performance is evaluated in part by their ability to maintain social stability, or at least to contain local conflicts.

These four intersecting circles compose the bureaucratic field that deal with labor unrest. Each circle is a field with its own rules and logic. In the field of petition offices, what defines the participants' positions is the capital of "state policies." The stakes are the interpretation and application of state policies. In the courts, what defines the participants' positions is capital of "state laws." The stakes are the interpretation and application of state laws and the evaluation of evidence. In the circle between petition offices and courts, the stakes are the conversion and competition between state policies and state laws. The circle between the center and the local is a "meta-field" which defines the statist capital and the conversion rate between different types of capital.

This bureaucratic field is different from the field described by Bourdieu. The fields in Bourdieu's analyses are usually independent and have clear boundaries. The connections between the fields are "homologous" but never "intersecting." In contrast, the boundaries among fields in China are ambiguous and flexible, and the central state has never clearly defined the conversion rate or order between the state policies and state laws, though it always emphasizes the "rule of law." The intersecting of the fields facilitates the circulation of the cases, and the flexibility and ambiguity of the boundaries increases the space and intensity of maneuver for the participants. The struggles within this bureaucratic field are actually over statist capital, which is objectified in this field. The unsettled definitions of the statist capital not only produce struggles at the local level but also promote the petitions to the center. What is produced in the struggles within this bureaucratic field is the enchantment of the statist capital or the reproduction of the "mythology of the state."

Second, functioning of the circular state – dispersive containment

If the structure of the circular state indicates the possibility of absorbing the workers' radical protests into an institutional way of dealing with their problems as "bureaucratic and legal cases," the process of circulating their cases makes this possible. By circulating their cases, the workers engage with the state institutions and agents, and learn the language and tactics to articulate their stories and justify their claims. It is a process of circulating the cases instead of solving their problems, therefore most of the time they will not receive the material concessions they request either from the factory and/or from the state. All that they receive is symbolic satisfactions, based on the distinctive characteristics of different categories of workers. These symbolic satisfactions produce the workers' illusions and hopes about their relations with the state and thus about the games that the state defines for them, which prevent them from either radicalization or desperation, but keep them engaging with the circles. This is not a way to solve the labor conflicts, but to dissipate the labor contentions piecemeal. The real mechanism of this "dispersive containment of labor contentions" in China is illuminated by two cases.

The first case is about a pension dispute. This "war" lasted ten years, from 1998 to 2008. In 1998, the central state decided to add 10 yuan per month to the basic pension, however, the workers in H Steel Factory discovered that this favor from the central state had been hijacked by their factory. The workers organized numerous street protests. However, in 2000, the factory made another reduction in workers' pensions, and the workers petitioned the local government. Their petitions brought no material relief, and the workers were directed to the legal system. From 2002 to 2004, they received three different verdicts and finally lost the case. Their appeals to the city and province court were rejected because their case was not considered a "labor dispute" and therefore no legal arbitration was applicable. The disappointment with the circle of

court directed the state workers back into the circle of petition offices. At the end of 2004, the city congress made a special investigation and convened a public hearing. All the sides were called to testify; however, still no conclusion was reached. The enforcement of new petition regulations from the central government initiated new waves of petitions. They sent multiple petitions to the ministry of labor and welfare, which were only referred back to local labor and welfare bureaus or petition bureaus. The petition to the center only activated new circles at the local level. From 2006 to 2008, the workers made intensive petitions to all possible local petition offices, which only referred them to each other, to courts, or back to the center. In July, 2008, right before the Beijing Olympics, the province Supreme Court accepted the case to prevent possible petition to Beijing at this sensitive time.

This ten-year struggle displayed a circular character. The initial radical protests to the factory were directed into the circular bureaucratic field. The conflict between the workers and factory, or between labor and capital, was therefore submitted to the arbitration of the state. However, the state did not make an easy judgment, but only sent the case from one circle to the other.

If the workers did not get the material justice they requested, they did not give up or revolt, because they received symbolic satisfaction. Most of these state workers were men over 60. They had lived through the Cultural Revolution and spent most of their lives in work units so they had a special history and relation to the state. Their long term experiences in the work unit offered strong organizational capacity; their familiarity with the factory history and state policies, and their political sensitivity also smoothed their interaction with state officials. These historical characteristics of the state workers became both the resources and burdens in their interaction with the state agents.

On one side, their organizational capacity made it easy for them to launch street protests and engage in collective actions, and thus make them the potential challengers to the state. On the other side, their dependence on the state made them easily gave up the collective resistance as simply a gesture for the state's attention and turned to the bureaucratic field for solution. Their potential organizational capacity and their familiarity with the state policies made petition officials take their petitions seriously. During the workers' interaction with petition officials, they tasted the old comradeship, which could not be felt in the outside society. At the same time, as old men who lost their long enjoyed privileges and whose basic subsistence threatened, these state workers were objects of sympathy. The state workers took petition to the state as the best way to solve their problems, or visiting to the petition offices as their "particular way of living and fighting," because they received respect and sympathy from the state officials and "attention and care from the state." The state workers' engaging with the legal circle complemented the petition system – either to save the circle of petition offices from bankruptcy when they could not give the workers a clear conclusion, or to reactivate the circle of petition offices when the workers hit a dead end. At the same time, the state workers' petitions to the center were organized like a pilgrimage to Beijing. They submitted formal petitions to all relevant state departments and they were satisfied with the symbolic inspirations and encouragement from their petitions even though they received nothing more than a piece of paper which directed them back to the local. In brief, the state workers' radical protests were absorbed into the bureaucratic field. Their engagement with the circle of courts, and circle between the local and the center were attempts to reactivate the circle of petition offices. What they received from their navigation

along the circles were symbolic satisfactions of respect for their capacities and status as “the working class” and sympathy as members of the old “lost generation.”

The second case was about a compensation and social security dispute. It was triggered by the restructuring measure of a factory in October of 2004. This restructuring policy was immediately resisted by the workers. The workers held protests inside the factory and in front of the city hall. The majority of the protesters were state workers, who were destined to lose their privileges in this deal. Hundreds of temporary workers also participated in the. After nearly a month of turmoil in the factory, the state workers signed the restructuring agreement on November 15, 2004. The temporary workers received nothing but kept working in the factory with no compensation, no contrast and no social security. The joint protests with the state workers inspired the “spirit of resistance” in the temporary workers and their long depressed will to “equality,” hence they started their own fight since the end of 2004. Like the state workers, they tried petitioning to the government first. However, what they received from the petition officials was verbal abuse and contempt for being “peasants,” or “women.” They were told that as temporary workers they were not eligible for the same treatment as state workers. They were bounced between petition offices without a clarification of their “status.” These experiences pushed the temporary workers into the circle of courts. Since their application for labor disputes arbitration was rejected, the workers’ lawyer suggested that they attempt administrative litigation instead.

In January, 2005, the workers filed an administrative litigation against the city labor and welfare bureau with the Top textile factory as the third party, and thus finally dragged them into the court system. After several rounds of court debates among the lawyers from three sides and the collection of evidence, the workers unexpectedly won the case in June. However, this was only a nominal success, because the city labor and welfare bureau were ordered to inspect and supervise the factory.

The rest of 2005 was a long legal struggle to enforce the verdict. Their application for mandatory enforcement of the adjudication was rejected in August, while their appeal to the city court was upheld in October. However, this time the success was even blanker – their case was returned to the district court to take charge. This experience, which was both exciting and disappointing, pushed the workers back to the circle of petition offices to make their nominal legal success into a real one – to give them the compensation, contract and social security they requested.

The year 2006 was another year of navigating among petition offices. The workers met a barefoot lawyer outside of the petition office of the city labor and welfare bureau who directed them back to the circle of courts. This time, they applied for labor disputes arbitration and were refused again in February, 2007. On the one hand, the workers kept appealing to higher courts; on the other, they sent a petition to Beijing in March and were sent back to their neighborhood committee for education. To reactivate their legal struggles, the temporary workers filed intensive petitions with local government departments and threatened of another visit to Beijing. This pressed the petition officials to negotiate with local court, which finally accepted their appeal. In May 2007, the workers received their first real promise of economic compensation. However, the factory’s appeal brought another trial that the workers lost. When the workers talked about another petition to Beijing, the neighborhood committee urged them to keep

fighting, since they “had more legal procedures to go through, which means the chance of a success, no matter how slim it would be.”

From October 2004 to July 2008, the struggle of the temporary workers assumed a circular character. Like the state workers, their first choice was the circle of petition offices, however, unlike the state workers, these temporary workers experienced blatant verbal abuse and discrimination. Their identities as temporary workers, rural residents and women all subjected them to the officials’ scorn. Several petition offices avoided or shifted their responsibilities to define the workers’ identities and rights. They also used the workers’ gender and residence status to undermine their claims to equality with state workers. The abuse and discrimination in the petition offices enraged the workers and made them resent the local government. They had expected the factory restructuring to make them equal to state workers, but their mistreatment in the petition offices only reinforced their inferiority. Unlike the better-organized state workers, the temporary workers could not launch an independent protest against the local state and the factory; therefore they were pushed to the circle of courts, which at least promised legal equality. The temporary workers’ struggles were constructed around the circle of courts, which dragged the workers into a four-year legal war. Their later visits to petition offices or Beijing were either to put enforce a ruling or to start another round of legal struggle. If the state workers received respect and sympathy from the circle of petition offices, the temporary workers received symbolic satisfaction from the circle of courts. Their success of administrative litigation did not grant them immediate material rewards, but it did let them taste equality under the law for the first time.

This token success inspired and sustained the temporary workers’ later legal struggles. During their long years of legal struggles, they won some cases sometimes, though the adjudications were either hard to enforce or were overruled by higher courts. These successes gave temporary workers some faith in the legal system. When they lost, or could not have a verdict enforced, they blamed the “administrative intervention,” not the “justice” of the legal system.

When the temporary workers first entered the circle of courts, they challenged local state officials and their restructuring policies. During their more than three years’ engagement with the legal institutions, their energy and interests were spent obtaining legal knowledge and protecting their “rights.” If their target was their economic interests, during the process of navigating along the circles, they were satisfied with the nominal equality granted by law and the possible realization of this equality in the form of economic capital. In this way, the workers were tamed by this circular state through circulation of their cases.

At the beginning of the struggle, both the state workers and the temporary workers resorted to street protests to oppose their factory’s transition to the market economy. Their radical challenges were directed to the bureaucratic field or the circular state and their issues of labor conflicts became bureaucratic or legal cases. Both groups of workers navigated among different circles and their cases were circulated while their problems were not solved. However, the workers did not get either radicalized or desperate by this prolonged process of shuffling along the circles, because they received symbolic satisfactions and illusions during this process. Different groups of workers received different satisfaction based on their distinctive historical characteristics. The state workers’ long experiences with work unit and close bond with the state dragged them mainly into the circle of petition offices, where they received the moral

satisfaction of respect and sympathy from the officials. Comparatively the temporary workers' marginal and discriminated existence in the state factory pushed them to the legal circle of courts, where they received the nominal satisfaction of equality and revenge from legal success. Furthermore, both of the groups received the illusion that they could finally realize their economic interest if they tried followed rules and learned state policies and laws. This symbolic satisfaction kept the workers in circular bureaucratic field, during which they became the obedient citizens. This dissipates labor contentions bit by bit instead of systematically. This is what I called "dispersive containment."

Third, the nature of "dispersive containment" – symbolic domination

From the radical challenger who blocked traffic and occupied factories to the loyal petitioners and obedient citizens, the transformation of the two groups of workers displayed the functioning of the circular state – the symbolic domination of the workers. When the workers were directed into the bureaucratic field, they began with the state agents, gradually learning the rules. When the workers enter the bureaucratic field, either they were invited to the petition offices like the state workers, or were pushed to the courts like the temporary workers, they gave their consent to the state officials and learned to use knowledge in common with them to interpret their situations and requests. They studied the state policies and state laws and tried to justify their claims through the application and interpretation of these statist capitals. In the workers' understanding, when they entered the bureaucratic field, they finally found a platform to have an equal communication with state officials and factory managers. They certainly knew there was an unequal power relation between the workers, the officials and the managers, but they thought that power relation was outside of the system of the state policies and state laws. They misrecognized their petitioning and legal litigation process as purely fighting between different (right or wrong) applications and interpretations of the state policies and laws, and thus ignored or were unaware of the power relation, and the symbolic violence inherent in the functioning of the bureaucratic field.

This symbolic domination was realized by the structure and functioning of the bureaucratic field. There were mainly two types of statist capital circulating in this field – one is state policy and the other is state law. The struggles within the circle of petition offices are structured around state policies, while those within the circle of courts are structured around state laws. However, because the boundaries between these two circles were not clear, these two types of capital got circulated in two circles in practice. When the petition offices and courts pushed cases back and forth between the circles, they actually activated the capital popular in the other circle. Most of the time, the debates around the case reflected different kinds of statist capital. The circle between the local and the center is also constructed around the statist capital, when the center had the ultimate authority to make and define state policies and laws, the local applied and interpreted state laws and policies to local conditions. There were always gaps between the center and the local, and that was why the number of petitions to local offices surged whenever the state made new policies and the passage of new laws would produce more court cases. When the workers made their petitions to Beijing, they were actually pursuing the ultimate interpretation of state policies and laws at its origins and then used it to fight local "abuse."

As Bourdieu argues, the purpose of the bureaucratic field is to objectify and universalize statist capital. When the workers' cases were circulated in this field, statist capital was

propagated and consolidated. The workers used state policies and state laws to understand their situations, interpret their experiences and reframe their claims. During this processes the class struggle between the workers and their managers were turned into a classification struggle to shape the workers' perceptions and understandings. The struggles between the workers, officials and managers were constructed around questions such as what are the identities and status of the workers (state workers, temporary workers or contract workers) in the new economy. What are their different relations with the state? What rights and interests that the workers could claim on the state? This classification struggle was carried out by activating and interpreting different state policies and laws. In engaging with the bureaucratic field, and fighting with the officials and managers, the worker submitted to the state's monopoly of symbolic capital and thus symbolic violence.

Chapter Two

History and Transition: relation between the state, the SOEs and the workers

Since 1980s, China has experienced its "great transformation." The transition from the state socialism to the market economy was the theme of this transformation. Case 1 was about a group of state workers who wanted the restoration of their full pensions, while Case 2 was about one group of temporary workers who fought restructuring and demanded social security. Both battles took place during the restructuring of the SOEs in Wuhan city.

Before describing the details of these cases, some general questions need to be posed. Why did both groups of workers rise up at this moment? Why were their struggles constructed around social security? Was there a conspiracy between the local government and the factory, as the workers believed? What was the tension between the center and the local? Why did the state workers and temporary workers adopt different strategies and receive divergent treatment from the state agents? This chapter explains the historical and institutional background of the cases, from the perspective of "the relation between the state, the SOEs and the workers."

First, the workers' state: work unit period

The work unit institution has been the traditional embodiment of state socialism in China. As basic social unit, the work unit has structured the mental and material world for the urban residents. It also defines the identity of the workers and their relation to the state.

The People's Republic of China was established to represent the working class, and learning from the experiences of the Soviet Union, it took placed priority on heavy industry at

the expense of agriculture. From the 1950s to 1980s, two social institutions supported and consolidated the special relationship between the state and its workers – the residence registration system (*hukou*) and the work unit system. The residence registration system froze the mobility of the rural residents from country side to cities for job opportunities and therefore guaranteed the privileges for the urban residents, while the work unit system realized those privileges through full employment benefits reserved for urban residents. In urban China, work units were the liaison between the state and the workers, or as many researchers have pointed out, they comprised “little societies” within the state. The “master” position of the state workers and the privileges enjoyed by them made socialist China “the worker’s state.”

What the work units did to the workers was categorized as “material maternity” and “political paternity” by Lu Xiaobo (Lu and Perry, 1997). On one side, the work units afforded the state workers accesses to secure jobs, affordable housing, inexpensive medical care, subsidies for everything from transportation to nutrition, and generous retirement pensions that were denied to rural residents. These privileges made state workers the “labor aristocracy.” However, along with these benefits came political controls – the workers were required to express their political loyalty to the party and thus to the state. This political control was realized by the party branches in the work units, which monitored the workers’ behaviors through rewards and sanctions. Both the economic benefits and the political control produced high level of identification with the state; in this sense, the state workers were the “homo work unit” (*danwei ren*). What defined this “homo work unit” was its “dependent personality” or “dependent mentality.” In his famous work on “the communist neo-traditionalism,” Andrew Walder explained the workers’ “economic dependence on their enterprises, the political dependence on the party and management, and the personal dependence on their supervisors (Walder, 1986.)

Both the physical organization of the work unit and the mental confinement of the “dependent personality” influenced the state workers’ protests, even when the work unit began to collapse. As Lu Xiaobo pointed out, “Protests in China during the Maoist period were mainly what David Strand has termed ‘cellular protests,’ because of the limit contact across unit boundaries (Lu and Perry, 1996:8).” Because the state workers’ interests and daily lives were constructed by their work units, it was hard for them to have cross unit mobilizations and to make universal requests.

These “cellular protests” prevailed in the state workers’ unrests in the reform era, according to Ching Kwan Lee. The protests against dispossession and exploitation since 1990s were clearly based on and confined to the boundary of work units. The state worker’s pension disputes shows that even though workers from several factories were fighting for their pensions, their claims and protests were specific to their own work units. At the same time, as long as the workers made “troubles” within their work units, the state would tolerate them (Perry, 2001:163-180). Those unrests were usually labeled as “sudden incidents” (*tufa shijian*) instead of “political incidents.” This confinement of the workers’ struggles to “work units” made it possible for managers and officials to rely in traditional means of dealing with them.

This mentality of dependents also framed the workers’ demands. As Andrew Walder argued, “In a communist economy, employment in the state enterprise is not primarily a market relationship. It is a position that establishes the worker’s social identity and rights to specific distributions and welfare entitlements provided by the state.” (Walder, 1986:16) The experiences in the work unit nurtured a deep connection between the state workers and the state,

and instilled trust and dependence on the state. This mentality influenced workers' perceptions of their positions and rights. The feeling of a close bond with the state made their radical protests against the abuse of the managers merely a symbolic gesture for the attention and help from the state, which facilitated their resistance to institutional channels. The political educations that the workers have received in the work units made them experts on state policies and bureaucratic jargon. This made their interaction with the state agents, especially the petition officials, relatively smooth, and created the illusion about their capacities and even a sense of power.

Most importantly, this episode shaped the workers' understanding and interpretation of their "rights" in the reform era, when the rights discourse and rights consciousness became political tools. As Chen Feng (2003:238) argued, under the old socialist industrial structure, labor interests were embedded in paternalist state institutions, and the workers took their wages and benefits for granted. Furthermore, the formation and development of such institutions, unlike welfare regimes in the West, resulted not so much from working-class struggles that made rights claims to the state from below, but from a revolutionary societal transformation steered from above by a party-state that ruled in the name of the working class. He concluded,

Thus, Chinese workers have had little experience in making claims for their own interests since the founding of the PRC. They perceive their interests as naturally tied to the paternalist framework and have in fact never been confronted with the issue of how to define their interests beyond it.

As the case of H Steel Factory shows, the state workers always tried to justify their claims to full pension distribution through their interpretation of the state policies. Even though after several years of struggles with the state officials, they were pushed to the legal circle and learned to use the discourse of "rights and contracts," their understanding of "rights and contracts" were not the inalienable and universal thing based on the general identity of "citizenship," but still something conferred by the state.

What the work unit system produced and supported were not only the state workers as "labor aristocracy," but also a hierarchy within and without the work units. Besides the segregation between "rural" and "urban" residents, there were internal "distinctions" among urban workers. As Martin King Whyte (2004: 202) stated,

Workers in state enterprises were the largest proletarian category, but in the early 1980s China also numbered about 15 million employed in urban collective factories, 19 million employed in rural collective industry, and about 4 million urban and 9 million rural temporary workers (mostly employed by urban state factories).

The "labor aristocracy" only accounted for 42% of the entire industrial workforce and produced 75% of total industrial output in the early 1980s, and only they enjoyed the full benefits of permanent state employment. (Lee, 2007) These different categories of workers – the permanent state workers, workers in collective industry, urban temporary workers, and rural temporary workers, composed different status groups within the "working class." Except the permanent state workers, all other workers experienced different extent of "discrimination" in the society in every aspect – wages, housing, and health care.

As the lowest stratum of the working class, the rural temporary workers were in the most vulnerable position. Unlike the peasant workers who streamed into the cities from 1990s, who worked and lived in a segregated world, these temporary workers worked side by side with those state workers. These experiences institutionalized discrimination against the temporary workers. Unlike the peasant workers who accepted exploitation and prejudice, temporary workers found it unequal and unfair. Therefore, when the institutional arrangements changed, the temporary workers would take revenge for the discrimination they suffered by fighting back. As the “outsiders inside the work units,” the temporary workers had a less privileged relationship to the state. Since they did not enjoy the job security and social welfare, the temporary workers did not feel obligated to the state. These mentalities framed the temporary workers’ resistance to discrimination and mistreatments in the reform era. This was proved by the second case in this dissertation – the temporary workers’ fights for their compensations and social security. Because of their relationship to the state, they sued the local government and fought for their equal contractual rights.

Through the work unit system, the socialist state maintained the social order by categorizing workers. This made socialist China actually a status society structured by social distinctions based on “state assigned identities” embodied by different benefits that workers could claim. Above this status society was an authoritarian state which monopolized all material and spiritual resources. Within this society, the state workers enjoyed high esteem and material security, while the temporary workers experienced institutionalized discrimination in a system that treated them as cheap labor.

Second: retreatment of the state – reform and restructuring of the SOEs

At the end of 1970s, the state-owned enterprises employed more than 60% of the urban workers and produced 75% of national industrial value. However, urban employment rose to alarming levels after 1978, fuelled by the return of disgruntled youth who had been sent “down to the countryside” during the Cultural Revolution. There was even a surge of social and political delinquency across the country. (White, 1987:369) The central government hoped to reduce urban unemployment by creating jobs and changing the structure of the urban economy. After the 1978 reforms, the state-owned enterprises revealed their deficiencies: the guaranteed life long tenure made the state workers lazy and the privileged social welfare became a burden for the factories. This “iron rice bowl” was blamed for the failings of the socialist command economy. To improve labor productivity, “modernizing the industrial enterprises” became the goal of urban economic reform. This was meant to stimulate productivity by taking away job security and increasing management efficiency. All these required the changing the relationship between workers and enterprises through the introduction of a labor contract system (*laodong hetongzhi*).

In February 1983, the Ministry of Labor and Personnel issued a circular calling for the implementation of a labor contract system. As Gordon White stated, this “labor contract system” applied to workers in state enterprises. Workers employed under this system were distinguished from contract workers (*hetonggong*). The former were recruited within the state labor plan and have a certain status in, and claim on, their enterprise; the latter were usually recruited outside the plan on a short-term basis for specific tasks (White, 1987:367). In other words, the former

are state workers, while the latter are temporary workers. At first stage, this new contract system was limited to newly recruited workers; this caused a three-tiered system of fixed, contract and temporary workers. This reform of the employment policy and relation was an attempt to improve productivity and increase the flexibility of the SOEs without threatening the status of the state workers. However, the partial implementation of this new system, did not realize the goal of this reform – the old state workers still enjoyed their iron rice bowl and did not change their working style, while new contract workers after 1985 faced the prospect of becoming second-class workers. This was proved by a popular saying about the workers in the SOEs – contract workers do while fixed workers watch (*hetonggong gan, guding gong kan*). Hence the productivity of the SOEs did not improve and the welfare burden for the SOEs remained heavy. At the same time, with the introduction and expansion of other types of enterprises, such as TVEs (Township and Village Enterprises) and foreign joint enterprises, the SOEs began to face stronger competition and pressure to undergo more fundamental changes.

The decline of performance among SOEs prompted the central leadership to change reform strategy in the wake of the 14th Chinese Communist Party (CCP) Congress in 1992, when the central leadership abandoned its traditional emphasis on the role of plan and redefined China's transitional economy as a 'socialist market economy.' In November 1993, the Third Plenum of the 14th Central Party Committee spelled out detailed measures for the implementation of a new strategy of the establishment of a "modern enterprise system," which called for the expansion of "the labor contract system." Again, the iron rice bowl was the major impediment to raising labor productivity of the SOEs; the expansion and even universalization of the labor-contract system was regarded as a solution. By the end of 1993, contract workers accounted for one-third of all workers in manufacturing. (Naughton, 1997) One in five of all workers in SOEs were contract workers (SSB, 1994).

In 1994, the central government issued the first labor law, effective 1995. This labor law was "formulated ... in order .. (to) regulate labor relations, establish and maintain a labor system compatible with a socialist market economy." In this law, "the new contract-relation formerly referred to as an 'exploitation relation' and thereby contrary to socialist industrial relation – was enshrined in law for the first time" (Warner, 1996). This labor law decreed that all long-term workers should become contract workers by the end of 1996, both state workers and temporary workers should sign contracts with their employers, and there should be no differences between them.

The 15th CCP Congress in September, 1997 launched a more aggressive restructuring of SOEs, to shut down unprofitable enterprises, diversify ownership, shift enterprises to modern forms of corporate governance, and de-link the provision of social services from individual employers by privatizing housing and shifting responsibility for health insurance and pension provision to city or provincial governments. (Giles, Park and Cai, 2006:64).

Although in ideology and in official documents, the word "privatization," never appears, in practice the restructuring of many SOEs, especially those on the verge of bankruptcy, usually took the form of selling the enterprises to individuals or private enterprises. Along with the change of enterprises ownership came the "buying out of the state workers" (*maiduan gongling*) which meant to cut off the employment relation between the state workers and their work unit

through giving them a lump sum of money that was deemed as equal to their labor contribution to the factory. After the buy-out, the state workers would have to enter the labor market as contract laborers with no special relationship with the state. In the new restructured factories, a “capitalist” labor relation between managers and workers prevailed; this was usually unacceptable to state workers. This radical change to the ownership of SOEs cut off the workers’ relation to their work units and hence to the state inevitably faced resistance from the state workers. That was probably the moment for the most intense labor conflict since the economic reform and also death knell for state workers.

Since 1978, more than two decades of the urban economic reform turned the SOEs from the state work units to the market corporate and turned the state workers from the labor aristocracy to the deprecated “contract laborers.” The three stages of the restructuring of SOEs, which means decentralization of authority and returning profits to enterprises from 1979 to 1984, separating government from enterprises from 1985 to 1992, and finally the establishment of modern enterprises since 1993, clearly showed the “retreatment of the state” from the functioning of SOEs as well as from benefiting and controlling of the state workers. The introduction of labor contract system tried to raise productivity through shaking the labor security of the state workers, while the labor law attempted to further get rid of the privileges and status of “state workers” and universalize the practice of “contracting labor.” This trend reached a climax in the “buying out of state workers” in the radical restructuring of SOEs, which finally cut off the relationship between the state workers and state factories, and turned them into “contract laborers” and “modern corporate” in the market. Through this process, the state could gradually isolate itself from the direct interaction and maybe confrontation between workers and SOEs and act as an arbitrator as well as regulator of the labor relations and conflicts.

If the work units represented a status society structured by the totalitarian state, the restructuring of the SOEs, i.e. the collapsing of work units, pointed to a society based on contract, enforced by a retreating state. In the status society, the permanent state workers stood on the “paramount high” while the temporary workers served as “cheap labor” with low wage and few benefits, at the same time the peasants were segregated in the rural areas. In this status society, labor mobility was close to zero. The state realized its monopoly of opportunities and resources through the functioning of work units, while the workers deemed everything they received as the entitlements from the state. The restructuring of SOEs dismantled work units and attempted to turn them into independent modern enterprises performing according to market competitions. This was a process of establishing the employment relationship as the labor and capital relation based on contract. Compared to the status society, this new society based on contract was seemingly more equal and dynamic, which actually implied a set of western notions of “rights” and “rational individuals.” In this society, the state should only function as the regulator making rules or arbitrator enforcing rules, instead of the omnipresent and omnipotent “God” responsible for everything. At the same time, different types of workers would experience the process of “commodification” and “contractualization” which would get rid of their differences in status and privileges and turn them into the universal labor power on the labor market. However, this universalization process produced diversified responses and effects on different types of workers based on their historical experiences. For the state workers, becoming “contract workers” meant the downgrading of social status and the deprivation of privileges. Therefore they would try all out to resist this ‘contractualization.’ Even during the process of their resistance, they finally understood this was an inevitable trend and ‘there was no alternative,’ they tried to interpret the new rhetoric in their old mentalities. In their understanding, “rights” were not the unalienable

thing inherent in human nature and guaranteed by social order, but equal to “the entitlements” originated from the state. At the same time, even when they used the term of “contract,” they referred to the “social contract” between them as the state workers and the state, instead of the pure labor contract between employee and employer. The dependence on the state nurtured by so many years of work units experiences highly shaped the state workers’ resistance to restructuring – they tried to hold on to their historical bond with the state. Comparatively, the temporary workers, who had always been discriminated and marginalized by the state, were eager to welcome the “contractualization” process, which would put them under some legal protection of the state finally. At the same time, it was easier for them to embrace the “equality” connotation of “contract” and the state as rule maker and law enforcer. This explained why the state workers felt comfort in the petition offices which reproduced the paternal protection of the state, while the temporary workers put the local state on the post of “defendant” when it failed to enforce the factory to grant them equality and contracts.

Three: reinforcement of the state

If in the state socialist era, the state realized its control over the society through the institution of work units, during the period of reform and especially the restructuring of SOEs, when the work units gradually collapsed, and the state retreated from the modern enterprises, how can the new regime maintain its legitimacy and manage the social masses, especially the workers released from or “abandoned” by their work units?

As Anita Chan has insightfully pointed out, the hallmark of the “state socialism” was “welfare socialism,” and the Maoist regime claimed its legitimacy in the cities based on this “welfare socialism.” (Chan, 1998) Actually there was a twist in this “welfare socialism,” where the work units took the responsibility of welfare supplies, and therefore were called “the mini welfare state,” when the state made the economic plan and allocated resources. As some author remarked, in that system, the work units worked like a government, while the government functioned like an enterprise. During the economic reforms since 1978, the restructuring of SOEs gradually turns them into modern enterprises enjoying financial autonomy and functioning according to economic logic and market competition, and the state takes up its responsibility of social welfare provision, which becomes its new way of social ordering and management. In the time of transition, the workers, both the previous state workers and the newly contracted laborers, are troubled by the feeling of uncertainty and therefore longing for some sort of security. Hence the social security becomes the new tool for the state to construct the interests of workers and constitute the new subject of citizenship.

In fact, before the economic reform, employment was the most important source of security for urban residents because social insurance and welfare benefits were generally unavailable for individuals outside the workplace – the work units. As West contended, after 1966, China’s social security system (including the pension schemes) was designed to deliver social services and benefits to employees and their families through SOEs. (West, 1999) In this system, enterprises bore responsibility for providing retirees with pension benefits (although the state subsidized them before the economic reform of the 1980s) which was the most important security for the workers. This pension system was called “pay-as-you-go,” which meant the workers did not need to contribute to the pension plans of SOEs but could get as high as 60% of their wage each month when they retired. This PAYGO system turned out to be unsustainable when the SOEs went through restructuring. On the one side, the state subsidy and soft budget constraints, as the symbol of planned economy, were generally stopped functioning since 1980s.

Under this circumstance, the pensions and welfares became a huge burden for the SOEs, especially when they faced market competition from other type enterprises with younger employees and fewer welfare responsibilities. On the other side, the SOEs faced with the problem of aging of the workers. The number of retirees increased fivefold between 1978 and 1985, and overall pension costs rose from 2.8% of total wages for urban employees to 10.6%. (Chow, 2001:35) The difficulty faced by the SOEs contributed to the “pension crisis.” Since 1980s and with the restructuring of SOEs, the state has tried to convert enterprise-financed labor insurance into a unified social insurance pooling system with the government, enterprises and individuals sharing in funding. The direction of pension reforms was to make a transition from pay-as-you-go system to a partially funded system, consisting of both social pooling and individual accounts. Since 1986, coinciding with the introduction of labor contract system, the state introduced employee contributions. The newly hired contract workers were required to make individual contributions to existing pension schemes, while the permanent state workers initially did not (Beland and Yu, 2004:277).

In 1991, the state council proposed a three-tier retirement insurance system for employees in urban enterprises, which would be composed of (1) a basic retirement program managed by the state; (2) supplementary retirement programs funded by the enterprises; and (3) individual savings retirement accounts chosen by each employee (Zhao and Dickson, 2001). In 1997, with the intensification of restructuring of SOEs, the central government tried to set the universal contribution rates for the enterprises and individuals, and applied them to all enterprises and employees.

The pension reform was meant to relieve the economic burden for the enterprises, especially the old SOEs, and universalize and socialize the administration, provision and distribution of the pension funds. This theme was presented in the general orders and documents about pension reforms from the central state, which gradually turned itself into a rule maker and regulator. However, the implementation of this pension reform was quite uneven and fragmented (Wang, 1995:6). On one side, the economic background of this pension reform was the restructuring of the SOEs, which was actually the marketization and privatization of SOEs. This process turned the SOEs from the “mini welfare state” to the independent market player responsible for its own loss. Under this circumstance, even the pension reform attempted to lighten the SOEs’ economic burden, still the pension distribution became a big problem for them, since they lost subsidies from the central state. As Chow and Xu stated,

when changes were made to require individual enterprises to be responsible for their losses, including the costs of paying pensions for their retired employees, it was reported that even profitable SOEs had found too difficult to fulfill their pension obligations...the only way for SOEs, overburdened by pensions, to survive was to reduce, delay or simply cease to pay benefits. (2001:37)

On the other side, the political background of this pension reform was decentralization. The central government only made the most general orders and directions for the reform, and gave the provincial governments much freedom and room to set their own standards and conduct their own experiments under the general directions – the specific localities could align their enterprise and individual contribution rates. At the same time, the provincial governments faced the task not only of enforcing the orders from the center, but also developing the local economy, which became their primary responsibility and motivation. To protect local SOEs from bankruptcy and

maintain social stability, the local governments tend not to enforce the contribution and distribution of pension funds from the SOEs. The practices at the local level produced the limited coverage of the pension, which still would only cover the urban residents, especially the state workers. Even so, the existing pension system was running a deficit. How did the state manage this pension deficit, when it could not gather enough funds to fill the social pool for pension? The central state established the Ministry of Labor and Social Security (MOLSS) in 1998 to develop a more comprehensive social security system and fight accumulated deficits in established pension pools. This institution and other responsible ministries tried all ways to increase the pension funding – increase the central and local budgets in pension distribution, selling state-owned assets to obtain cash (MOLSS, 1999). The local governments usually moved the money paid into the individual pension accounts to meet pooled funds' current pension deficits (Beland and Yu, 2004).

This pension reform presented what C.K. Lee described as a “bifurcated state.” On the top is the central state which attempted to reestablish its legitimacy and social control by constructing the most basic interests and rights for the citizens in terms of social security. All the policies and directions from the central government point to a new society with clear definition of rights and responsibilities, in which the state, the enterprises, and the individuals can follow rules. The universalization of social security, which tries to erase the differences among areas, ownership types, and employment relations, and socialize the administration and distribution of social security funds, is not only trying to relieve the economic burden for the struggling SOEs facing market competition, but also an attempt to build a new connection between the state and workers (now citizens) out of the relics of the work units. This new state is embodied by its policies and directions, and also the special funds and central budget to resolve the deficits in the local level. However, this attempt at universalization attempt from the central state is hard to realize and implement at the local level. The provincial and municipal governments are embedded in the difficult situations and have to face the severe budget constraints. The for-profit enterprises would rather reserve benefits for their employees instead of contributing to the social pool, which might be abused, while the failing enterprises tend to depend on the social pool when they were not able to make their full contribution.

How could the local governments solve the problems and crises of pension fund deficit? In practice, the universal social pool is far from accomplished even after 2000. What functions on the provincial level is still a hierarchical coverage of social security. The retired state workers do enjoy the promised pension distribution, but sometimes payments are delayed or reduced. Other types of workers, such as temporary workers, are still trying to get into the state-sponsored social security system. Rural residents are ineligible for this system. The idea of citizenship becomes an abstract notion for the central state to propagate through its laws and documents, but it also constructs the local struggles between the workers, managers and officials.

Lost in transition

The history of work units in the state socialist period and the social transformation produced by the restructuring of SOEs set the background for the two cases in this dissertation. In *The Great Transformation*, Karl Polanyi (2001) generalized the social transformation during the transition to the market economy in England as the process of commodification with the

countermovement of social protection. It could be said what happened in China since 1980s was its own great transformation.

As Polanyi argued, the development of modern nation state went hand in hand with the development of the modern market economy; in China, building the market economy was accompanied by the transformation of the state. If the restructuring of SOEs commodified labor, the workers' struggles around this restructuring could be understood as their attempts at social protection targeting the state. When the H Steel Factory underwent restructuring, the pension distribution became such a huge burden that it tried to reduce the part of enterprise compensation to the pension. The universalization of the contribution and distribution of the pension funds was actually part of the central efforts to commodify all the labors across the ownership types, employment relations and regions. The state workers in the H Steel Factory opposed pension reductions because they still deemed their pension as an entitlement from the state and it was discounted by the factory. If the state workers' struggles were against the decaying of state protection aroused by the universalization of treatments to all kinds of workers during the restructuring of SOEs, interestingly, the temporary workers in Top Textile Factory protested the differential treatment during the restructuring and the limited coverage of social security in local practice. Unlike the state workers, the temporary workers did not receive any compensation for their loss of employment relation with the old factory, and they did not receive social security. They fought for their equal right to the state workers, which gradually became a fight against the naked commodification of labor. The restructuring of SOEs, as the historical moment to commodify all the workers, produced an environment of change for both groups of workers. Although the change meant different things for them, it offered the opportunity for both of them to redefine their positions and rights under the new social order.

From 1978 to 2008, three decades of social reform changed Chinese society from a status society to contract society, from a totalitarian state to a fragmented state, from a work unit to a modern enterprise, from an enterprise welfare to social security, from society of classes to a society of citizens. Although the trend of reform is the same as the global theme of "decentralization, marketization and privatization," the Chinese characteristic is "gradual and pragmatic reform" which is very different from the big bang reform in Eastern Europe's post-communist countries. This gradual and pragmatic reform was carried out through experiments, pilot projects, revisions, negotiations and compromises between the center and the local, and thus produced a society with coexisting principles without defined relations and boundaries. If social problems and conflicts were predestined to be produced in social transition, what is special about China is how this reform influenced the way social conflicts are controlled. The two cases reveal the trends of universalization and differentiation. On one side, there was the trend to commodify labor and universalize social security coverage; on the other side, there was the practice to differentiate among the workers and limit the social security coverage and benefits. The conflicts between these two forces and trends not only appeared in the tension between central directives and local practices, but also produced different state policies at different periods from the same "center." These conflicts, tensions, and differences became both the origin of and the solutions to labor conflicts.

The two cases in this dissertation displayed that the state contained the labor conflicts produced by the transition through the symbolic domination of the workers by the functioning of the statist capital. During the transition period, the state promulgated policies and laws

stipulating the direction of the reform and regulating the responsibilities and rights for the enterprises and the workers. These state policies and laws became the symbolic capital which structured the local struggles around labor conflicts. This transition produced pension disputes and restructuring disputes, mainly about material capital, but also developed the fields to solve or contain these conflicts – through the struggles around symbolic capital. The state promised the conversion between material capital, but at the local level, the conversion was not realized. At the same time, to circulate and promote the social application of statist capital, a circular bureaucratic field appeared, composed of intersecting circles of petition offices and courts.

The workers were lost in this social transition from state socialism to market economy. In the change from a status society to a contract society, they had to redefine their identities and their relation to the state, in order to solve their economic disputes and protect their interests and rights. Because of the inconsistency of the state policies and conflicts between policies and laws, the workers were temporarily lost in the transition from state socialism to market economy, but this loss was expressed by their spatial loss in the transition from one circle to the other which was constructed with different kinds of statist capital.

Chapter Three

The Castle: the pension disputes of the state workers

So he resumed his walk, but the way proved long. For the street he was in, the main street of the village, did not lead up to the Castle hill; it only made toward it and then, as if deliberately, turned aside, and though it did not lead away from the Castle, it led no nearer to it either. At every turn K. expected the road to double back to the Castle, and only because of this expectation did he go on; he was flatly unwilling, tired as he was, to leave the street, and he was also amazed at the length of the village, which seemed to have no end ...

- Frantz Kafka, *The Castle* : 14-15

“The very uncertainty about your summons guarantees you the most courteous treatment, only you’re too sensitive, by all appearances. Nobody keeps you here, but that surely doesn’t amount to throwing you out.” “oh, my mayor,” said K., “Now again you’re taking far too simple a view of the case. I will enumerate for your benefit a few of things that keep me here: the sacrifice I made in leaving my home, the long and difficult journey, the well-grounded hopes I build on my engagement here, my complete lack of means, the impossibility after this of finding some other suitable job at home, and last but not least my fiancée, who lives here.” ...”no, absolutely,” said K.” I don’t want any act of favor from the Castle, but my rights.”

- Frantz Kafka, *The Castle* : 96

Prologue

It was raining on May 24, 2006, and few visitors were in the petition office. Two old men were in the waiting room. They were in their sixties and wore dark blue jackets in the style of Sun Yat Sen's uniform, which had been popular in the 1980s. However, the pen caps sticking out of the front pocket on their chests revealed their memory of Mao's era, when the cadres used pens as a symbol of their status. These two "old-timers" quietly sat upright on the bench, but the documents in front of them seemed to be talking to everybody in silence. The piles of paper were as heavy as a book, and I wondered about their story. I thought it must be a story full of tears and blood.

When it was their turn, they were called into the reception room. Director Peng, the official in rotation, sat behind the counter. He said, "You, old comrades, are good. You are reasonable!"

One of the old men responded, "How could we not be reasonable? Making trouble and noise would not solve our problem."

While Director Peng was reading their documents, Director Xu—head of the petition office—came by. When he saw these two old men, he asked, "You are here again?"

The two old men replied in unison: "Yes, Director Xu!"

Director Xu said, "We are happy that you have come to visit us again," and headed to his office.

Both Director Peng and I immediately realized that this was a "cold case." Director Peng politely asked the old men to wait outside again as he went to Director Xu's office. When I went to the waiting room with two cups of tea, the old men were talking to a woman in their age.

"We still believe in the Communist Party. It is the great, honorable, and righteous party. It will solve our problems."

I introduced myself and handed them the cups of tea. They were very interested in me. The first thing they told me was that they had been fighting for eight years to get their pensions back. Lao Lee, the elder man, explained that their case was extremely complicated. It concerned the enterprise, the Labor Bureau, the city government, and the court and had gone to Beijing. He winked at me with some mystery when mentioning Beijing. The other man, Lao Tu, explained that every official had refused to talk to them and pushed them around. He said they were pursuing their pensions legally.

"There must be some place for us to speak," Lao Tu said. "The Chinese Communist Party respects human rights. We have only one tenet: we act according to the law. We would not go against the laws or rules."

The woman next to them agreed. "Yeah, we are not making trouble. We are the people obeying the rules."

Lao Lee launched into an explanation about how a conspiracy exists between the government and the enterprise in order to oppress old workers. Such a situation has damaged the

interests of the state and ruined the reputation of the party. He said that, because they obeyed the rules and knew the policies, they could speak with confidence. Lao Tu added that they had worked for thirty to forty years, but now received a mere 500 Yuan a month—although even the gas bill cost 90 Yuan a month. Their children had been laid off, and the whole family lived on the patriarch's pensions. He said that they had reported this situation many times, but nobody cared.

When Director Xu suddenly appeared, Lao Lee immediately informed him that they wanted to talk to him, but Director Xu said there was no need to talk to him unless they had some new questions. The old men disregarded the director's rebuff and began to explain their situation again. They said that they had sent their petition letter to the Supreme Court and they had gone to the provincial People's Congress. Lao Lee handed a document to the director, stating that it was a notice from the Ministry of Labor and Social Welfare, stating, "Isn't this enough for you to talk to me?"

Director Xu glanced at the note, but quickly asked, "What can I do? I am finished with your case. I have given you our written reply, and that is the end. It is no use for you to talk to me. Even if you went to the Ministry of Labor and Social Welfare or even the State Council, I cannot take your case any further."

Lao Lee reminded him that the ministry had told them to report to Director Xu, but the director said that—without any new questions or new information to report—he had no new opinions. Lao Tu reminded the director that the centre had told them to get help from the local authorities. Director Xu again stated that his office had already dealt with the situation. At this point, Lao Lee seemed to threaten the director by telling him that they would write the centre a new letter.

Director Xu appeared to be frustrated by the case. "I suggest you not to go anywhere. How could there be any new opinions about your case? You can talk to the centre, but the centre cannot deal with any concrete petitions. Your letters and your visits will ultimately be directed back to us. Your efforts are all in vain." Director Xu seemed a bit angry.

Lao Lee explained that he had just received a phone call from Beijing, but the director interrupted him. "Will the phone call solve your problem? What is their opinion? Do they give you clear instructions and a specific conclusion? If they think we are wrong, they will ask us to correct it. But your notice only says that you need to report to the local offices, and we maintain our old conclusion." Director Xu then abruptly left the waiting room.

Meanwhile, Lao Lee was speaking on the phone. He explained to the caller that he was in the province's Labor Bureau. He promised not to make any trouble in the caller's jurisdiction. He met my surprised eyes with a smile and said, "It is the street patrol officer in our community. He keeps close eyes on me always. He is afraid that I might have gone to Beijing—so many local petitioners in Beijing now! People visit the local offices less and less frequently because it won't solve any real problems."

He mentioned retired state workers in company "M" who had "made trouble" (*nao shi*) yesterday. I asked them if it was true that the workers blocked the company entrance, as I heard from the petition officials. They denied this information immediately and insisted that the

workers were just trying to report their problems to the cadres and managers to make some social impact. “We know it won’t work by sitting in the middle of the road. That is why we end up here, at the petition office.” I asked them how they could stay so calm after eight years fighting and facing the obvious disregard from the officials. Lao Lee said, “We are the nine hundred ninety-nine eggs bumping the government. We will get some result one day; I am sure, although we may be broken then.”

This was a scene that I witnessed in the petition office of the province labor and social security bureau. It was just one episode of a ten-year war from 1998 to 2008, which actually has not ended yet. This war was initiated by the state workers and their factory about pension reductions, and gradually the state got involved deeper and deeper. The drama in the petition office shed a light on the realities and images of the state – the tension between the center and the local, the persistent influence of the communist party, the complicated circle of governmental branches, the entanglement between government and enterprise, and the suspicious efficacy of “rule of law.” A more detailed analysis of the workers’ ten-year war – their active engagement with all sorts of state agents, would further lay bare the structure of this state and how this state absorb and pacify labor conflicts through making the workers’ contention into bureaucratic and legal cases and circulating them in the circular bureaucratic field. During the ten years, the radical labor conflict between the workers and the factory was gradually directed to the bureaucratic field and turned into the discursive struggles structured by state policies and laws. The workers got lost in their active engagement with the bureaucratic labyrinth, where they were bounced back and forth without getting anywhere, just like K in Kafka’s castle.

The ten-year war: from radical resistance to peaceful articulation

In China, ten years’ war is used to describe a long and formidable process of fighting, and usually takes the flavor of exaggeration. However, the struggle for the retired workers of H Steel factory has indeed taken ten years, literally, from 1998 to 2008.

H Steel factory is an SOE established in early 1950s as one of the national steel base. Like most SOEs, it experienced the stable and splendid socialist “work unit” period and went through a down turn in 1990s. When the restructuring of SOEs accelerated since 1997, H Steel factory faced severe economic pressure and had to stop production. In a special report to the city government, H factory admitted that it was difficult for the factory to keep contributing pension funds to the social pool. Before the universalization of distribution of pensions through the social security bureau in 2000, the SOEs still took the role of pension distribution to their workers, which means the factories would get the basic pension from the government and add some enterprise compensations as the total pension to the retired workers. This transitional period from the enterprise welfare to social security produced a great deal of confusions and also provided some room for the enterprise to manipulate the pension funds.

First stage: radical conflict and mild official intervention (1998 -2000)

At the beginning of 1998, the central government decided to increase 35 Yuan each month to the basic pension for every recipient. Unexpectedly, this good intention became the trigger of the ten years’ war. It was not until August of 1998 that the workers in H Steel factory

knew about such a good favor, which had been “kidnapped” by their factory. According to the workers’ open letter to the public, “the factory claimed 827,452.12 Yuan from the city labor and social security bureau (referred to as “city bureau” hereafter) in July of 1998; however this money never went into the workers’ pockets.” The workers went to the factory managers to request their money with state policy in one hand and sticks in the other. They won the first round of struggle and in October the factory was forced to give every worker 350 Yuan as compensation for ten months. However, this turned out to be a short-lived triumph followed by a protracted see-saw battle.

One month later, in November of 1998, the factory decided to reduce 30% of the workers’ pension.² This was no doubt a bombing to the workers, who would not accept it in silence. As reported by the factory, “at the end of 1998, Lee circulated small character posters in the factory residence area. He called on the workers to act for an explanation. It led to the blockage of the administration building of our factory on January, 12th in 1999. He called the media to the scene, who made a wrong report of the event. This triggered a larger scale of social unrests, including besieging the factory and its supervising company, and blocking traffic on the main road for three days. This series of events severely vitiate social stability, therefore the province governor made an instruction to push the newspaper to publish a new report one week later. This new report clarified the situation and unveiled the truth, so that it dissolved the blockage from most workers.” This radical attack from the workers did not intimidate the factory, nevertheless. In April 1999, a new factory policy of pension distribution was released. Pension was calculated based on age instead of service length in the new system. Everyone who was above 65 years old got 450 Yuan per month, while those who were younger got 360 Yuan per month. In workers’ eyes, this new policy was extremely unfair; and in their calculation, the factory cut about 2 million of pension distribution through these reduction measures. In September, Lee drafted “an open letter” with signatures from 153 workers, to expose the factory’s “crime” and asked for help. They began to petition to city and province governments and relevant departments, however they got no real replies, except the signal of “your factory is dynamite, and we’d better stay away from it.”

This ten-year war began with the radical conflict between the state workers and their factory. The workers’ immediate responses to the factory’s pension reduction measures were radical collective actions, such as street protests and physical attacks. However, after the short period of concession, the factory chose to confront the workers with the support from local government. Actually according to the factory’s records, the pension reduction was permitted by the city government or at least got its acquiescence from the beginning. In September 1998, the city government held a special meeting with about fifteen government departments to discuss the financial difficulty faced by H steel factory, which had already stopped production. In the meeting summary, the city government listed a series of “special measures” to help out the difficult SOE, such as selling the enterprise land, delaying paying bank loans, and special government funds for workers’ stipends. For the pension funds, the city government agreed that H steel factory could delay paying its pension contribution for three months, during which the city social security bureau would distribute pension to the workers. This three month of “grace

² The workers insisted their pensions had been reduced by 30% in total, while the factory claimed that it only reduced 30% of the enterprise compensation to the pension. Throughout the years, neither side gave clear evidence to prove their claims.

period” seemed not solve the financial problem for the factory, therefore two months later, the factory announced the first round of pension reduction. These documents from the local government and the factory revealed the financial crisis faced by the SOEs under restructuring and market competition, which produced the real pressure for pension distribution on the enterprise level. As indicated in last chapter, delaying or reducing pension distribution became a common practice for the SOEs. However, this practical measure by the enterprises could not be officially legitimized or openly supported. As C. K. Lee has argued, the local government faced the contradiction between legitimation and accumulation – on one hand, the local government needs to maintain social stability through protecting the basic interests and rights of the workers, while on the other hand the same government needs to help the SOEs to complete restructuring and promote production. (Lee, 2007) Therefore the local government usually took ambiguous attitudes to the enterprises’ practice of pension reductions. When the conflict between workers and their factory became very radical and vitiated the social stability, the local government would actively intervene and tried to function as the mediator, however, when the workers were directed into the official channel, the government would slow down and take the strategy of “dragging.” (Tuo) As the workers remarked, “no matter where we went to petition, nobody would say we were wrong, but nobody would give us a clear conclusion or instruction. They just threw us some ambiguous big words and asked us to be patient.” This ambiguous attitude and dragging strategy made the workers’ petitions to every government department fruitless and endless. The petition officials knew how sensitive this case was and nobody dared to make a conclusion. When the workers exhausted the petition officials’ “tricks,” they were finally referred to another channel – the legal struggle. The petition officials would normally say, “we are very sympathetic to you, old comrade, but sorry we cannot help you, because we are powerless in the new regime. We could neither use administrative command to order your factory, nor give you the money you want. Maybe you can go to the courts. They have the real power to rule your factory and penalize it, if it is wrong.”

Stage two: legal struggle and radical revenge (2000-2003)

The workers did not get the “explanations” from the government and the factory in their one year petitions. They turned to legal institutions for a “judgment.” In August of 2000, Lao Lee, with 140 retired workers, applied for labor disputes arbitration. Lao Lee told me, “It was so lucky that I happened to know the person who registered cases. She told me, ‘Lao Lee, don’t worry. I am going to retire soon. I will help you before I leave.’ Otherwise, I think, they would not accept our case.” In the morning of December, 24th, the workers got the verdict which demanded the factory to return reduced pensions to the workers. What a beautiful success! However, it was too transient. In the afternoon of the same day, the factory submitted an emergent report to the arbitration committee to appeal. Right on the next day, a second verdict which suspended the case, arrived at the workers’ hands. While the workers were waiting for reopening of the case, the factory prepared “new evidence” to the committee and persuaded the workers to quit. When the case was reopened on February 17th of 2001, 31 workers decided to withdraw. It took the committee about eight months to make a third verdict on October 8th of 2001. This time and finally the workers lost the case and the factory did not need to pay them anything. Only 43 workers decided to appeal.

2002 was a silent year, from both the workers’ and the factory’s report. The only traces of workers’ behavior were three legal documents. In January, 2002, the district court refused the

workers' appeal. The workers decided to keep appealing to the city court. In July 2002, their appeal was rejected by the city court, who sustained the district court's refusal. The worker applied for re-inquiry of the case. At the end of 2002, they got the inquisition that their case was unacceptable to the city court. Till then, the workers' legal way of rights defense seemed to hit a dead end. Beneath the three legal documents were one year struggle for the workers to keep trying, waiting, and hoping. They learned to follow the legal procedure step by step, because they believed they held the truth and there must be justice. However, the legal process did not even offer them a forum to debate. Their case was refused "procedurally."

Amazingly, the workers did not lose their faith in law easily. They kept appealing to the province court. The feedback they got was "wait for notification, please wait ...". The workers were frustrated and exhausted by this prolonged process and finally they broke out. At the end of 2003, Lee drafted a second open letter, in which he recapped their struggles to defend their rights to pensions, and called on the workers to "get back our life-saving money!" A factory report listed series of workers' radical behaviors. "On December 5th, hundreds of workers besieged the party administrative building in the factory. On December 15th, the workers blocked the entrance of the factory and it led to the stoppage of production for one day. On January 5th of 2004, the workers blocked the factory entrance again with the banner of 'return our pensions!' On January 12th, they went to besiege the supervising company of the factory. On January 13th, about 60 workers blocked the factory entrance again and they turned to the district court later." According to this report, Lee organized and directed more than thirty times of such "destabilizing actions" involving more than 100 workers each time. On May 15th, Lee and his comrades made a petition of assembly and demonstration to the district police station, who immediately reported this to the factory and the district government. The managers agreed to meet the workers and promised that they would solve the problem soon. The workers felt very gratified and withdrew their petition. However, one month past and the factory could not come up with a clear plan. The workers felt that they were cheated. They said in their second petition of demonstration, "They did not show us their sincerity but just play the game of a protracted war. This is so unbearable for us!" Of course they did not get the permission from the police, and this time Lee got a warning. The district policemen went to Lee's home to admonish him and pointed out that his behavior was illegal. They said if Lee did not stop the illegal organization of the workers, he would be sent to "the legal studies class" which was actually a detainment for fifteen days, without a legal charge.

From 2000 to 2003, the legal struggles lasted for three years. Like in the first stage, the workers got a temporary and transient success followed by prolonged struggles. In the workers' minds, the first verdict which supported the workers' request represented the legal justice carried out by righteous arbitrators, while the following verdicts and sentences which refused the workers' appeals were the result of factory bribes and administrative interventions. So many times the workers mentioned what the factory managers threatened them, "no matter where you go, we will send money after you. You go to the front door, and we go through the back door! You ride bicycles and we drive cars. Let's see which is faster, the two wheels (workers' bicycles) or four wheels (managers' cars)?" The workers knew that the functioning of courts were not totally independent from other social factors, especially the pressures from local government and the bribe from enterprises, but they believe in the "justice and neutrality" of the law itself. The first arbitration which supported the workers' requests proved and intensified the workers' belief in the power and justice of law, and this short-lived triumph sustained the workers' three years of

legal struggles. They believed if they could unveil what intervened the normal legal procedures or violated the legal codes, they would finally win the battle, and they believed the higher level of courts they went, the higher chance they could get the fair result, because they knew the local courts and officials were corrupted by their factory, or they were simply colluded with each other. That was why they kept appealing. However, the legal system failed them again and again. As the old state workers, who had lots of experiences with politics and bureaucracies, and were quite familiar with the entanglement between SOEs and local government, they chose to give up the legal attempts and fall back on radical collective action to attract attention from government again. Unlike the radical street protests they employed out of outrage three years ago, this time they were more organized and even followed legal procedure – they made demonstration petitions to the street police! During years of struggles with their factory managers and local officials, the state workers learned to play with rules and within rules. They successfully attracted the attention from government, but the managers still played the trick of “dragging and fooling the workers.” The workers’ second legal petition of demonstration was stopped by the police and interestingly the organizer was charged by his “illegal organization of the workers” and his penalty would be “attending legal studies classes.” What an irony! When the workers learned to obey the legal rules and play the legal games, they were defined as “illegal.” The line between “legal” and “illegal” was so thin and ambiguous that it was easily overstepped. Actually under current circumstances, when there were no clear legal definitions and rules about demonstration, assembly and organization, it was easy to pin down any collective actions as illegal, even when the workers thought that they were following legal procedures. From 2000 to 2003, the workers tried the legal struggles, radical attacks, and legalized demonstration petitions, but none of them worked. They were treated with “delaying” from the courts, “cheating” from the factory, and “threatening” from the district police.

Stage three: back to the official petitions (2004 -2008)

Till then it looked like the workers had used up their energies and hopes. They had tried radical actions, administrative petitions and legal arbitrations. No way worked out! The turning point came with a short report on newspaper. It was an interview of one “rights defense warrior,” who was a retired university professor and a district representative of the city people’s congress. Lao Lee and his colleagues contacted this Representative Chen, who was so touched by their stories and applied for a special check for their case in the city congress. In November, 2004, the city congress held a special meeting for “the pension distribution disputes arbitration in H Steel factory” and asked all relevant institutions, including the factory, the arbitration committee and the province supreme court, to submit their testimonies. Without any doubts, all sides insisted on their opinions – the factory claimed the pension reductions was due to the economic difficulty of the restructuring SOE and it was supported by the city government; the arbitration committee claimed its arbitration procedure was legal; and the city court claimed it refused the workers’ appeal because their case was not eligible as labor disputes. These testimonies obviously would not satisfy Representative Chen and the workers. In January 2005, Chen submitted a critique to the city congress and requested further investigation. Five months later, the city labor and social security bureau submitted a reply to Representative Chen, which took an attitude of “amicable settlement” to ask the representative to understand the institutional limitation to the labor disputes arbitration and promise to give the workers’ other forms of

compensations when the factory improved its economic situation. This compromise on paper did not buy off the workers easily. At the end of the year, Chen even submitted an opinion letter to the city mayor to ask for a resolution to a case lasting for more than two years in the city congress. Seven months later, the mayor referred a reply to Representative Chen from the city bureau. However, this time, the bureau took a strong position and insisted that the factory pension reduction was in line with the state policies and the procedure was legal. At the same time, the city bureau kicked the ball back to H Steel factory and asked it to do a better job in communication with the workers and protecting social stability. Till then, this case had finished its long journey in the city congress and basically hit a dead end. Although the workers did not get their pension and justice back through Representative Chen, the special check of their case in the city Congress and the possibility to “speak to the Mayor” had tremendous symbolic significance to them. They saw the hope of peaceful petitions, only with the help from “powerful” persons. The testimonies from the factory, city bureau and courts, supports from Representative Chen and the referred reply via the city Mayor, became important symbolic capital in their future interactions with the state officials.

If the help from Representative Chen showed the influence of individual “hero” to direct the workers back to the official channels of petitions, there was also institutional impetus to the workers’ attempts of official petitions. On May 1st of 2005, the new petition regulation was enacted by the state council. This new regulation claimed to “protect the legal rights of petitioners” and “regulate the petition procedures.” This new state regulation enkindled the faint light of hope in the workers’ mind. They studied the new regulation very carefully and did petitions step by step, from the factory, through the city bureau, to the province government. With the written reply from the province bureau, five worker representatives finally went to Beijing in November, 2005, for a five day intense petitions to every relevant state institution. They did not get any real answers to their questions or any written instructions to their case, but they got tremendous inspiration and encouragement from this pilgrimage to the center. They came back to W to fight with local governments with confidence charged by this trip. They did not know at that moment what awaiting them were endless circles of petitions. From the beginning of 2006 to the middle of 2008, the workers’ calendar was marked by numerous failed petitions to different governmental departments, including letter petitions to the Ministry of Labor and Social Security, the National Federation of Trade Union, and the Supreme Court. The workers’ petitions were either referred back and forth between different petition offices, or simply refused by some of them. The reason given by the governments was simple – your case had been dealt with through legal procedures therefore it was beyond the administrative intervention, or your case should be processed by other departments. The endless unfruitful petitions to the local government departments made the workers very frustrated and they could only threaten to petition to Beijing! In July of 2008, right before the Beijing Olympic, the workers got the notice that their case was accepted by the city court finally and they decided to drop their intensive petitions to province bureau. In October, however, they lost the case and they decided to go to Beijing, again!

In this stage, the workers were directed into the “systematic” way of petitions, and radical collective actions were gradually out of option. Five years collective struggles before this stage took some steam out of the state workers’ confidence about their radical confrontation with the factories based on their collective power of proletariat, and their illusion about legal struggles to give their justice. Finally they, as state workers, found out they had to fall back on the state, e.g.

the government departments at different levels to solve their problems and most importantly, give them respect and fair treatments. The special investigation of the city congress with the help from Representative Chen gave the workers the long lost feeling of “special attention from the government” and the testimony meeting with all relevant institutions finally awarded the workers what they had longed for – the platform of equal dialogue. Although this special check did not solve their problem or give them a different conclusion to their case, during the process of interacting with officials, the workers got symbolic satisfaction to their mental needs – sympathy and respect to them as the state workers. This was also true for their later experiences with different petition officials for years. Gradually the workers’ focus transferred from simply seeking for their reduced pensions to asking for a justification – why they were treated like this and was this treatment fair? To cash out the material capital the workers were asked to obtain some symbolic capital first.

The circular state: circulation of the “case”

It is hard to imagine that a group of workers in their 60s and 70s would sustain a “war” for ten years. However, this was exactly what happened in W and had become a not so rare event in recent China. Why could the workers not get their pensions back, or why did they not give up earlier? The detailed recapitulation of the processes of workers’ struggles indicates a complicated bureaucratic labyrinth in which the workers were bounced back and forth without getting anywhere. Based on this case, it can be argued that the bureaucratic field is constructed of four intersecting circles that circulated the workers case and successfully kept the workers from losing their faith in the state.

During the ten years of fighting, the radical collective actions of the workers gradually gave way to institutional arbitrations. When the workers failed in their confrontations with the factory, they turned to the government immediately out of their historical habitus as state workers. From 1999 to 2000, the workers repeatedly petitioned various government branches. However, these petition offices did not solve the workers’ problem; instead, they pushed them to the courts. From 2000 to 2003, the workers went through all the legal procedures, which failed to provide any conclusion, let alone the justice. The radical collective actions at the beginning of 2004 were pampered by the special investigation of the city Congress at the end of the year. When the new petition regulations were enforced in 2005, the workers’ petitions became more intensive; they finally went to the center that same year after submitting all the procedural petitions. If what happened to the workers in these years indicated an emerging bureaucratic field constructed under the “rule of law,” the workers’ itinerary of petitions after 2005 clearly displayed the circular character of this field.

In February 2006, the workers petitioned the province’s Labor and Welfare Bureau, but were refused. In March, they submitted a written petition to the Ministry of Labor and Welfare, who replied to them one month later, asking them to report to the local labor bureau. This sparked a year-long battle between the petition officers in the province’s labor bureau and the workers. In April 2007, the workers wrote a letter of petition to the city Congress. Two months later, the city government sent them notice that their case had been referred to the city’s labor bureau. In September, they received a written reply from the city’s labor bureau that suggested they pursue the matter through legal channels. The workers applied for a countercheck for the

city's reply in the province's labor bureau, which was accepted in October. In December, they were informed that the province had not accepted the case, which had been rejected on a legal basis. At the same time, they received another reply to their letter of petition from the Ministry of Labor and Welfare that stated "please report to the local welfare inspection institution, and please report to the local petition institution."

Thus, in February 2008, the workers petitioned the province's Petition Bureau—the special petition institution led by the provincial government and composed of representatives from every governmental department. However, they were again referred to the province's Labor and Welfare Bureau. This time, the head of the petition office, Director Hu, accepted their case. After many visits to the petition offices, the workers were promised an official reply in early July. At the end of June, the workers made several intense visits to the petition office for the final reply, but received nothing except prolonged waiting. After several threats of petitioning Beijing, the workers were notified that the province's Supreme Court had accepted their application for a retrial due to a revision of law codes from the center. This notice led the workers into a new circle between petitioning and the law. Not surprisingly, at the end of October, the workers lost their case. This time, they were so disappointed by the local circles that they decided to visit the center again. It could be reasonably predicted that this visit was but the starting point of another circle.

The trajectory of the workers' repeated petitions is presented in figure 2, which clearly illustrates the circular character of the workers' navigation between different bureaucratic branches. The red arrows indicate the first circle between the province Labor and Welfare Bureau and the Ministry of Labor and Welfare in 2006. The blue arrows highlights the circle incorporating the city Congress, city Bureau of Labor and Welfare, labor disputes arbitration committee, and provincial Bureau of Labor and Welfare during 2007. Finally, the black arrows indicate the circle between the Ministry of Labor and Welfare, the province's Petition Bureau, the province's Bureau of Labor and Welfare, and the province's Supreme Court from 2007 to 2008.

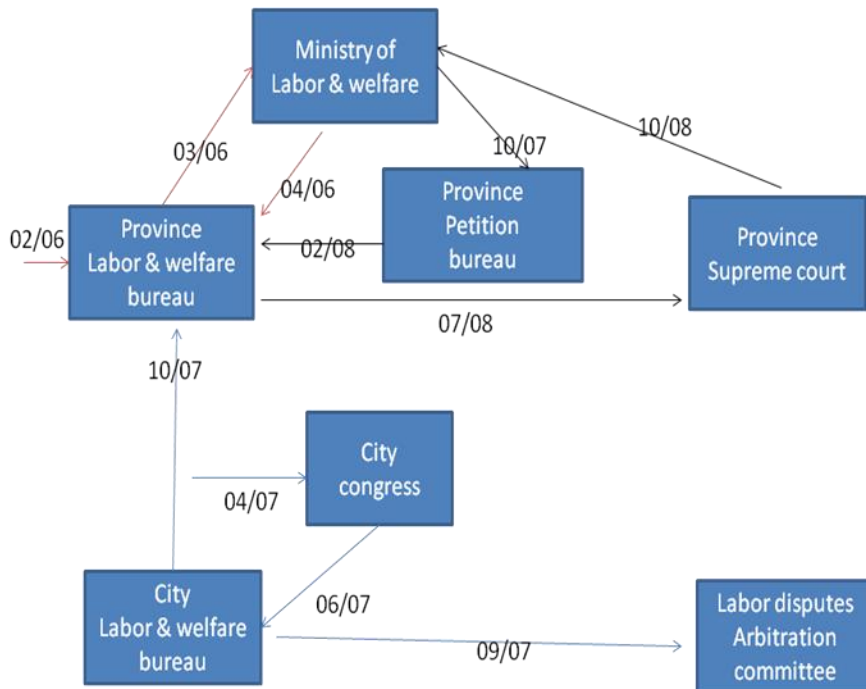


Figure 2. Flowchart of the workers' petitions since 2006.

If the trajectories of the workers' struggles since 2006 clearly indicated the circular feature of the bureaucratic field, which circulated the workers' case without solving their problems, a recap of the workers' ten year war now presented the state as a circular machine functions to absorb the labor conflicts through four intersecting circles: a circle between local petition offices, a circle between different levels of courts, a circle between petition offices and courts, and a circle between "the local" (*defang*) and "the center" (*zhongyang*) Figure 3 illustrates this circular state.

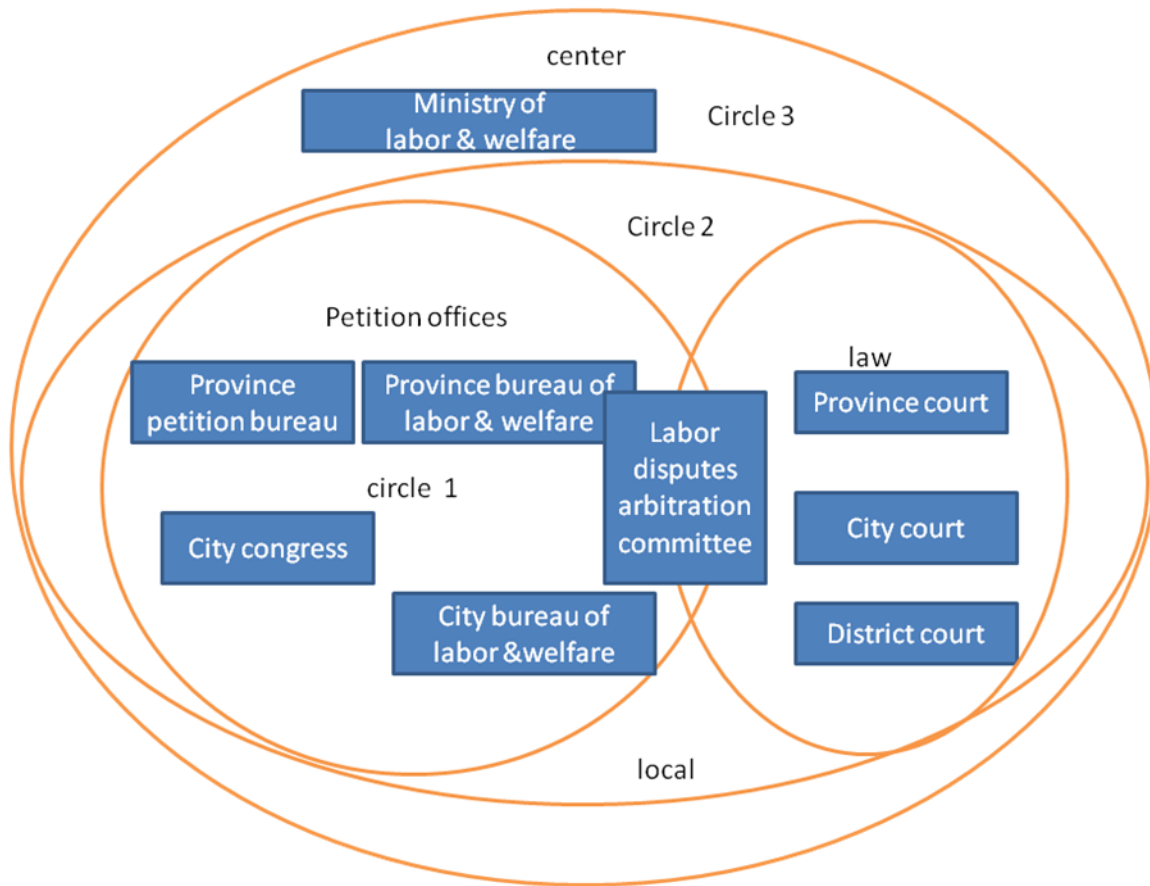


Figure 3. The circular state for case one.

This picture could clearly delineate the structure of this circular state – the relative positions of different institutions and their relations. To understand how this circular state functions to absorb the radical labor conflicts and tame the challenging workers, it requires a detailed analysis of each circle.

Circle between petition offices – when history met the future

During the 10-year struggle, state workers visited nearly all the relevant branches of local government branches, and usually were referred to their petition offices. When the workers went to the government, the petition offices determined that they could not satisfy the visitors’ expectations. As one petition official said,

we don’t have any real power, neither economic power nor administrative power. It is not the command economy any more. We don’t have the administrative power to demand the enterprises. And we don’t have the money, either. The workers all want us to solve their problems. What are their problems? Finally it is about money. Then what

can we do? They don't understand that our responsibility is not to solve their problems, but to explain and interpret relevant state policies, and tell them where to go. It is like consulting.

Although the petition offices said that “consulting” was all that they could do, the government expected them to defuse social conflicts and maintain social stability, while the workers expected them to solve their problems. The lack of real power and measures in contrast to the high expectations were an embarrassment to the petition offices. They were called “the fire extinguisher of the government” and the target of visitors' anger. The powerlessness to solve the workers' problems and the responsibility to maintain social stability made “bypassing buckets” the working style for the petition officials. The workers' problems or the labor conflicts were processed as “petition cases” and passed among the petition offices. Figure 2 shows the 30-month circuit of the “pension reductions” of the state workers.

If the long journey of the case throughout the circle of petition offices did not solve the workers' problems, what kept the workers playing this pointless game? Actually this circulation was a very productive process. The circle of petition offices transformed the radical labor conflicts between the workers and their factory into a peaceful dialogue, during which the two sides tried to use the particular statist capital to justify their claims. At the beginning, the case was a labor conflict – the capital side reduced the labor side's pensions in order to save capital for production. The capital side entered the bureaucratic field with its simple market economy logic while the workers came with their moral indignation, but while engaging with this circle of petition offices, both sides were pushed to learn how to legitimize their positions through citing and interpreting state policies. The fights inside the petition circle became the symbolic struggles of constructing an administrative of “pension reductions” which actually revealed different understandings of the relationship among labor, capital and the state in transition. This process turned the class struggle between the workers and the factory into a classification struggle to define fair and reasonable pension distributions to the state workers.

In Bourdieu's theory, classification is the principle of vision and division, while the classification struggle refers to “struggles over the monopoly of the power to make people see and believe, to get them to know and recognize, to impose the legitimate definition of the divisions of the social world and, thereby, to make and unmake groups” (Bourdieu, 1991, p.221) When the labor conflicts between the state workers and H Steel Factory entered the bureaucratic field, especially the petition offices, the focus of the struggle became the definition and justification of the pensions for the state workers, especially the reduced part – was it inside or outside of the social pool? Should the factory reduce the enterprise compensation part of pension based on its economic performance? Although this classification struggle was fought between the state workers and their factory, the resources and basis of the struggle actually came from the state, which monopolized the symbolic power to impose legitimate definitions on social divisions. However, this state of China is in transition, which has produced different policies at different times for different purposes. These policies became the battleground for the workers and their factory. In numerous reports, the factory and the workers listed a series of state policies about “pension reform” to support their claims. The two sides either cited different state policies, or offered contrasting interpretations of the same one. In general, the factory emphasized the state's attempts to alleviate the burden on enterprises through pension reform and its determination to establish universal pension system independent from enterprises, while

the workers reinforced the state's efforts to guarantee a basic standard of living and its emphasis on distributing pensions in time and in full. Both were able to find a basis for their argument.

In the factory's testimony submitted to the city congress at the end of 2004, the H Steel Factory insisted that the reduced pensions belonged to the enterprise supplementary pensions, which were collected outside of the social pool and dependent on the economic performance of the enterprise. When the enterprise faced economic difficulty, it could legitimately cut off that part. The factory listed a series of state policies about these "supplementary pensions."

The factory's lists began with document 33 from the state council in 1991 – the decision on pension reform. This document introduced the enterprise supplementary pension. Item 2 said: "along with economic development, we should gradually establish a new pension system composed of basic pension insurance, enterprise supplementary pension and individual accounts, to change the current pension system which is entirely dependent on the state and enterprises." Item 8 stated: "supplementary pension is established by enterprises for their own employees and determined by their economic capacities. The expenses come from enterprise-owned fund." The factory's interpretation of this state policy was "it means supplementary pension was the product of command economy and it is determined by the enterprises, therefore not required and stipulated by the state. Enterprises had the power to decide whether or not, or how much to pay for this supplementary part of pension."

The factory also cited document 123 from the Ministry of Labor and Social Security in 1994 to emphasize the purpose of welfare reform. "The goal of this reform is to accommodate the establishment of socialist market economy, and the employment and wage system reform. It is not to improve the retirement benefits. In order to establish a multi-level and universal pension system, to keep up with the aging trend and social adaptive capacity, the basic pension should not be too high." The factory's interpretation was "the state even wants to control the basic pension level, not to mention the enterprise supplementary pension. This is about the spirit of market economy!"

The factory side used document 6 from the State Council in 1995-- the notification of deepening the enterprise employees' pension reform – to indicate the state's attitudes toward enterprise supplement. Item 5 said: "after submitting basic pension insurance fund, enterprises could establish supplementary pension insurance for their employees, depending on their economic performances." Item 6 said: "...must strictly control the contribution rate and distribution level of basic pension, to relieve the burden for the state and enterprises." The factory's interpretation was "this policy shows that the state respects the reality, emphasizes the capacity and autonomy of enterprises, and wants to relieve the burden of enterprises. So far we have never seen a document requiring 'enterprise supplementation' or proposing 'the state makes policies and enterprises contribute money' as the workers claimed."

Finally the factory came to document 8 from the state council in 2000: the notification of enforcing the distribution of basic pension in time and in full amount. It said:

the basic pension inside the social pool must be paid in full amount. The supplementary pension outside of the social pool must be determined by enterprises' economic performances. Realizing the socialized distribution of basic pension is the important measure to distribute pension in time and in full amount, and to relieve the burden for

enterprises. And it is the prerequisite of establishing the social security system independent of enterprises.”

Furthermore, the factory cited Document 13 from MLSS, “pension outside of the social pool is paid by enterprises depending on economic performance. Turning those items outside of pool into inside of pool is forbidden.” The interpretation from the factory was

we should say, for ten years, policies from the state have been consistent. It made clearer, deeper and more concrete directions for pension distribution. They made the clear conclusion about pension out of social pool, which should be determined by enterprises’ economic performance. This offered the legal base for solving the common problems facing enterprises around the country. According to these policies, we, the H Steel factory reduced the “enterprise supplementary” part of pension is in line with the direction of national pension reform.

Through this series of state policies, the factory indeed displayed a state attempting to establish a universal pension system, which is independent of enterprises’ economic performances. In the policies listed by the factory, from 1991 to 2000, the enterprises’ contribution changed from the main component of pension funds to the supplementary part and finally were proved to be the product and remnant of “command economy” and thus were not necessary in the market economy. All these documents cited by the factory pointed to a future or a target of universal social security system without special compensation from the enterprises towards the state workers. H Steel Factory was trying to employ this future to justify its past behavior of reduction, however, it was criticized by the workers for “using the nonexistent document to justify their abuse,” because the factory began to reduce pension from 1998, while Document 8 only came out in 2000. If the factory used predictions to justify its behavior, the state workers tried to use history to justify their claims. In the workers’ petitions to government departments, they listed a series of state policies supporting their claims, which started in 1978.

Document 104 from the state council in 1978 built the foundation for the workers’ understanding of their pension. Item 2 stated: “after the workers retire, their pension must be distributed monthly till they die.” This policy stipulated that workers should enjoy lifetime pensions. This was the rule that the factories and governments must obey. It had legal power.

The workers used document 117 from MLSS in 1993 to legitimize the enterprise’s compensation to them. Item 11 said, “those pension not listed in the social pool, should be paid by enterprise according to previous standard, not distributed from the social pool.” It consolidated the enterprise’s role in pension distribution. When the factory kept indicating that in the new universal social security system, everybody should be treated as the same, the workers emphasized the decree from the center -- “old method for old people and new method for new.” (*laoren lao benfa, xinren xin banfa*) In 1997, even when the center accelerated its pace to establish universal pension system, the workers noticed that item 5 of Document 26 from the State Council insisted, “those employees retired before this decision, must be paid pension according to previous stipulations.” Certainly the workers claimed that they belong to this category of “old workers” who should enjoy the old pension system.

Then the workers listed document 28 from the state council in 1998-- the notification of establishing provincial social pool – to prove the center’s special attention to the old workers.

Item 6 said, “When the social pool is transferred from central industry to local management, the retired workers’ basic pension entitlements should stay the same in principle. Those listed inside the social pool should be paid by the provincial pool, while those not listed should be paid by enterprises.” Furthermore, the workers insisted that Document 10 from the state council and Documents 42, 49, 123 from MLSS in 1999, all emphasized “after the socialized distribution of pension, those pensions outside of social pool should be paid by enterprises.” They also listed document 69 from the state council which ordered the local governments to pay those pension arrears, and asked enterprises to pay those pension outside of the social pool.

Even towards the crucial policy basis for the factory’s justification of their reduction behavior, the workers offered their own interpretation. “This was the first time that the state council proposed that pension outside of social pool should be decided by enterprises’ economic performances. But this doesn’t mean that enterprises could reduce the workers’ pensions. Otherwise, this was against the spirit of document 104 in 1978 and document 69 in 1999.” Interestingly, these two documents were listed by both the factory and the workers, but they gave very different interpretations. When the factory pointed out that the central government was consistent about establishing universal pension system independent of enterprises which finally achieved its clarification in these policies, the workers insisted that these new policies were not intended to reduce workers’ long-enjoyed pension entitlements, otherwise the new contradicted old ones. To verify their special claim to the pensions was valid even in the new system, the workers cited the most recent document. They found in Document 16 from the central office in 2003, the center stipulated, “enterprises must take their social responsibilities during a particular historical period. The retired employees’ pension outside of social pool must be paid by their enterprises according to relevant policies.” This was no doubt the newest evidence for the workers’ claims to enterprise compensation.

What appeared in this series of policies was a very different state from the one depicted by the factory. This was a state that cared about its workers and that insisted on the historical responsibilities of the enterprises and the historical specificity of the old workers. When the factory made references to the future and reform, the workers always cited history and responsibility. The transition from “history” to “future” offered the factory and the workers complicated and contradictory state policies. From enterprise pension to supplementary pension to pension outside of social pool, the responsibility of the enterprises to their workers became the focus of this discursive struggle around pension reduction. While the factory tried to take the position of minimum responsibility to the workers as the symbol of future market economy, the workers tried to ask the state to reinforce their historical bond with the enterprises as the command economy had done in the past. While both sides could find support for their claims from state policies and give justifications to their claims from different interpretations of state policies, this discursive struggle needed the arbitration from the third side – the petition offices’ arbitration.

The most involved petition office was that from the city labor and social security bureau. During the long interaction between the workers and the petition offices, the petition officials actually avoided reaching a conclusion. To the workers, the question was quite simple. They needed to define the reduced part of pension – was it really the enterprise supplementary and outside of social pool? They made they own calculations and concluded that the reduced part was not entirely outside of social pool. They wanted the petition officials to show them their

evidence and calculations, which should have been simple, but this “naïve” wish had never been granted.

In Bourdieu’s work, the classification struggle usually took place between different sects of the dominant classes and the classification schemes would be imposed upon the whole society. The state workers’ struggles over the reduced pension showed that the “consumption” of the classification was not simply a passive reception of the imposition, but also a struggle. This was partly caused by the nature of the state in transition, which produced different classification schemes that became the resources for local struggles. Interestingly, these local struggles did not challenge the authority of the state, but actually helped to activate and reproduce the state policies. Therefore the circulation of the worker’s case was not purely a “walk through,” but a productive process to promote the circulation of state policies and the social fervor of interpreting these policies. These state policies were the statist capital which represented the ultimate power of the state.

Circle between courts – the political logic under the legal judgment

If what happened in the circle of petition offices was the construction of the administrative case of pension reductions through activating and interpreting different state policies, the struggles in the circle of different courts were about the construction of the legal case of “labor arbitration.”

In 2000, when the workers became so frustrated with their one-year petitions to local government departments, they were referred to the courts. That was the first time for these old workers to use the law as a weapon. However their application to the local court was rejected and they were referred to the district labor disputes arbitration committee. According to the workers’ accounts, even their attempt to get their case accepted there was not easy – their case was accepted as labor disputes because Lao Lee knew the person in charge of entry. Whether this was true or not, it showed the arbitrary image of law in the minds of the workers.

On December 14, 2000, the workers finally won their arbitration. In the arbitration ruling, the workers received an official acknowledgement and summary of the process of pension reduction and a clear calculation. According to the adjudication, “From April of 1999, 98 out of the 140 grievance’s pensions were reduced. The total reduced pensions were 1172.31 Yuan per month. Maximum was 199.34 Yuan per month; minimum was 4.15 Yuan per month and the average was 68.08 Yuan per month.” Based on these facts, the arbitration committee made the conclusion:

the committee agrees, when the workers retired, their labor relations with the enterprise were ended. Their pension (including the basic pension inside social pool, and the enterprise compensation outside of pool) was the embodiment of the workers’ contributions to the enterprise before their retirement; therefore it should not be reduced along with the change of the enterprise’s economic performance. ... We therefore made the adjudication as below: there were no legal and policy base for H Steel factory to

reduce the workers' pension in November, 1998 and April, 1999. These reductions of pension were not fair and not reasonable, so the committee would not support them.

Finally the committee ordered, "the defendant must return the reduced pension in total of 242,991.25 Yuan to the workers within 15 days." The legal basis of this arbitration was Document 8 in the year 2000 from the State Council: the notification of the distribution of pensions to retired employees in enterprises on time and in full.

This adjudication, as expected, came as a shock to the factory managers, who believed that the government, including the labor disputes arbitration committee, was on their side. According to the law, the factory could make an appeal within 15 days to local court, but it chose to submit an emergency report to the arbitration committee the next day. In this report, the factory pointed out that the adjudication from the arbitration committee used improper laws and contradictory legal evidence. The factory claimed,

the reduction of pension was based on document 8 item 4 from the state council in 2000, document 13 item 4 from MLSS, chapter 5 item 47 of the Labor Law, document 123 item 1 and 5 from MLSS in 1994, and document 103 item 19 in 1992. We are absolutely obeying the rules and laws. How could you say that we did not have legal evidence?

Furthermore, the factory pointed out,

the adjudication said when the workers retired; their labor relation with the enterprise was ended. Then their pension should not be distributed by the enterprise and they should not enjoy the supplementary pension from the enterprise. The adjudication should respect the reality that pension system in our country has gone through the historical change.

Interestingly, when the disputes arbitration committee used Document 8 as the legal base to criticize the factory's behavior of reducing pension distribution, the factory managers used it to defend their pension reduction. As the factory report concluded,

the adjudication always emphasized that our factory must correct our pension distribution error according to Document 8. But we don't understand this. It was right based on this Document 8 that we took up this new way of pension distribution. If the committee insisted that we did not have legal foundation, could you please tell which item of Document 8 should we abide by?

The first round was between the factory and the arbitration committee, and was constructed around different interpretations of Document 8 by the State Council. This entanglement with state policy and document was changed in following legal struggles in the circle of courts, which emphasized laws and procedures. The second adjudication from the arbitration committee was quite short. After mentioning regulation 34 from "the processing rules for the labor disputes arbitration committees" issued by MLSS in 1993, the committee ordered the two sides of disputes to submit new evidence before January 15, 2001 and suspended the first adjudication. Ten months later, the third adjudication declared the final loss of the case for the workers. In this adjudication, the history of the case and the evidence were summarized again – the facts remained the same, but the emphasis changed. The calculation of reduced pension was simplified to one sentence while the economic difficulty of the factory was highlighted. It emphasized that 37 workers had decided to withdraw their suits after learning the "truth" of the

pension reduction. Finally, the committee declared that “the reduction behavior from the factory did not affect the workers’ enjoyment of their basic pension and required supplements stipulated by the state policies. There was no legal base for the workers to ask for redistributing the enterprise supplementary pensions,” and thus the committee decided to “reject all the arbitration requests” from the workers. The legal foundation for this adjudication was all about labor law and regulation on labor disputes arbitration. Document 8 from State Council was not even mentioned.

From June 2000 to November 2001, the workers finished their first step in the circle of court. The first adjudication from the arbitration committee turned out to be the first and the only triumph for the workers in their ten year fight. It not only proved to the workers that their claims were just, but also shaped their conceptualization and interpretation of their pension in the future – they had ended their labor relations with the factory and their pension should have nothing to do with the enterprise’s economic performance. The arbitration from this semi legal institution gave them confidence in the legal solution to their problems, which sustained them for a three-year legal battle. However, in, the workers never had the chance to articulate their understanding and interpretation of pension policies.

After the factory’s urgent report based on its radical interpretation of Document 8 from the State Council, the arbitration committee tried to avoid using ambivalent state policy as its legal basis and turned to pure legal procedures and rules. This was evident in their second and third adjudications, which focused on labor law and labor disputes arbitration regulations.

If the workers’ first step of legal attempt led them into the court system, in the following legal struggles, they were pushed out of the courtroom. In January 2002, their appeal to the district court was rejected; in July 2002, their appeal to the city court was rejected; in December 2002, their re-inquiry application was rejected. In 2003, their appeal to the province court received no answer. When the workers learned to use legal knowledge to protect their rights, they found there was no place for them to prove their legal competence. Gradually the aim for their legal struggle changed from getting their money back to finding a platform to argue and communicate (*jiangli*, 讲理) equally.

If the travel around this circle of court – from the labor disputes arbitration committee to the province supreme court, only gradually denied the workers’ enter, how could they open the courthouse door? In 2004, with the help of Representative Chen in the City People’s Congress, the workers’ case earned a special investigation and a public hearing, which the workers viewed as a great opportunity to talk with the managers, officials and legal arbitrators. The dialogue between the workers and the legal institutions revealed the entanglement of political concerns and legal sentences. Interestingly, the testimonies from the city court and the labor dispute arbitration committee were tainted by political concerns while the workers refuted them like professional law practitioners.

The arbitration committee’s two verdicts within twenty-four hours were quite awkward and strange. However, its explanation sounded assured and bold with justice:

We think it is our basic principle of work to correct our wrong verdict. It is not wrong to suspend the first verdict before its legal effectiveness in order to protect reform fruit and social stability based on the real situation of the factory. Our

arbitration did not violate the legal rights of both parties (if one party does not accept the verdict, it can still appeal to court), and it is up to our Party's spirit of "liberating thoughts and respecting realities."

What was not mentioned in this testimony was the emergent report from the factory—the real reason for the second verdict. The committees did not specify that their first verdict was wrong, but focused on the "correctness" of their second verdict, which was down to the real situation of the factory and up to the spirit of the party. This defense tried to legitimize its abnormal or "illegal" legal procedure by politicizing it.

If this excuse of the second verdict was still too abstract to get to the point, the committee's elaboration of the third verdict made the reasoning more explicit.

The third arbitration took a long time because of the complexity of this case. Although there were only 140 workers involved in this arbitration, the problem of "whether or not it is legal to deduct the enterprise compensation part of pension because of economic loss" concerned the interests and rights of 3,500 retirees in the factory, 7,000 retirees in its supervising company, 40,000 retirees in H steel industry, and even the 500,000 retirees in W city. Because this case concerned the social stability of the city, our arbitration committee had to be extremely cautious while processing it. We reported to the city government and consulted the province bureau. We made the final verdict based on the complication of this case and its possible effects on the social stability of the entire city. We think the long duration was determined by the complicated situation of this case; it reflects the conflict of interests in the period of economic transition. We should understand this case from the perspective of respecting reality and maintaining social stability."

The committee's logic was that, if these workers won this case, retired workers in other factories would rise up and fight for their pensions too; therefore, the workers must lose the case. The ultimate goal was to maintain social stability, as they stated, "social stability is overwhelming!" Throughout the testimony, they did not even mention the legal justice that they were supposed to defend.

Compared to the arbitration committee's quite political defense of their suspicious three verdicts, the workers' refutation sounded much more professional in a legal sense.

The second verdict is illegal. According to the arbitration law chapter one item nine, arbitration should be carried with just one verdict and that was the end. It means regardless of whether the parties accepted the verdict or not, the disputes could not be solved through a second arbitration. If one party does not accept this verdict, it can appeal to the courts. This shows the separation between administration and judiciary. However, the factory didn't appeal to the courts through legal procedures; instead, it submitted an emergency report to the arbitration committee to ask for a suspension. This is clearly an administrative intervention. We still don't know what was wrong with the first verdict.

The workers actually got to the core of the problem when they pointed out the administrative intervention. As a semi-legal institution, the labor dispute arbitration committee was more of an administrative branch of the labor bureau; therefore, it was hard to keep “the separation between administration and judiciary,” and the concern of social stability overwhelmed the legal reasoning.

Unlike the semi-legal institution of the labor arbitration committee, the court system should only abide by legal rules. Regardless of what lies behind the court, the only valid reason that could be considered in court is “legal facts and evidence” and the only standard should be law codes. This was evident in the city court’s defense of its rejection of the workers’ appeal. Unlike the long defense from the arbitration committee, which was full of political concerns, the testimony from the court system was very short.

According to item one of “the interpretation of applicable law for labor disputes case” by the Supreme Court, “the court should accept the case if it is about the social security disputes between retired workers and their employers who have not joined the national social security net.” But H steel factory joined the social security net in 1987 and fulfilled the socialized distribution of pension in July 2000. Therefore, we think the workers cannot sue the factory according to legal procedures. Their requests for returning and increasing pensions should be solved by the factory according to its economic performance and its own policies. It is beyond the administration of court.

Although the court only applied the legal code to reject this case, the last sentence betrayed its reticence to the factory’s deeds. The underlying logic was that, as long as the factory joined the social security net—which meant the workers could get their most basic needs covered—the court would not “intervene” in the internal affairs of the factory.

However, the workers, who claimed to have studied the laws and state regulations very carefully, insisted that their appeal should be accepted according to another legal code: item 5 of “interpretation of the applicable laws to labor disputes arbitration cases.” This item stipulated that, “When the arbitration committee made a new verdict to correct a previous one, and one party decides to appeal, the court should accept the case.” In light of the workers’ response, which relied on law to counter law, the city court employed its authority of interpretation of law.

We think that we should not interpret the items in isolation. Arbitration was the prerequisite procedure of labor disputes management. It does not mean any case going through disputes arbitration procedure should be taken by court. The key is whether or not the case is qualified. Item 5 is applicable for labor disputes cases, but the focus of this special case is not labor disputes; therefore, item 5 is not applicable here. Finally, we still decide that it is correct for the court to refuse Lee’s appeal.

Interestingly, this case—which was initially arbitrated as labor disputes—was redefined by the court as a non-labor-dispute; as such, it could be dismissed. The court did not point out what the “focus of this special case” exactly was; however, from the testimony from the arbitration committee, it was reasonable to speculate that the focus and the “specialty” of this case were its political consequences, which vitiated the social stability, and its reflection of conflicts of

interests in the period of transition—neither of which could be dealt with through legal sentences. Unlike the arbitration committee, which could put the political concerns on the table, the court could only close the door to avoid the possible exposure of the non-legal reasons for legal processing.

However, the workers did not immediately see through this political undertone of the legal discourse. They thought they had failed because they were not authoritative enough to warrant the legal judgment; therefore, they decided to use authority to go against authority. They asked for help from a famous law professor in the most prominent university in the city, who wrote a professional legal position paper on their case. In this position paper, the law professor cited several laws to prove that the workers' case was a labor dispute and, thus, item 5—not item 1—should be applied. The law professor concluded that the rejection of this case in district, city, and province courts lacked sufficient legal basis. However, at the end of this position paper, the law professor said,

Although I think the courts do not have enough evidence to refuse this case, I know it is extremely difficult for the workers to continue appealing. The court will insist on its decision to decline this case. Even if it accepts this case, the court could reject all of [the workers'] requests. Therefore, I suggest the workers to put down this case and enjoy the last days of their lives.

This last statement actually revealed the real understanding of law by this law professor. Although her professional expertise enabled her to make correct legal judgment based on “pure” knowledge of the law codes, the practical assessment of the real situation led her to a “realistic” conclusion.

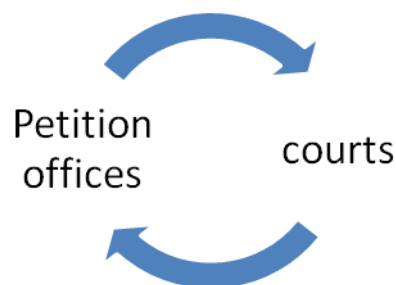
From August 2000 to the end of 2003, the workers went through three labor disputes arbitrations and four appeals. From the first triumph as a labor disputes case in the first adjudication from the arbitration committee to the final denial as a labor disputes case in the testimony from the province court, this pension disputes for the state workers finished its journey in the circle of courts. From the first legal struggle between the factory and the arbitration committee constructed around Document 8 from the State Council to the last legal contradiction between the province court and the law professor about application of different items of “the interpretation of applicable law for labor disputes case” by the Supreme Court, the struggles in this circle of courts promoted the functioning of the statist capital of laws. In appearance, this circle of courts was constructed around the principle of “rule of law” and followed legal rules, however, the testimony from the arbitration committee and court exposed the political underpinning of this legal edifice. The political concerns of social stability overruled legal justice in the processing of this sensitive case. The province court finally defined this case as a non-labor dispute by manipulating law code in order to avoid making a clear legal judgment on the economic and political issue of pension reduction. The legal struggle forced the workers to study state laws. In their eyes the law was universal knowledge that could help. They imagined that they could become powerful if they mastered the knowledge of state law. However, the arbitrary interpretation and application of state law by the courts displayed the real power behind the seemingly universal law that the courts held the power to define the subject.

Circle between petition offices and courts – courts as an exit

During the 10 years, this case of pension disputes was circulated not only within the circle of petition offices and the circle of courts, but also between them.

After radical resistance and attack to the factory failed, the workers did one year petition to all kinds of government departments. As the analysis of the circle between petition offices indicated, what happened in that circle was the bucket passing of their case. The petition officials usually only played the language games with the workers without solving their problems, because as they admitted, they had neither the money nor the power to do so. When the workers became frustrated, they would be referred to the legal circle, which was said to have real power. Whenever a case could not be handled by the petition officials, the case could be referred to the legal system. By referring cases to this higher and more powerful court, the bureaucracies could shake off some of their responsibilities and avoid blame for their impotence.

In this case, the workers were pushed toward labor arbitration. This process lasted for about three years and ended with the ruling that the court could not accept their appeal because their case was not a labor dispute. The disqualification of further legal procedures pushed the workers back to the road of petitions. The analysis of the circle of courts clearly displayed the administrative intervention to the functioning of the legal system and the political sensitivity of this pension disputes, therefore it was reasonable for the workers to seek help from government again. And indeed the workers kept petitioning to the labor and social security bureaus after studying the new regulations on petitioning. Not surprisingly, the city's Labor and Welfare Bureau suggested, "since you have gone through legal procedures, we would like to suggest you continue the legal approach" while the province's Labor and Welfare Bureau cruelly rejected it, saying, "we would not accept a case that has been legally refused." Until then, the trajectory of this case of pension disputes had beautifully showed a circulation between the circle of petition office and circle of courts:



The coexistence of both circles actually saved each circle from bankruptcy when one case hit the dead end. Reference of the cases from petition offices to arbitration committees or courts assuaged the workers' disappointment in the petition system and attributed the helplessness of petition officials to their structural limitations. As one petition official in the province labor and social security bureau told the workers,

Your case has gone through the labor disputes arbitration. It was a semi-legal procedure. You must accept the arbitration, and we have to accept it too. You come here only for

policy issues. You tell me your request and we tell you how to approach it. If your request is reasonable, you must find some evidence to support you. Now we must promote the law-based administration.

However, the circle of courts, or the order of law, did not accept the workers' case. Disqualifying the case as non-labor disputes and thus refusing to give a legal judgment to the pension disputes freed the legal system from political risk and sent the case back to the circle of petition offices. Finally it became sort of mutual references and the workers were left exhausted and lost in the shuffle.

During this mutual reference between the petition offices and courts, the existence and function of the courts served as the exit to the system of petition offices, which means whenever the case could not be dealt with by the petition offices, the court system became the next destination for the workers. The political sensitivity of the case determined that the court could not give a clear conclusion, but the legal processing of the case became the excuse for the petition offices to refuse the workers again and again. The disappointment with the local circle between petitions and laws pushed the workers to yet another circle.

Circle between the local and the center – pilgrimage to the center

The word of “Beijing” or “the Center” held huge symbolic significance in the state workers' petitions. What happened in the circle of petition offices and circle of courts were symbolic struggles around different interpretations and applications of the state policies and state laws. Therefore it was natural for the workers who had tremendous confidence on their capacity to understand the state's “spirit” (*jingshen*) but lost in these local fights to seek the final judgment and justice from the highest authority in the center. During the 10 years of struggles for the state workers, they made three petitions to the center – one was the 5-day visit to Beijing, and the other two were letter petitions to the MLSS.

In November 2005, four worker representatives went to Beijing to make an intensive petition to all relevant state departments. After this pilgrimage, the representatives composed a report to the workers. A detailed analysis of this report could reveal the special mentality of “petition to the center” and the mechanism of this unique phenomenon.

The letter began with a passionate “revolutionary” tone:

Dear Comrades of Retired Workers,

With your support and trust, we, the four representatives finally arrived at Beijing on November 2st and began our petition journey! Every morning we got up early to stand in the long line of petition. Usually we could get a chance to report to the department directors in the afternoon. At night we studied and revised our petition letters to prepare for the next visit. We tried to make full use of the five work days of the week!

Next they described the scenes they had witnessed in the petition offices.

There were many people petitioning in Beijing. They were singing the International, Solidarity is Power, and they were shouting “we want to see the center leaders!” We also saw many Thank You letters and posters on the wall of the petition offices. In Beijing, the door to petition is wide open to everyone. As long as you are honest, patient and obeying rules, you won’t be sent back brutally. There must be some place to accommodate you. There were, of course, both serious and perfunctory petition officials. It depends on who you met ...

Although the singing of “The International” and “Solidarity is Power” showed the workers’ nostalgia for the revolutionary spirit of the working class, the paragraph displayed a well-disciplined image of the state workers, who had a very optimistic view of the petitions to the center. This sounds exactly like the official propaganda about “rational and regulated petitions.” When the workers obeyed the rules of petitions and put high expectations upon their visits to the state center, what could the petition officials offer them? In the report, they gave a vivid and detailed description of the petition process and officials’ responses.

We visited the national petition bureau first. The officials there scrutinized our materials and said “This is rarely seen. We would report to our superiors. We cannot give you a clear reply now, but we have the power to inspect and coordinate. This is our internal procedure. You could also go to visit the MLSS and the committee of state assets management.”

We then went to the MLSS and we were accommodated by three officials. Finally they said, “the state policies are correct. The state raised your pension while the enterprise reduced your pension, and the city government permitted the enterprise’s reduction. These have nothing to do with the state policies. Small policies subordinate to big one and old policies subordinate to new ones. Policy is the best interpretation to policies. The enterprise should carry its own baby away!”

Finally we went to the committee of state assets management. They said, “We can supervise the behavior of enterprises. But the reduction of your pension has been permitted by the city government. We cannot supervise governmental behaviors. You have to go back and get rid of the city government permission, which was the abuse of administrative power!”

From this report, it is clear that no institution took charge of their case and gave them clear judgment. They were either referred to another petition office, or sent back to the local. While the MLSS threw the ball to the enterprise, who “should carry its own baby,” the state assets management committee pushed it back to the city government, who “abused administrative power.” Although no petition office gave the workers a clear conclusion, they believed the center also thought that the local – either the enterprise or the government, was wrong. Therefore the conclusion of the report was full of optimism:

Dear Comrades of the retired workers! The five days of petitions in Beijing was the trip to broaden our views and to deepen our thoughts. It gave us the key to fight pension reductions. It pointed out the direction for us to achieve the final triumph of fighting. Please believe in us: there is no policy basis for pension reduction, and it is administrative abuse for the city bureau to permit enterprise reduction. Please believe: as

long as we can unite our thoughts and behaviors, we can build solidarity. We are destined to deny those local pension reduction policies. We have confidence to announce, from now on, the task is still heavy, but the road is just ahead! Victory, must belong to us!

With the confidence charged by this pilgrimage and the instruction from the center, the state workers resumed their local struggles. This time they did not go to the enterprise, but to the city bureau of labor and social security. However, the petition officials refused their petition, because the workers had no written instructions from the center. To get the evidence from the center, the workers did write petitions to the MLSS in 2006 and 2007. Indeed they received feedback from the center in time. However, this reply was rather dry. What the workers received was a notification on a piece of paper with MLSS heading. Eight alternatives were listed:

One, report to local labor and social security inspection institution.

Two, report to local labor and social security petition offices.

Three, report to local government petition offices.

Four, submit to local labor disputes arbitration committee.

Five, submit to local social security management institution.

Six, solve the problem through administrative review or administrative litigation.

Seven, report to local people's congress, people's court, and people's procuratorate

Eight, report to relevant institutions.

In the 2006 notification, the center checked the reports to the local labor and social security petition offices. However, when the workers went to the petition office in province labor and social security bureau, the petition officials did not take this notification seriously. Without other choices, the workers wrote another letter petition to MLSS and on the second notification, the center checked alternatives 1 and 3. With this new notification from the center, the workers did get their case accepted by the province petition bureau, which referred them back to the province labor and social security bureau. But this time, the petition office accepted their case. Although, the workers did not give them anything, it finally got into the procedure again, and that meant hope to the workers.

The format of the notification showed the standard character of bureaucratic files: it included almost all alternatives but did not take any special situation into consideration. It showed the "universality and neutrality" of the center. The differences between two notifications towards the same case, however, revealed its "arbitrariness." It could be predicted that if the workers sent a third letter petition, the center would recommend another. The workers would either die or give up first. Despite this "absurdity" of the center from clear analysis, the workers took the notification as the "holy message" from the center. When this message did not work out in the local (as happened in 2006), it proved the local abuse of the center's will; when the message was carried out by the local (as happened in 2007), it displayed the power and efficacy of the center.

This circle between the local and the center indicated the power relation after decentralization. The new center did not have direct power over what the local did and thus became a crippled giant. The workers had a clear sense of the center's weakness. In a meeting with the worker representatives in Lao Lee's home, one old man said, "the center does not push and let the local fiddle-faddle. Now the center does not want to be the judge." The other man said,

"Even the policies from the center are ambiguous. Premier Wen put it clear that the living standard for the retirees must be guaranteed. Aren't we retired? Our retirement certificate was stamped by the seal of the People's Republic of China. It was not faked. It was authorized by the state!"

The other workers expressed nostalgia for Mao's iron-fisted central government. He said,

Now the government, the institutions, are all upside down. It is like the warlordism in the past. The local only listened to the center when it wanted. If in Mao's time, you don't listen to the center, one red-letter-headed document would be enough to get you down!

This nostalgia resonated among the workers, one of whom jumped up and said,

The Mao's time was really democratic! Every document would be enforced to the bottom of the local. Nobody dared to violate the will of the center. If you violated the center's document, your head would be chopped! Now everything changed! It is not capitalism, nor is it socialism! It is just such an ism – a half-cooked ism (*jiasheng zhuyi*)!

In the workers' mind, all the problems originated from the local violation to the center's policies and laws. Although they were a little disappointed in the weakness of the center, they still believed in the justice and legitimacy of the state that it represented, and that was embodied by the state policies and laws.

Symbolic Domination: From political crusader to economic calculator to legal defender

The four circles composed the circular state. Every circle itself was obviously vulnerable as the workers' problem was never solved by any of the circles. At some points, the workers hit a dead end or lost their illusions of victory in one circle, but they would be only shuffled to another circle right in time. The co-existence and interception of the circles saved each of them from bankruptcy and prevented the radicalization of conflicts within each circle through the circulation of the cases. This bureaucratic field of intersecting circles produced and circulated the symbolic capital embodied in the state laws and policies. Through the struggle for this symbolic capital the state workers lost their self-definition—namely, their self-identity as state workers with a historical bond to the state as well as their pension based on this bond—and lost their material power based on the radical collective actions of the working class.

The functioning of this circular state was not only based on the particular structure of the bureaucratic field, but also dependent on the particular subjects produced by this machine. In 1999, when the state workers tried to get their pensions from the factory through radical attacks, they were potentially challengers and resisters to the state. Ten years later, when the workers

petitioned the central government in Beijing, they were transformed into law-abiding citizens, no matter how contentious they were. Through their tremendous interactions with the petition officials and legal personnel and during their migrations between different petition offices and courts, the workers learned the new discourses of the rule of law and identified their new positions as depreciated commodities in the labor market instead of glamorous urban aristocracies.

This transformation process was evident in the workers' open letters to the society at different stages of their ten-year struggle. The first open letter, drafted in 1999, began with a strong Maoist flavor:

We are the 3,200 retired old workers in the steel factory. Most of us are the same old workers who participated in the revolutionary work from 'five lakes and four seas' from the 1950s and 1970s. We all went through the honorable retirement procedure according to the national 104 circular. We should enjoy our pensions from the state and the Party, which always care and help us! Policies from the center always emphasize that pensions should be distributed in time and in full. However our factory has deducted our pensions again and again! How could the factory managers make their own local policies to fight against the central policy?

The second sentence of this paragraph was basically another version of the famous quotation from Chairman Mao: "We came from five lakes and four seas. We came together for a common goal of revolution!" This sentence set the tone of this open letter, albeit perhaps unconsciously. The Maoist mentality inherited from the workers' experiences in the Cultural Revolution significantly shaped the state workers' conceptualization of their retirement and pension. Retirement was not simply an economic behavior, but a political issue. It was designed and authorized by the state; therefore, it was "honorable." Accordingly, they took their pension as the "care and help" from the state and the party. Hidden within this Maoist mentality was a strong concept of the totalitarian central government. This "center" was all-embracing and overwhelming. It was always correct and righteous.

In addition to the Maoist mentality, the workers' historical reasoning based on their understanding of the experiences of state socialism was evident. In the second paragraph, the workers specified their historical relationship to the state to validate their claims to a pension.

Before retirement, we contributed our youth and everything we had to the state and the work unit. We worked hard with sweat and blood to create wealth for the state and the Party. We paid high taxes to our superiors every month and every year. This should have built up enough economic bases for security for us. Because our factory is a state-owned enterprise and our labor security entitlements should be protected by the state, we thought we did not need to worry about our lives after retirement. However, when we were going to see God, our factory managers began to deduct our pensions.

Here the state workers offered economic logic for their pension. Several decades of reform supplied tremendous historical reflections about state socialism. High accumulation together with low salary (*gao jilei and di shouru*) during that period became a common understanding of the state workers' historical sacrifice to the state. Therefore, they took their pension as a

legitimate return from their contribution to the state. The state in this economic discourse was not that totalitarian party state recalled by the workers at the beginning, but rather an indebted part of an economic relationship that should fulfill its responsibility. However, the workers did not make this economic logic explicit; rather, they still packaged it in the political casing. Instead of claiming their pension as a legitimate “right” based on this economic relation, they still referred to their pension as an entitlement from a protective paternal state. This political enchantment of the state workers made them regard their struggles related to the pension as a political crusade instead of just an economic dispute. They concluded the first open letter by stating, “We hereby request the government and related state departments to inspect H Steel factory and return our deducted pensions, which were illegally plundered by the factory. Our goal is to build up an honest government, to clean up the party, to punish corrupted officials, and to serve the workers!”

Throughout this open letter, the state workers were pleading to the state to protect their pensions, which were legitimized by their particular historical relationship with the state. In their minds, they regarded their pension as the extension of their historical bond with the state. This politicized interpretation of pension based on historical retrospection was rebutted by the pure economic arguments from the factory, which emphasized the pressure and challenge coming from market transition.

In 2004, the city’s Congress conducted a special investigation of this case; every related side was called in for testimony. The factory’s testimony clearly revealed its economy logic supporting the deduction of pensions: “H steel factory has been undergoing production stoppage, economic loss, and capital depletion since 1994. Prior to 1998, it had stopped production for two years. Since 1997, the collection of pension funds for the retired workers has become a big burden and headache for the factory.” The factory supplied the economic background of the pension deduction action. Its logic was purely economic: the factory could not afford the huge pension for the workers because of economic difficulties encountered by the collapsing state enterprise in light of market competition. The economic difficulty laid out the context of pension deduction, but the factory could not legitimize the deduction legally and politically. In addition to mentioning that the deduction got support or acquiescence from the city government, the factory tried hard to prove that this action was in line with the state laws and policies, especially the state’s efforts to build up a new social welfare system independent of the factory. It listed a series of state policies aimed at “alleviating the burden of enterprises and serving the socialist market economy.” The logic was quite clear for the factory. As a residue of welfare policy in a planned economy, the part of enterprise compensation could be eliminated if it became too much of a burden for the enterprise in the market competition. The factory thus legitimized its pension deduction action as an attempt to contribute to a universally independent welfare system launched by the central state. What emerged in this discourse was a quite different state from that paternal party state in the workers’ minds—namely, a rational reformer that steadily pushed toward a market economy. This market orientation included certain characteristics, such as “universality” and “independence,” which were exactly what the state workers’ lacked.

Facing the factory’s defense based on strong market logic, the state workers gave their refutations in another open letter in 2006. In response to the factory’s economic logic, the workers had their own interpretation.

The economic loss of the factory was the result of bad management, and it was the responsibility of the managers. They shouldn't dig money from our pensions, since we no longer have labor relations to the factory after retirement. The factory said the deducted pension would be returned to us when the economic situation improved, but that turned out to be a lie! As we all know, in 2004, our factory was named the top 100 taxpayer in the city. Why didn't the factory return our life-saving money then?

The workers were clearly learning to argue using the economic logic and evidence offered by the factory. They no longer attempted to fight the factory's blatant market logic with their political euphuism. Their previous political enchantment gave way to the economic rationality in the discursive struggle. In the workers' economic reasoning, their deducted pension was not a strategy for market success, but a loan to a poor manager; therefore, it must be returned.

Compared to the image of the state workers who tried to launch a political crusade to defend their historical glory in the first open letter, the workers in this new letter (written seven years later) presented themselves as the market victim to fight their current misery. The workers' historical retrospection gave in to the factory's market prospection. Although the images of the market and the state were quite different in the workers' letters than those presented in the factory's testimony, the workers gave up their previous political understanding and justification of their pension and tried to talk in the same language and logic as the factory. Now their pension was not the political return of their contribution to the state that had been hijacked by the factory, but the "market return" of their loan to the factory under severe competition. Because of this transformation, the state was also changed from one part of this deal to the objective arbitrator that could pass judgment according to rules and laws.

However, despite losing their cases so many times, the workers had not lost their belief in the law. In their 2006 open letter, the workers concluded,

From our studies of state policies, we understand that, when the factory deducted our pensions, it actually destroyed our "retirement contract," which is the extension of our labor contract with the employer. When the factory destroyed our pension contract, it deprived our pension entitlements determined by the "labor contract" based on bilateral negotiation and consensus. Therefore, this behavior is against the labor contract law. We now understand that both pensions inside pool and outside pool are our legal rights. It could not be deprived by any personal will.

Here a quite different and totally new discourse emerged from the workers' side: contracts, rights, and the law. Three years of legal struggles had trained the workers to think and talk through this new discourse of law, despite not having gained legal justice from the struggles. Now their pension became their legal right based on their labor contract with the enterprise and the state became an arbitrator that wanted to build up its legitimacy and regulate the society through the "rule of law."

Conclusion

From the state workers' first open letter in 1999 through the factory's testimony in 2004 and the workers' third letter in 2006, the workers' defense of their pension was transformed from

a political crusade to protect the party and the state to a legal defense of their personal rights. The radical confrontation between the workers and the factory—or capital and labor—was absorbed or diffused by the peaceable petition processes and “neutral” legal procedures. During this process, the workers’ touching and emotional defense of their pension based on the historical bond to the protective state gave way to a rational legal discourse of rights based on contracts. The workers learned to think and talk in market logic and legal discourses. This normalization process turned the state workers from radical challengers to obedient law defenders, which served as a codification process that redefined the relationship among labor, capital, and the state by reframing the state workers’ pensions.

This process of labor disputes settlement could be conceptualized as a symbolic domination by which the workers subjugated themselves to the new official legal discourses and market logic. This subjugation did not mean that the workers gave in to the factory or gave up their rights to pension, but that they were subjected to the official languages to articulate their stories and justify their claims. It was clear that the workers were not “cheated” by the factory’s market prospection, nor were they persuaded by the official legal sentences. Yet they were still willing to engage in this game of language despite the fact that their daily existence was threatened. They almost stubbornly held on to their belief in the “rule of law” even though they knew of the administrative intervention behind the legal judgment. The workers’ interests in this game of language and their illusion about the justice of the central state and the principle of “rule of law” were inculcated through their ten-year engagement with the circular bureaucratic field, which prevented them from organizing large-scale labor movements in public spaces out of bureaucratic purview and control.

Chapter Four: The Trial – the social security disputes of temporary workers

‘...Otherwise the files remain in circulation, and, as the regular official court routine requires, are passed on to the higher courts, before coming back to the lower ones, swinging back and forth with greater or smaller oscillations, with longer or shorter delays. These routes cannot be predicted. Outwardly, it might sometimes seem that everything has been long since forgotten, the file lost, the acquittal made absolute. No one familiar with the court could ever believe that. No file is ever lost, the court never forgets. One day – quite unexpectedly – some judge takes a closer look at the file, recognizes that in this case the charge is still active and orders an immediate arrest. I’m assuming here that a long time has passed between the apparent acquittal and the new arrest, which is possible, because I know of such instances, but it is equally possible for the man who’s just been acquitted to go home from the court and find agents already waiting there to arrest him again. Then of course his freedom is at an end.’ ‘And the trial begins all over again?’ K. asked, almost incredulously. ‘Certainly,’ the painter said, ‘the trial begins all over again.’

- Franz Kafka, *The Trial*: 144

Epilogue

October 15, 2004 was an exciting day in the history of Top Textile Factory, because the workers took over. They blockaded the entrance to the factory, surrounded the administrative building, and even attacked the managers. Hundreds of workers marched down the main road in the factory with red flags and loudspeakers, demanding, “Return our youth, return our sweat and blood, return our factory!” “Live and die with our factory!” Xiaoling, a temporary worker who had worked in the factory for 10 years, told me later:

You know that was the first time that the state workers invited us, the temporary workers, to unite with them and act with them. And indeed we attracted much attention. The police cars, the TV broadcast van, and the news reporters all came. The factory sent five representatives to have a dialogue with us. When they tried to take pictures of us, I said, “you cannot do that. It is a violation of my human rights and image rights!” I even got a chance to talk to the top manager!

The workers later claimed that they felt euphoric. The turmoil went on for three days and the confrontation between the workers and the factory lasted for one month. On November 15, however, all the state workers signed an agreement on a “buy-out” which paid them 850 Yuan per year³ and promised social security and health insurance. Some of them signed a one-year contract with the factory. The temporary workers had no choice but to continue to work, with no compensation, no social security, and no contract. The temporary workers did not show much indignation at the state workers’ abandonment. As they explained,

the leaders were bought off, and the followers gave in. That is so normal in these days. You know the state workers! They have been used to the protection and favor from the managers and the state. They will never put their privileges at risk. Finally it is their war and we are the followers. If it were our battle, we won’t give up so easily. We will fight till the end, since we have nothing to lose!

Four and half years later, on a July 15, 2008, seven temporary workers gathered at Xiaoling’s apartment to discuss their lawsuit. The day before, they just received the new verdict from the district court. This new verdict was even worse than the previous one – it rejected all the workers’ requests for social security, housing compensation, and back pay. One woman said, “I don’t understand how come a simple labor case would take four years to get a result. What is so difficult about our case? Aren’t the legal facts clear enough? Aren’t the legal evidence sufficient? I don’t understand.” Yang, the only male worker in the group, said, “You know what is so special? There are governmental interventions in our case!” A woman, who just lost her husband in a medical accident, said, “No wonder why there are so many cases on the newspaper that people kill policemen and set fire on the government building. Give me some dynamite, and I will go. Anyway I am desperate!” Xiaoling said, “But I have also seen so many successful legal cases on the newspaper, the radio, and the TV, everywhere! We should keep trying.” Yang said, “Yes, now we can appeal to the city court! We have got the ticket to the higher level.

³ Someone who worked in the factory for 30 years would receive 25,500 Yuan (850Yuan/year x 30 years).

The city court must not be as corrupted as the district one, who wears the same pants as our factory.” One younger woman asked, “What if we fail again?” Wang said, “That means the entire city of W is enveloped in darkness!” Xiaoling said, “Then we will go to Beijing, again! I don’t believe there is no clear sky in China!”

From the joint protests with the state workers to the individual litigation, the group of temporary workers changed from radical challengers to obedient citizens. This was the same process as the state workers underwent, and although the temporary workers also migrated through the circular state, their approaches and the treatments they received were quite different. If the state workers saw the petition offices as their battlefield, the temporary workers saw them the petition offices were but the entrance to the court system, which was their battlefield.

Introduction: the five year struggle

This chapter describes a group of temporary workers in another large state-owned enterprise in W city. From the end of 2004 to the middle of 2008, this group of workers engaged with petition offices, courts and even went to Beijing to “protect their legal rights violated by the factory.” They fought the factory and local officials, and became persistent legal warriors.

Top Textile Factory was built in 1952 as an important project of the first five year plan. Like most state-owned enterprises in W city, the government ordered it to go through restructuring in 2004, to avoid bankruptcy. One important step of the restructuring was to buy out the state workers’ life tenure with the factory. The state workers would receive a total amount of money which was considered to be equal to their labor contribution to the factory, and their labor relation with the factory was then terminated. This was supposed to commodify China’s entire labor force, so that the state could wash its hands of in the troubled SOEs. The working class that had been domesticated and nurtured by the Chinese work units for decades opposed the restructuring.

What complicated the situation in Top Textile Factory was the coexistence of several categories of the workers. At the moment of restructuring, only 3000 of the factory’s 10,000 workers were state workers. The state workers used temporary workers as the foil for their privileged position and benefits, restructuring would relegate state workers to the status of temporary workers. To prevent this, the state workers, protested, but were forced to accept the deal offered by the state. For the temporary workers who had worked so long in the factory and were accustomed to discrimination, their protests with the state workers gave them the illusion of equality. However, the betrayal by the state workers opened their eyes and taught them that they would have to fight for their “equality” by themselves.

The circle of petition offices – when future met history

When the radical collective action failed and the state workers were bought off, the temporary workers decided to fight for themselves. Their first attempt at arbitration was refused because the committee claimed that no case related to the restructuring of SOEs was eligible for labor arbitration. Their lawyer was told that restructuring was a governmental behavior, and it

was carried out by the special team of representatives from city government, city trade union, the public security bureau, the labor and social welfare bureau, and the committee of state assets management (CSAM later). The labor arbitration committee, as a semi-legal institution, was nested in labor bureau, which was a branch of city government, and was in no position to make a judgment on governmental behavior.

While their lawyer, Chen, tried to find some way to get the case to court, the workers went on their long march of petitions. They visited every petition office. I accompanied the workers to their trips to the committee of state assets management, the city labor bureau, the labor disputes arbitration committee and their factory trade union. These trips not only displayed the circular feature of their petitions but also exposed the underlying principle of this petition game – it was a classification struggle to define the identity of the “temporary workers” in relation to state workers, peasant workers, and contract workers.

The state assets management committee was a newly established governmental institution to take charge of the restructuring of SOEs. It was the “new elite” in the government, because it handled not only policy issues but also the state assets. The main visitors were the factory managers and potential buyers for the SOEs. The petition office open to the workers was its sideline. Commensurate with its position, the city committee of state assets management was located in the business district. It was a splendid high rise with two huge bronze lions guarding the entrance.

It was a raining when Xiao Chun, the other leader of the workers, called me to join their petition to the state assets management. When we rushed into the building, the gatekeeper joked, “It is you again! How many people do you bring today? How can you get the money? Even the state workers have no rice to eat. You are just temporary workers!” Xiao Chun said, “Next time, we will bring our kids to beg for food here.” The petition office was on the sixth floor and the director, Pan, was surrounded by five workers.

“You know our factory is undergoing restructuring, but it was said that we, the temporary workers did not have a share in this restructuring, because it is to change the status of the state workers, to convert them to temporary workers. Is this true?” Xiao Chun got the chance to ask first.

Director Pan said,

This is a historical problem. They were the employees with the status of state workers, who were hired by the state. Now their statuses have been changed and they became the same as others. Therefore they need to get a little compensation from the state. This is the special policy particularly for the official state workers, and you are not qualified.

Xia, a tiny woman in her forties asked, “Who are we, then? Are we private owned workers?”

“I won’t discuss this with you. But in history, you were peasant workers. That is the historical reality and you cannot change it.” Pan said.

Xiaoling asked angrily, “How could you say that we are peasant workers? We worked in the state factory for 20 years; we got married to the city men and our kids are in school here; we

don't have land in the countryside and our Hukou (residence registration status) have been moved here. Why do you keep saying that we are peasant workers? Now nobody cares about us and wants us, neither the city nor the countryside. Both want to kick us out!"

Pan smiled and said, "No, I am not kicking you out. Your status was determined when you were hired by the factory. And it was sanctioned by the labor bureau."

Xia shouted, "We are not qualified for this, for that, for everything, just because we are peasant workers? Isn't this depriving us of our rights? As a worker, I only want to be treated like everyone else, according to the labor law!"

The word "labor law" aroused the workers. They shouted, "Yes, labor law! You must give us compensation; otherwise you breaking labor law!"

"Does labor law say anything about peasant workers?" Pan asked.

Yang said, "But we are the temporary workers! Labor law said there should be no distinction between permanent state workers and temporary workers from 1994. Now we are all contract workers!"

Pan said, "Well, okay. Even if you are contract workers, the state workers have terminated their contract with the factory, therefore they get the compensation. But you still work in the factory, right? By the way, have you even signed contracts with the factory?"

"Of course we have signed contracts with the factory. It is the factory who has not renewed our contract, and it is also the factory who does not want to terminate our contract, either!" Several workers fought back immediately.

Pan said, "Well, the factory has offered you a one-year contract, but you won't take it, right?"

"You think we don't know the tricks of the factory?" Yang laughed scornfully. "In a year, when the contract expires, we will be driven out of the factory with nothing. And, all those years of hard work and all our relations with the factory will be erased. Now the strategy of the managers is to drag us – we won't terminate your labor relations, but we won't give you any compensations or social security. If you cannot endure, you can quit, by yourself ..."

Xiao Chun added, "Our previous contracts were signed with the state-owned enterprise. Now the state has retreated from our factory, and it becomes private owned. Does this mean the elimination of our previous work and history? We worked for the state before, and that part has nothing to do with the new enterprise. How can we renew the contract with the new factory?"

Pan seemed annoyed. "The restructuring of your factory is stipulated by the city government, by the state. Are you going to sue it?" The workers were silenced by this question. Only Xia asked, "Could it be possible that the state made a mistake? How could the state pay so much money to the state workers who made such troubles? Is the state foolish?"

Pan said, "The state won't take such a personal point of view, like you. The state always takes a broader perspective, to consider the whole picture. Let's not talk about those abstract

issues. How about you go back and wait for the new policies and subsidies for temporary workers?”

“No, we don’t need any special policy. We just want to be treated in the same way of others. Equal pay for equal work, as the labor law stated!”

said, “But I have told you that you are not state workers, but peasant workers!”

I asked him to give a definition of “peasant workers.” He said, “I shall not give you the definition. You should go to the labor bureau. People there can make a judgment on your status. I have said, I have explained whatever I can. If you are still not satisfied, you could apply for labor disputes arbitration. If you are disappointed at the arbitration result, you can always appeal. There are so many alternatives for you! Labor bureau is where you should go!”

Following Pan’s suggestion, we went to the city labor bureau. As an old government branch, the city labor bureau mainly dealt with labor policy. When the labor conflicts intensified under the economic reform, and especially with the restructuring of SOEs, the labor bureau became the frontline of labor agitation. Unlike the committee of state assets management, the city labor bureau was a grey three-story building inherited from the era of state socialism. The petition office was on the second floor and the arrangement of the room was austere. A long wooden counter divided the officials and the visitors like a wall. Two tired-looking old men sat behind the counter.

When Xiaochun tried to greet them in the traditional Chinese, one of the men said, “Don’t waste our time. Just tell me what you come for.”

“We came from Top textile factory. We, peasant workers--we, the temporary workers--have not terminated our contracts, when our factory was restructured ...”

The old man interrupted, “I have told you to go to the committee of state assets management. We don’t have the authority to sanction problems related to restructuring.” We told him it was exactly the officials in that committee told us to come here for a clarification of our employment relations.

“Well, then show me the evidence of your employment relations. Show me your contract, your pay stub!” He then said.

“We have our pay stubs!” The workers responded. The man shouted, “You tell them. Why bother me?” Xia shouted back, “Because you are the person in charge of employment relations!” The man said “But we are not in charge of restructuring.” Xiaochun said, “But they said our problem was about labor arbitration.” The man said, “then you should go to the labor disputes arbitration committee. Right next door!”

His arrogance enraged the workers. Xiaoling asked, ‘What is your duty then?’ The man said slowly, “our duty is simply to explain policies and give you some instructions. The policy about the restructuring of your factory and the treatment of the workers was made by the city government. We don’t have power and authority to sanction that.” Xia asked, “Isn’t the labor bureau the institution to protect the legal rights of the workers?” The man was not moved. “It all depends. Some are in our charge, some are not. It is not like this – I am a worker, you are the labor bureau, therefore you must take care of me. No way! Even it is in our jurisdiction, we still

need evidence. Not everything related to labor is our duty!” “We don’t have our social security! Isn’t this your duty?” The old man shouted, “It is none of my business! And it is too far away. You should focus on your crucial problems.” We asked him what was crucial, and he said, “it is your status and identities! Whenever you can verify your status, identities, and your relation with the factory, you can go to the state assets management committee to ask for your entitlement, accordingly!” Xiaoling said, “But we had our state status before. We have worked in the state factory for 20 years!” The old man said, “where did you get the state status? You are just a gang of peasants!” “So, you also treat us like peasant workers?” We asked. “Of course you are. All the documents you showed me said so!”

When we tried to convince him that we were not peasant workers, it seemed that we came back to the starting point. Finally, the man refused to talk to us. “Go to the state assets management committee, go to the city hall. Anywhere but here! The government has the power, but we are just the implementation tool.”

We went next door, to the labor disputes arbitration committee.⁴ A man in his forties sat behind a shabby desk. Xia said we wanted to make arbitration. After Xia’s fragmented and emotional expression of “the case,” the man asked, “What rights do you want to claim?” Xia said, “we want to participate in the restructuring.” The man said, “Restructuring is a governmental behavior. It is not something that you can request. If you are not listed as the object of restructuring, there must be reasons. Did you sign contracts? Do you have the city residence?” When he knew that they received the city residence at the end of 1990s, he surprised us, saying, “According to Document 35 in 1995 from the city government, your factory must have paid the management fee to the city government for you, because you are the outside laborers who take up the positions reserved for the city residents. You were a burden to the city and the government used that money to improve the infrastructure to accommodate you. As outsiders, your length of service does not count. Your factory has paid the price for you, so you cannot claim the same benefits and compensations as the state workers.”

Xia asked, “Does this mean that it is not the state and the factory owe us, but we owe them?” The man said, “I am not saying that, but what I have told you is historical reality. I don’t need to discuss this with you, the outsiders. I should only ask you for legal evidence.” Xiaoling said, “We have evidence, but still you won’t accept our case!” He said, “I have told you, the government has designated and the Supreme Court has ordained, all cases related to restructuring could not be accepted here. Even we made the arbitration, the court would reject it.” I asked, “Is this stipulation higher than labor law?” He said, “Under certain historical circumstances, it is!” “This is the violation to our human right!” Xia yelled at him and Xiaoling joined, “Doesn’t this mean there is no place to solve our problems? No matter how much injustice we endure, they could oppress us as they will?” Noticing our anger, the man said, “Listen to me. I know this time is hard for you. As women you should put your energy and time in your home, and take good care of your husbands, kids and families.” Xiaoling asked, “So it doesn’t matter if our rights are violated?” The man turned back to his legal talk, “I am sympathetic to you, but my sympathy should not overrule the law! Your request might be fair and just, but they must be legal at first!” Xia said, “Aren’t you talking about legal? I can tell

⁴ Since all the labor disputes arbitration committees were located next to the petition office in the labor bureau and it is very normal for the petition officials to refer the petitioners to this committee, I will include it within the circle of petitions office. It is actually the intersecting point between this circle and the legal circle.

you, tell everybody, tell China, and tell the whole world, that what we request is legal first of all!” The man shook his head and said, “I just want to tell you to respect and accept reality.” Xia asked, “What reality?” And we all said, “The reality is giving in. Accepting reality means to give up!” The man finally said, “Okay, if you don’t want to accept reality and insist that your request is legal, you should go to your factory and get some evidence of your labor relations!”

When I suggested the workers to go to their factory, they told me they had talked to the restructured factory, which was now called an industrial holding company, but the attitudes from the managers were terrible. Xiaoling said, “They told us, ‘you should feel blessed as long as you can survive. Why did you leave the countryside? Why not just be a farmer? If we did not give you a job, you would have starved!’” Xia added, “You know what the manager said about us? He said, ‘you were just trying to make a fortune and you were fortunate enough! What a fuss were you making? You people with low quality!’” Yang also said, “When we were doing petitions, they called us the counterrevolutionaries, and claimed that we had ruined the glory of the state. But you know we have the truth. We are not irrational or trying to make a fuss over nothing. We went there to reason with them! But what do they think of us? Their attitude is, okay, you can make a noise as you want. Anyway the arbitration committee won’t accept your case. You can come to me as long as you have time and energy. You are making a fool of yourself!”

Only Xiaoling agreed to make another petition to the factory with me, because she was assigned to a new workshop and had been punished for leading the temporary workers’ resistance. We decided to visit the factory trade union first, since it was still the workers’ organization. However, the experience was a nightmare. As a worker, Xiaoling did not even know where the trade union was located. Getting direction from the main administrative building, we walked a long way to find the small room in an old building. Only a middle-aged woman sat behind a desk. Later we learned that she was the chairwoman Dang of the factory trade union, but she was very cold. Xiaoling began by saying; “we the workers always take the trade union as our own home ...” The chairwoman was very impatient with Xiaoling’s complaints. She said, “If they give you this amount of money, they must have the reason. I don’t believe it is personal. And I suggest you not to be too picky. You should calm down. You came here to work, then work hard. If it is easy to make a living outside of the factory, I guess nobody will come here. First, you should work according to your conscience; second you work to make a living, right? I don’t want to argue with you. No matter where you go, you must obey the rules. I used to be a woman worker just like you. I came to this post step by step through my hard work, and hard work paid off.”

Xiaoling said, “So your point is, we have difficulties, therefore you can exploit us. If we don’t work, we will have to starve, right? If you push us to work extra time, we have to accept, even without pay, right?” Dang said, “It is not that simple. But supply is much more than demand on the labor market. That is the reality and you have no choice.” When Chairwoman Dang found that she couldn’t persuade Xiaoling, she suggested inviting Xiaoling’s foreman to come. After a while, a slim man in his fifties came in, saying in a calm voice, “You are such a headache for me! You work for me, but came to my superior. This means I haven’t done my job well.” Xiaoling said she had only come for help. They had a long argument about the workload and unpaid overtime work. Foreman Liu said, “You are assigned extra work; you should feel lucky and appreciate us, because we give you the opportunity to work and make money. Every

morning, when you get up, wash your face and feel in good spirit, you should think like this: okay, I am still alive, I am so happy. I am energetic to work, I am so joyful. I still have work to do, I am so lucky! You should take your work as the opportunity given by the factory managers and the society, and feel blessed if you get the chance to work overtime! If you take work as a burden, a pressure, that is bad. Okay, if you really don't want to work overtime, that is fine. I could easily find another person to do your job, since so many people are waiting in line. But if you cannot finish your job in time, don't expect me to save you." Xiaoling said, "You raise the bar so high, nobody can finish it in time. If you can pay for the extra work, everybody will be glad to work for extra time!" The foreman said, "It is hard to say. You have the attitude problem, because you always stick to the labor law. Okay, you are correct. I am not saying that you are wrong to talk about labor law." Xiaoling said, "But you talked to me before when you forced me to work. You said, 'put me in jail if you think I violated the labor law!'" The foreman said, "Yes, I did force you to work. Sometimes people like you deserve to be forced!" Xiaoling said, "I think I am a good worker, I obey the rules." The foreman said, "I will say something that you might not want to hear. I feel like you are a hothead." Yao said, "Are you saying that I am rebellious?" Liu said, "Your blood flows really fast. Actually you should calm down. There is some dangerous and unstable element in your words and minds. Now we are still under the leadership of the communist party. We still need to emphasize stability. There are indeed many opinions against restructuring, but the pace of restructuring won't slow down. You must change your attitudes and mindset. Your work is actually like the day labor, like the shoe man on street. I give you the money and you do the job. If you continue to influence the stability of my workshop, I won't let you go easily. First, strictly obey the factory rules; second, strictly obey the labor discipline; third, don't disrupt production!" Xiaoling said, "How could I become a day labor, like a shoe man on street? I am a senior worker in this factory. Where do my entitlements and benefits go? What am I now?" This petition ended with Xiaoling questioning her identity.

These conversations showed the trajectory of the temporary workers' petitions. Although their route was much simpler than the itinerary for the state workers' petitions, it also displayed some circular features:

The coexistence of numerous petitions offices in all kinds of governmental branches and even factories made it possible to pass the workers around. The CSAM referred them to the labor bureau because they needed to verify their labor employment relations; the labor bureau referred them back to the CSAM because their case was produced by the restructuring policy. The arbitration committee either referred them back to the CSAM, since it was more of a "governmental behavior" than a legal case, or to the factory, which brutally denied any of their requests, and even their stable labor relation with it. The workers did have their evidence and reasons, but when they were directed into this bureaucratic field of petition offices, they did not have power to define anything. Furthermore, when engaging with the petition officials, the temporary workers' request for material interests, such as compensation, was transformed into a symbolic discussion about their status and identities; therefore the "class struggle" was turned into a classification struggle. This classification struggle was also carried out between history and future, but unlike the state workers, the petition officials insisted on the history of the temporary workers while the workers tried to use the universal standard after restructuring which pointing to the future, to fight the current mistreatments.

Like the state workers, the classification struggle for the temporary workers revolved around “the legitimate definitions of the divisions of the social world,” and especially about “make and unmake groups.” (Bourdieu, 2001:221) While the petition officials refused to give the same entitlements of the state workers to those temporary workers, the temporary workers denied that they were peasant workers. The state workers had been the privileged urban aristocracy in the state socialist regime, while the peasant workers were the new cheap laborers for the rising capitalist labor market, who did not have the same protections and rights. The temporary workers, did not fall into either category. In the state socialist period, when the temporary workers worked side by side with the state workers but did not enjoy the same payments and welfare, they took that for granted, because that was a fairly ordered society with settled boundaries between social groups defined clearly by the state. The restructuring of SOEs marked the climax of the transitional period which blurred the social boundaries, and especially eroded the special social position of the state workers. It was time for the temporary workers to redefine themselves. The struggles in the petition offices proved the difficulty of their identification with the state workers, while the temporary workers refused to be discriminated against as peasant workers. During the circulation among petition offices, the temporary workers felt lost. As two categories with different symbolic capital, the state workers and the peasant workers were always posed as two poles of Chinese workers: temporary workers and the officials. However, the temporary workers failed to prove that they were the same as the state workers, and the officials also failed to convince the temporary workers that they were the same as peasant workers.

In contrast to the classification struggle for the state workers to define their entitlement to pension, which was structured around different interpretations to the numerous state policies, this classification struggle for the temporary workers to define themselves was constructed on “nothing objectified” and thus revealed its “arbitrary nature.” If the transitional state made too many policies about the pension reform to the state workers, the contradictions between them became resources for the local debates, and the policy vacuum about the temporary workers from the state made the local struggles more elusive. Local authorities tried to categorize the temporary workers as “peasant workers,” however none of them would explain what this meant. This ambiguous notion of peasant workers gave the authorities more room to manipulate the situation and to reject the temporary workers’ requests.

When neither the officials nor the workers could verify their identity, the focus of the arguments turned to the clearer category of “contract workers.” As stated in chapter 2, the concept of “contract worker” was introduced to shake the privileged position of the state workers and thus increase the productivity and flexibility of the SOEs. In practice, the “contract workers,” were the opposite of state workers. This was why most state workers preferred leaving the labor market to being “contractualized.”

This negative concept of “contract workers” was exacerbated by rampant capitalist exploitation during and after restructuring of SOEs. As Foreman Liu’s said, these people were no different from day laborers. That was why in many workers compared their work to slavery. However, compared to these “contract workers,” other contract workers were protected by labor law. This contract workers had formal labor relation with the enterprise and enjoyed certain rights stipulated by law, and thus protected by the state. The temporary workers struggled to use this identity of “contract workers” to validate their requests. Though the labor law clearly stated

that the enterprises should sign contracts with newly hired workers, this was not carried out, so contract workers only had this protection on paper. However, when the temporary workers attempted to use this identity of contract workers to fight the factory's abuse, they were required to show the legal evidence of "contract."

Why couldn't they show their contracts, or why didn't the factory sign contracts with them? The official in the city labor bureau said, "it was none of my business!" When the workers mentioned that two temporary workers received compensation because they had signed contracts with the factory, the official in the committee of state assets management shrugged and said, "I am sorry, but who can you blame? It is because you don't have strong consciousness of law as your coworkers!"

The new focus on the "contract worker" showed the restructuring process as an opportunity to transform the categories of perception. This new focus constructed the classification struggle in the circle of courts.

The circle of courts – the legal appearance to the political struggles

On November 15, the day all the state workers signed their buy-out agreement, Xiaoling, the leader of the temporary workers was listening to her favorite radio program, "Friends of the Law." A self-educated young lawyer, Chen Bo was talking about labor law. Xiaoling was quite impressed, and visited Chen's office the next day, with four other representatives of 164 temporary workers in the Top Textile Factory. When Chen got to know the workers' situation, he promised to win this case for them, because the 1995 labor law stated there should be no distinction between the state workers and the temporary worker.

From January 2005 to July 2008, the temporary workers attempted to verify their identities and material requests. They went through one administrative litigation, one civil litigation, two labor disputes arbitrations, two administrative appeals, and two civil appeals. There were two stages of the struggle: administrative litigation and labor prosecution. During the four years, because of the "administrative intervention," the workers had to give up arbitration but in favor of administrative litigation; however, when they won the administrative case, because of the failed administrative enforcement of the verdict, they had to go back to the labor prosecution. This back and forth showed the limited "independence" of the legal system, but also obscured the workers' conceptualization of "rule of law."

Administrative litigation: a formal success

Though the temporary workers were inspired by this new knowledge of labor law, their first legal attempt was difficult. When they ran to the city labor bureau to apply for a labor disputes arbitration, the arbitration committee claimed it was related to restructuring of SOE, and was therefore beyond the committee's jurisdiction. This sent the workers to the petition offices. However, the discrimination they experienced in there as temporary workers, peasant workers, or women, was humiliating. When the old man in petition office of the labor bureau shouted at them "you can sue me if you are not satisfied," the workers were provoked to do so. Finally their lawyer filed an administrative litigation against the labor bureau for its administrative inaction with Top Textile Factory as the third party. In his explanation, the workers initially only

wanted to get their money back, but their disastrous experiences made them so angry that the goal of their legal engagement was to defend a principle. They said, “even we cannot get the money, we can sue the officials. We can let off some steam!” The possibility of suing the officials and the equality promised by the labor law gave the workers the “illusion” that they could become citizens under the “rule of law.”

The workers sent an express letter written by Chen to the labor bureau, accusing Top textile factory of violating labor law in its treatment of temporary workers. The labor bureau had 10 days to reply. After a month, the workers filed the administrative litigation. In some sense the workers dared the labor bureau to violate administrative law, but in another sense the workers were coerced by the law to do. During their visits to all the petition offices, the workers were questioned about the evidence to validate their questions and claims. And this awareness and emphasis of evidence was referred by all the officials as the hallmark of “rule of law” as opposed to the arbitrary old regime of “rule of man.” Through the interaction with the officials, lawyers and judges, the workers began to learn how to read legal codes and collect evidence almost as well as lawyers did.

The workers’ request of filing a collective case representing 34 temporary workers was rejected and they were required to file individual case, at a cost of 100 Yuan each. This deterred all but four workers, including Xiaoling and Xiaochun. In On March 4, 2005, the first hearing was held in district court. At around nine o’clock in the morning a middle aged woman judge in a grey robe walked in with two old jurors. No officials from the labor bureau nor managers from Top Textile Factory showed up, but their lawyers did. Most of the spectators were workers. Director Pan from the committee of state assets management came. It seemed this case had attracted the government’s attention.

The hearing was a debate between the lawyers over whether the labor bureau was administratively inactive, and ended with the question of the status and identities of the workers.

The labor bureau lawyer of showed a pile of documents to the judge and said, “These are all the relevant documents about restructuring of Top textile factory. During restructuring, there is no such thing as administrative inaction. Our bureau sent a special team to live in the factory and worked with other officials from different government branches. The question of relocation for the workers during and after restructuring is a complicated and comprehensive issue under particular historical conditions. It therefore cannot be simply settled by a single department or according to a single law. Some of the questions brought up by the workers were still in the process. So you cannot say that our bureau is administrative inactive. It is just a special way for us to function during restructuring.”

The factory lawyer simply claimed, “Evidence clearly shows that we the factory has acted according to law. We have paid the social security for them. The restructuring is mostly about changing status of the workers hired officially as the state workers or hired with clear contracts. The plaintiffs don’t belong to either category and therefore not qualified for the compensation.”

According to the workers’ lawyer, “All those documents about the restructuring were announced after our case filed, therefore they were not valid evidence. Furthermore, please give evidence to verify my plaintiffs’ identity as peasant workers, as they were treated as peasant

workers by the factory and through the documents. Legally they were contract workers. And labor law ordained equal pay for equal work. Every worker should enjoy equal rights. The differential treatments to the workers, as stipulated by those policies, are against the labor law!”

The labor bureau lawyer disagreed. “Labor law only stipulated compensation when terminating contracts. But Top textile factory has not terminated its labor relation with your plaintiffs. How could they get compensation? The restructuring is about the change of state status. I don’t know which item of labor law the restructuring has violated.”

The judge asked the factory lawyer to verify the relation between the plaintiffs and the factory. The lawyer said, ‘They are the employed workers of the factory.’ “What type of workers?” The judge kept asking. The lawyer hesitated and said, “Should be contract workers, but I am not sure.” When the judge asked when the workers began to work, the lawyer said she did not know since she was not the lawyer in charge of the case. The workers who had given the first date of their work and proved that they still worked in Top Textile Factory. When the judge asked whether or not the factory deducted contract fees and social security fees from their wages, they said, “we don’t know, because we cannot see our paystubs and we know nothing.”

It sounded like the factory could not prove that these workers were peasant workers, while the workers could not prove that they were contract workers, and the labor bureau insisted that they were not state workers. The judge chose not to rule, but turned to the evidence of the administrative procedures – how did the labor bureau responded to the express letter. The testimony given by the labor bureau was surprising – the lawyer did not know whether the letter had arrived. Because of the inadequacy of evidence, the workers needed to prove that the labor bureau had indeed received their mail. The hearing was then suspended.

Two months later, the court hearing was reopened. Chen and Xiaoling obtained the signature of the labor bureau receptionist from the post office, which proved that the letter had been received. This time the court debated the “contract,” which was crucial to define the legal status of the temporary workers. The labor bureau lawyer said, “Top Textile Factory is under restructuring now, which will change its ownership. Under this circumstance, the length and principal part of the contract might change. These problems could only be figured out gradually during restructuring. Social security is a very complicated issue and it concerns the future of many people. If the factory paid for all the security, it would delay the whole restructuring plan.”

The factory lawyer said, “Maybe the factory indeed hasn’t signed contracts with some of you, but now the primary goal is restructuring and the crucial thing is to change the status of the state workers – to sign contracts with them. The plaintiffs are still working in the factory and haven’t changed their status; therefore compensation is not applicable to them.” Facing these political defenses of the factory’s treatment to the temporary workers and the labor bureau’s inaction, Chen asked, “Are there any laws saying contract could be avoided during restructuring? Why couldn’t the temporary workers get compensations? Why shouldn’t they enjoy the same rights as the state workers, so many years after the labor law issued? Yes, the factory is under restructuring. But restructuring is the most crucial time for the labor bureau to supervise the factory to settle the historical problems. After restructuring, the new factory will be owned by private managers, and the workers have no relations to the new factory. Nobody could take care

of them.” He ended with one powerful question – “Are the local policies mightier than the state law?”

If the classification struggles in the petition offices distinguishes temporary workers from the state workers to withhold state entitlement, the legal struggles concentrated on disqualifying the temporary workers through their lack of contract. In the petition offices, the workers tried to use labor law and the equal legal rights granted to contract workers to fight the officials’ discrimination, while in the court hearings, the official lawyers tried to use policies and economic reasons of restructuring to defend the labor bureau’s inaction and the factory’s abuse of the workers. It was quite powerful and illuminating for Lawyer Chen asked at the end, “are the local policies even mightier than the state law?” If the final verdict of this administrative litigation could give a conclusion to this struggle, the workers seemed win the battle in the first round.

On June 13, the workers won, and the judge ordered the labor bureau to “fulfill its responsibility and answer the plaintiff’s requests within 30 days.” It indeed proved that the officials and the workers were equal under the law. However, a closer scrutiny of the adjudication exposed a sobering reality – there was nothing in the ruling about the identities and status of the workers and their material interests. The workers’ success was based on the judge’s identification of a procedural error on the part of the labor bureau – by failing to reply to the workers’ letter within 10 days.

The enforcement of this adjudication showed the limits of the workers’ legal victory. As the adjudication indicated, the case was referred back to the labor bureau. After many visits to its petition office, finally on July 19, the labor bureau issued a letter of instruction which demanded the factory to correct its mistreatment to the temporary workers in time. Obviously the factory did not take this instruction seriously enough. On August 31, the workers applied for a mandatory enforcement of their adjudication. Ten days later, they received notification that their application had been declined because “the application does not offer any concrete contents for enforcement.” The workers then filed an appeal to the city court in September and one month later they received the final verdict – the city court overruled the district court’s rejection. However, like the first success, this second success came with an even blanker content – “this case is returned to the district court to take charge.”

From January to October 2005, the temporary workers completed their first legal game, which granted them two formal or symbolic successes with no real results. The workers had found some equality and justice, but none of the compensation, the contract or the social security were settled. The workers still had to solve their material problems.

Civil litigation – loss based on form

The formal success of the administrative litigation did not turned into the material gain for the workers, and the adjudication became only the “certificate” for the workers to negotiate with the labor bureau. The year 2006 was marked by numerous office petitions, and the workers’ fervor seemed weakened by the year-long legal struggle. However, their passion for

law was rekindled by a “bare-feet” lawyer⁵, who they met right outside of the petition office in the labor bureau. This man told them that Chen had misdirected them into the wrong way of administrative litigation. He suggested that they should stick to the labor prosecution. The workers actually had felt cheated by their lawyer for a while, since Chen claimed he could only help them to win the case but the enforcement was not his duty; the workers still had to pay Chen even though they did not get one penny from the factory. As Xiaoling said, “We were so disappointed at those professional lawyers, who only want to make money out of our cases. We chose this new lawyer and we knew he was not that competent in knowledge sense, but we appreciate his courage and his determination to help us get our money. And he promised that he would not charge us until we get our money from the factory.”

On December 28, 2006, this lawyer, Li, helped the workers to apply for labor disputes arbitration again, and they received the notification of rejection in February, 2007. Because Li, unlike Chen, was outside of the courts, he could not find out a reason for the rejection. The workers tried to appeal to the Hanyang district court; however they were told it was unacceptable. In March, two workers and lawyer Li made an unusual petition to Beijing. Although their case was not dealt with by the center, they used the trip to gain enough political capital to threaten the local officials, who finally asked the court to accept their appeal. In this appeal, the workers asked the factory to pay for their old age, unemployment, medical and injury insurance, pay back the withholding wages, housing compensation and contract termination compensation. Citing stipulations in the labor law, Li calculated how much money the factory should pay to the workers. Housing compensation should be 50,824.4 Yuan and the contract termination compensation should be 23,713 Yuan in total. Compared to the administrative litigation, the target of this labor prosecution was clearly “material interests.”

At the end of May, the district court decided that the factory should pay the old age insurance for the workers, which meant Xiaoling could receive about 20,000 Yuan. The court rejected Xiaoling’s request about other types of insurance, which were either defined as out of the range of civil litigation, or without valid evidence. Neither side was satisfied with this result and appealed to the city court.

In this new appeal, Li gave a more detailed calculation about the economic compensation to the workers. In the section of “facts and reasons for appeal,” he insisted “it is the state’s order that the enterprises must pay for the social insurances and housing compensation for the workers” and emphasized those insurances and compensations had been enjoyed by the state workers but denied to the temporary workers. He cited many state laws and province orders in defense of the workers’ requests. The six-page appeal should only have been a page long. Six months later, the city court, referred the case to the district court.

The case was reopened in May, 2008. After three years’ legal struggles, the workers fully expected to win. They submitted 11 pieces of evidence to the court, including documents from the factory, verdicts from the courts, pay stubs, and even some secret recordings of conversations between workers and managers. They wanted to show the court that they were

⁵ Bare-feet lawyers were the self-educated “lawyers” who did go get formal training in law and did not pass the national bar exam to get the certification, but they did serve as “the legal representatives” with their legal knowledge. [you should move this note to the first place that this term appeared. I questioned the meaning of this term in the first part of the paper.]

telling the truth and they knew the law. As they said, during the court hearing, the factory's lawyer could not refute any of the workers' arguments. Xiaoling was so confident in her legal knowledge that she gave a long legal speech about this labor case, while the judge said that historically they were temporary workers therefore they could not expect to be treated like state workers. When I mentioned what the workers now requested was not even the compensation for the state workers, but the labor rights under labor law, the judge simply said, "If so, I am afraid you will be disappointed."

The new adjudication was a defeat for the workers. All the evidence submitted by the workers was declared to be either legally invalid or irrelevant, and the factory did not need to pay the workers.

This new verdict was based on the legal assessment of the evidence and avoided the workers' arguments about the justice of social security and economic compensations that they deserved. The factory lawyer did had undermined the legal efficacy of the workers' evidence. The workers used some secret recording of the conversation between workers and foremen to prove that their work day was 12 hours long and that 5% of their wages was deducted every month. The factory lawyer insisted, the foreman was unaware of the recording and he was misdirected to a dialogue that was carefully designed by the workers, therefore the recording was legally invalid. The witness had been fired from the factory so his testimony was biased. When the workers used paystubs to prove their employment relationship with the factory, the factory lawyer claimed those paystubs verified their status as "temporary workers." When the workers used province and city policies to support their claims to social security, the factory lawyer insisted those policies could not be used as legal evidence, and could not be applied to the restructuring SOEs. The court agreed with the factory lawyer's refutation of the workers' use of evidence. In the final verdict, the court stated the documents offered by the worker were the policy documents made by the local government to deal with concrete social problems. They were not mandatory legal and administrative stipulations. Furthermore, the workers' request for social security was defined as a non-labor dispute, because "they were concerned with the restructuring of SOEs." As to the workers' claims about deduction of wages and overtime wages, the court stipulated it should be arbitrated by the labor disputes arbitration committees. Until then, all of the workers' requests were rejected ' and they were actually pushed back to the labor disputes arbitration, which had already rejected their application twice already, because it was related to the restructuring of SOE. However, this did not seem to bother the court, because it had fulfilled its duty based on legal assessments of evidence and based its judgment on legal codes and procedures.

The trajectory of this case displayed what Bourdieu called the "power of form." According to Bourdieu, "this power inheres in the law's constitutive tendency to formalize and to codify everything which enters its field of vision" (1987, p.825) This power of form gave advantage to legal professionals and also gave the field of law an appearance of "universality and neutrality." The workers won the administrative litigation as a "formal success" which was purely based on the labor bureau's violation of administrative procedure. This "formal adjudication" led to the difficulty of "enforcement." Comparatively, the workers' loss of the civil litigation case was a real failure based on "form." The whole case was constructed around "legal evidence" and the factory lawyer set the definition of "legal evidence." As Bourdieu pointed out,

the “power of form” was a kind of symbolic violence that allowed the dominator to put the law on his side, and “when they need to, these are the people who can put the most skillful exercise of formal rigor to the service of the least innocent ends.” (Bourdieu, 1987:850) During the two stages of the workers’ legal struggles, the justice of workers’ requests of social security and compensation was never allowed to enter the field. Their application of labor disputes arbitration was refused twice. Only as labor disputes, the details of the factory’s mistreatment to the temporary workers, and the fairness of workers’ requests could enter the juridical field as “legal issues” to be pondered according to labor law. However the disqualification of the conflicts between the workers and their factory as “labor disputes” kept those facts and reasons on the level of “non-specialists’ sense of fairness” or “their ‘view of the case’.” (Bourdieu, 1987:828). Actually, because those requests were defined in relation to the restructuring of SOEs, this case was “naturally” pushed out of the purview of law, but to the order of policy and administration. The administrative litigation and the following civil litigation indeed brought the workers’ case into the juridical field and gave them the opportunity to debate with the factory as equals. Furthermore the successes during the legal struggle did give the workers feelings of equality and empowerment. However, their material interests were never realized. What was realized in this field was the circulation of the cases between different courts. When the workers lost the case in the retrial of the district courts, they were suggested that they could keep appealing, since there were still three more levels of courts that they could push their case through.

If the state workers’ legal struggles revealed the political logic underneath the legal judgment, the temporary workers’ case displayed the legal appearance of economic and political struggles. Even though the real struggle between the workers and the factory was the labor conflict and it was transformed into the political struggle between the workers and the officials about the social identity of the workers, the final adjudication to the struggles must appear to have been purely based on legal procedures, codes and evidence. Although the political and economic concerns, such as the equal treatments to the temporary workers during restructuring and the fair coverage of social security, were the crux of this case, the verdict only emphasized the validity of the evidence and the legal rules. The economic calculations and political arguments did appear in the conversations between the workers and the judges, and even in the debates between the lawyers, but the final judgments were formally based on legal codes. It was this formality gave the field of courts the appearance of “universality, neutrality and objectivity,” which covered the clash between economic and political interests.

Circle between petition offices and courts: petition offices as entrance

The case of temporary workers’ social security and compensation was circulated both between and within the circle of petition offices and the circle of courts. If in the state workers’ struggles, the circle of courts served as the exit to the petition offices to mitigate the tension in that circle and shake off the official’s responsibilities, in this case for the temporary workers, the circle of petition offices stimulated, activated and finalized the circulation in the legal circle.

The rejection to the workers’ application of labor disputes arbitration at the end of 2004 directed the workers to the circle of petition offices. The conflict between the workers and their factory was defined as “related to the restructuring of SOEs,” and therefore precluded a legal

solution. The workers' treatment by the labor disputes arbitration committee told the workers and their lawyer this was a policy and political issue determined by the local government departments. Unlike the state workers who petitioned immediately after collective actions, the temporary workers were pushed to the petition offices when the legal way did not work for them.

However, the experiences in the petition offices pushed the workers back to the courtroom. Not like the state workers who got sympathy and respect from the petition officials, the temporary workers only experienced discrimination and contempt. They were discriminated as peasant workers who took up the resources of the city but hoped to be treated as state workers in vain. It was in the petition offices that the temporary workers were reminded to go to court again and again, either the hollow suggestion of other alternatives than petitioning, or the blatant threaten of "you can sue me if you are not satisfied." These experiences in the petition offices made the temporary workers disappointed and resentful. In contrast to the state workers, who had a long historical relation to the state officials and enjoyed the protection from the state there were highly dependent on the state, the temporary workers were marginalized; this actually made them more independent and courageous. This pushed them into administrative litigation.

The formal success of the administrative litigation did not bring the material rewards to the temporary workers. To realize their material interests, the workers still had to go to the petition office of the labor bureau to enforce the verdict – to fulfill its statutory duties within 30 days. As a response to the court order and the workers' frequent visits, the labor bureau did send an order of correction to the factory, asking it to pay for the old age, unemployment and health insurances for the workers and sign contracts with them before the deadline of July 29, 2005. However, the factory did not make enough corrections, and the labor bureau gave them another notification – the legal representative of the factory was fined 8000 Yuan and the factory was fined 2000 Yuan. The labor bureau had accomplished its statutory duty while the workers still received nothing. This fight between the labor bureau and the factory made the workers understand what the petition officials told them – the petition office did not have either money or power. This understanding directed the workers back to the legal field, which was said to be powerful in the new era of "rule of law."

Although the workers' application of labor disputes arbitration was rejected again, this time, with the written notification of rejection, the workers could appeal to the district court. However their appeal was rejected. To reactivate this legal circle, the workers fell back on the petition again. With the political capital of "petition to Beijing," these workers gained support from the petition official in the disciplinary inspection committee of the city, who suggested that the court hear the workers' case. This time, the pressure from the petition institution helped to activate the circle of courts. Nevertheless the trial hinted at the possibility of sending the case back to the petition circle. The court refused most of the workers' requests because "they were related to the restructuring of SOEs, therefore they were beyond the jurisdiction of the court." Although the verdict did not say "we suggest you go to the petition offices to solve your problem," this was the implication. Even though the workers decided to keep appealing, it could be reasonably predicted that they might have to go back to the petition offices when they got enough failures based on this legal definition to the case as "political and governmental issues."

The rejection of labor disputes arbitration pushed the workers into the circle of petition offices for compensation. The discrimination and denial in the petition offices urged the workers back to the circle of courts for equality. In order to materialize the legal success the workers had

to go back to the petition offices, which actually had no power upon the restructured enterprises. The failure of the petition offices to fulfill its duty of monitoring the factories sent the workers back to courts again. However, the courts rejected their application of labor disputes arbitration and the following appeal again. Only with the help from their petition to the center and the local government (other than labor bureau) this case entered the legal circle again. And it could be reasonably predicted that the case would be circulated back into the circle of petition offices again in the future. From November 2004 to August 2008, the workers shuffled back and forth between petition offices and courts. Without the legal system, the disastrous experiences in the petition offices could only incite radical behavior; without the petition offices, the denial of the courts would also push the workers to the edge of desperation. The mutual reference between the petition offices and the courts save the workers from the possibility of radicalization through enhancing the workers' illusion about their capacity to fight and extending the trajectory of their struggles. The circle of the petition offices and the circle of courts composed the local field for the workers to fight the abusive local officials and the exploitative factory managers. If at some moment, the workers got disappointed or frustrated about the circulation in the local field, they could still go to another level of circulation.

Circle between the local and the center: the pressure to the local

In February 2007, the temporary workers seemed to reach a dead end. Since the restructuring in November 2004, they tried petitioning to all kinds of government departments, but none of them could give the workers clear answers or even a clear verification of their identity. They tried administrative litigation, but the formal success did not settle their social security or labor contracts. To solve their problems, the workers redefined their material requests and went back to the labor disputes arbitration. However, their application for labor disputes arbitration was rejected by the city committee for the second time. Their appeal to the district court was refused too. There was nowhere else to go in the local circles, so it was time to appeal to the center.

Their petition to Beijing was inspired by Li. When he could not recover the workers' money through labor disputes arbitration, Li had to find a "wild-cat method" (*ye luzi*). He was also representing another group of temporary workers – the environment sanitation workers, to get their social security, and they decided to petition to Beijing. On March 11, 2007, Xiaoling, Meimei, two sanitation workers and Li went to Beijing. Since they did not know how to send a petition to the center, they protested in front of Zhongnanhai (the White House in China). As expected their behavior attracted the attention from the soldiers on patrol. They sent the workers to the police station and the police called the province agency⁶ to get its "subjects" back. The workers were brought by a van to a guest house, where they were detained for three days.

When Xiaoling and Meimei described this detainment, they were actually very proud. They were not tortured or threatened, but treated like guests. They enjoyed delicious food every day and watched television. After some short legal education sessions, they were put back on to

⁶ Every province in China sets a special agency in Beijing to do the networking job with the "center," and accommodate the local officials' visits. One of the most important jobs for the province agency recently is to take back the radical petitioners to the center and sent them back to the local.

the train. They were met at the train station by the staff of the neighborhood committee. The neighborhood committee put them to work, gardening and cleaning for the community for a monthly wage of 600 Yuan. It was easier than working in the textile factory, but they were under close surveillance from the committee, because they were considered a “dangerous and unstable element.”

This visit to Beijing became the workers’ political capital and they now could claim that their case had attracted attention from the center. This worked in their subsequent visits to the petition offices. One official in the petition office of discipline inspection committee (*jilv jiancha weiyuanhui*) called the petition officials in the district court and asked them to accept this case, because he emphasized that they did not want the case going to the center again. According to the workers, the district court accepted their appeal at the end of March and rendered the first verdict in May. It seemed that the visit to the center indeed reactivated the circulation of the case in the local circle of courts. It was not clear whether or not the favorable verdict towards to the workers in the first trial had been influenced by their visit to Beijing, but it was certain that the workers would think about a second visit to Beijing when they lost the case.

On July 23, 2008, the workers gathered in Xiaoling’s apartment to discuss the second verdict and the next appeal. Everyone had received the same message from their neighborhood committees. Meimei, the Beijing petitioner, said, “because I have been to Beijing, the neighborhood committee always admonishes me. Yesterday, when they knew I got the verdict, they said, ‘please don’t go to Beijing again because you lost the case. You still have three more legal procedures to go. It is still possible for you to win the case back!’” Another worker said, “Yes, I suspect that they had some meeting together. The court has notified our neighborhood committees about the verdict and asked them to stabilize us and persuade us.” Yang added, “yes, they have two strategies. One is to drag us through the courts; the other is to stabilize us through the neighborhood committee. They are really afraid of our visiting to Beijing.” Meimei said, “our neighborhood committee said, after the Olympic, you can go to Beijing and we won’t stop you. But, not now!” Xiaoling said, “Of course we must go to Beijing if they fail us again in the city court. If they cannot stand the pressure from Beijing, they could accept the mediation of disputes with us privately.” After this group of workers submitted their appeal to the city court, the factory director called Xiaoling and Yang for a private mediation.

The temporary workers’ experiences with the center displayed an overwhelming and omnipresent state running from the Zhongnanhai and it demonstrated a strong capacity of nonviolent social control. Since the workers were sent to their province agency, their behavior was under the close surveillance of the state. Although the workers did not see one state official, their visit to Beijing activated the huge network of the state. The soldiers, the police, the province agency and the neighborhood committee comprise the “panopticon” of the state, which put the workers’ behaviors under surveillance. Interestingly, the workers did not complain about the treatments from these pawns of the state. These temporary workers were accustomed to the militancy on the shop floor and the frequent rebuffs in society, so they enjoyed the hospitable treatment that they had received as “guests.” As the state workers tried to use their encounter with the local petition offices to gain access to the center, this group of temporary workers used their contact with the center to gain access to local officials. The temporary workers had a more pragmatic attitude to the state than state workers did— they could sue the local government when it did not support them and they could make use of the central state when they could. Because of

their different relation to the state, the state workers took their petition to Beijing while the temporary workers used their visit to exert pressure on the local.

Change of subjectivity – from the outsider of the state towards the loyal citizen

In November of 2004, the temporary workers joined the state workers' protest against the restructuring plan to gain some money from the factory. The protest indeed gave them the first taste of "equality" and got them familiar with such fancy words like "rights." The differential treatment from the factory and the abandonment from the state workers left the temporary workers all by themselves. Although most of the temporary workers had experienced decades of unfair treatment and discrimination in the state factory, after the "revolutionary enlightenment," they never wanted to be cheap labor again. At that time, there were many ways to frame their requests— protests, petitions, and lawsuits. Protests were out of the question, because they had all failed. The responses from the petition officials made the workers disappointed in the local government. Only the law seemed to point in the right direction. When Chen told the workers about the 1995 labor law and of the abolition of the distinction between state workers and temporary workers translated their resentment of their mistreatment by the factory into a solid sense of injustice based on civil rights. This construction of the social facts into legal case created the legal aspiration in the workers, and the struggles in the following years could be understood as their efforts to enter the field of law. During this process, , labor conflicts between the workers and the factory were turned into the peaceful arguments based on different interpretations of the state laws, and workers became adamant believers in the state laws and in the "rule of law."

When I first met the workers, I was surprised by their knowledge of the law. Xiao Ling told me,

I used to be blind to law. After this, I study laws every day, especially labor laws. I watch every TV programs related to law and I take notes, such as the contact numbers and websites. I know how to surf the web. There is no official law for restructuring, so we should do it according to labor law. We are not asking for something excessive. Just give us what is stipulated by law. Equal pay for equal work! How can the city government make the restructuring policy against the labor law? We are not making a fuss. They must give us some justification [*shuo fa*].

Other workers were eager to talk about their "enlightenment of law" and in their conversations with me and the petition officials, they kept citing laws and using legal terminology. However, their knowledge of law was rudimentary. In their first encounter with the factory and labor bureau in court, the workers were asked to keep silent and let the lawyer to speak for them, because they were regarded by the lawyer to be "not familiar with the formal way of court presentation and debates." In the courtroom, the workers needed to control their anger and present the "truth" as legal facts with the support of evidence and codes. That was a challenging lesson for them. At the end of the first court hearing, the workers finally broke their silence. When the factory lawyer showed the court the receipt of social security for the workers, one worker sitting next to me said, "But they are cheating! That is absolutely faked! They said they paid our social security from 2002. How could that be possible?" I told her to calm down, but

she kept saying they were lying. A juror came over and said, "Listen to me! Loud voices won't solve your problems." The worker said, "But it is provoking to hear them lying." The juror said, "You came to the court in order to solve your problems peacefully and rationally, right? It makes no sense for you to quarrel here. Quarrel will not fix your problem. You must calm down." The worker said, "But they are cheating!" The juror said, "How do you know they are cheating? Do you have evidence? Please pay attention to your words. Here is the court! Be polite!" When the juror left, the worker said to me, "I know they are cheating. When I told them that I wanted to quit, they told me, they wouldn't pay my social security if I leave. If my social security is already in the system, they cannot threaten me like that. I would have to quit in order to see what would happen then. At that time I would have the evidence!" After many similar encounters, the workers learned to accept this "peaceful and rational" way to defend their rights.

If Chen's categorization of the workers' conflicts with the factory as a violation to the labor law was an inspiration among the workers, the success of the administrative litigation consolidated their confidence in the law. The significance of this success despite its lack of material promise sustained the workers' legal struggles in the following years as the workers became well-versed in the law. This was evident in the second stage of their legal struggle – the labor disputes arbitration and the civil appeals. Not satisfied with the "indifference and distance" from the professional lawyer, the workers hired a barefoot lawyer, and tried to use their legal knowledge to speak for themselves. They collected evidence, they debated with the factory lawyer in court, they argued with the judge in their petition, and they even tried to teach me labor law. They believed that truth and the law were on their side, so they were going to win. However, they did not know that their understanding of the facts and their interpretation of the laws were but the common sense wrapped in legal terminology. As Bourdieu argued,

the establishment of properly professional competence, the technical mastery of a sophisticated body of knowledge that often runs contrary to the simple counsels of common sense, entails the disqualification of the non-specialists' sense of fairness, and the revocation of their naïve understanding of the facts, of their 'view of the case (1987:828)

In order to argue with the managers and to persuade the judges and jurors, the workers composed a letter stating their understanding of the case. This letter read like a poster from the time of the Cultural Revolution, but it was actually full of the "spirit of law" and "vocabularies of law."

This is a typical collective labor disputes case resulted from the illegal behavior from the Top Textile Factory, who seriously violated the labor law and damaged our legal labor rights. We, the seven plaintiffs work at the same factory, and we suffered the same violation of rights at the same place and same time. From the objective fact that we all sue with the same requests using the same law, logically our accusation must be well founded by mutual references. After so many legal procedures of the first instance, the second instance, the retrial, and the inspection out of the court, facing so many evidence, testifiers and testimonies, the factory side did not bring up even one valid evidence to prove they had not gone against the law. They just deny their guilt by resorting to sophistry. They can only cite isolated parts from administrative documents, which cannot be used as legal evidence, and disturb the normal legal procedure. Based on such facts, we think the court should support the three requests from us -- the seven plaintiffs of this

case: one, the economic compensation; two, the social security; three, the back pay and overtime pay. After the three trials, the basic illegal behaviors of the Top Textile Factory have already been confirmed, and many evidences have proved that they had violated the state law. According to the Item 38 and Item 46 from the Labor Law, the court should order the factory to terminate the contracts with the workers according to law, and pay them the economic compensation. In addition, according to the Item 81 and Item 89, the court should order the defendant to make up our loss in public accumulation fund and social security. Finally, we ask the court to make a just sentence based on facts and rules. We hope the court can realize the slogan of “everybody is equal in front of law” [*falv mianqian renren pingdeng*] and “punish the prince like common people if he breaks the law.” [*wangzi fanfa yu shumin tongzui*] If the court still cannot affirm, please organize another round of debate between the plaintiffs and the defendant. Let the two sides to develop the “live or die” fight hand to hand! We believe facts speak louder than words. The defendant, the Top Textile Factory’s violation of law is the objective reality. This case is based on solid evidence. The court must give us a just verdict to finalize this case!

This letter revealed the workers’ diligence in learning “legal” language, and their understanding of this case. Xiaoling and Yang also gave an emotional lesson to the judge, asking,

“how difficult is this? We are not asking for some egregious things, but only to protect our basic rights. Now the state tries to build a harmonious society, and a governance according to law. We run so often to the court, because we have the confidence in law. But now we have to say that we nearly lose our confidence. The law in China is too unreliable. Here is the court. It should do everything according to law. Our case is about simple labor disputes. Why you cannot give us a clear conclusion after two years? Why is it so difficult? Aren’t the facts clear? Aren’t the evidence adequate? Or are there special complications? When we try to talk about laws and legal codes, you say, ‘don’t talk about law with us. Shouldn’t we know better than you?’ It sounds like we are blind to law. Yes, we don’t know as much about law as you, but where did you put the law? You have not done anything according to law at all.”

The presiding judge listened to the workers’ complaints. She avoided the discussion of the “rule of law,” but focused on detailed questions, such as how many hours they worked every day, and what was on the contract. When the workers talked about their health insurance and old age insurance, the judge fell back on the old logic of “changing the status of the state workers” and that these workers were “temporary workers.”

If these arguments showed the workers’ suspicion about the court’s application of laws, one of my conversations with Xiao Ling displayed her belief in the labor law and her confidence in her ability to use it. When I wondered why Xiaoling had not given up, she said, “Because we have seen many similar cases sentenced by the judge on the newspaper, so we have the confidence to make this case. So many others won their cases, why not us? In order to make this case, I submitted my resignation letter. We are compelled to do this, because our factory violated our rights. According to the state law, as long as the enterprise violated the law, the workers could get economic compensation. This was stipulated in the labor law and the judicial interpretation.” She read the labor law to me. She said, “if the enterprise violated one of them,

the workers could terminate the contract. Our factory has violated so many of them, why couldn't we end the contracts? Look at this, the Item 36, it is about the working hours. It is so obvious that our factory has violated this legal stipulation. It should be 40 hours per week, but we work for 60 hours! Can you say that our factory is violating the law?"

I said, "But the court doesn't sentence like this!" She said, "That is why the court is not fair, it is not reasonable and not lawful! So law is nonsense to them! They call white black!"

I said, "But the court has already made the verdict, and it does not support your requests and evidence."

Xiaoling said, "You don't understand the law, because you haven't studied it. I study the law every day. We have sufficient evidence. We have read so many cases in the newspaper. There are so many similar labor disputes case like ours and they have all received the compensation. I paid attention to the explanations from those lawyers and studied related laws and policies. We dare to quit the job because we know the law. Our loss of the case is not because of the law itself, but because of the judges. It was the result of administrative intervention from the local government. The law could not beat the government and politics!" She stared me for a while. "See here, they said, the court regards us as the temporary workers hired by the factory. Have you seen temporary workers in the same factory for twenty years? Have you seen the temporary worker who has been paid social security for ten years?"

I said, "But from history there was indeed the existence of long term temporary workers."

She replied, "But there should be no temporary workers after the labor law. There is such a state law. Don't you understand?"

"I understand, but they are asking for evidence."

She sighed. "This is like the living person has to show the evidence to prove that he is alive! When we did administrative litigation, the court confirmed that we were the contract workers. Could you show the evidence that we are peasant workers or temporary workers? The labor law stated, temporary workers refer to those short term laborers with high mobility. I haven't moved for 20 years. I am categorized as mainstay technical workers. The factory said we were temporary workers. Do they have evidence? If I say anything, they must ask me for evidence! They said the work time is stipulated by the state. Do they have evidence? I am not debating with you. I just want to tell you our grievances, tell you why the court is wrong. Now I extremely want to let people know the truth. Whatever I have said I have foundations. I only use state laws to interpret it."

I said, "You really study the law every well!"

She said, "Of course. I studied all the labor disputes stipulations. I went to the websites to check the labor contract law. We are acting in light of the state law. We are not blind to law. After so many years of legal struggles, we trained ourselves to be the experts, like 'prolonged illness makes a doctor of a patient [*jiu bin cheng lingyi*].' We are not making a fuss. We can go to debate in the labor disputes arbitration committee, in labor bureau, in the court, and even go to Beijing. They could not beat us, because we can go around the world as long as we hold the truth. They dare not even answer our challenge." Finally, She brought out a piece of paper, on which

were many labor law stipulations. She read them to me one by one and explained how the factory violated their legal rights, therefore they had the rights to terminate the contracts.

“You really believed in law,” I said.

“Of course, otherwise I won’t go to court. I certainly still have a glimmer of hope!” She answered immediately.

These workers had a very complicated feeling about the law. On one side, they were very confident in their ability to work through the system and they indeed believed in the justice of the law, despite their limited education. However, on the other side, they were aware of the administrative intervention in the courts, and of the corruption of the court system. In their minds, the legal system was fair, so if they worked hard to master the legal knowledge they could obtain justice and equality. What they did not see was that the legal system was only the obscured representation of the power struggles in the society – who had the power to define and interpret legal codes, to validate evidence, and to regulate proper behaviors. Their disenchantment with the legal system, or their sober understanding about its limited efficacy prevented them from seeing the legal system for what it was: a transfigured field of power struggles.

From January 2005 to June 2008, the workers worked through the legal system. The disappointment in the petition officials pushed the workers into a courageous administrative litigation against the labor bureau. They won the case but reaped no material rewards, so they resorted to petitions. The hardship and failure of the enforcement of this nominal legal success pushed the workers back to road of petitions. The visit to Beijing led by a bare-feet lawyer and its pressure to the local petition officials facilitated their new wave of legal struggle defined as a labor case. This time they seemed get a real success which promised them real money. However, this success was temporary. Finally the workers ended up with nothing, but the possibility of appealing to the city court, again! From an outsider’s perspective, this process of legal struggle was full of frustration, denial and injustice, however, for the workers as insiders, it offered them a platform to argue with the managers and officials as equal citizens; the taste of success, no matter how transient and symbolic it was; and the fancy of a self-image as legal exports and warriors. All these gave them the brand new experiences which were so different of their past suffering of discrimination and marginalization in the society as secondary citizens, or not even citizens, but outsiders. It was undeniable that the workers were mostly concerned about their material interests, but this symbolic dimension of their struggles did sustain the workers at the most disappointing and even desperate moments. Undoubtedly those short-lived or never-realized legal successes also give the workers tremendous encouragement and hope to keep playing this game. If the court experiences and the numerous failures did show the arbitrariness of the legal field, the random success actually proved to the workers the “justice” of the “pure” legal system – if the workers failed, it meant there must be some administrative intervention or corruption which prevented the legal system to work independently; if the workers succeeded, it meant the legal system must be just without outside intervention. If there had never been any successes for the workers, the “injustice” and “arbitrariness” of the legal system would be exposed too soon and too easily. With these scattered successes, the workers believed they would finally win, if they tried hard enough.

Chapter Five

Three avenues to the state: streets, courts and petition offices

Chapters 3 and 4 have described the struggles of state workers in the Hanyang Steel Factory and of the temporary workers in the Top Textile Factory. From the Castle to the Trial, both of the groups encountered similar obstacles. At first, the conflicts between the workers and their factories took the forms of street protests and factory takeovers, then this momentum simmered into drawn-out debates among workers, managers and state officials. The workers stopped asking for compensation and began demanding justice. What drove this shift was the gigantic state machine, which absorbed the labor conflicts and forced the workers to run around in circles from petition offices, to the courts, and to institutions of the local and the central government. In addition, even though neither groups' material requests were satisfied, they both had faith in their own knowledge, a belief in justice, and some trust in the state.

From last two chapters, the workers seemed to have taken separate roads to their goals. However, behind their choices was the state. After the collapse of the work unit, especially after the restructuring of the SOEs, which changed the state factories into capitalist workshops, controlling discontented and apprehensive workers became a serious problem. Based on the two cases explored in Chapters 3 and 4, this chapter will explain how the state created a discursive field to absorb and direct the workers.

Street protests – rule of force

China's largest cities had not seen so many protests, sit-ins, and demonstrations as they did during the restructuring of SOEs. These public protests unleashed the power that had been contained under state socialism. If "taking it to the streets" was the natural choice for the workers who had lost their protection, the response of the state would determine the workers' subsequent actions.

While the right to strike was not expressly forbidden, it was removed from the constitution in 1982, because the political system had "eradicated problems between the proletariat and enterprise owners." (Amnesty International, 2005:7) However, while the problems between the proletariat and enterprise owners had arisen in recent years, the right to strike had not been legalized. At the same time, after Tiananmen Square, the Draft Law on Assemblies, Marches, and Demonstrations was quickly revised, finalized, and passed in late 1989 in a version clearly designed to criminalize protest. According to Tanner,

the final draft granted local police and government officials maximum administrative discretion to make virtually any form of social protest illegal by requiring would-be protesters to apply for permission in advance. The law permitted local officials to deny such applications for any number of reasons, with no effective avenues for legal appeal. (2005:196)

At the institutional level, the central state wielded an iron fist towards the workers' destabilizing actions— they either did not have the right in theory or could not assert it in practice. However, along with the collapse of work units and the decay of the state protection, taking to

the streets became the first choice for many workers. As many researchers have stated, the central state actually displayed some hesitation. As Elizabeth Perry has pointed out, the central government “has demonstrated a certain degree of tolerance and even sympathy toward economically driven protests, provided that they remain clearly bounded in both scale and aspirations.” (2001:13) It means that as long as the street protests were organized within a single enterprise and for purely economic reasons, the state officials would rather accommodate, negotiate or simply pay the workers off.

This conditional tolerance from the state structured the workers to frame their protests in limited and localized ways; as noted Vivienne Shue, these protests “[took] as their protest targets not the architects of central reform policy but local ‘bad’ officials, ‘incompetent’ firm managers, and ‘heartless’ employers” (2000:17). Therefore the central state actually stayed outside of the street protests. In Shue’s analysis, decentralization and marketization helped to disperse the legitimate responsibility for the economy, which helped to obfuscate the responsibility and defuse the protests. Very few street protests would target the central economic reform policy while most of them would blame the local government and curse the factory managers. Shue argued,

The combined effects of decentralization and marketization have worked to the advantage of the central state, then, making it somewhat easier for the center to contain and quell those protests that have arisen while simultaneously sustaining its own appearance of legitimacy. (Shue, 2000:17)

The tolerance from the central state and the limitations of the workers constituted each other and pushed the responsibility for dealing with the protesters to the local government and to the SOEs. The local government and the factory took advantage of the state workers’ limitations to undermine their collective actions and will. As the H Steel Factory and the Top Textile Factory showed, the protests were organized within the work unit for economic reasons. The eruption of the protests and demonstrations, which made the traffic jams or production stoppages, displayed the collective power that could be assembled and released by the working class. However, the workers were either deceived or bought off by their employers.

The workers had valid reasons for not fighting to the end. Their narrow economic interests made it easy for the factory to buy them off. Second, the workers did not expect the protests to solve their problems; they were a way to make their employers nervous and attract the attention of the local government. Years of state socialism deeply had instilled a dependent mentality in the workers, who relied on the government to give them their entitlements. Although they had the capacity to organize, this sense of dependence prevented radical resistance from lasting long.

Certainly these mental restrictions also depended on the legal restrictions. The workers knew that they risked arrest and imprisonment. When the state workers in H Steel Factory first submitted their application for demonstration, they knew the permit might not be granted. When the promise and compromise from the factory side turned out to be a delaying tactic, the workers submitted their second application. However, this time, they were given a warning from the police – the leaders would be sent to legal studies center for 15 days, which hinted that their organization of the collective action was on the verge of being illegal. The ability of the police to criminalize workers’ activism made street protests very difficult.

The central government's tolerance of workers' economic protests and the legal restrictions on workers' collective action in law allowed the local government to manipulate these protests. When the local government was involved in workers' collective action, how could it appease them? Usually the local government would direct the workers into a bureaucratic field, in where they could articulate their requests. This bureaucratic field was composed of petition system and courts system.

Petition – “rule of man” with reference to “rule of law”

Petition, or “letters and visits” (*Xinfang*) have a history that dates to China's imperial period. In imperial China, if any parties were not satisfied with a magistrate's sentence, they could petition the imperial sensors, which bore surveillance responsibilities for the emperor. At the same time, parties might seek direct appeals to the imperial thorns – proceed to the imperial institutions in Beijing, or even to the emperor. According to Minzner, “

Appeals and memorials assisted the emperor in governing more effectively by providing a flow of information to help him root out corruption, correctly resolve individual cases, acquire knowledge of local conditions, receive popular input, assure good government, and review the work performance of local authorities. (2006:113)

This petition system in imperial China was “a governance tool designed to assist the emperor in his *personal* ruling of the nation, rather than as a specialized judicial organ.” (Minzner, 2006:114) Therefore, the imperial petition was the symbol of “rule of man” and the “merger of judicial and administrative authority.” This imperial petition practice and institution contained the seeds of the *xinfang* system that developed after 1949.

After the establishment of the People's Republic of China, formal petition institutions emerged almost immediately. This new system was not only the revival of the imperial petition practices as “rule of man,” but also the continuation of the Communist practice of maintaining contact with the population through “mass line.” In 1951, every government at or above the county level was ordered to establish departments handling letters and visits from the masses. These petition departments, or petition bureaus, enabled the central leadership to receive complaints about offenses and misbehavior of local cadres and served as a source of raw information on local conditions. The most important function of this new petition institution was that “it served as a channel for citizens seeking to protect their individual rights and interests in the absence of a functional legal system” (Minzner, 2006:115). This institution derived its influence from the political power of the Communist Party and its officials, regardless of legal norms; therefore it still represented the rule of man (or party.)

From an imperial practice to help the personal rule of the emperor to the communist institution to enforce the party's “mass line,” petition system has always been the hallmark of “rule of man” in the absence of a functional legal system. What would happen to such an institution after the social reform under the direction of “building up the socialist legal system” since 1980s, and especially after 1990s? The petition institution might wither away when the legal system is consolidated and the state falls under the rule of law. Indeed there were academic and social debates calling for the termination of this remnant of feudalism and communist rule. However, the petition system has not only survived the social changes since 1980s but been refurbished and consolidated since 2000s. On the one hand, petition bureaus at every level of the

government are thriving as the number of petitions has increased. The 2005 regulation for petitions declared its transformation in the new era of “rule of law.”

Why does the state still need these petition institutions? How does this system of “rule of man” function in the general environment of “rule of law?” If this petition system only passes the workers’ cases around instead of resolving them, how does the government keep the system from collapsing? Why doesn’t the same petition institution treat different workers the same way? Why do workers want to petition the center even when the center fails to solve their problems? To answer these questions, we need to analyze the new petition regulations and explore their functions.

How does this petition institution as “rule of man” adapt to the new environment of “rule of law?” The 2005 regulation displayed how the party attempted to build a “modernized form of petition” in the spirit of “rule of law.” According to the first sentence of the regulation, “this regulation is made to keep the close connection between the people and the people’s government at every level, to protect the legal rights of the petitioners, and to maintain the order of petitioning.” If the first part emphasized the “mass line” of the petition for the party, the second part turned to its new legal aim, and the third part explained its social function of maintaining order. So the petition institution was both the party’s governance tool and the petitioners’ legal weapon. Throughout the regulation, the party attempted to use the legal norm to regulate the petition system, which used to be more arbitrary. For example, the petition institutions were required to reply to the petitioners within 15 days of receiving the cases and they had to finish processing the cases within 60 days, with a 30-day extension for particularly complicated cases. At the same time, the new regulation clarified the duties and responsibilities of petition institutions at different levels and discouraged “bypassing the immediate superiors” (*yueji shangfang*). In addition, this new regulation stated, “all the petition institutions should reject the cases that have been or should be processed through legal procedures, such as litigation, arbitration, or administrative reconsideration, etc.” In this way, the petition regulation not only tried to make the distinction between the jurisdiction of petition and the sphere of law, but also highlighted the priority of law in settling social disputes. Furthermore, the new regulation made the law the standard to assess the legitimacy of the petition requests.

After investigation and review by the competent administrative authority, the petition should be handled in accordance with law, regulations, and other decisions in one of the following ways, and a written response sent to the petitioner: (1) Requests for which the facts are clear, and are in accordance with law, regulation, or other decisions, should be supported; (2) In the case of requests which are reasonable, but which lack a legal basis, ‘explanation work’ should be done on the petitioner; (3) Requests lacking a factual basis or not in accordance with law, regulation, or other decisions, should not be supported. It looked like that the legal legitimacy was regarded as the most important standard to decide whether or not a petition case was supported. Such concrete stipulations in the new petition regulation did lay out a new petition field regulated by the legal norms, which was called “petition based on law.”

As stated at the beginning of the section, the petition was the institution for “rule of man” which derived its legitimacy and power from the authority of the emperor and from upper-level officials or the party. Could this institution really be transformed by legal norms? As Minzer’s detailed research of the petition institutions and regulations has disclosed, despite its efforts to end the “personal arbitrariness and disorder” of its predecessor, the new petition practice directed by the new regulation still left room for personal maneuver and intervention. As he pointed out,

some of the characteristics of the xinfang system differ significant from what might be expected from rule of law institutions. Examples include the lack of finality in decisions, vague and overlapping jurisdiction between institutions, and differential treatment for particular cases. (Minzner, 2006:136)

Indeed, under the appearance of “clearly defined petition regulations,” there was the messy practice of petition management based on the particularity of the cases. These characteristics were apparent in the two cases presented in this dissertation. First, the vague and overlapping jurisdiction among petition institutions helped to form the circular field of petition offices. The lack of clear jurisdictions made it easy for these offices to pass along difficult or sensitive cases. Figure 2 shows how the case of state workers’ pension reductions was circulated from the city labor bureau, to the city congress, to the province labor bureau, and to the province petition bureau. The temporary workers seeking compensation were bounced from the state assets management committee, to the labor bureau and then to the labor disputes arbitration committee. This circulation in the field of petition office was considered normal.

A recent survey of petitioners in Beijing found that petitioners visited an average of six central government bureaus; the largest number was 18 (Yu, 2005:216). Moreover, although the regulation tried to emphasize the legitimacy of the petitions, what determined the priority and treatments of the petition cases was their “political significance and sensitivity.” The case of the state workers was accepted by the city congress and the workers were treated with respect and sympathy in the petition offices, because their case, as reported by the city labor disputes arbitration committee,

“concerned the interests and rights of 3,500 retirees in the factory, 7,000 retirees in its supervising company, 40,000 retirees in H steel industry, and even the 500,000 retirees in W city. Because this case concerned the social stability of the city, our arbitration committee had to be extremely cautious while processing it.”

Besides its political significance, the potential for the state workers to launch large scale collective protests forced the petition officials to take their case seriously, even though they were unable to settle it. The case for the temporary workers was dismissed by every petition office, because their issue and their “collective revolutionary potential” did not pose enough of a threat to social stability, and that was why the temporary workers were pushed to the circle of courts. What produced and supported this differential treatment for particular cases was not the “universal regulations” but the hidden responsibility system for the petition bureaus. This responsibility system urges all petition bureaus to pay special attention to the cases designated by higher levels to resolve, the cases of mass petition and of extreme behaviors. This particularized standard of assessing the “importance and seriousness” of the petition cases was obviously in conflict with the regulation. And it was clear that this responsibility system would discipline officials not according to their inability to resolve problems according to law, but rather for their inability to maintain social order.

Could such a petition system solve the problems posed by the petitioners? According to a recent study, less than 0.2% of petitioners surveyed had their complaints addressed (Zhao, 2004). This was verified by Hu, the head petition official in the province petition bureau, who had been in his position for more than 10 years. He claimed, “my calculation is that less than 0.5% of the petitioners resolved their problems through petition.” If the petition system could not help petitioners, why did they continue using in? Director Hu said,

you see my work, it is mostly doing the explanation and persuasion jobs. When the petitioners come, they usually have some problems to pose, but they simply want to talk about their grievances. They want to release their anger, emotion, frustration, confusion and even hatred. Here we give them a place to speak out and even shout out. We listen to them and comfort them, even though we could not satisfy their material requests. We are doing the mental work most of the time.

This was why this petition system was a “safety valve” for local tensions (Cai, 2004:448). The state workers in Han Yang Steel Factory felt the comradeship in the petition offices and this was valuable to them. This explanation and persuasion work based on mental comfort and symbolic satisfaction could not be found in the legal system.

Besides this mental work which could maintain social stability, the petition system fulfilled another important function for the state. By allowing the state to collect information about the local situations, it “plays a key role in allowing social mobilization and participation in an otherwise closed political system” (Minzner, 2006:177). On one hand, by reporting the illegal behavior by local official, the petitioners contributed made a political contribution to leadership decisions. On the other hand, the 2005 national regulations gave petition organs the responsibility to analyze and report on general petition trends, separately from the handling of individual petitions. In the petition office of the province labor bureau, the officials repeatedly had to tell the petitioners that all they could do was interpret policy not make it. Usually the petition official would say “we are sorry that there was not relevant policies concerned your case. We will report your case to our superiors. Maybe in the future your situation will be taken care of by the state. Please be patient.” Sometimes the government would revise or enact a policy in response to a situation, but this could take months or years. The temporary workers in the Top Textile Factory, after many petitions to the state assets management committee, received economic compensation in July of 2007, two years after their first petition. This long process made the new policy an “unexpected gift” from the government, not the fruit of their own efforts, and perpetuated the authoritarian relationship between the state and the citizen.

To maintain social stability by manipulating the emotions and mentalities of the petitioners, and to support the authoritarian state through the collection and analysis of local information, the petition system was still a tool of “rule of man.” Because of the priority of maintaining social order, this petition system neither to solved social problems nor protected the legal rights of the petitioners. It just delivered “attention, help and favor” from the authoritarian central state. However, this is now an era of “rule of law” and the country should be ruled “in accordance to law.” How can the central state consolidate and legitimize the existence and functioning of the petition system as an institution of “rule of man?”

Despite its hidden goals and latent functions directed by the spirit of “rule of man,” the appearance of the petition system, and especially the contact between the petition officials and petitioners, was full of the “spirit of rule of law.” As laid out in the petition regulation, to enter the field of petition, the petitioners must prove their grievances were not only based on facts, but also on legal and political grounds. The petition officials usually expressed sympathy, but insisted that all they could do was apply the law. If the petitioners wanted the officials to take their case seriously, they had to show their mastery of the state laws and policies. As one study of petitioners showed, approximately half of the interviewees had prepared documents, had some ability to tell their story coherently, and understood the applicable laws or regulations (Yu, 2004).

This was proved by the case of the state workers in Hanyang Steel Factory. When I first met Lao Lee and Lao Tu in the petition office in the province labor bureau, I was impressed by

all of the documents that they brought along. In the later contacts, they displayed an even more impressive understanding of the state policies. Their battle with the petition officials was based on their different interpretations of the state policies. This emphasis on the evidence and basis of grievances and disputes gave the appearance of “objectivity and universality” to the petition system that was usually accused of being “arbitrary and subjective.”

The temporary workers in Top Textile Factory displayed the other side of the legal emphasis of the petition system. Their requests were denied by the state assets management committee because they were ineligible for compensation according to the city policies, while the new policy about temporary workers had not been made yet. Their petition to the labor bureau was denied too, because they did not have legal evidence to prove their labor relation to the factory. In the labor disputes arbitration committee, the official tried to dismiss their case by saying, “I am sympathetic to you, but my sympathy should not overrule the law! Your request might be fair and just, but they must be legal at first!”

Although the petition system tried to maintain social stability by manipulating the petitioners’ emotions, the new system offered a platform for “argumentation and justification” rather than simply offering them a way to express dissatisfaction. Petition officials usually dealt with these persistent petitioners, who were potentially more of a threat to social stability, by using a “legal and policy” basis.

Besides this “spirit of rule of law” transforming the working style of the petition officials, there was another way for the petition system to sustain “rule of law” – by referring petition cases to the legal system. When petitioners could not be appeased by the officials’ tactics, or the petitioners’ problems could not be solved state policies, the petition officials would refer them to the legal system. The reference to the legal system was normalized by the new regulation, which stated, “The petition system could reject the cases that should be or has already been processed legally by litigation, arbitration or administrative reconsideration. But it should notify the petitioner to report to relevant institution according to relevant laws, regulations and procedures.”

This was exactly what happened to the state workers in Hanyang Steel Factory. Even when their case attracted the attention of the city congress, the city labor bureau still refused to take the case because “this case had already gone through legal procedure of labor disputes arbitration and it was suggested to continue the legal approach.” The province labor bureau also rejected them because “we could not accept the legally refused case.” Therefore the reference to the legal system has alleviated some of the responsibilities of the petition system and prolonged the workers’ struggles.

Legal system – “rule of law” intervened by “rule of man”

After the Cultural Revolution, Deng’s regime began to use law to organize society and build state legitimacy. In 1985, the Standing Committee of the National People’s Congress passed a resolution “acquainting citizens with basic knowledge of the law.” This resolution launched a nationwide “law dissemination campaign.” This campaign has deeply changed not only the rules of social life and state functioning, but also the daily vocabularies and mindsets of citizens. On the one side, from taking legal suing as a shame to regarding it as a savior, the change of social norm proved the success of this social campaign; on the other side, the party state still controls the legal system, though in 1999, the constitution was amended to establish a state based on the socialist rule-of-law.

This “rule of law” with Chinese characteristics is far from the ideal of western judicial independence, in which the law can impose meaningful restraints on the state and on individual members of the ruling elites. Many researchers on the “rule of law” in China claim that what has happened in China is “rule by law” – “an instrumental conception of law in which law is merely a tool to be used as the state sees fit” (Peerenboom, 2002:8). This concept indeed catches the theoretical relation between the law and the state in China, but it does not explain how the state could uphold the authoritarian rule of the party and assert the supremacy of law at the same time. The two cases in this dissertation revealed how the “rule of law” intervenes in “rule of man” in the local government.

From 2003 to 2005, the state workers in Hanyang Steel Factory undertook three labor disputes arbitrations and two appeals. From 2005 to 2008, the temporary workers in Top Textile Factory undertook one administrative litigation, one civil litigation, and two appeals. Both groups of workers had some temporary and transient success, followed by months of years of waiting, frustration and rejection. Their legal struggles were influenced by the local government, which directed, intervened, and even manipulated the processing and results of the cases.

For the state workers, as many researchers have found, they did not voluntarily choose the legal way to protect their interest at first; they chose petition offices only after they knew their pension had been reduced. The two-year fight with the petition offices reoriented them to the legal system. Although the petition officials expressed their respect and sympathy to these old state workers, they insisted that they had neither economic power to pay for the reduced pension nor political power to admonish the factory. While the state workers finally accepted this reality, they accepted the suggestion from the petition officials to seek help from law. This transition from the field of petition offices to the field of law seemed to prove that legal system was more powerful than the administrative system, at least in appearance.

The opposite happened with the temporary workers. The temporary workers chose the legal way to protect their rights right after the “buy-out” but their application for arbitration was refused, because their case was concerned with restructuring of SOEs. This stipulation from the Supreme Court displayed the state’s confinement of legal system. To set the cases related to restructuring as exceptional, it declared the limitation of the legal system and the supremacy of the state. According to the petition officials in the province labor bureau, the state set aside the restructuring cases, because the workers could get higher compensation under state policies than under labor law. To some extent, there should not have been any special compensation for the termination of contracts in accordance with the law. However, this special design from the state produced a special space immune from the legal regulation. When the workers’ compensation was appropriated or even embezzled by the factory managers, or when some of them experienced unfair or unequal treatment, like those temporary workers, they had no recourse. It looked like there was clear and objective basis to decide whether or not a case qualified for legal assessment, such as the stipulations from the National Supreme Court, or some legal codes. However, this determination was quite arbitrary, depending on “political necessity” more than legal validity.

This arbitrariness was apparent in the province supreme court’s treatment of the state workers’ appeal. The appeal was rejected because the reduction of workers’ pensions was not qualified as a labor dispute case, though the law professor interpreted the law differently. This discursive power held by the legal institution to name the case seemed to be based on the objective and universal rules, however it arbitrarily served particular political interests. Even if the workers could see through this truth, the legal struggle was their only option if the petition

officials pushed them out of office. To enter the legal field, the temporary workers had to take a detour from administrative litigation. With the help of their lawyer, these uneducated temporary workers began to learn the legal game.

The state workers won their first labor arbitration against their factory while the temporary workers won their administrative litigation against the city labor bureau. Although both successes were short-lived, they had tremendous symbolic significance. It proved that everyone was equal under the law. These small early successes made the harder battles of the future possible. The workers could see a “pure legal system” without the intervention from “money and power.”

What undermined the workers’ success were obviously the influences from the local government. The report from the Hanyang Steel Factory to the labor disputes arbitration committee violated the legal procedures of appeal. The second and third verdicts, which were against the workers, displayed the administrative function of the committee as part of the labor bureau, not its legal position. The testimony given by the committee to the city congress unveiled the political expediency instead of the legal legitimacy of the new verdicts – to maintain the social stability of the city. If the state workers displayed the power from the local government, especially the labor bureau, the temporary workers’ case revealed its impotence. The labor bureau made the verdict which favored the workers a blank check. When the factory continued to violate the rights of temporary workers– no contracts, no social security, no economic compensation for restructuring--the labor bureau had no leverage except a small fine. In fact, the plaintiff prevails in 40% of administrative litigation cases, a rate three times higher than in the USA (Peerenboom, 2002:8). However, research has also shown that even after winning the administrative case, the plaintiffs did not profit from the verdicts. Both the power and the vulnerability of the administrative influence indicated a complicated relationship between the local government, the SOEs and the workers. After the fiscal and economic reforms, the local government’s political performance is closely connected to the SOEs’ economic performance, so it has incentive to clear the road for the restructuring of the SOEs, such as shake off the social welfare burden from them, or reduce their responsibility for economic compensation. This shared interest between the local government and the SOEs produces what Jean Oi conceptualized as “local corporatism.” The workers called it “the conspiracy between the factory and the government.” This was why the local government took an active role in the case of the state workers. However, as the local government, it also has the responsibility to maintain the social stability and respond to the workers’ complaints and requests when the factory violated their rights. Obviously the moment of restructuring produced many of these paradoxical situations for the local government, which have not been explained by the theory of “local corporatism.” Facing the workers who learned to use “the weapon of law” to fight the factory, the local government was involved and it could hardly function as a neutral arbitrator.

No matter how much the local government influenced the legal process, it could not blatantly overrule the law. Although the field of courts is deeply embedded in the field of power, it could only get its legitimacy and authority by maintaining the appearance of “objectivity, universality and neutrality.” These characteristics of the legal field were realized through its emphasis on legal procedures, codes and evidence. When the city court refused the state workers’ appeal, it did not say that this case concerned the interests of all the retired state workers and thus the social stability of the city, but that this case could not be accepted as labor disputes based on ‘item one of ‘interpretation of applicable law for labor disputes case’ by the Supreme Court, which stipulated, “court should accept the case if it is about the social security

disputes between retired workers and their employers who have not joined the national social security net.” Since Hanyang Steel Factory had joined the social security net, the state workers’ case was not a labor dispute. The state workers used the law to fight law. Based on the letter from a law professor, the workers proposed to apply Item 5 instead of Item 1 to their case. However, the workers were destined to lose this fight, because only the legal stipulation spoken by the court had the power to construct social reality.

Similarly, when the workers petitioned to the district court, the judge talked like a petition official and emphasized the historical differences between the state workers and temporary workers. However, the temporary workers lost the case because their evidence was declared either “irrelevant” or “invalid” under to the law, though the factory side had not submitted any evidence that the workers thought was useful. To keep appealing to the city court, the temporary workers decided to collect new evidence and to learn more about the labor law. It seemed that no matter what happened outside of the legal field, the rules within this field had to be purely based on law. Because the legal codes had the appearance of “objectivity,” the workers thought this would grant them justice and fairness, as propagated by the state.

Because this legal game emphasizes legal codes, procedures and evidence, the workers had to learn legal knowledge. From 2000 to 2005, the state workers stopped referring to their pension as “help and care” from the paternal “party state,” and started referring to them as “the extension of their labor contract with the factory.” From the first open letter, to the refutation to the city court’s testimony, the workers’ “official” writing clearly showed their ability to tell their story and frame their requests. From 2005 to 2008, the temporary workers changed from being “blind to law” to being “addicted to law.” In the first court hearing, they were forbidden to speak; three years later, they tried to teach the judge to make a just ruling. This transformation showed how the engagement with the legal system produced a fervor for studying of law. This fervor came from the belief in the efficacy of the legal codes. This belief was the product of the legal field – a field under the rule of “supremacy of law.” The appearance of “objectivity, universality and neutrality” of this legal field made the workers believe that this was where they could finally find equality and justice. They believed the law could really become their weapon if they knew how to use it. “Knowledge is power” became not only propaganda slogan but also social practice.

However, intervention from the local government to, or the influence of “power and money” on this legal field, was powerful. In China, the administrative intervention in the legal system was commonplace. Workers complained, “What kind of rule of law do we have? Actually power overrules law, and money can buy law!”

When I asked the state workers, why their case had lasted for so many years with no result, they blamed administrative intervention. “The pension reduction was agreed upon by the city government, especially the city labor bureau. How could they let us win?” The temporary workers always mentioned that the district court chief judge talked to them after the trial and said that the court was also under huge pressure. “What pressure does the court face? Of course it is the pressure from the local government. Our factory was one of the biggest tax contributors to the government. Of course it will protect our factory and ask the court to rule against us,” said the workers.

If those testimonies from the local government are accurate, these showed the workers’ sober understanding of this reality. The question is why the workers did not lose their belief in the justice of the law and their confidence in their power from the knowledge of law, if they were

aware of the administrative intervention in the court and kept losing. Mary Gallagher used the term “informed disenchantment” to describe this legal mobilization, which contains elements of raised legal consciousness in terms of knowledge about the law and feelings of greater efficacy, and understanding of legal strategy with a concomitant sense of disappointment and frustration about inequalities and dysfunctional aspects of China’s developing legal system. (Gallager, 2006:4)

In other words, the masses perceive the functioning of the legal system in two ways: how it works, and how they can work it. The masses did not trust the legal system, but had tremendous belief in their ability to use it in their own interest. The two cases in this research indeed proved this “informed disenchantment,” however, this concept does not explain how these contradictory sides of the legal system could coexist, or force the workers to give up.

To answer this question, we need to look at not only the mentality of the workers, but also the structural relationship between the legal field and the field of power. There is not a direct deterministic relation between these two fields; those who have power could use the legal field to serve their interests. Rather, people cannot find the direct representation of the interests for the powerful in the legal field, which is organized around the principle of “objectivity, universality and neutrality.” In the social campaign to launch the “rule of law” project, the image of law is set up as the opposition to the “arbitrariness, nepotism, and bureaucratism” of the socialist system. And in order to mobilize the masses to take part in this social campaign, the media covered most legal cases in favor of the underdog.

No matter how transient those triumphs are, they represent the justice of the legal system – a pure legal system untainted by money and power, and they encourage the workers that they might win finally if they try hard enough. The idea of administrative intervention in the legal system helps to construct this image of the “pure legal system.” This misrecognition of the legal system as an “objective, universal and neutral” field sustains the workers’ fervor of learning and their use of legal knowledge despite their awareness of “rule of man.”

Protest, petition and litigation

In her research on labor politics in northeast and southeast China, Ching Kwan Lee pointed out different paths of workers’ labor activism, and the workers ability to use whatever would achieve their goals (Lee, 2007). The two cases in this research showed these different paths of struggles constituted each other. Furthermore, these different paths did not emerge naturally from the workers’ struggles, but were structured by the state.

Compared to petition and legal litigation, street protests were the non-institutional way of lodging complaints and demanding justice. However, street demonstrations, although disruptive, were not a serious threat to the state. This effect was produced by the relationship between the central and local state in the context of decentralization and marketization. The central state wisely stayed out of the picture so that its legitimacy would go unchallenged. At the same time the oppressive legal stipulations from the central state constrained the workers’ right to collective actions, however, this restriction was enforced locally. With the deterrence from the law, the local government exploited the dependent mentality of the state workers to make the street protests only irruptive events. The leaders of those protests usually ended up in the petition offices of local government, not in jail. As the case of the H Factory indicated, when the workers got became frustrated by petitions and litigations, they would resort to street protests again. Therefore there was a circular relationship between the street protests and institutional struggle.

Petition and legal litigation presented as opposing solutions, as the former represents the “rule of man” for the party state, while the latter represents the “rule of law.” However these two routes of struggles actually coexist and intersect. The field of petition offices constructed under the new national petition regulation take up many legal norms to regulate the behaviors of both the petitioners and the officials and standardize the procedures to process petitioning, and it constantly reorient the petitioners to the field of courts to protect their rights and always refers to law as more powerful than administrative measures. The field of courts creates a venue for the petition office to transfer the difficult cases and petitioners elsewhere. At the same time, the field of courts always works under pressure from the field of petition. Even though the field of courts is organized under the principle of “objectivity, universality and neutrality” and appears so to the party clients, the administrative intervention still influences the entry, the processing and the results of the legal cases, especially for those concerned with social stability and political sensitivity. This legal field under control of the state and designed to serve the socialist market economy could only send those tricky cases back to the administrative channel, usually the petition offices, for a political assessment. In the new era, the petition system is neither a simple tool of “rule of man” nor is the legal system purely a tool of “rule of law.”

Many researchers have studied different forms of workers’ activism, and some sharply pointed out that those workers easily switch from one channel to the other. However, no research has explored the relationships between these channels and patterns of workers’ migration. This comparative research of the labor politics for the state workers and the temporary workers in W City showed that the street protests, petitions and court litigations did not simply coexist and the workers did not randomly switch from one to the other. All the street protests would end up in the petition offices, which was the entry point to the local bureaucratic field. The mutual references between the petition offices and the different levels of courts were the regular routes for the workers, and at some point the frustrated workers would go to the center, which would direct them back to the local. This trajectory for the workers’ struggles revealed the structure of a circular state, which was composed of four intersecting circles – the circle between petition offices, the circle between courts, the circle between petition offices and courts, and the circle between the local and the center. It was this circular state that absorbed the labor conflicts and transformed them into petition cases and legal cases and circulated them along the different circles. Whenever the workers seemed to hit the dead end in one circle, they would be directed into another circle and their struggle therefore would not be radicalized to higher grade of street protests. The spatial circulation facilitated the temporary prolongation. Usually the workers would spend years in this bureaucratic labyrinth, and in the process they lost their radical momentum and gradually became peaceful petitioners and litigants.

Chapter Six: The effects and functioning of the circular state

Protests, petitions and litigations were the three roads that workers took to approach the state, which tried to tame the workers' resistances without suppressing it. The tolerance from the central state and the direction from the local state allowed protesting workers to switch easily from the non-institutional path to the bureaucratic field. The intersection of petition and litigation forced the workers to go back and forth between the two. The fluid boundaries between them made the whole system very responsive to the workers' requests in the sense that the workers' resistance would be quickly and effectively absorbed.

The workers, in both Hanyang Steel Factory and Top Textile Factory, experienced a transformation in their identifications with the state in the course of their struggle. Their engagement with the state officials and institutions actually brought the workers who were released from the state factory after the restructuring of SOEs back to the embrace of the state without the intermediation of the work units. At the same time, this state functions very differently from its predecessor – the socialist party state based on Marxist ideological control and rigid resource allocation. The state seems to be retreating from the enterprises, and has become more like a limited rule maker and regulation enforcer; however this new state is very powerful in a different way. If the party state was a prohibitive one, this new state is productive. Its legitimacy and its social control are realized not by crushing the labor conflicts but by structuring the field of local struggles. The state workers in H Steel Factory and the temporary workers in Top Textile Factory give some clue to the structure of this new state which could be generalized to the promotion of the statist capital, the mystification of the center, and the symbolic domination of the masses and the dispersive containment of labor politics.

The promotion of statist capital

In the article “Rethinking the State: Genesis and Structure of the Bureaucratic Field,” Bourdieu conceptualizes the rise of the modern state as a centralization of different kinds of capital and especially the rise of statist capital. The statist capital is the symbolic capital held by the state “granting power over the different species of capital and over their reproduction.” (Bourdieu, 1994:5) The bureaucratic field objectifies the otherwise diffused symbolic capital – making it codified, delegated and guaranteed by the state. The cases in this research showed how the bureaucratic field promoted the circulation and inculcation of statist capital. The initial goal of the workers protests was to obtain economic capital. However, when they were directed into the bureaucratic field, their request for economic capital was based on their understanding of symbolic capital – the use of state policies and laws to justify their claims to pensions or social security. Through interaction with the petition officials and the legal personnel, workers decided that they needed to study the state rule and laws, which were the only recognized credential in this field and function. If in the socialist bureaucratic field, popular capital was personal loyalty to the Marxist ideology, the party membership and the social network (*Guanxi*), in the new bureaucratic field, it is constructed under the principle of “rule of law,” which is the new form of statist capital. Different from the previous capital's “personal and arbitrary” characteristics, this new capital is universal; at least it claims to be. “Universality” is actually the origin of the power of the modern bureaucratic field, compared to the personal rule of the feudal crown, according to Bourdieu. This is also true for China's emerging new state, which tries to use “rule of law” to reorganize social life and get rid of the efficacy of the old statist capital.

When the workers enter the bureaucratic field, the struggle around money is transformed into the struggle around the statist capital. The state promises the conversion between the economic capital, such as the pension and the compensation, and the symbolic capital, such as the state policies and the state laws. The struggles in the bureaucratic field are thus constructed around different interpretations and applications of the state laws and policies – do the workers' claims have solid basis in the state authorization? The labor conflict between the state workers and their factory around the reduced pension was transformed into a petition case constructed around different interpretations of the state policies about pensions.

Why did the processing of this case last for so many years? The complication was the uncertain status of the state stipulation of pension for the state workers in the transitional period from the planned economy to the market economy. During this transition, the state enacted numerous policies about pension reform. Although the general direction of reform was clear – to establish a universal independent pension system, different policies were intended to take care of different interests. This was why both the factory and the workers could cite policies to support their claims. At the same time, some directional policies were composed in such an abstract style that different sides could even conjure up different interpretations. These characteristics of the state policies in transition promoted local struggles in the bureaucratic field while sustaining the legitimacy and supremacy of the central state despite the local disorder. The officials in the petition offices always complained about the lack of social security law which could give out clear and steady regulations for the social security disputes. They said,

every time the state made new policies about social security, it will produce a new wave of petitions to our office. Those policies are not making things simple by universalizing the management of social security, but always produce particular stipulations for particular categories. For example, the state decides to raise the pension for everyone. That is good. But under this general direction, there will be at least ten particular cases requiring particular treatments, such as to those veterans, those have worked more than forty years, etc.. You know, within the last six years, the province policy of pension distribution kept changing every year. That means much work for us, because every time there will be many petitioners coming to claim that they are qualified for some particular treatment.

The state workers in Hanyang Steel Factory stipulated their recognition of the new state policies to launch their long march of petition, and tried to justify their requests of pension by verifying their traditional relationship with the work unit and thus with the state. The existence of different and even contradictory pension policies justified the endless circulation of the cases in the field of petition offices.

Comparatively, the temporary workers' requests did not have enough support from the state policies. This was consistent with their marginal existence in the state factory and the cities. It was a vague and "temporary" category produced by the unplanned requirement of the state factory. No state policies specified the treatments of temporary workers in the restructuring, while the local policy relegated them to the category of "peasant workers." The absence of state policies, which represented the authoritative verification of claims from all sides, pushed the workers into the legal field. The struggles in this field were certainly constructed by the legal codes. Unlike the state policies, the state laws were supposed to be more stable and universal. If the state policies kept changing along with the power struggles, the laws represented the

“classificatory discretion” that “freezes a certain state of the power relations which it aims to fix forever by enunciating and codifying it” (Bourdieu, 2000:450). Since the laws did not offer much room for different interpretations, the struggles within the legal field revolved around the legal validity of evidence. Administrative litigation was suspended after the first court hearing because the validity of the evidence was called into question, and the temporary workers lost the retrial of their civil litigation because all of their evidence had been found to be either irrelevant or invalid. The state laws, as a special kind of symbolic capital, emphasized professional precision and universal applicability. It was more difficult to access and grasp than the state policies were, and required more expertise and tactics to apply. The relations to the state laws as the symbolic capital were actually quite unequal for the workers and the factories. This was shown by the temporary workers’ amateur understanding of labor law and their unprofessional way of collecting evidence. However, the state law was also more attractive to the temporary workers because it promised universal equality, such as the simple legal slogan of “equal pay for equal work.” This appearance of equality concealed the “structural inequalities built into a system that values professionalism, education, connections, and the ability to master complicated rules and procedures” (Gallarger, 2006:8).

To fight with the factory managers, to argue with the petition officials, and to get their cases accepted by the courts, the workers had to study the state policies and state laws. The decade of struggle was a time for them to master the state policies on pension distribution, while the temporary workers also exhibited their four years of intensive study of labor law. The engagements with the bureaucratic field, either the petition offices, or the courts, were an incentive for the workers to accumulate the statist capital (e.g. the knowledge of the state laws and the state policies). At first, the impetus might have come from the possibility of the conversion of symbolic capital, state policies and laws, into material economic capital, pensions and social security, but gradually the learning of state policies and laws brought some of the pleasure and satisfaction that the workers had not previously had. They could win social respect by becoming experts in state policies and laws and they enjoyed the illusion that they were powerful because the state was behind them. Although they had little money, the workers believed they were rich in knowledge. Furthermore, through consumption of the statist capital, the workers had the illusion that they were close to the state – the real state embodied in those policies and laws, which were so different from the corrupted local government, and that always supported the workers. No matter which side won the bureaucratic fight, the justice and the righteousness of the state laws and policies would be sustained and reproduced. What was promoted by the statist capital in the bureaucratic field was actually the legitimacy of the state.

Imagination and mystification of the state

Several years of engagement with the state officials and legal personnel did not solve the workers’ problems in a material sense, but the circulations of their cases helped to promote the learning and application of statist capital. The workers immersed themselves in the study of new state policies and laws. After the collapse of the work units, the state workers lost their direct connection to the state, both in the material form of welfare entitlements and job security, but also in the symbolic form of the rigid ideological control.

How could the state reestablish its “sovereignty” in the minds of the workers? The state policies and state laws, especially the stipulation of the entitlements and rights, were the discursive construction of the state. This was also applicable to the temporary workers, who did not have a stable labor relation either to the old SOE or to the new private enterprise. Whenever the workers cited the state policies and laws to justify their claims during their interaction with the state officials they were actually participating in this construction of the state.

What was produced by the statist capital, such as the state policies and state laws, as the symbolic languages, was the “reproduction of the imagination of the state as that specific authoritative center of a society in principle capable of issuing what Bourdieu calls the ‘final judge.’” (Hansen and Stepputat, 2001:8) Although this state was also embodied by the effective institutions, such as the army and the prison, its more omnipresent and effective existence was produced by the imagination about it. There was a dialectic relation between this abstract state in imagination and the state policies and laws as its embodiments. On one hand, the imagination of the state was the guarantor of those policies and laws. The efficacy of the state policies and laws, such as the discourses of rights, hinges on the efficiency of the imagination of the state as the author. If the imagination of the state was ineffective, the discourse of the laws and policies were inconsequential. On the other hand, the state laws and policies were “state spectacles” asserting and confirming the authority of the state. As Hansen and Stepputat argued, “these spectacles only occasionally succeed in producing the specific social effects they aim at, but always reproduce the imagination of the state as the great enframer of our lives. (Hansen and Stepputat, 2001:37)

This was exactly what the two cases proved. The goal of pension reform launched from the central state was to establish an independent pension system that could shake off the extra burdens for the SOEs and at the same time socialize the contribution to the pension pool and increase the coverage of pension distribution. However, in local practices, the SOEs tried to avoid their responsibilities of pension contribution because the economic difficulty in market competition and the local government granted the reticence for this enterprise behavior for the concern of local economic development, while the workers had to pay the price for this “local corruption and conspiracy” in the form of delayed and reduced pensions. It could be argued that the numerous state policies about pension reform did not achieve their announced goals, but they were not useless. These state policies structured the struggles in the field of petition offices and framed the legitimate means of justification. It was through the interactions between the state workers and the petition officials around the interpretations of the state policies that the image of the state was created and reproduced. During these struggles, the state changed from the authoritarian party state “taking care of the interests of the working class” to the limited government “enforcing the laws and functioning as a neutral arbitrator.” This was also true for the temporary workers and their relation to the labor law.

The labor contract law was enacted in 1994 and it announced that there should be no differences between the state workers and the temporary workers since then, and ordered the factories to sign contracts with newly hired workers. However, the differential treatments to the state workers and the temporary workers lasted into the 21st century and fewer than half of the contracts were signed. This law did not have the promised social effects, but it created scores of legal cases which would otherwise be impossible to bring to court. This law was enacted in 1994 and took effect in 1995, but not until the labor conflicts became intense was the law really

enforced. Since the temporary workers were traditionally outside of the protection of the state, the state discriminated against them. When the workers began to study labor law and learned how to use it to protect their rights, they created an imagination of the state and a new relationship with it. During the workers' presentations on court and their interpretations to the labor law in daily encounters, it was evident that they understood their rights. Through their activation of the discourses of labor rights, their imagination of the state became authentic.

This imagined state was usually thought of as "an intrinsic existing apart from society," (Mitchell, 2006:181) but the everyday practices of ordinary people is the best discursive construction of this state. Philip Abrams suggested that this state "meshes the imagined translocal institution with its localized embodiments" (2006:227) This relationship was proved by the workers' migration between the local and the center. The workers' struggles in the local petition offices and courts were constructed around different state policies and laws. The factory managers and the workers usually had different interpretations of these policies and laws, and the local government always made local policies. What supported the workers' allegations that the factory had broken state laws and that local officials were not adhering to state policies was a righteous and just state embodied by authentic laws and policies. When they could not win the local battles with the factories and officials, it was natural for the workers to petition the center for the "final judgment." There was nearly a consensus in public opinion that "the central government is righteous and just while the local officials are corrupted and abusive" and "the central policies are always good but they would certainly be distorted in local implementations." To some extent these popular discourses reflected the reality in that they revealed the gap between the center's promises and local practices, but to greater extent these were just part of the discursive construction of the state. This state was the effect of the differences and gaps between the center and the local. The mystification of the center (i.e. the idealization of the center as always righteous and just), was the inevitable result of the functioning of this imagination of the state – if this imagined state needs a body, it must be mysterious.

The workers' petition to Beijing verifies this mystification of the center. The state workers' two letter petitions to the Ministry of Labor and Social Security received two replies—two simple forms with different alternatives checked. These vague messages from the center maintained the mysterious image of the state. Their report of the 5-day intensive petitions to different central government departments in person read more like a "fantasy of the state" than the "reality show of the worker representatives." They did not receive straight answers or any real help from the center. But still the report produced the impression that the central state was more supportive of the workers than the local government was. The workers participated in this construction of the mystification of the state, because in this way their petition to the center became a particular statist capital that they could use in their local struggles.

This was also true for the temporary workers. Their petition to the center was but a farce masquerading as tragedy. The temporary workers did not get close to the physical location of the center and they did not meet any agents of the central government. Nevertheless, when Xiaoling received a temporary job with the neighborhood management committee and the trip became the pressure pushing the court to accept their case; this petition was also turned into the statist capital that could be cashed in the local interactions. Their success would definitely inspire other workers and contributed to the construction of the imagined state and to the mystification of the center.

Symbolic domination of the workers

When the workers were directed from the street to the petition offices and the courts, their challenge to the social order was gradually tamed by the bureaucratic field. Their fights with the factory from economic compensation and pension were transformed into the political struggle for the symbolic capital of recognition. Through their engagement with the petition officials, lawyers and judges, and to fight with the factory managers, the workers learned to study and make use of the state policies and state laws. It was during this process that the workers changed their identification of themselves, their view of the state, and recognition of their position in the state.

As argued by Bourdieu,

the state does not necessarily need to give orders and to exert physical coercion, or disciplinary constraint, to produce an ordered social world, so long as it is able to produce incorporated cognitive structures attuned to the objective structures and so secure doxic submission to the established order. (Bourdieu, 2000:178)

The workers' engagements with the bureaucratic field enabled the state to impose "the legitimate knowledge of the sense of the social world, its present meaning and the direction in which it is going and should go." (Bourdieu, 2000:185) The state workers' struggles in the petition offices and courts were constructed around the definition of the pension – Is the reduced part of pension inside or outside of the social pool? Is the state workers' pension the historical responsibility of the enterprises? Should the economic performance of the enterprises determine the distribution of the state workers' pension? How much and in what way should the state get involved in the pension fund collection and distribution? What was defined by these questions were not only the social vision of the pension, but also the proper relation between the workers, the enterprises and the state. Although the state workers did not agree with the factory upon any aspect of these questions, and they did not even yield to the court's order at last, they still submitted to the legitimate discourses of pension and transformed their identification with their status of "state workers."

During their interaction with the factory, the petition officials, the labor disputes arbitration committee, and the courts, the state workers' understanding of their pension was transformed from their contribution to the party state, to the loan to their poor factory facing market competition, to the extension of their labor contract with the factory, and their view of the state was also converted from an authoritarian party state, to the arbitrator of the market competition, to the guarantor of the contracts. By employing official discourse to justify their claims, and to use the factory managers' own logic against them, the state workers accepted the dominant idea of building an independent pension system in line with the market economy, in which the workers, the enterprises and the state all took only limited liabilities. This was the new social order to which the state workers submitted and their new cognitive structure was attuned to this social structure. This submission to the social order through employing the knowledge shared with the dominator was not that painful for the workers, but produced a pleasant sense of power. They were so passionate about their competency in applying and interpreting the state policies and arguing with the officials and managers that they were always

eager to debate with them. They did not realize that in the new social order constructed by the legitimate discourses there was no category of “the state workers” who had a special historical relation to the state and thus was qualified for special attention and who had contributed to the enterprise’s prosperity in planned economy and thus deserved some special reward. The simple submission to the economic logic of the market competition and the legal claims of contract edged out the possible moral discourse which would be legitimate in pre-“rule of law” era.

The temporary workers experienced a similar process of submission. Their struggle was about their identity, and if they deserved the same compensation that state workers did. Were they the same as the peasant workers? Should they be excluded from the social security coverage as the peasant workers were? Were they contract workers? What kinds of rights did contract workers have? This struggle showed displayed the power of the state to impose “the legitimate definition of the division of the social world and, thereby, to make and unmake group” (Bourdieu, 1999:221).

In the socialist period, “the state workers” was the most basic category in the social structure, and “the peasants” were the “other” in, while the temporary workers did not have an official existence. If the restructuring of SOEs implied the termination of the category of “state workers,” what will become the new organizing category of social division? According to labor law, it could be reasonably predicted that the universal concept of “contract workers” should replace the differential categories of status groups within the working class in state socialism. However, even 10 years after the passage of the labor law, the contract workers were still a group on paper with no capacity for mobilization. The workers either had not signed contracts with the enterprises, or did not know what the contract meant, until they entered the legal field. Actually what the state had promoted since the 1990s was the category of “peasant workers.” This hybrid concept was the label for those peasants left the countryside to work in the cities, especially in the capitalist factories in the rich coastal area. The state came up with this concept to normalize the chaotic situation aroused by the influx of peasants. This was not the state’s attempt to embrace the peasants but an attempt to exclude them from urban privileges – they could not get equal pay for their work, not to mention social security. Even though in recent years, “to protect the rights for the peasant workers” was popular propaganda for the state, it was certainly not about equal rights. When the temporary workers asked for their rights of “equal pay for equal work” stipulated by the labor law, they insisted that this should apply to every laborer. However, as the petition official pointed out, “not everybody works is protected by the labor law as a laborer. If this is the case, why does the state make the concept of ‘the peasant workers?’ Why do we need to protect their rights specifically? Shouldn’t it be enough to just treat everybody the same?” This point of view revealed the “official secret” of categorization – to make the social divisions and thereby the social orders.

Compared to the concept of “state workers” and “peasant workers,” the concept of “contract workers” were rarely used by the workers to identify themselves because it had not been socially constructed outside of the legal field. The gap between the legal term of “contract workers” emphasizing the rights and the practical exploitation to the “contract laborers” on the shop floor made it less appealing to the workers. When the temporary workers were pushed to the legal field to carry out their struggle, they began to learn how to use the concept of contract workers to protect their rights. However, when they identified as contract workers instead of state workers, economic compensation from restructuring disappeared from their agenda, and

their requests were purely the “legal rights” for the contract workers. In this way, the temporary workers were also submitted to the new social order, in which they could fight for equality finally, but at the same time their requests for equality could also be declined.

Through making the categories of “pension inside of social pool,” “pension outside of social pool,” “the state workers,” “the peasant workers,” and “the contract workers,” the state constructed the recognition frameworks for the workers to carry out their struggles. The numerous state policies and laws did indicate the universalization of the workers with different names into a single category with clearly defined rights, and the universalization of the social security (including pension) independent of the enterprises. However, in this transitional period, through the symbolic struggles in the bureaucratic field, the state workers lost their special entitlement based on their history, because in the future there would be no “state workers”; on the contrary, the temporary workers could not ask for the same treatment as state workers, because they had traditionally been “temporary workers.” The state workers’ requests of historical return was refused by the justification based on the projection to the future, while the temporary workers’ requests for equal treatment were rejected because of their historical origin.

The historical location in this transitional period gave more room to this game of language, in which the workers were immersed. The cases of the state workers and the temporary workers showed the symbolic violence exerted by the state. As Bourdieu argued,

Symbolic violence is the coercion which is set up only through the consent that the dominated cannot fail to give to the dominator (and therefore to the domination) when their understanding of the situation and relation can only use instruments of knowledge that they have in common with the dominator, which, being merely the incorporated form of the structure of the relation of domination, make this relation appears as natural. (Bourdieu, 2000:170)

Why didn’t these workers give up if the road to justice was so arduous, and they always failed? Could the transient and random little triumphs really end the endless stumbling in the labyrinth? Were the workers simply duped by the state? I would argue that these questions were actually not about the judgment upon the consciousness of the workers, especially their “true or false consciousness,” but about their beliefs in the fields that they were entering and their interests in the games that they were playing. And the Chinese state in this transitional period inculcated the belief in the bureaucratic field of petitions and litigations and the belief in the central government, and produced the interests in the language games of state policies and laws.

During the field research, I asked the state workers if they saw a contradiction between the state policies. Did they really believe in the justice of the central government? It was surprising that they said, after so many years of studying, they found state policies to be very consistent, and they genuinely believed in the center government. Similarly, when I tried to reveal the arbitrariness of the application of state laws, the temporary workers insisted on the justice of the law itself and its efficacy. They dismissed my attempts to enlighten them about the “truth” and “reality” that I found through scientific analysis. On one hand, I seemed much more realistic than the quixotic workers; on the other hand it the workers seemed to possess a certain kind of complicated realism which I could not comprehend.

When I first met Lao Lee, he said, “We are the 999 eggs bumping the government. We will get some result one day; I am sure, although we may be broken by then.” This sentence mixed a solemn recognition of reality and a romantic imagination of possibility. It was the same for the temporary workers. They certainly knew the legal judgment to their requests was influenced by both the money from their factory and the pressure from the district government, but still they held belief in the legal justice and confidence on their competency with law. This paradoxical situation of the workers and my relation to them was best explained by Bourdieu’s notion of two-fold truth.

The “half-learned,” eager to demystify and denounce, do not realize that those they seek to disabuse, or unmask, both know and resist the truth they claim to reveal. They cannot understand, or take into account, the games of self-deception which make it possible to perpetuate an illusion for oneself and to safeguard a bearable form of “subjective truth” in the face of calls to reality and to realism, and often with the complicity of the institution. (Bourdieu, 2000:190)

Dispersive containment of the labor disputes by the circular state

From radical street protests to peaceful petitions and litigations, both the state workers and the temporary workers experienced a transformation of their strategies. Although these two groups of workers shared similar trajectories, they were not united by their struggles against the factory managers and local governments during restructuring of SOEs. On the contrary, the historical differences between the state workers and the temporary workers affected their interactions with the state agencies, and the differential treatments from the state reinforced and reproduced the differences between the two groups. Although the direction of reform would later produce the universal category of the contract workers, in this transitional period, the radical labor conflicts were contained and dissipated through differential treatments of categories of workers based on their historical trajectories. This dispersive containment avoided the danger of radicalization of labor conflicts brought by rapid unification of the workers’ situations and recognitions which was possible in restructuring of SOEs.

The table shows the differences between the state workers and the temporary workers.

	State workers	Temporary workers
Gender	Mostly men	Mostly women
age	60s to 70s	30s to 40s
Previous status	Urban aristocracy	Discriminated and marginalized
Street protests	Radical and numerous, Leadership and good organization	Radical but short, and only once, followers
Petition	This is their main battlefield,	Experiences of discrimination and

offices	they enjoyed respect and old comradeship, this is the symbolic satisfaction they get from struggles	verbal abuse, buck-passing
courts	Experiences of cheating, buck-passing, and rejection	This is their main battlefield, they enjoyed the formal equality granted by law, this is the symbolic satisfaction they get from struggles
Visit to Beijing	Very formal institutional petitions to the state ministries, and got referred back to local petition offices	Wild cat approach to the state power center, and got sent back to province agency and then the neighborhood committee
The way to engage with the state	Reproduce political and economic dependence on the state, mainly make use of state policies	Have a more equal and maybe radical relationship with the state (so they sue the officials), mainly make use of labor law to go against local polices
Treatment from the state	Use the petition office system to drag them, and make the illusion that the state still tries to care and help the state workers	Let them play the legal games, and let them taste the formal equality granted by state law

The two groups of workers were indeed inherently different in age, gender and resident status, and these differences were historically affiliated with their employment status. Compared to the masculine category of the state workers representing the working class in the state socialist period, temporary workers tended to be female workers from the countryside. According to many researchers focusing on the “fragmentation” of the working class, these workers would not be able to build any solidarity based on universal interests and it would be hard for them to organize meaningful collective actions. However, this research confirmed Elizabeth Perry’s (2000) proposition that the inner division among the workers could only be activated with their interaction with outside forces under proper social environment. Their different experiences in the state factories before the restructuring did influence their strategies, but there was no deterministic relation between them. Although the state workers finally carried out their struggles more often in the petition offices, while the temporary workers went to the courts, that was not a result of “natural choices,” but the manifestation of a series interactions between the workers and the state agents. It was not simply that the state workers preferred petition offices representing the old tradition, while the temporary workers chose courts as the new stage.

At first, two groups both took to the streets in opposition to factory policies, and when they were directed to the bureaucratic fields, they bounced between the petition offices and courts. The strong organizational capacity nurtured by the work unit made it easy and convenient for the state workers to launch street protests. At the same time, they were treated with respect in the petition offices because of their ability to threaten social stability by

launching radical collective actions. Their application of labor disputes arbitration was suggested by the petition officials who could not find a way either to challenge the pension reduction supported by the city government or to pacify the angry workers.

The legal struggles dragged on for three years, but it allowed the petition officials to refuse any further consideration of the state workers' case. This legal failure pushed the state workers back to the petition field and consolidated their recognition of the petition offices as their best battlefield. Because what they requested was the special entitlement from the enterprise based on their historical contribution, the state policies were their symbolic capital. And indeed they received mainly symbolic rewards from the knowledge of state policies and mental satisfaction from the respect accorded to them by the petition officials.

The temporary workers also participated in the street protests as followers. Their marginal existence in the state factories and the lack of organizational resources precluded independent street protests, and made their petitioning experiences a nightmare of humiliation. They were pushed to the legal field which could satisfy their yearning for equality, and the administrative litigation to the labor bureau could be deemed as the revenge for their mistreatment in the petition office. Simply the possibility of suing the state officials and bringing them to the equal dialogue with the temporary workers was an incentive to go to court. Although they still needed the petition offices to enforce the verdict or reactivate the legal procedure, they would take legal struggle as their main strategy. The pleasure and confidence created by becoming the legal experts produced symbolic satisfaction for the temporary workers and emboldened them to keep fighting.

It was true that the different characteristics, especially the different experiences under state socialism, and their different historical trajectories, were the basis on which the state workers and the temporary workers diverged. However, the workers' struggle was a process of trial and error. The interaction with the state bureaucracy helped them to locate their positions in the new social order and thus decide how to protect their rights. It could be argued that the different battlefields for the state workers and the temporary workers were the result of the processing mechanism of the bureaucratic field, whose circular structure played a crucial role in the dispersive containment of the labor conflicts.

The state workers were always under the protection and regulation of the central state, so many state policies stipulated their rights and entitlements. These policies became the symbolic capital that the state workers could accumulate in the local struggles; therefore the state workers took the petition offices of the government as their main battlefield, and only took legal litigation as an exit to it – the state workers were directed or pushed to this legal field only when the petition officials believed that they could not handle this case at that time. Because of the power and effects displayed by the state workers' interruptive collective actions, and because of the political relevance and sensitivity, the workers' request were taken seriously in the petition offices, and even in the functioning of the legal field, the political concerns and administrative intervention played an important role. The central state also gave these workers very formal and institutional acceptance to their petitions to Beijing, though this respect from the center did not make much differences during the local struggles. Comparatively, the temporary workers always held a distant relation to the state, or they were marginal. There were no central policies to clarify the provisions about the temporary workers, therefore the local struggles in the petition field had no solid basis and thus took the form of evasion. Because labor law was the only

stipulation from the state to frame the temporary workers' identities and rights, knowledge of the labor law became the only symbolic capital that they can accumulate and the courtrooms became their main battlefield. The abuse that they encountered in the petition offices was their only entrance to the legal field. If the state workers' legal struggle unearthed the political concerns under the appearance of objective legal sentences, the temporary workers displayed the formal objective appearance of legal arbitration to cover the underlying political logic. Their wildcat petition to Beijing was rejected by the center but placed pressure on the local.

These sharp contrasts between the two cases indicated that the same structure of the bureaucratic field did not homogenize the state workers and the temporary workers. Their different relations to the state produced very different experiences and sent them to different battlefields. The differential treatments from the state and its agents made the uniting of different categories of workers into a universal fate impossible.

If the historical restructuring of SOEs was an opportunity to universalize different categories of workers and possibly unite them through collectively opposing unfair treatments during the restructuring, the "dispersive containment" of different workers' resistances actually proved the difficulty or failure of class formation. In both cases presented here, state workers and temporary workers experienced degradation and deterioration of living or working conditions during restructuring. However, this shared situation did not play a role in their struggles; what was emphasized as significant was their historical differences, and their distinction from the virtual category of "contract workers" on the paper (in the law.) To some extent, the state workers and the temporary workers constituted each other as "the other" instead of identifying with them. The state workers' classification struggle seemed to be structured around the nature of pension – inside or outside the social pool, but actually it was about the special identity and entitlement towards the "state workers." To prove that they deserved the special pension compensation from the enterprise, the state workers had to insist on their "permanent" status guaranteed by the state and thus they had never questioned the pension coverage towards other categories of workers. The temporary workers initially tried to identify with the state workers in order to be eligible for special restructuring compensation. However, they gradually abandoned this unrealistic request and tried to distinguish themselves from "peasant workers." In their attempts to identify with the universal category of "contract workers," they actually wanted to distinguish themselves from the "peasant workers" or "day laborers" who had absolutely no legal protection under labor law. If what the workers did in the bureaucratic field was the classification struggles for them to relocate their position in the new social order, they tried hard to sustain or obtain their interests through keeping distance from the category below themselves. If under state socialism, the significant social divisions were among the state workers, the temporary workers, and the peasants, in the future, all the workers should be universalized into a single category of "contract workers." However, in this transitional period, there was only a new category of "peasant workers," which actively structured the reality, while the contract workers existed only on paper.

What happened in both the petition offices and the courts were alienated the workers from each other. What united all categories of workers was the concept of "the disadvantaged social group." The central state applied this term to anyone who suffered the social transition and was in a disempowered position. Nearly all the workers used this concept to refer to themselves during their petitions in order to elicit sympathy from the officials, because this was a moral

concept, not a socioeconomic one. If the “state worker” was a political category which implied the past political relations in the socialist China, the “contract worker” should be an economic category which unveiled labor-capital relations in the market economy. However, what was prominent in the transitional China were the two vague concepts – the peasant workers and the disadvantaged social group. They reflected the unsettled and ambiguous situations that could not be conceptualized through a simple or pure “class” perspective. In some sense, these two concepts realized the “declassification” function to cover the naked class relation produced by the transition to market economy. This “declassification” effort from the central state complicated the classification struggles at the local level. The popularity of concepts like “peasant workers” and “disadvantaged social group” far exceeded that of the category of “contract workers,” which could not justify the workers’ requests and claims.

From the above analysis, it could be argued that the differential treatments from the state finally influenced the workers’ mentalities, behaviors and thus the ways in which the workers drew distinctions between themselves and other groups. Different categories of workers could only find their position in opposition to others, especially from those who were closest to them. In the process, the workers waited for the official naming from the state, the holder of the monopoly of legitimate symbolic violence. However, the name of “contract workers” did not mobilize different categories of workers and organize them into one universal class. On the contrary, the names of “peasant workers” and “disadvantaged social group” produced the social entities and realities they claimed upon and also obscured the reality and nature of labor conflicts produced by the market transition.

The cases of H Steel Factory and Top Textile Factory indicated that the state contained the labor conflicts by restructuring of SOEs during China’s transition to a market economy. The state prevented the radicalization of the labor conflicts not only through its circular bureaucratic field which could absorb the challenging workers and transform their radical material requests into peaceful discursive justifications, but also through its symbolic domination of the workers which structured the social division among them and their vision of the social order.

Chapter Seven

Conclusion: Bourdieu and the Chinese state in transition

The cases of H Steel Factory and Top Textile Factory clearly displayed how the Chinese state maintained its control on the workers after the collapsing of work unit institution and contained the sharp labor conflicts produced by the restructuring of SOEs. The particular structure of the state composing of four intersecting circles facilitated the circulation of the workers’ requests during which the radical material struggle was transformed into discursive struggles for justification. During the migrations between different circles, the workers learned to frame and justify their requests by employing state policies and state laws, and thus converted themselves from the potential challengers to the virtual supporters to the state, though they were always struggling. Through the active engagements between the workers and the state agents,

the state policies and state laws on paper were activated into the framework structuring the perceptions of the workers and the local struggles. This was a process to reproduce and circulate the statist capitals which embodied the imagination and myth of the state. Unlike the previous totalitarian state based on monopoly of the material resources, which controlled the social conflicts mainly through oppressive prohibitions, this new circular state displayed a strong power based on monopoly of symbolic violence, which maintained the social order and stability mainly through productive enframing. This state functioned as the terrain of struggles for the contesting actors, who fought for different positions through accumulating different capitals.

This entire research was constructed under the direction of Bourdieu's theories, such as the state as the bureaucratic field monopolizing the symbolic violence, the symbolic domination of the workers, and the classification struggles as an important dimension of the class formation. However, this dissertation was not simply an application of Bourdieu's concepts to the case of China, but an effort to bring Bourdieu's theory to a challenge: can Bourdieu's theory go beyond the stable France with its symbolic hierarchies firmly in place, and successfully explain a state in transition and a society in uncertainty? Because of the particularity of the Chinese state and the background of social change, this research brought Bourdieu's theory forward to some extent.

First, the state as intersecting fields. In Bourdieu's theory, the world basically functions as fields – the play grounds with different rules, logics and capital distributions. Bourdieu offered descriptions and explanations for different fields, like the state as a Meta field, the market as economic field, the political field, the cultural field and even an abstract field of power. However, in his system, the relationship between these fields was never clear. It seemed that these fields were independent to each other, because there were clearly defined boundaries between them and the determining logics and rationalities were very different for each field. The only possible connection between the fields was simply the ambiguous “homology,” which means people in the similar positions in different fields might share some sympathy and understanding because they were similarly located. This homologous and independent relation between fields might be a feature of the highly differentiated and professionalized society with stable social ordering. As to the Chinese society which was quite unstable with unsettled social divisions, all the fields were intersecting with each other, which means the boundaries were flexible and fluid between them. This particular configuration of the Chinese state was produced by the transformation from its predecessor – the totalitarian state. The totalitarian state was embodied by a strong center under the direction of the single party controlled the every aspect and area of the social life, therefore there was no effective limitations and restrictions towards this state power. Along with the social reform since 1980s, this totalitarian state became differentiated – it created some semi-independent fields which posed meaningful influences on the central state. The decentralization process created the local states with their own interests and goals, while the legal reform created a legal field which could inspect the state organs and officials to some extent. If the totalitarian state could be depicted as one single circle covering everything, this transformed state was best presented as several circles – fields. Unlike the highly differentiated state, such as France, every field held relative autonomy; these fields created and originated from the single totalitarian state were not independent but intersected with each other. This intersection of the fields actually helped to maintain some of the totalitarian characteristics of the state – the party or the center could reach any point in every field through these intersections and thus still held strong control at every area. These intersections made the

state a circular Meta field, which highly influenced the way it functioned, at least how it contained labor conflicts. This structural feature was part and parcel of its functioning.

Second, the classification struggles. Bourdieu's theory indicated that classification was one of the most important ways for the state to function – to make social visions and divisions; therefore the classification struggle was very crucial for political competitions. Throughout his theoretical system, the classification struggles entirely happened between different sections in the dominant class – they struggled for the right to impose symbolic violence over the whole populace. As to the dominated groups, he did not explain clearly, but it could be reasonably deduced from his scattered discussions, that they were simply the followers and consumers to the classification schemes produced by the struggles within the dominant class. However, the two cases in this dissertation displayed the classification struggles participated by the dominated groups, such as the state workers and the temporary workers. To some extent, this was because the state in transition did not offer stable and absolute classification schemes for the people to easily locate themselves. The structuring categorizations were either too many, such as different and contradictory policies for the state workers' pension distributions, or too few, such as the lack of official definition to the peasant workers, or temporary workers. This unstable or unsettled situation of the state actually gave more room to the local struggles around classifications. Through numerous protests, petitions and litigations, the dominated workers actually took part in the process of defining their new positions and rights. As I have argued in chapter five, these contentious attempts helped to make new policies, just in a roundabout way. According to Bourdieu, the political struggles were basically the battles between different political representatives for different classes and sectors. The dominated groups could only articulate their interests through their spokes persons. However, the reality in China was that there was no independent trade union, authorized assembly was literally forbidden, and the intellectuals generally were indifferent to the situation of the workers. It was so hard for the workers to find their representatives that they could only take up the classifications struggles by themselves. From their relationship with the professional lawyer and the bare-foot lawyer, it was easy to tell the difficulty for the workers to find effective and affordable help in classification struggles. That was also why the workers failed most of their attempts during those struggles.

Third, time was important. In the logic of practice, Bourdieu emphasized the importance of time in accounting for social actions. He stated, "To introduce uncertainty is to reintroduce time, with its rhythm, its orientation, and its irreversibility, substituting the dialectic of strategies for the mechanics of the model" (Bourdieu, 1990:99) This means even with the help of structure, people could not make sense of the improvisation of the social life and action, so it was necessary to bring in "time" – the immanent element of practice. Time was not an external entity, and even not only the organizing scheme of our perception, but an inherent part of the action, which would influence the consequence and meaning of the action. So there was a temporal structure of practice. This irreversibility and tempo of action usually was ossified by the objective model of action which has a totalizing view, thus it could not account for the real practical state of action. Although Bourdieu always emphasized the importance of time and proposed to bring time into the research agenda, his theoretical system was basically a static structural approach and usually used to analyze the highly stable society. This research about the transitional China offered a perfect opportunity to analyze the "uncertainty" and it did display the importance of "time." The elongation of the workers' struggle routes was the indispensable element of the functioning mechanism to contain the labor conflicts. The longer the workers

were involved in the circles, the more they invested into the discursive games, the more difficult for them to give up. It was during the several years of struggles that the workers were converted from the radical challengers to the social order into the loyal believers to the rule of law. Time played such an important role in taming the workers, diverting their anger, and distracted their goals. At the same time, the transitional timing, with its particular uncertainty, also structured the struggles. The ambiguity of the pension policies and workers' identities were produced by this uncertain transition, and it highly shaped the workers' struggles and the effects. This uncertainty, especially the random little successes gave the workers hopes and illusions to keep trying, and obscured the "objective structure" of the bureaucratic field which could only be illustrated by the "objective analysis" afterwards and from outside. It could be argued that time was the inherent feature of the structural effects produced by the transitional state in China and the crucial mechanism of the functioning of this state.

If time was important for the functioning of this system, it was legitimate to ask how long would this transitional system last. Was the intersecting of different fields just the situation of the transitional period and finally it would evolve into the independent homologous fields? Would workers find their representatives in the political struggles and thus be institutionally co-opted? If this transitional period pointed to the political model of the western world, it could be predicted that in the future, under the principle of "rule of law," the legal field would win the independence from the bureaucratic field; therefore the intersection between the fields would disappear. At the same time, the legal stipulation on the demonstration, assembly and protest would be revised to accommodate the workers' requests of political representation and expression; therefore petition system would weaken its function of conflict resolution. However, this was not a determined process that every modern state must follow and the Chinese state did display many exceptional characteristics. Whether or not the Chinese state would reach that "destination" to great extent still depended on what happened during the transition. From the two cases analyzed in this dissertation, this state in transition tried hard to keep its control over the society despite its efforts to create some space and freedom for the social forces. Whether or not the field of law would gradually gain its independence and become meaningful restriction over the state, as the definition of "rule of law" implies, is still hard to tell. As argued by Harley Balzer, "sustainable legitimacy derives not from solving problems, but from creating an environment in which they can be resolved in ways that people consider just. The CCP will be able to retain its hold on power only if it is able to successfully shift from the former to the latter, something few authoritarian regimes have managed to sustain." (2000:250) The cases in this dissertation indicated to some extent the transitional state has successfully built up its new legitimacy based on creating the environment to resolve problems, though it did not solve problems by itself. In this way, this authoritarian regime seems to be able to sustain itself for a long time. The challenge to this regime must come from more radical requests from the dominated groups, such as the calling for the right to organize independent trade union and the right of freedom of association and expression, etc. The strikes in Honda factory emerged in June, 2010 in Guangdong province actually indicated the new stage of the labor capital conflicts and the workers' responses towards the conflicts. How the state deal with this new labor unrest is a crucial sign to where the new regime will go. Will it really evolve from the repression to toleration and finally to co-option towards the popular resistance? This still needs empirical test from the new wave of workers' resistance. Those workers would have very different histories, mentalities and employment relations with factories from the state workers and temporary workers in this research.

Bibliography

- Amnesty International. 2005. "Labor unrest and the suppression of the rights of freedom of association and expression." *Engaging the Law in China: state, society, and possibilities for justice* Edited by Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien Stanford university press.
- Arabs, Philip. 2006. "Notes on the difficulty of studying the state." *The anthropology of the state: a reader*, edited by Aradhana Sharma and Akhil Gupta. Oxford: Blackwell Pub.
- Balzer, Harley. 2000. "State and society in transitions from communism: china in comparative Perspective." *Is China Unstable?: Assessing the Factors*. Edited by David Shambaugh. An East Gate Book.
- Belcher, Marc J. 2002. "Hegemony and Workers' Politics in China." *The China Quarterly* Vol. 170, 283-303
2004. "The Working Class and Governance" in *Governance in China*, edited by Jude Howell Rowman&Littlefield publishing group.
- Beland, Daniel and Ka Man Yu. 2004. "A long financial march: pension reform in China" *Journal of Social Policy*. Vol. 33: 267-288
- Bourdieu, Pierre. 1986. "Force of law: toward a sociology of judicial field" *Hastings Law Journal*. 805 (1986-1987)
1987. *Distinction: A social critique of the judgment of taste*. Harvard University Press.
1992. *The logic of practice*. Stanford University Press.
1992. *An Invitation to Reflexive Sociology*. Chicago, University of Chicago Press.
1994. Rethinking the state; on the genesis and function of the bureaucratic field. *Social Theory* 12(March, 1994):1-19
1998. *Practical reason: on the theory of action*. Stanford University Press.
1999. *Language and symbolic power*. Harvard university press.
2000. *Pascalian meditations*. Stanford University Press.
- Cai, Yongshun. 2004. "Managed participation in China." *Political Science Quarterly*, Vol.119. No.3
- Chan, Anita. 1998. "Vietnamese and Chinese labor regimes: on the road to divergence." *The China Journal*. No. 40, July 1998: 302-325
- Chen, Feng. 2000. "Subsistence Crisis, Managerial Corruption and Labor Protests in China" *The China Journal*. Vol.44, 41-63
2003. "Industrial restructuring and workers' resistance in China." *Modern China*, Vol.29, 237-262
- China Labor Bulletin, 2008: Going it alone: a new report on the state of labor movement in China. Available at:
http://www.clb.org.hk/en/files/share/File/research_reports/workers_movement_07-08.pdf
- Chow, Nelson and Yeubin Xu 2001 *Socialist Welfare in a Market Economy*, Ashgate Publishing Limited
- Gallagher, Mary. 2006. "Mobilizing the law in China: 'informed disenchantment' and the Development of legal consciousness." *Law and Society Review*. Volume 14. Issue 4: 783-816.
- Giles, John, Albert Park and Fang Cai. 2006. "How has economic restructuring affected China's urban workers?" *The China Quarterly*, Vol.185: 61-95

- Hansen, Thomas Blom, and Finn Stepputat. 2001. *States of imagination: ethnographic explorations of the postcolonial states*. Duke University Press.
- Hu, Xiaoyi 1996 "Reducing State-Owned Enterprises' Social Burdens and Establishing a Social Insurance System" in *Policy Options for Reform of Chinese State-Owned Enterprises* edited by Harry G. Broadman, World Bank Discussion Paper (335)
- Katznelson, Ira and Aristide Zolberg ed. 1986. *Working Class Formation: Nineteenth Century Patterns in Western Europe and the United States*. Princeton University Press.
- Kenneth L. and David M. L., 1992. *Bureaucracy, Politics, and Decision Making in Post-Mao China*, Berkeley: University of California Press.
- Lin, Yi-Min 2001 *Between Politics and Markets: Firms, Competitions, and Institutional Change In Post-Mao China*, Cambridge University Press
- Lu, Xiaobo and Elizabeth Perry. 1997. *Danwei; the Changing Chinese Workplace in Historical and Comparative Perspective*. Armonk, N.Y.: M. E. Sharpe
- Mallee 2003, "Migration, hukou and resistance in reform China" in *Chinese Society: Change, Conflict and Resistance* ed. by Elizabeth Perry and Mark Selden.
- Minzner, Carl. 2006. "Xinfang: an alternative to formal Chinese legal institutions" *Stanford Journal of International Law*. Vol.103: 103-179
- Mitchell, Timothy. 2006. "Society, economy and the state effects." *The anthropology of the State: a reader*, edited by Aradhana Sharma and Akhil Gupta. Oxford: Blackwell Pub.
- Naughton, Barry. 1997. "Danwei: the Economic Foundations of Unique Institution" in *"Danwei: the Changing Chinese Workplace in historical and comparative Perspective"* ed. by Xiaobo lu and Elizabeth Perry. East Gate Book
- O'Brien, Kelvin J. 1996. "Rightful Resistance" in *World Politics* 49.1: 31-55
- Peerenboom, Randall. 2002. *China's long march toward rule of law*. Cambridge University Press.
- Perry, Elizabeth 2001. "Challenging the Mandate of Heaven: Popular Protest in Modern China." *Critical Asian Studies*, Vo.13, Issue 2: 163-180
2006 *Patrolling the Revolution: Worker Militias, Citizenship, and the Modern Chinese State*. Rowman & Littlefield Publishers, INC
- Polanyi, Karl. 2001. *The great transformation: the political and economic origins of our time*. Boston, MA: Beacon Press.
- Sargeson, Sally. 1999. *Reworking China's Proletariat*. ST. Martine's Press
- Scott, James. 1976. *The Moral Economy of the Peasant: rebellion and subsistence in Southeast Asia*. Yale University Press.
- Shambaugh, David 2000 *Is China Unstable?: Assessing the Factors*. An East Gate Book
- Shue, Vivienne. 2000. "Legitimacy crisis in China." *Is China Unstable?: Assessing the Factors*. Edited by David Shambaugh. An East Gate Book.
- Silver, Beverly. 2003. *Forces of Labor: workers' movements and globalization since 1870*. Cambridge University Press.
- Solinger, Dorothy 1993 *China's Transition from Socialism: Statist Legacies and Market Reforms 1980-1990*, An East BOOK
2000. "The potential for urban unrest: will the fencers stay on the piste?" In *Is China Unstable?* Edited by David Shambaugh. Sigur Center for Asian Studies, Inc.
- Steinfeld, Edward 1998 *Forging Reform in China: the Fate of State-Owned Industry*, Cambridge University Press
- Tanner, Murry Scot. 2005. "Rethinking Law Enforcement and Society: changing police

- analyses of social unrest.” *Engaging the Law in China: state, society, and possibilities for justice* Edited by Neil J. Diamant, Stanley B. Lubman, and Kevin J. O’Brien Stanford university press.
- Wacquant, Loic. 1989. “Towards a reflexive sociology” in *Sociological Theory*, Vol.7 No.1 (spring)
- Walder, Andrew. 1986. *Communist Neo-traditionalism – work and authority in Chinese Industry*. Berkeley University Press
- Warner, Malcolm. 1996. “Chinese enterprise reform, human resources and the 1994 Labor Law.” *The international journal of human resource management*. Volume 7, issue4, December 1996: 779-796
- West, Loraine. 1999 “Pension reform in China: preparing for the future.” *Journal of Development studies*. Volume 35, Issue 3: 153-183
- Whyte, Martin King. “The changing role of workers” in *Governance in China*, edited by Jude Howell, 2004
- Yu, Jianrong. 2005. A Survey of the Xinfang System and Thoughts on Reform.
- Zhao, Jianmin and Bruce Dickson. 2001. *Remaking the Chinese State: strategies, society and Security*. Routledge: New York.
- Zhao, Ling. 2004. Xinfang Gaige Yingfa Zhengyi [Xinfang Reform Triggers Reform] Nanfang Zhoumo [South Weekend] , Nov. 18, 2004.